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federal register

Thursday
October 27, 1983

Selected Subjects

Animal Drugs
Food and Drug Administration

Banks, Banking
Federal Reserve System

Bridges
Coast Guard

Fisheries
National Oceanic and Atmospheric Administration

Government Contracts
Labor Department

Government Employees
Interior Department

Household Appliances
Federal Trade Commission

Marine Safety
Coast Guard

Navigation (Water)
Coast Guard

Organization and Functions
Immigration and Naturalization Service

Railroad Safety
Federal Railroad Administration

Water Pollution Control
Environmental Protection Agency

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Contents

Federal Register
Vol. 48, No. 209
Thursday, October 27, 1983

Agriculture Department
See Commodity Credit Corporation; Food Safety and Inspection Service; Forest Service.

Civil Aeronautics Board
NOTICES
49677 Agency information collection activities under OMB review
Hearings, etc.:
49677 British American Air, Inc.
49678 Northern Air Lines, Inc.; cancellation

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
49678 Indiana; date change

Coast Guard
RULES
Drawbridge operations:
49656 Texas
Safety zones:
49657 San Francisco Bay, Calif.
PROPOSED RULES
Navigation areas, regulated:
49660 Puget Sound, Washington

Commerce Department
See International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration.

Commodity Credit Corporation
NOTICES
49674 Bylaws

Consumer Product Safety Commission
NOTICES
49724 Meetings; Sunshine Act

Customs Service
RULES
Merchandise, imported; transportation in bond and merchandise in transit:
49655 Overcarried and prematurely discharged merchandise; special manifest procedures; correction
NOTICES
Trade name recordation applications:
49723 Zahnradfabrik Friedrichshafen, AG.

Defense Department
See also Defense Mapping Agency.
NOTICES
Household goods program, domestic:
49688 Interstate shipments, soliciting rates; procedure changes; extension of time and correction
Meetings:
49688 Wage Committee

Defense Mapping Agency
NOTICES
Meetings:
49688 Mapping, Charting and Geodesy Advisory Committee

Energy Department
See Federal Energy Regulatory Commission.

Environmental Protection Agency
RULES
Water pollution; effluent guidelines for point source categories:
49808 Pharmaceutical manufacturing
PROPOSED RULES
Water pollution; effluent guidelines for point source categories:
49832 Pharmaceutical manufacturing

Federal Aviation Administration
PROPOSED RULES
Air traffic operating on flight rules:
49659 Cessna Aircraft Co.; single pilot operation; rulemaking petition; correction
NOTICES
49720 Exemption petitions; summary and disposition

Federal Communications Commission
NOTICES
49724 Meetings; Sunshine Act

Federal Election Commission
RULES
49653 Presidential election campaign fund; transmittal to Congress; effective date announcement
NOTICES
49724 Meetings; Sunshine Act

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
49655 Alaska natural gas transportation system charges; shippers cost-recovery mechanism correction and effective date
NOTICES
Hearings, etc.:
49688 Centel Corp.
49689 Central & South West Services, Inc.
49689 Central Illinois Light Co.
49689 Cleveland Electric Illuminating Co.
49689 Dayton Power & Light Co.
49690 Florida Power Corp.
49693 Greenquist, Thomas A.
49690 Idaho Power Co.
49690 Kansas Gas & Electric Co.
49691 Montana Power Co.
49691 Northern States Power Co. (2 documents)
49691, 49692 Superior Water, Light & Power Co. (3 documents)
49692 Tennessee Gas Pipeline Co.
49692 Texas Eastern Transmission Corp.
49693 Vermont Electric Power Co.

Federal Maritime Commission
PROPOSED RULES
49664 Security for protection of public; discontinuance of proceeding

Federal Mine Safety and Health Review Commission
NOTICES
49724 Meetings; Sunshine Act (2 documents)

Federal Railroad Administration
PROPOSED RULES
Safety appliance standards:
49666 Roof running boards, removal from box and house cars; elimination of requirement

Federal Reserve System
RULES
Interest on deposits (Regulation Q):
49654 Early withdrawal penalty; temporary suspensions; Arizona
NOTICES
Applications, etc.:
49695 Deerwood Bancorporation, Inc.
49695 Farmers State Bancorp., et al
49693 First Southern Bank Corp. et al
Bank holding companies; proposed de novo nonbank activities:
49694 Citicorp, et al

Federal Trade Commission
RULES
Appliances, consumer; energy cost and consumption information in labeling and advertising:
49654 Room air conditioners; comparability ranges; prior range still applicable
PROPOSED RULES
Appliances, consumer; energy cost and consumption information in labeling and advertising:
49660 Central air conditioners and heat pumps staff report; extension of comment period
NOTICES
49725 Meetings; Sunshine Act
49695 Premerger notification waiting periods; early terminations

Fish and Wildlife Service
PROPOSED RULES
Endangered Species Convention:
49667 Giant Panda; appendixes added
NOTICES
Environmental statements; availability, etc.:
49709 Trinity River Basin Fish and Wildlife Management Program, Calif.

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
49656 Estradiol valerate and norgestomet in combination
Human drugs:
49656 Antibiotic drugs; sterile ceftizoxime sodium
PROPOSED RULES
Biological products:
49660 Hepatitis requirements; shipment of blood product; correction

Food Safety and Inspection Service
NOTICES
Meat and poultry inspection:
49677 Standards and Labeling Division policy memoranda; semi-annual listing

Forest Service
NOTICES
Meetings:
49677 Bridger-Teton National Forest Grazing Advisory Board

General Services Administration
NOTICES
49696 Agency information collection activities under OMB review (2 documents)

Health and Human Services Department
See Food and Drug Administration; Human Development Services Office; Public Health Service.

Historic Preservation, Advisory Council
NOTICES
Programmatic memorandum of agreement:
49674 Pacific Northwest Region, National Forests, Oreg. and Wash.; depression-era structures

Human Development Services Office
NOTICES
Organization, functions, and authority delegations:
49697 Development Disabilities Administration
Social services block grant program:
49697 Federal allotments to States

Immigration and Naturalization Service
RULES
Organization, functions, and authority delegations:
49651 Service officers, powers and duties; availability of service records

Interior Department
See also Fish and Widlife Service; Land Management Bureau; Minerals Management Service; Reclamation Bureau.
PROPOSED RULES
49662 Employee responsibilities and conduct

International Trade Administration
PROPOSED RULES
49659 Foreign policy export controls, effects of
NOTICES
Antidumping:
49679 Lightweight polyester filament fabric from Korea
Countervailing duties:
49678 Cotton shop towels from Pakistan
49684 vitamin K from Spain

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
49709 Aberdeen & Briar Patch Railway Co.
49709 Atchison, Topeka & Santa Fe Railway Co.

Justice Department
See also Immigration and Naturalization Service.
NOTICES
49710 Agency information collection activities under OMB review

Labor Department
See also Wage and Hour Division.
RULES
49736 Federal service contract labor standards

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
49702 North Dakota
Conveyance of public lands:
49707 California
Cooperative management agreements:
49701, 49707 California (2 documents)
Exchange of public lands for private land:
49706 California
Geophysical logs; availability, etc.:
49701 Montana
Meetings:
49705 Lake County, Oregon; bombing and aerial gunnery range
49703 Rock Springs District Grazing Advisory Board
Oil and gas leases:
49703 Lottery and posting of available lands; simultaneous suspension
Opening of public lands:
49700 Arizona
Recreation management restrictions, etc.:
49704 Oregon and Washington; special permit fees
Resource management plans:
49706 Kemmerer Resource Area, Rock Springs District, Wyo.
Sale of public lands:
49705 Nevada
49704 Oregon; cancellation
49706 South Dakota
49704 Utah

Legal Services Corporation
NOTICES
49710 Recipient fund balances; instruction

Maritime Administration
NOTICES
Meetings:
49722 Maritime Advisory Committee

Minerals Management Service
NOTICES
Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:
49709 Kerr-McGee Corp

National Bureau of Standards
NOTICES
Laboratory Accreditation Program, National Voluntary:
49685 Activated carbon

National Highway Traffic Safety Administration
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
49723 Volkswagen of America, Ind.; proceeding cancelled

National Labor Relations Board
NOTICES
49725 Meetings; Sunshine Act

National Mediation Board
NOTICES
49725 Meetings; Sunshine Act

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
49668 Foreign fishing; permit fees, etc.; extension of time
49669 Foreign fishing; poundage fee schedule

National Science Foundation
NOTICES
49711 Antarctic Conservation Act of 1978; permit applications, etc.

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
49712 Boston Edison Co.
49713 Cleveland Electric Illuminating Co. et al.
49713 Consolidated Edison Co. of New York
49714, 49716 Duke Power Co. (2 documents)
Safety analysis and evaluation reports; availability, etc.:
49718 Rochester Gas & Electric Corp.

Pacific Northwest Electric Power and Conservation Planning Council
Meetings:
49719 Hydropower Assessment Steering Committee

Public Health Service
NOTICES
Medical technology scientific evaluations:
49699 External counterpulsation (Cardiassist device) treatment of Killip Class II myocardial infarction

Reclamation Bureau
NOTICES
Contract negotiations:
49707 Fryingpan-Arkansas Project, Colo.

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
49665 Natural and other gas; monitoring of gas odor level; withdrawal

Science and Technology Policy Office
NOTICES
Meetings:
49719 White House Science Council

Small Business Administration
NOTICES
Small business investment companies:
49719 Maximum annual cost of money; Federal Financing Bank rate

State Department
NOTICES
Meetings:
49720 International Investment, Technology, and Development Advisory Committee
49720 International Radio Consultative Committee

49720 National Bipartisan Commission on Central America

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
49687 China
49687 India

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Railroad Administration; Maritime Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration.

Treasury Department
See also Customs Service.
NOTICES
Notes, Treasury:
49723 Z–1985 series

Wage and Hour Division
RULES
Federal service contract labor standards
(Editorial Note: For a document on this subject, *see* entry under Labor Department.)

Part II
49736 Department of Labor, Wage and Hour Division

Part III
49832 Environmental Protection Agency

CFR PARTS AFFECTED IN THIS ISSUE

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

8 CFR
103 49651

11 CFR
9001 49653
9002 49653
9003 49653
9004 49653
9005 49653
9006 49653
9007 49653
9012 49653

12 CFR
217 49654

14 CFR
Proposed Rules:
Ch. I 49659

15 CFR
Proposed Rules:
Ch. III 49659

16 CFR
305 49654
Proposed Rules:
305 49660

18 CFR
154 49655

19 CFR
18 49655

21 CFR
436 49656
442 49656
522 49656
Proposed Rules:
610 49660

29 CFR
4 49736

33 CFR
117 49656
165 49657
Proposed Rules:
165 49660

40 CFR
439 49808
Proposed Rules:
439 49832

43 CFR
Proposed Rules:
20 49662

46 CFR
Proposed Rules:
540 49664

49 CFR
Proposed Rules:
192 49665
231 49666

50 CFR
Proposed Rules:
23 49667
611 (2 documents) 49668, 49669

Rules and Regulations

Federal Register
Vol. 48, No. 209
Thursday, October 27, 1983

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 month.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule changes responsibility and authority from the Associate Commissioner, Management to the Associate Commissioner, Information Systems to certify specific Service records and to grant or deny requests under the Freedom of Information and Privacy Act. Clarifying editorial changes, a revision to reflect the new Executive Order 12356 on National Security Information and a reference to the use of a simplified form are also included.

EFFECTIVE DATE: October 27, 1983.

FOR FURTHER INFORMATION CONTACT:
For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.
For Specific Information: Russell A. Powell, FOIA/PA Reviewing Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3278.

SUPPLEMENTARY INFORMATION: This rule revises 8 CFR Part 103 to delegate responsibility for certifying copies of files, documents, records, and nonexistence of an official record to the Associate Commissioner, Information Systems. Authority to grant and deny requests made under the Freedom of Information Act (Secs. 1-3, Pub. L. 95-502, 88 Stat. 1561-64 (5 U.S.C. 552)) and Privacy Act (Sec. 3, Pub. L. 93-579, 88 Stat. 1897 (5 U.S.C. 552a)) and responsibility for implementation of the Act is also delegated to the Associate Commissioner, Information Systems. To facilitate processing of Freedom of Information and Privacy Act requests, authority may be further delegated to other designees of the Associate Commissioner, Information Systems, Regional Commissioners, and District Directors.

The revision reflects the new Executive Order on National Security Information (E.O. 12356, 47 FR 14874, dated April 2, 1982, and effective August 1, 1982).

Form G-639, Application for a Search of the Records of the Immigration and Naturalization Service under the Freedom of Information Act (5 U.S.C. 552), June 20, 1980 edition, was combined with Form G-657, Privacy Act Information Request, June 15, 1980 edition, for a simplified Form G-639, Freedom of Information/Privacy Act Request June 12, 1982 edition, (OMB No. 1115-0087). Form G-657 has been discontinued.

This rule amends the following sections of Part 103:

Section 103.7(d)(1) delegates responsibility for certification of copies of files, documents, records, and non-existence of an official record to the Associate Commissioner, Information Systems. This change also amends paragraphs (b)(1), (b)(2) and (d)(2) of § 103.10, paragraphs (b) and (c) of § 103.20, and paragraph (a) of § 103.21.

Section 103.7(d)(4) changes the title of the Assistant Commissioner, Information Services to the Assistant Commissioner, Records Systems Division and the title of the Chief, Records Administration and Information Branch to Director, Records Management Branch.

Section 103.9(c) formerly specified deletion of only names and other personal identifying data from decisions which are made available to the public. The section is revised to clearly provide for deletion of all identifying data that may be exempt under the Freedom of Information Act.

Section 103.10(a)(2) is revised to delete notification to the records requester of the date on which the time period for complying or denying the request began, and to clarify that a request must be in writing.

Section 103.10(c)(1) is revised for improved readability.

Section 103.10(d)(3) changes the address for an appeal of the denial of a written request for a record in whole or in part to the Assistant Attorney General, Office of Legal Policy (Attention: Office of Information and Privacy), Department of Justice, Washington, D.C. 20530.

Section 103.21(a) is also revised to specifically require that requests for records must be in writing, refers to the simplified Form G-639, Freedom of Information/Privacy Act Request, and removes reference to Form G-657, Privacy Act Information Request, which has been discontinued.

Section 103.22(b)(1) updates the reference from E.O. 11652 to E.O. 12356 (National Security Information).

Section 103.28 changes the address for requests for correction of records to the Office of Associate Commissioner, Information Systems, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Paragraph (b) of this section changes the appeal authority from the Deputy Attorney General to the Assistant Attorney General when an individual appeals a refusal by the Service to amend or correct a record.

Section 103.30(a) deletes reference to discontinued Form G-657, Privacy Act Information Request.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this order is exempt as provided by paragraph (a)(2) of section 553, which exempts matters relating to agency management or personnel.

This order is not a rule within the meaning of Section 1(a) of E.O. 12291 because it is within the exception defined in paragraph 1(a)(3) which relates to agency organization, management, or personnel.

The provisions of 5 U.S.C. 601 *et. seq.* of the Regulatory Flexibility Act relating to certification or to a regulatory flexibility analysis, do not apply since this order is not within the definition of a rule as defined in 5 U.S.C. 601(2).

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Archives and records, Authority delegation, Freedom of

Information Act, Organization and functions.

Accordingly, Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. Section 103.7 is amended by revising paragraphs (d) (1) and (4) to read as follows:

§ 103.7 Fees.

* * * * *

(d) * * *

(1) The Associate Commissioner, Information Systems, the Assistant Commissioner, Records Systems Division, or the designee of either, authorized in writing to make certification in his absence—copies of files, documents, and records in the custody of the Central Office.

* * * * *

(4) The Assistant Commissioner, Records Systems Division, or the Director, Records Management Branch, Central Office, or the designee or either, authorized in writing to make certification in his absence—the non-existence of an official Service record.

2. Section 103.9 is amended by revising paragraph (c) to read as follows:

§ 103.9. Availability of decisions and interpretive material under the Freedom of Information Act.

* * * * *

(c) *Deletion of identifying details.* To the extent that information in decisions is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), the deciding officer shall provide for deletion of identifying details, as appropriate, from copies of decisions made available to the public.

* * * * *

3. Section 103.10 is amended by revising paragraphs (a)(2), (b)(1), (b)(2), (c)(1), (d)(2), and (d)(3) to read as follows:

§ 103.10 Requests for records under the Freedom of Information Act.

(a) * * *

(2) *Manner of requesting records.* All Freedom of Information Act requests must be in writing. Requests may be submitted in person or by mail. If a request is made by mail, both the envelope and its contents must be clearly marked: "FREEDOM OF INFORMATION REQUEST" or "INFORMATION REQUEST." Any request for information not marked and addressed as specified will be so marked by Service personnel as soon as it is properly identified and shall be forwarded immediately to the appropriate office designated to control Freedom of Information Act requests. A request will not be deemed to have been received for purposes of the time period under 5 U.S.C. 552(a)(6) until the request has been received by the appropriate office, or would have been received with the exercise of due diligence by Service personnel. Service Form G-639, Freedom of Information/Privacy Act Request, may be used for rapid identification as a Freedom of Information matter and to ensure expeditous handling; however, a request may be submitted in any written form. Each request made under this section pertaining to the availability of a record must describe the record with sufficient specificity with respect to names, dates, subject matter and location to permit it to be identified and located. A request for all records falling within a reasonably specific category shall be regarded as reasonably described if the description enables the records to be identified by any process not unreasonably burdensome. If it is determined that the request does not reasonably describe the records sought, the response rejecting the request on that ground shall specify the reason why the request failed to meet requirements and shall extend to the requester an opportunity to confer with Service personnel to reformulate the request.

(b) *Authority to grant and deny requests.*—(1) *Grants.* The Associate Commissioner, Information Systems, regional commissioners, district directors, and their designees may grant any type of request not prohibited by law or Executive Order. The head of any office specified in paragraph (a)(1) of this section may grant the following types of requests:

* * * * *

(2) *Denials.* The Associate Commissioner, Information Systems, regional commissioners, district directors, and their designees are authorized to deny a request under exemptions provided in 5 U.S.C. 552(b).

* * * * *

(c) * * *

(1) *Response within 10 days.* Within 10 days (excluding Saturdays, Sundays, and legal holidays) of the receipt of a request by the Service (or in the case of an improperly addressed request, of its receipt by the appropriate office as specified in paragraph (a) of this section), the authorized Service official shall either comply with or deny the request unless an extension of time is requested as required under 28 CFR 16.5(c). A request improperly addressed will not be deemed to have been received for purposes of 5 U.S.C 552 (a)(6) until it has been or would have been received by the appropriate office with the exercise of due diligence by Service personnel.

* * * * *

(d) * * *

(2) *Form of denial.* A reply denying a written request for a record in whole or in part shall be in writing, signed by the Associate Commissioner, Information Systems, by a regional commissioner, by a director, or by one of their designees. The reply shall include a reference to the specific exemption under the Freedom of Information Act authorizing withholding of the records. The notice of denial shall contain a brief explanation of how the exemption applies to the record withheld and, if the deciding official considers it appropriate, a statement of why the exempt record is being withheld. The notice of denial shall include a statement of the right of appeal to the Attorney General under 28 CFR 16.7, and that judicial review will thereafter be available in the district in which the requester resides or has a principle place of business, or the district in which the agency records are situated, or the District of Columbia.

(3) *Right of appeal.* When a request for records has been denied in whole or in part, the requester may, within 30 days of its receipt, appeal the denial to the Assistant Attorney General, Office of Legal Policy, (Attention: Office of Information and Privacy), Department of Justice, Washington, D.C. 20530. Both the envelope and letter must be clearly marked: "FREEDOM OF INFORMATION APPEAL" or "INFORMATION APPEAL."

* * * * *

4. Section 103.20 is amended by revising paragraphs (b) and (c) to read as follows:

§ 103.20 Purpose and scope.

* * * * *

(b) The Associate Commissioner, Information Systems, shall ensure that the provisions of §§ 103.20 through 103.36 of this title and 28 CFR 16.40 through 16.56, and any revisions, are brought to the attention of and made available to:

(1) Each employee at the time of issuance of the regulations and at the time of any amendments; and

(2) Each new employee at the time of employment.

(c) The Associate Commissioner, Information Systems, shall be responsible for ensuring that employees of the Service are trained in the obligations imposed by the Privacy Act

of 1974 (5 U.S.C 522a) and by these regulations.

5. Section 103.21 is amended by revising paragraph (a) to read as follows:

§ 103.21 Adcess by individuals to records maintained about them.

(a) *Access to available records.* Any individual who seeks access to records about himself in a system of records, which have not been exempted from access under the Privacy Act of 1974 (5 U.S.C. 552a), must submit a written request in person or by mail to the manager of the particular system of records to which access is sought. Systems managers are identified in the "Notice of Systems of Records" published by the National Archives and Records Service, General Services Administration. A request for access to records in multiple systems of records may be addressed to the Office of the Associate Commissioner, Information Systems which shall assist the requester in identifying the request more precisely and shall be responsible for forwarding the request to the appropriate systems managers. Use of Form G-639, Freedom of Information/Privacy Act Request, is recommended for rapid identification and to ensure expeditious handling of the request.

* * * * *

6. Section 103.22 is amended by revising paragraph (b)(1) to read as follows:

§ 103.22 Records exempt in whole or in part.

* * * * *

(b) * * *

(1) A request for information classified by the Service under *Executive Order 12356 on National Security Information* requires the Service to review the information to determine whether it continues to warrant classification under the criteria of the Executive Order. Information which no longer warrants classification shall be declassified and made available to the individual, if not otherwise exempt. If the information continues to warrant classification, the individual shall be advised that the information sought is classified; that it has been reviewed and continues to warrant classification; and that it has been exempted from access under 5 U.S.C. 552a(k)(1). Information which has been exempted under 5 U.S.C. 552a(j) and which is also classified, shall be reviewed as required by this paragraph but the response to the individual shall be in the form prescribed by paragraph (a) of this section.

* * * * *

7. Section 103.23 is amended by revising paragraph (a)(1) to read as follows:

§ 103.23 Special access procedures.

(a) * * *

(1) That has been classified under Executive Order 12356, the request shall be referred to the appropriate classifying authority under 28 CFR 17.61 and the individual requesting the record shall be so advised unless the record is also exempt from disclosure under 5 U.S.C. 552a(j) or (k);

* * * * *

8. Section 103.38 is amended by revising paragraphs (a) and (b) to read as follows:

§ 103.28 Requests for correction of records.

(a) *How made.* Unless a record is exempted from corrections, a request for amendments or corrections is made by the individual concerned, either in person or by mail, by addressing the written request to the manager of the system in which the record is maintained. The requester's identity must be established as provided in § 103.21. The request must indicate the particular record involved, the nature of the correction sought, and the justification. A request made by mail should be addressed to the system manager at the address specified in the "Notice of Systems of Records" published by the General Services Administration and the request and envelope must be clearly marked "Privacy Correction Request." Where the requester cannot determine the precise system manager or believes that the same record appears in more than one system, the request may be addressed to the Office of the Associate Commissioner, Information Systems, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. This office shall assist the requester in identifying the location of the record.

(b) *Initial determination.* Within 10 working days of the receipt of the request, the appropriate Service official shall advise the requester that the request has been received. If the record is to be amended or corrected, the system manager may so advise the requester but if correction is refused, in whole or in part, the referral must be by the head of the component in which the record is located, or his designees. If a correction is to be made, the requester shall be advised of the right to obtain a copy of the corrected record upon payment of the standard fee, established in 28 CFR 16.46. If a correction or amendment is refused, in whole or in part, the requester shall be given the reasons and advised of the right to appeal to the Assistant Attorney General under 28 CFR 168.48.

* * * * *

9. Section 103.30 is amended by revising paragraph (a) to read as follows:

§ 103.30 Accounting for disclosures.

(a) An accounting of each disclosure of information for which accounting is required (see § 103.24 of this part) shall be attached to the relating record. A copy of Form G-658, Record of Information Disclosure (Privacy Act), or other disclosure document shall be used for this accounting. The system manager shall advise the requester, promptly upon request as described in § 103.24, of the persons or agencies outside the Department of Justice to which records concerning the requester have been disclosed.

* * * * *

(Sec. 103 of the Immigration and Nationality Act, as amended 98 U.S.C. 1103); 5 U.S.C. 552a; 28 CFR, and EO 12356)

Dated: October 21, 1983.

Alan C. Nelson,

Commissioner of Immigration and Naturalization.

[FR Doc. 83-29208 Filed 10-26-83; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9012

[Notice 1983-27]

Presidential Election Campaign Fund

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date.

SUMMARY: On July 11, 1983 (48 FR 31822), the Commission published the text of revisions to its regulations at 11 CFR Parts 9001-9007 and 9012, which implement the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.* The revisions include a new Part 9012 regarding unauthorized expenditures and contributions, which follows 26 U.S.C. 9012. The Commission announces that these regulations are effective as of October 27, 1983.

EFFECTIVE DATE: October 27, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, D.C., 20463 (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: 26 U.S.C. 9000(c) requires that any rule or regulations prescribed by the Commission to implement Chapter 95 of Title 26, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. The Commission may finally prescribe the regulations in question after they have been before both Houses of Congress for 30 legislative days. The regulations made effective by this notice were transmitted to Congress on July 1, 1983. Thirty legislative days expired in the House and in the Senate as of October 4, 1983.

Announcement of Effective Date

11 CFR Parts 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9012, as published at 48 FR 31822–31839, are effective as of October 27, 1983.

Dated: October 24, 1983.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 29172 Filed 10-26-83; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R-0488]

Interest on Deposits; Temporary Suspension of Early Withdrawal Penalty

AGENCY: Federal Reserve System.

ACTION: Temporary suspension of the Regulation Q early withdrawal penalty.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by severe storms and flooding in designated areas of Arizona.

EFFECTIVE DATE: October 5, 1983.

FOR FURTHER INFORMATION CONTACT: Daniel L. Rhoads, Attorney (202/452-3711), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On October 5, 1983, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 12148 of July 15, 1979, the President, acting through the Director of the Federal Emergency Management Agency, designated the Arizona counties of Graham, Greenlee, Pima, Pinal, and Santa Cruz ma o disaster areas. The Presidential declaration was subsequently amended on October 6 to include the counties of Gila and Yavapai, on October 7 to include Cochise County, on October 12 to include Mohave County, and on October 20 to include portions of Apache and Navajo counties. The Board regards the President's action as recognition by the Federal government that a disaster of major proportions had occurred. The President's designation enables victims of the disaster to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty (12 CFR 217.4(d)). The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster areas as a result of the severe storms and flooding beginning on or about September 23, 1983. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to October 5, 1983, and will remain in effect until 12 midnight, April 7, 1984.

List of Subjects in 12 CFR Part 217

Advertising, Banks, banking, Federal Reserve System, Foreign banking.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons in the designated areas of Arizona directly affected by the severe storms and flooding, good cause exists for dispensing with the notice and public participation provisions in section 553(b) of Title 5 of the United States Code with respect to this action. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make this action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority, October 21, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-29154 Filed 10-26-83; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Room Air Conditioners

AGENCY: Federal Trade Commission.

ACTION: Rule related notice.

SUMMARY: Under the Federal Trade Commission's Appliance Labeling Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15 percent or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range is still applicable for the next year.

The ranges of energy efficiencies for room air conditioners have not changed by as much as 15 percent since the last publication. Therefore, the ranges published on March 25, 1980 [1] remain in effect until new ranges are published.

EFFECTIVE DATE: October 27, 1983.

FOR FURTHER INFORMATION CONTACT: James Mills, 202-376-2891, or Lucerne D. Winfrey, 202-376-2805, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [2] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13)

[1] 45 FR 19520.

[2] Pub. L. 94-163, 89 Stat. 871 (Dec. 22, 1975).

furnaces. Under the statute, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule[3] covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained the estimated annual cost or energy efficiency rating, derived from tests performed pursuant to the DOE test procedures, for all models of the seven categories of appliances. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From the information, the Commission compiled and published[4] ranges of comparability for each product, as required by § 305.10 of the rule.

Section 305.8(b) of the rule requires that manufacturers, after filing this initial report, shall report the same information annually be specified dates for each product type.[5] If an analysis of the new data indicates that the upper or lower limits of any of the ranges have changed by more than 15%, the Commission must, under § 305.10 of the rule, publish a revised version of the new range or ranges. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for room air conditioners have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the initial publication of the ranges on March 25, 1980.[6]

In consideration of the foregoing, the present ranges for room air conditioners will remain in effect for the next year.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619 (1978), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 83-29170 Filed 10-26-83; 8:45 am]

BILLING CODE 6750-01-M

[3] 44 FR 66466, 16 CFR Part 305 (November 19, 1979).

[4] 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 26036 (April 17, 1980), 46 FR 3829 (January 16, 1981).

[5] Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for refrigerators, refrigerator-freezers and freezers are due by August 1.

[6] 45 FR 19520.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM81-21-000]

Recovery of Alaska Natural Gas Transportation System Charges; Effective Date and Correction

Issued: October 21, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction and notice of effective date and OMB control number.

SUMMARY: On July 25, 1983, the Federal Energy Regulatory Commission issued a final rule in Docket No. RM81-21-000, Order No. 320 48 FR 34442 (July 29, 1983), concerning recovery of Alaska Natural Gas Transportation System charges. This document gives notice of the effective date and of the OMB control number for that final rule. It also corrects an error in the authority citation.

EFFECTIVE DATE: The rule is effective October 27, 1983.

FOR FURTHER INFORMATION CONTACT: Jan Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (Supp. IV 1980) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320, require that OMB approve certain information collection requirements imposed by agency rule. On September 21, 1983, OMB approved the information collection requirements in the Commission's final rule concerning recovery of Alaska Natural Gas Transportation System Charges, 48 FR 34,442 (July 29, 1983), and issued control number 1902-0129 for that rule. Therefore, the rule is now in effect.

In FR Doc. 83-20424, appearing on page 34,442 of the issue of July 29, 1983, on page 34,458, column 1, "(OMB Control Number of §§ 154.201-.213: 1902-0129)" is added following the introductory heading "Recovery of Alaska Natural Gas Transportation System Charges" and before the title of § 154.201.

In additions, the following correction is made:

On page 34,457, column 3, the citation for the Natural Gas Act, "16 U.S.C. 717-717w;" is corrected to read "15 U.S.C. 717-717w;".

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29215 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 18

[T.D. 83-218]

Customs Regulations Amendments Relating to Special Manifest Procedures for Overcarried and Prematurely Discharged Merchandise

Correction

In FR Doc. 83-28596 beginning on page 48655 in the issue of Thursday, October 20, 1983, make the following corrections:

§ 18.10a [Corrected].

1. On page 48657, column one § 18.10a(a), line eleven, "authoritized" should read "authorized".

2. On the same page, column two, § 18.10a(b)(2), line sixteen, "arrival at

the manifested port when" should be removed.

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 442

[Docket No. 83N-0302]

Antibiotic Drugs; Sterile Ceftizoxime Sodium

Correction

In FR Doc. 83-27655 beginning on page 46270 in the issue of Wednesday, October 12, 1983, make the following corrections:

1. On page 46271, in § 436.345(f), second column, second complete paragraph, thirteenth line, "solution as" should read "solution prepared as".
2. On page 46272, in § 442.17a(b)(6), first column, five lines from the bottom, "$t-t^a$" should read "$t-t_a$".
3. In the same section, same page, second column, three lines from the top, "t_2" should read "t_a".

BILLING CODE 1505-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Estradiol Valerate and Norgestomet in Combination

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by CEVA Laboratories, Inc., providing for safe and effective use of a norgestomet (synthetic progestogen) implant and an estradiol valerate/norgestomet injection for synchronizing estrus/ovulation in heifers.

EFFECTIVE DATE: October 27, 1983.

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

SUPPLEMENTARY INFORMATION: CEVA Laboratories, Inc., 10560 Barkley, Overland Park, KS 66212, filed NADA 134-930 providing for use of an implant containing 6.0 milligrams (mg) of norgestomet and an injection containing 5.0 mg of estradiol valerate and 3.0 mg of norgestomet per 2 milliliters. The product is used to control timing of estrus to permit synchronized breeding of heifers with or without estrus detection.

Approval of NADA 134-930 is based on data and information contained in Searle's NADA 97-037 and incorporated herein by reference. Approval of Searle's NADA is reflected in 21 CFR 522.850. NADA 134-930 is approved and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

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

List of Subjects in 21 CFR Part 522

Animal drugs, Injectable.

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

§ 522.850 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 522.850 *Estradiol valerate and norgestomet in combination* is amended in paragraph (b) by adding after the number "000014" the phrase "and 050604."

Effective date. October 27, 1983.

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

Dated: October 20, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-29149 Filed 10-26-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08-83-03]

Drawbridge Operation Regulations; San Bernard River, Texas

AGENCY: Coast Guard, DOT

ACTION: Final rule.

SUMMARY: At the request of the Missouri Pacific (MOPAC) Railroad Company, the Coast Guard is changing the regulation governing the MOPAC swing span railroad bridge across the San Bernard River, mile 20.7, near Brazoria, Texas. The bridge provides vertical clearances of two feet and 19 feet above high water and low water, respectively, and now opens on signal at any time.

The change will require that at least three hours advance notice be given for an opening of the draw between 12 midnight and 8:00 a.m. In support of this change, MOPAC Railroad has committed to: (1) Have a bridgetender at the bridge from at least one-half hour before to at least one-half hour after the appointed arrival time and (2) install a radiotelephone on the bridge for the bridgetender to communicate with the approaching vessel.

This action is being taken because of the infrequent requests for opening the draw during the specified advance notice period. This action is designed to relieve the bridge owner of the burden of having a person constantly available to open the draw, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment is effective on November 28, 1983.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Bridge Administration, Branch, Eighth Coast Guard District Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130—(504) 589-2965.

SUPPLEMENTARY INFORMATION: On 30 June 1983, the Coast Guard published a proposed rule (48 FR 30150) concerning this amendment. The Eighth Coast Guard District also published this proposal as a Public Notice dated 5 July 1983. Interested persons were given until 15 August 1983 to submit comments.

Drafting Information

The principal persons involved in drafting this rule are: Perry Haynes, Project Manager, District Operations Division, and Steve Crawford, General Attorney, District Legal Office.

Discussion of Comments

Five comments were received from navigational interests addressing five areas of concern: (1) Require a radiotelephone on the bridge to permit communication between the vessel operator and the bridgetender (2) difficulty making contact with the bridge owner to give the required advance notice when the vessel is under way (3) difficulty providing accurate arrival time at the bridge due to the river current (4) recourse available to the towing industry should the bridge owner fail to provide timely service (5) unattended bridge is vulnerable to vessel strikes and vandalism. These areas of concern are discussed below.

The bridge owner advised that the radiotelephone has been ordered, the operating license applied for, and installation of the unit on the bridge is expected to be completed well in advance of the effective date of this rule.

There should be no difficulty in contacting the bridge owner to give advance notice from a vessel afloat. The vessel operator merely calls by radio the Freeport/Bay City Public Coast Station, KGW 304, Channels 25 and 27, to place a collect call to the railroad dispatcher, Spring, Texas, (713) 350-7581 or 7584.

The Bridge is located at river mile 20.7. Assuming that it takes a tow six hours to travel from the mouth of the river to the bridge, the tow theoretically would be half way there, or 10.35 miles from the bridge, at the end of three hours. At this distance, it would appear that the mariner could give the minimum three hours advance notice of his arrival time with reasonable confidence, even during adverse weather or river conditions. Moreover, the bridgetender will arrive at the bridge at least one-half hour before the vessel's scheduled arrival time, and will stay at the bridge at least one-half hour after the vessel's scheduled arrival time.

Should the bridge owner fail to provide timely service, as required by the regulations, the special operating procedure may be rescinded and the bridge owner required to provide full time bridgetender service.

An unattended bridge is considered no more nor no less vulnerable to vessel strikes than an attended bridge. Should vandalism develop, it will be dealt with by the bridge owner in a timely manner to the satisfaction of all concerned.

Economic Assessment and Certification

This final regulation has been reviewed under provisions of Executive Order 12291 and has been determined not to be a major rule. It is considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedure for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of May 1980). An economic evaluation has not been conducted since the impact is expected to be minimal for the reasons discussed above. In accordance with § 605(d) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding a new § 117.245(j)(40) after § 117.245(j)(39) to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(j) * * * .

(40) San Bernard River, mile 20.7, Brazoria, Texas. The draw of the Missouri Pacific railroad bridge shall open on signal from 8 a.m. to 12 midnight. From 12 midnight to 8 a.m. the draw shall open on signal if at least three hours notice is given.

* * * * *

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3))

Dated: October 18, 1983.

W. H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 83-29241 Filed 10-26-83; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

COTP San Francisco Regulation 83-04; Safety Zone Regulations: San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The U.S. Coast Guard is establishing a temporary moving safety zone in San Francisco Bay on October 29, 1983. This zone is needed to provide for safety of life on navigable waters during a welcoming ceremony for the Aircraft Carrier U.S.S. Carl Vinson. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: These regulations are effective on October 29, 1983 between 4:00 p.m. and 8:00 p.m. PDT.

FOR FURTHER INFORMATION CONTACT: LTJG W. W. Whitson, Marine Safety Office, San Francisco Bay, (415) 437-3073.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing and NPRM and delaying its effective date is not feasible because of time constraints and is contrary to the public interest because of the necessity to ensure safety of life on navigable waters during this welcoming activity.

Drafting Information

The drafters of this regulation are LTJG W. W. Whitson, project officer for the Captain of the Port, and LT. C. A. Amen, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin at 4:00 p.m. PDT, October 29, 1983 with the arrival of the Aircraft Carrier U.S.S. Carl Vinson under the Golden Gate Bridge. The vessel will proceed inbound from the Golden Gate Bridge, along the San Francisco city front to its assigned berth at Naval Air Station, Alameda, CA.

The Safety Zone established by this regulation is necessary to ensure that the welcoming parade of approximately 500 pleasure craft do not impede the progress of a relatively unmaneuverable vessel which requires unobstructed waters for safe navigation. Three Coast Guard vessels will enforce this Safety Zone.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new § 165.T1204 to read as follows:

§ 165.T1204 Safety Zones: San Francisco Bay U.S.S. Carl Vinson welcoming activities.

(a) *Location.* The following area is a Safety Zone:

(1) The waters surrounding the U.S.S. Carl Vinson proceeding inbound from the Golden Gate Bridge along the San Francisco city front to its assigned berth at Naval Air Station, Alameda, CA. on October 29, 1983 from 4:00 p.m. to 8:00 p.m. PDT. This moving Safety Zone

extends out 200 yards on either side of a line running from a point 400 yards ahead of the vessel to a point 200 yards astern of the vessel.

(b) *Regulations.* (1) accordance with the general regulations in Sec. 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) This Safety Zone will terminate upon the arrival of the U.S.S. Carl Vinson at its assigned berth at Naval Air Station, Alameda, CA.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: October 19, 1983.

K. F. Bishop, Jr.,

Captain of the Port, USCG Marine Safety Office, San Francisco Bay.

[FR Doc. 83-29242 Filed 10-26-83; 8:45 am]

BILLING CODE 4910-14-M

Proposed Rules

Federal Register
Vol. 48, No. 209
Thursday, October 27, 1983

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Docket Nos. 23771 and 23772]

Cessna Aircraft Co.; Single-Pilot Operation

Correction

In FR Doc. 83-27737, beginning on page 46358 in the issue of Wednesday, October 12, 1983, make the following corrections:

1. On page 46359, second column, under *Petition for Amendment of §91.213*, fourth line, "from operation" should have read "for operation".
2. Same column, under *Petition for Exemption From the Provisions of §91.213*, third line, "§91-213" should have read "§91.213".
3. On page 46360, third column, twenty-one lines from the bottom of the page, "certification is not" should have read "certification is now".
4. On page 46361, second column, the eighth line from the top of the page should have read "profound national and private sector public".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Ch. III

[Docket No. 31021203]

Request for Comments on Effects of Foreign Policy Export Controls

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: Section 6 of the Export Administration Act of 1979 provides that export controls imposed for foreign policy reasons expire one year after imposition unless extended. In preparation for revision or extension of controls on January 20, 1984, the Department is seeking comments on how controls imposed or extended effective January 20, 1983 have affected exporters and the general public.

DATE: Comments should be received by December 8, 1983 to assure full consideration in formulation of control policies.

ADDRESS: Written comments (six copies) should be sent to: Mr. Richard J. Isadore, Director, Operations Division, Office of Export Admimistration, P.O. Box 273, U.S. Department of Commerce, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: George Kuzmycz, Acting Chief, Special Programs, Branch, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 377-4275.

SUPPLEMENTARY INFORMATION: The Export Administration Act of 1979 establishes criteria for the imposition, extension, or expansion of foreign policy export controls. Subsection 6(a)(2) of the Act provides that:

Export controls maintained for foreign policy purposes shall expire * * * one year after imposition, * * * unless extended * * * Any such extension and any subsequent extension shall not be for a period of more than one year.

For administrative reasons, the Department reviews and extends all foreign policy controls on a uniform date, notwithstanding that certain controls imposed during the year otherwise would expire on their anniversary date.

Foreign policy controls were extended or modified on January 20, 1983, to be effective through January 20, 1984. Controls remain in effect at this time covering human rights, South Africa and Namibia, Libya, anti-terrorism, regional stability, embargoed communist countries, oil and gas equipment for the Soviet Union and Afghanistan, and truck manufacturing equipment for the Soviet Kama River and ZIL truck plants. Nuclear nonproliferation controls continue in effect pursuant to section 17(d) of the Act and section 309(c) of the Nuclear Nonproliferation Act of 1978 (See 15 CFR Part 378).

To assure maximum public participation in the review process, comments on the extension or revision of these existing foreign policy controls are solicited.

The Act requires the following criteria to be considered when imposing, expanding, or extending foreign policy export controls:

(1) The probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such control;

(2) The compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;

(3) The reaction of other countries to the imposition or expansion of such export controls by the United States;

(4) The likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects on the controls on existing contracts;

(5) The ability of the United States to enforce the proposed controls effectively; and

(6) The foreign policy consequences of not imposing controls.

The Department is particularly interested in the experience of individual exporters in complying with these controls, with emphasis on economic impact and specific instances of business lost to foreign competitors.

Parties submitting comments are asked to be as specific as possible. However, respondents are remined that the Department is soliciting only information that may be used publicly. No "confidential business information" will be accepted. Any infomation so designated will be returned to the commenter.

All comments received before the close of the comment period will be considered by the Department in the development of final regulations.

While comments received after the close of the comment period will be

considered if possible, their consideration cannot be assured.

All public comments will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda that will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not routinely be made available for public inspection.

The public record concerning these comments will be maintained in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001B, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration's Freedom of information Officer, at the above address or by calling (202) 377-3031.

Authority: Sections 6 and 13, Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.;* Executive Order No. 12214 (45 FR 29783, May 6, 1980).

Dated: October 24, 1983.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 83-29244 Filed 10-26-83; 8:45 am]

BILLING CODE 3510-25-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act; Extension of Comment Period

AGENCY: Federal Trade Commission.

ACTION: Extension of comment period.

SUMMARY: The Federal Trade Commission's Bureau of Consumer Protection has extended for 30 days the time period within which comments will be received on a staff report that summarizes and analyzes the evidences in its rule amendment proceeding to include pulse combustion and condensing furnaces under its Appliance Labeling Rule. The staff report has been placed on public record No. 209-18, and was announced in the **Federal Register** on August 19, 1983 (48 FR 37663).

DATE: Comments will be accepted for the record until November 2, 1983.

ADDRESSES: Requests for copies of the staff report should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue N.W., Washington, D.C. 20580. Comments should be sent to James Mills, Attorney, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: James Mills, 202-376-2891 or Lucerne D. Winfrey, 202-376-2805.

SUPPLEMENTARY INFORMATION: The Bureau Director has received a request for a 30-day extension from the Gas Applicance Manufacturers Association (GAMA), which requested the extra time in order to evaluate thoroughly the staff report and ensure proper preparation of its submission to the record.

The Bureau Director is persuaded that GAMA's request to justified, and has decided to grant it. In the interest of fairness and a complete record, the Bureau Director has decided to grant a 30-day extension to the general public as a whole, so the comment period is extended until November 2, 1983.

The Commission's final determination in this matter will be based on the entire rulemaking record, including the staff report and comments received on it. The staff report has not been reviewed by the Commission, and its publication should not be interpreted as reflecting the present views of the Commission or any member thereof.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), 42 U.S.C. 6294; Sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Carol T. Crawford,

Director, Bureau of Consumer Protection.

[FR Doc. 83-29169 Filed 10-26-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 82N-0029]

Hepatitis Requirements; Proposed Amendment To Permit Shipment of Any Blood Product Before Test for Hepatitis B Surface Antigen Is Completed

Correction

In FR Doc. 83-27919, beginning on page 46815, in the issue of Friday, October 14, 1983, on page 46816, in the third column, in § 610.40(b)(4), in the fourth line, "such as blood" should read "such a blood".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 13-83-12]

Regulated Navigation Area; Puget Sound, Washington

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to regulate gill net fishing in Puget Sound and adjacent waters. This action would reinstate certain general regulations which were recently cancelled by the U.S. Army Corps of Engineers and would establish authority for special traffic lanes to reduce conflicts between gill net fishing vessels and deep-draft vessels. These regulations are needed due to the large number of user conflicts and potentially hazardous situations which frequently develop during periods when heavy concentrations of gill net fishing vessels are present. The intended effect of this proposed action is to facilitate the safe passage of vessels in Puget Sound with minimum interference in gill net fishing activities.

DATES: A public Hearing will be held on 14 December 1983. All requests to present oral testimony must be received on or before 7 December 1983. All written comments must be received on or before 31 December 1983.

ADDRESSES: Written comments, and requests to present oral testimony, should be submitted to Commander (mps), Thirteenth Coast Guard District, 915 Second Avenue, Seattle

Washington 98174. Comments will be available for inspection in Room 3506 at the above address. Normal office hours are 8:00 A.M. to 4:15 P.M., Monday through Friday, except holidays. Written comments or requests to make oral testimony may also be hand delivered to this address. The Public Hearing on 14 December 1983 will be conducted between 1 pm–4 pm and 6 pm–8 pm in the South Auditorium located on the fourth floor of the Federal Building, 915 Second Avenue, Seattle, Washington 98174.

FOR FURTHER INFORMATION CONTACT: Cmdr. T. Roger Pike, USCGR, Marine Safety Division, Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98134. Telephone: (206) 442-5537.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making ty submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 13–83–12), and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. In addition, interested persons are invited to attend the Public Hearing and present oral or written statements on this proposal. Persons wishing to make an oral statement should notify Cmdr. Pike by 7 December 1983 and indicate the approximate amount of time required. Comments at the Public Hearing will normally be heard in the order the requests to comment are received. It is requested that a written summary or copy of the oral presentation be included with the request. The proposed rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

Drafting Information

The drafters of this notice are Cmdr. T. Roger Pike, USCGR, Marine Safety Division, Thirteenth Coast Guard District, and Lt. James R. Woeppel, USCG, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulation

The U.S. Army Corps of Engineers recently cancelled its regulations in 33 CFR 206.93 which addressed gill net fishing in Puget Sound. Those regulations were withdrawn by the Corps of Engineers as a part of a general review of its regulations. The Coast Guard proposes to republish those regulations since they had proven to be quite effective and since they were generally well accepted by the maritime public.

In addition, new regulations are proposed to authorize temporary special traffic lanes as an alternative to the Puget Sound Vessel Traffic Service Traffic Separation Scheme during periods of heavy gill net fishing. During the gill net fishing season, concentrations of gill net fishing vessels, and their nets, frequently block traffic lanes, creating the potential for hazardous situations. Over the past several years, this issue has been discussed in a number of settings. In 1981, a Public Hearing and an Open Conference were held under CGD80–119. Several regulatory and non-regulatory actions grew out of these meetings. (For a summary of these actions, see 48 FR 20248). More recently, the Puget Sound Users Forum, sponsored by the Sea Use Council, recommend the authorization of temporary special traffic lanes as proposed herein. That recommendation had support from a broad spectrum of Puget Sound users, including the Puget Sound Gillnetters Association. The recommendation was successfully implemented on a trial, voluntary basis during the 1982 fishing season, using a one half mile wide special lane. Since then there has been some question raised as to how wide a lane is necessary or appropriate, but support for the general concept has remainded intact. Briefly, the concept involves authorizing the Puget Sound Vessel Traffic Service (PSVTS), during periods and in areas of heavy gill net fishing concentrations, to establish a temporary special traffic lane for use in lieu of the existing Traffic Separation Scheme. Deep draft vessels would be authorized to use this lane, which would be kept free of gill net fishing. Gill net fishermen, in return, would be free to fish, relatively undisturbed, in all other waters, including the usual lanes of the Traffic Separation Scheme.

Finally, a ferry lane would be established for the Edmonds-Kingston ferry route similar to the historic Mukilteo-Columbia Beach ferry lane, which would be re-established. Gill net fishing would be prohibited in these two ferry lanes.

Economic Assessment and Certification

This proposed regulation is considered to be nonsignificant in accordance with DOT policy and procedures for simplification, analysis, and review of regulation (DOT Order 2100.5). Its economic impact is expected to be minimal since gill net fishing will be affected only in a very small area in comparison to the area of Puget Sound which is involved, and because the temporary special traffic lane would be implemented only if and when the concentration of gill net fishing vessels in the traffic lanes created a safety hazard. Therefore, further economic evaluation is not necessary.

Based upon this assessment, it is certified in accordance with Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, by adding § 165.1301 to read as follows:

§ 165.1301 Puget Sound, Washington.

(a) *General regulations.* The regulations in this paragraph shall govern fishing with gill nets in the following northwestern Washington waters under the jurisdiction of the Captain of the Port Seattle: Puget Sound, Hood Canal, Possession Sound, Commencement Bay, the Strait of Juan de Fuca, the San Juan Archipelago, Georgia Strait, Rosario Strait, and adjacent waters.

(1) A tug with tow, whose intended course will take it through waters occupied by gill net gear, shall sound one long blast, followed by one short blast, of a whistle or horn, and during darkness or fog shall, in addition, indicate its intended course by directing a searchlight beam on such course. Gill net fishermen operating within the indicated course of the tug shall draw in their gear or otherwise maneuver to permit passage of the tug and its tow without hindrance or unreasonable delay.

(2) A tug without tow or any other vessel, if unable to determine the lay of the nets and doubt exists aboard the tug or vessel as to the best course to take, may request assistance of the nearest gill net boat which shall, without delay,

drop its net and pilot the tug or vessel through. If assistance of a pilot boat is not obtainable or if nets are so concentrated as to make it impracticable to lay a course through the nets, the tug or vessel shall proceed as indicated in paragraph (a)(1) of this section for a tug with tow, and nets shall be lifted or maneuvered out of the way to permit passage of the tug or vessel without hindrance or unreasonable delay.

(3) A boat with at least one man in it capable of controlling the net shall be in constant attendance upon each net while it is laid out, except when providing pilot service as provided in paragraph (a)(2) of this section.

(b) *Prohibited fishing area in Possession Sound between Mukilteo and Columbia Beach.* Fishing with gill nets is prohibited within 440 yards on each side of a straight line connecting the ferry landings at Mukilteo and Columbia Beach.

(c) *Prohibited fishing area in Puget Sound between Edmonds and Kingston.* Fishing with gill nets is prohibited within 440 yards on each side of a straight line connecting the ferry landings at Edmonds and Kingston.

(d) *Prohibited fishing area in Temporary Special Traffic Lanes.* In order to decrease conflicts between deep-draft vessels and fishing vessels, the Coast Guard is authorized to establish a temporary special traffic lane, as described below, for use as an alternative to the Puget Sound Vessel Traffic Service Traffic Separation Scheme described in 33 CFR Part 161. When gill net fishing has reached or may reach such concentrations as to constitute a hazard to navigation, the Puget Sound Vessel Traffic Service may, from time to time, grant deviations to individual vessels to use this temporary special traffic lane. When the Puget Sound Vessel Traffic Service has placed into effect this special traffic lane, and announced that fact by Broadcast Notice to Mariners, gill net fishing is not allowed within the areas described in that announcement. The temporary special traffic lane may be all or part of a lane commencing north of Pt. Wilson at the center of Precautionary Area "SA" and extending southerly to the center of Precautionary Area "TC" off Browns Point. A line along the center of the Traffic Separation Scheme and connecting the traffic separation buoys now named "SA", "SB", "SC", "SD", "SE", "SF", "SG", "T", "TA", and "TC", will form the center line of the temporary special traffic lane. (For a description of Separation Zones, Traffic Lanes, and Precautionary Areas, see 33 CFR 161.183, 161.185, and 161.187). A line parallel to and one quarter mile west of this center line will form the western boundary and a line parallel to and one quarter mile east of this center line will form the eastern boundary of this special lane.

(33 U.S.C. 1224; 49 CFR 1.46(n)(4); 33 CFR 1.05-1(g)(4))

Dated: September 9, 1983.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 83-29240 Filed 10-26-83; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 20

Employee Responsibility and Conduct

AGENCY: Interior Department.

ACTION: Proposed rulemaking.

SUMMARY: Portions of the regulations governing the conduct and responsibility of Department of the Interior employees (43 CFR Part 20) are proposed to be revised. This proposed revision, if adopted, will delete the public financial disclosure reporting requirements for Department of the Interior employees identified as performing functions or duties under the Federal Land Policy and Management Act, Mining in the Parks Act, Energy Policy and Conservation Act and the Outer Continental Shelf Lands Act Amendments of 1978. This proposal is based on a Justice Department interpretation of Section 207(c) of the Ethics in Government Act of 1978, and on the Department's effort to promote efficiency in the process of collecting and reviewing employee financial disclosure reports to prevent actual or apparent conflicts of interest. Another proposed revision would incorporate a provision to allow management reasonable flexibility in administering employee responsibility and conduct restrictions that apply to Minerals Management Service employees. The remaining proposed revisions in this notice will, if adopted, solve minor administrative problems identified while enforcing the current rules in 43 CFR Part 20.

The Department invites comments on these proposed regulations.

DATE: To be considered, comments must be received on or before November 28, 1983. All comments will receive full consideration.

ADDRESS: Comments, views and opinions concerning the proposed regulations should be submitted to: Deputy Agency Ethics Officials, U.S. Department of the Interior, Room 5125, 18th and C Streets, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Gabriele J. Paone or Mr. Mason Tsai on (202) 343-3932.

SUPPLEMENTARY INFORMATION: The Department of the Interior proposes to amend 43 CFR Part 20 by eliminating the regulations requiring public financial disclosure reporting for those employees who perform duties and functions under the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579); the Mining in the Parks Act (Pub. L. 94-429), the Energy Policy and Conservation Act (Pub. L. 94-163), and the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372). This proposal is based on a Justice Department interpretation of Section 207(c) of Public Law 95-521, and on the Department's effort to promote efficiency in the process of collecting and reviewing employee financial disclosure reports to prevent actual or apparent conflicts of interest. Refer to the Department of Justice letter of April 11, 1980 from John M. Harmon, Assistant Attorney General to Deputy General Counsel David O. Bickart at the Environmental Protection Agency. An amendment to Section 24 is proposed, and will allow management reasonable flexibility to administer the conflict of interest restrictions that apply to employees of the Minerals Management Service. The remainder of the proposed revision affects various sections of Part 20 and is needed to solve administrative problems identified while enforcing the provisions in the Part.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

This rule does not contain information collection requirements which require approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary authors of the proposed rule are Gabriele J. Paone, Deputy Agency Ethics and Audit Coordination Official and Mason Tsai, Assistant Agency Ethics Official.

List of Subjects in 43 CFR Part 20

Conflicts of interest, Government employees.

Accordingly, 43 CFR Part 20 is proposed to be amended as follows:

Dated: November 24, 1983.

Richard R. Hite,

Principal Deputy Assistant Secretary, Policy, Budget and Administration.

PART 20—[AMENDED]

1. It is proposed that 43 CFR Part 20 be amended by revising the Authority Citation to read:

Authority: 5 U.S.C. 301; 18 U.S.C. 207(j) (Supp. V 1981); sec. 12 Ch. 576, 48 Stat. 986 (25 U.S.C. 472); sec. 201(f), Pub. L. 95–87, 91 Stat. 450–51 (30 U.S.C. 1211 (Supp. V 1981)); E.O. 11222, 30 FR 6469 3 CFR 1964–65 (Comp.), as amended (18 U.S.C. 201 note); 5 CFR 735–104; 5 CFR 734.103; 5 CFR 737.1(c)(7).

2. Section 20.735–2 would be amended by revising paragraph (h)(4)(i) to read:

§ 20.735–2 Purpose, policy and general responsibilities.

* * * * *

(h) * * *

(4)(i) Special codes of conduct have been approved in accordance with § 20.735–2(h) for two groups of employees:

(A) Bureau of Land Management Fire Management Teams—approved January 16, 1981.

(B) Office of Inspector General Auditors and Investigators—approved July 16, 1982.

* * * * *

3. The regulations on sanctions would be amended by revising § 20.735–4 to read as follows:

§ 20.735–4 Sanctions.

(a) Violations of the regulations in this part by an employee may be cause for appropriate corrective, disciplinary or remedial action, which may be in addition to any criminal or civil penalty provided by law.

(b)(1) Disciplinary action may include, but is not limited to, oral or written warning or admonishment, reprimand, suspension, reduction in grade or pay, or removal from office and shall be taken in accordance with Departmental policies, applicable statutes, Executive Orders, and regulations (Refer to Federal Personnel Manual and additions thereto). Disciplinary action may be imposed independently from and without prior application of remedial actions.

(2) Remedial actions may include those actions described in § 20.735–40. Failure to comply with appropriate remedial action may result in suspension or removal from office, or other disciplinary action. Employees may appeal divestiture orders is accordance with procedures contained in § 20.735–43.

(c) The procedures for disciplinary action involving contract education employees in Indian Affairs are contained in 25 CFR 38.6.

4. Section 20.735–7 would be amended by revising paragraph (b)(2)(i) to read:

§ 20.735–7 Gifts, entertainment, and favors from domestic sources.

* * * * *

(b) * * *

(2) * * *

(i) Food and refreshments of nominal value on infrequent occasions in the ordinary course of an official luncheon or dinner meeting or other official or professional function or on an inspection tour where an employee may properly be in attendance,

* * * * *

§ 20.735–9 [Amended]

5. It is proposed to redesignate § 20.735–9 paragraphs (a)(2) and (a)(3) as (a)(3) and (a)(4) respectively. Then a new § 20.735–9 paragraph (a)(2) is proposed to read:

(a) * * *

* * * * *

(2) The Department may charge a fee or accept reimbursement for providing a service or thing of value to a private source when the service or thing of value provided benefits to both the Government and the particular private source (31 U.S.C. 9701). In such instances only a portion of the costs can be accepted from the private source. The Department must pay expenses associated with its usual official business and for the benefits it receives from participating in the event. The private source can be charged or may reimburse the Department for that portion of the service provided that exceeds the Department's usual expenses and the benefits to the government. Under this provision, payments from private sources must be deposited in the U.S. Treasury unless the bureau receiving the payment is authorized by statute to accept such payments.

§ 20.735–9 [Amended]

6. It is proposed that § 20.735–9 paragraph (b)(3) be amended by removing the works "International Communication Agency" found in the first sentence and inserting in its place: United States Information Agency

§ 20.735–20 [Amended]

7. It is proposed that § 20.735–20 paragraph(c) be amended by removing the words "All Assistant Secretary Immediate Offices including Bureau and Office Directors." and inserting in its place: All Assistant Secretary Immediate Offices including heads of Bureaus and Offices.

8. It is proposed that § 20.735–24 be amended by revising paragraphs (a)(3)(i), (a)(3)(ii), (a)(4)(i), (a)(4)(ii), (b)(1)(ii), and (b)(3), and by adding paragraph (d)(6) as follows:

§ 20.735–24 Interest in Federal lands.

(a) * * *

(3) * * *

(i) Membership or outside employment in a business which has interests in federal lands, and

(ii) Ownership of stock or other securities in corporations determined by the Department to have an interest in federal lands directly or through a subsidiary.

(4) * * *

(i) Holdings in land, mineral rights, grazing rights or livestock which in any manner are connected with or involve the substantial use of the resources or facilities of the federal lands, or

(ii) Substantial holdings of a spouse or dependent child. *Refer to § 20.735–21(b)(5) for the definition of "Substantial."*

(b) * * *

(1) * * *

(ii) Retaining a direct interest in federal lands acquired voluntarily or by any other method, before or during employment by the Department in their own name or in the name of their spouse, dependent child, or solely-owned or family-owned business except that they may acquire or retain such interests in accordance with the waiver criteria in § 20.735–24(e).

* * * * *

(3) All Department employees are prohibited from acquiring or retaining any claim, permit, lease, small tract entries, or other rights in federal lands either in their own name or in the name of their spouse, dependent child, or solely-owned or family-owned business except that they may acquire or retain such interests in accordance with the waiver criteria in § 20.735–24(e). Also, employees, other than those identified in § 20.735–24(b) (1) and (2), may purchase or retain stocks or securities traded on the open market in companies having interests in federal lands, provided that such acquisition will not interfere or appear to interfere with the proper and impartial performance of their official duties.

* * * * *

(d) * * *

(6) The prohibitions imposed on Minerals Management Service employees by § 20.735–24(b) are imposed by the Secretary through regulatory extension of the statutory provisions in 43 U.S.C. 31(a). Accordingly, the Secretary authorizes

the Director, Minerals Management Service (MMS), to approve exceptions to this regulatory extension for individual MMS employees or for a class of MMS employees for cause. Exceptions granted by the Director for a class of employees shall be with the prior concurrence of the Designated Agency Ethics Official.

* * * * *

9. Section 20.735-30 would be amended by revising paragraph (c) to read:

§ 20.735-30 Executive order filing requirements.

* * * * *

(c) *When to file.* The Ethics Counselors shall notify each employee covered by this sectin and furnish the necessary form or forms to the employee at the time of his or her entrance on duty and by December 15 of each year.

* * * * *

10. It is proposed that § 20.735-30 paragraph (c)(1) be amended to remove the last word "or" and that § 20.735-30 paragraph (c)(2) be amended to remove the last word "or".

§ 20.735-34 [Removed]

11. It is proposed to amend Part 20.735 of 43 CFR by removing § 20.735-34 in its entirety.

12. It is proposed that § 20.735-35 be amended by removing paragraph (a)(4).

13. Section 20.735-35 would be amended by revising paragraph (b)(2)(i) to read:

§ 20.735-35 How to file.

* * * * *

(b) * * *

(2) * * *

(i) Statutory prohibitions contained in § 20.735-22(c) or the Surface Mining Control and Reclamation Act filing requirements, and

* * * * *

14. It is proposed that § 20.735-35 be amended by removing paragraph (b)(3) and by adding a note between § 20.735-35(c)(2) and § 20.735-35(c)(3) to read:

Note.—"Covered employee" means an employee who is serving in a position that requires the incumbent to file a financial disclosure statement.

15. It is proposed that § 20.735-70 be amended by removing (a)(18), (a)(19), (a)(20), and (a)(22). Then (a)(21) would be redesignated as (a)(18); (a)(23) would be redesignated as (a)(19); (a)(24) would be redesignated as (a)(20); (a)(25) would be redesignated as (a)(21); (a)(26) would be redesignated as (a)(22); (a)(27) would be redesignated as (a)(23).

16. It is proposed that § 20.735-70 be amended by revising paragraph (a)(18) to read:

§ 20.735-70 Bibliography of statutes.

(a) * * *

(18) The requirement that each employee of the Office of Surface Mining Reclamation and Enforcement or any other Federal employee performing any function or duty under the Surface Mining Enforcement and Reclamation Act is prohibited from having a direct or indirect financial interest in underground or surface coal mining operations.

* * * * *

17. It is proposed that Appendix A-3 be revised to read as follows:

Appendix A-3—U.S. Department of the Interior, Bureau of Land Management; Employee Certification

Note.—The provisions in 43 CFR 20.735-22(c)(1) and 20.735-24 should be read completely before this statement is signed.

I have received a copy of the Department of the Interior Regulations governing Responsibilities and Conduct of Employees (43 CFR Part 20). I have been advised of the name and location of the Assistant Bureau Ethics Counselor. I understand that I may discuss questions or concerns related to my responsibilities, conduct, and financial interests with this individual.

I certify that I do not have a direct or indirect interest in Federal lands as prohibited in 43 CFR 20.735-22(c)(1) and 20.735-24. I understand that an interest in Federal land is interpreted to include stock ownership in companies which lease Federal lands, leases, permits, contracts, mineral rights, grazing rights, etc.

I certify that I do not now have and that I will not acquire an active real estate license during the time I am an employee of the Bureau of Land Management.

_____

(Employee's Name typed or printed)

_____

(Title of Position)

_____

(Signature of Employee)

(Date) _____

Instructions

1. All employees (including temporaries, reemployed annuitants, excepted appointments, etc.) of the Bureau of Land Management must complete the certifications on this form.

2. Your name must be printed or typed and a signature and date must be on the appropriate lines.

3. Signed certificates shall be sent to and maintained by the Servicing Personnel Office.

4. If you are unable to certify compliance, you must submit a statement of facts to the Assistant Ethics Counselor for review and action.

5. If you do not have a copy of the Department's regulations governing Responsibilities and Conduct (43 CFR Part 20), you may obtain a copy from your Personnel Office. If you do not know the name and location of the Assistant Bureau Ethics Counselor, your Personnel Office can provide you with the name and phone number.

Privacy Act Notice

43 CFR 20.735-22(c)(1), 43 CFR 20.735-24, and 5 U.S.C. 301 constitute the authority for requesting this certification. This certification must be signed; failure to do so can be cause for denying appointment or for appropriate disciplinary action.

This certification will be used to record officially the fact that you have knowledge of, and are in compliance with, the restrictions pertinent to your employment. The information certified to will be considered confidential and will form a part of the records of the office where you file; as such, the contents may be routinely disclosed to authorized Interior personnel, the Office of Personnel Management, the Department of Justice and to appropriate law enforcement agencies.

Appendices D, E, F, and G [Removed]

18. It is proposed that Part 20 of 43 CFR be amended by removing appendices D, E, F and G.

[FR Doc. 83-29234 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-10-M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 83-30]

Security for the Protection of the Public

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: By notice published in this proceeding (48 FR 35675, August 5, 1983) the Federal Maritime Commission solicited comments regarding its regulations concerning the Proof of Financial Responsibility to meet Liability Incurred for Death or Injury to Passengers and Other Persons on Voyages and for Indemnification of Passengers for Nonperformance of Transportation (46 CFR Part 540). This notice was published in conjunction with the Commission's review of the instant regulations conducted pursuant to section 610 of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 1169). No comments were received. Since the Commission is unaware of any need or basis for amending or modifying the requirements of Part 540 at this time and no comments were received, the Commission has decided to discontinue this proceeding.

DATE: This discontinuance of proceeding is effective October 27, 1983.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street

NW., Washington, D.C. 20573 (202) 523-5725.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-29246 Filed 10-26-83; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-57; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Monitoring of Gas Odor Level

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, Transportation.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: Rigid standards were proposed for the control of the odorant injection rate required for natural gas along with a increased frequency of inspection of each odorizer and a maximum interval between the dates of the sampling of the gas in the odorized piping systems to assure the presence of an appropriate level of odorization. Review of the comments to Notice 1 published in the **Federal Register**, February 22, 1979 (44 FR 10604), has convinced MTB that the proposal was not practical and would not increase the level of safety sufficiently to justify the very high estimated cost. Odorizing equipment to replace wick and by-pass odorizers on small gas systems that may be capable of meeting the proposed limits are very costly and lack the reliability of the present equipment. As a consequence, the proposed standards are withdrawn.

FOR FURTHER INFORMATION CONTACT: Paul J. Cory, (202) 426-2082.

SUPPLEMENTARY INFORMATION: Part 192 now contains standards for the minimum level of odorization required for natural gas in a distribution system and certain transmission pipelines. Section 192.625(a) provides that, "A combustible gas in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell." Section 192.625(b) requires transmission pipelines in Class 3 or 4 locations, with certain exceptions, to also be odorized in compliance with paragraph (a). Section 192.625(e) then states, "Equipment for odorization must introduce the odorant without wide variations in the level of odorant." In addition, § 192.625(f) requires that, "Each operator shall conduct periodic sampling of combustible gases to assure the proper concentration of odorant in accordance with this section."

Notice and Comments

Public Complacency

In Notice 1, MTB argued that if odorant is injected into a gas system in varying amounts above the minimum required by § 192.625(a), the public subjected to minor gas leaks would develop a complacent attitude toward detecting a gas odor and could cause a person to not report a hazardous leak.

This argument was refuted by many of the 111 commenters to the NPRM who pointed out that in fact there were advantages to periodically increasing the odorant level to assist in detecting minor leaks inside homes before they become hazardous. One comment relative to complacency stated that the public was most impressed by the response or lack of response by the operator. Several other comments said that excessive ordorant injection becomes self regulating because of nuisance leak calls and the cost of odorant.

Variation in odorant injection rate

There were many comments stating that the proposed limit of a 33 percent variation from an established mean odorant injection rate for each station was not practical and could be unsafe. Reason given included:

1. Gas received from the supplier may have a widely varying odorant level.
2. Gas flow rates may at times be either higher or lower than the designed capacity of the odorizer.
3. At times it is necessary to vary injection rates to compensate for odorant absorption in the system.
4. Variations of the odorant level in natural gas could safely be much greater than 33 percent.
5. Many operators intentionally increase the odorant level to periodically get consumers to detect and report gas leaks inside buildings.
6. Very few odorizers are capable of controlling the injection rate within a 33 percent variation over the widely varying range of gas flows that occur at most tap stations.
7. Above a certain high concentration of odorant in air, the human nose does not respond to additions of odorant.

Fequency of inspection of odorizers

MTB further proposed to establish maximum time intervals between the inspection or testing of odorizers to assure a continued supply of odorant and determine the average odorant injection rate.

Commenters responded by pointing out that wick and by-pass odorizers, which account for most odorizers in use, are not equipped to measure odorant level. In addition, these odorizers are usually installed on smaller gas systems where the odorant use would be quite small. Thus, odorant usage would often be erratic or so small as to be unmeasurable. On odorizer stations where injection type odorizers are used for large gas flows, it may be appropriate to inspect odorizers daily. All of these arguments were used to support the continued use of the present performance language of § 192.625(e).

Frequency of sampling natural gas

MTB also proposed to amend § 192.625(f) to establish a maximum interval of 95 days between sampling and testing of the gas in the pipeline to determine that the gas was detectable at a concentration in air of one-fifth of the lower explosive limit. Responses to this varied from an operator who did odorometer tests at least daily to those who stated that an odorometer test annually was adequate so long as odorizer performance was regularly monitored. Convincing arguments were given for various frequencies of conducting odorometer tests (annually, semi-annually, monthly, weekly, daily) on each individual operator's system. Thus, MTB is convinced that a fixed maximum time interval between samplings of gas in pipelines would in some cases permit an excessive amount of time between samplings to be safe on some pipelines and at the same time requiring samplings to be made more frequently than necessary for safety on other pipelines.

Conclusions

In summary, it appears that the more rigid requirements proposed for control of the injection rate of odorant in natural gas by odorizers, establishment of maximum fixed intervals between inspections of odorizer equipment, and establishing maximum intervals between tests of the odorant level in pipeline systems at a number of locations are not practical or cost effective. Therefore, Notice 1 is hereby withdrawn pending further study of the safety benefits of any additional odorization regulations compared to their costs to industry and the public.

(49 U.S.C. 1672, 49 CFR 1.53, Appendix A of Part 1, and Appendix A of Part 106.)

Issued in Washington, D.C., on October 24, 1983.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 83-29245 Filed 10-26-83; 8:45 am]

BILLING CODE 4910-60-M

Federal Railroad Administration

49 CFR Part 231

[FRA Docket No. SA-3, Notice 8]

Safety Appliance Standards

AGENCY: Federal Railroad Administration (FRA), Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes to eliminate the requirement that railroad and other freight car owners remove the roof running boards from box and other house cars by December 31, 1983. This action is being proposed in response to a petition of the Association of American Railroads (AAR).

DATES: (1) Written comments must be received not later than December 15, 1983. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) Public Hearing. A public hearing will be held at 10:00 a.m. on December 12, 1983. Any person who desires to make an oral statement at the hearing should notify the Docket Clerk before December 7, 1983, by phone or mail.

ADDRESSES: (1) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 5101 of the Nassif Building at the above address.

(2) Public Hearing. A public hearing will be held in Room 8334 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Persons desiring to make oral statements at the hearing should notify the Docket Clerk by telephone (202-426-8285) or by writing to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Office of Safety, Federal Railroad Administration, Washington, D.C. 20590. Telephone (202) 426-0897.

SUPPLEMENTARY INFORMATION:

Background

In 1966 the Interstate Commerce Commission (ICC), which was then responsible for administration of the Federal railroad safety program, amended its regulations concerning the arrangement of safety appliances on box cars and other freight cars of similar design, *i.e.*, "house cars." The ICC amendment reflected changes in railroad operating practices and increases in the size of certain types of freight cars by eliminating the requirement for installation of roof running boards on newly constructed cars unless that car was to be equipped with roof hatches. Additionally, the ICC directed the removal of roof running boards and modification of ladders and handholds of existing box and house cars unless equipped with roof hatches.

The regulation adopted by the ICC is contained in the first sentence of the Note in § 231.1 of the Safety Appliance Standards (49 CFR 231.1) and is now administered by FRA. The original regulation contained a compliance date of April 1, 1974, for the removal of roof running boards and completion of the related changes in the associated ladders and handholds for all box and other house cars built on or before April 1, 1966, or under construction prior to that date and placed in service before October 1, 1966. That compliance date has been extended by FRA until December 31, 1983.

The AAR has filed a petition requesting that FRA delete this provision and eliminate the requirement for modifying cars placed in service prior to October 1, 1966. AAR estimates that at the time the rule was initially adopted there were approximately 700,000 cars that required modification. That number has steadily and substantially diminished over the years, and the AAR estimates that only 30,000 unmodified cars are still in service. Because of the large number of cars that are stored in serviceable condition, AAR states that it is particularly difficult and expensive to ensure that the retrofit program is completed. Additionally, a large portion of these cars is scheduled for retirement in the next few years.

AAR's position is that the difficult and expensive task of modifying the remaining cars cannot be supported as necessary for safety. AAR suggests that the universal existence of railroad operating rules, which prohibit engine and train crews from going on the roof of freight cars, and of a like rule prohibiting other employees from going on the roof of a moving freight car, means that the safety of personnel will not be jeopardized by eliminating the requirement for continued removal of the roof running boards. AAR estimates that the cost of locating, moving, modifying the remaining cars would exceed $10 million.

FRA accident data indicate that there is no accident or injury in which FRA can identify unmodified equipment as a causal factor in incidents involving on-duty railroad personnel. In the absence of such data, FRA has repeatedly granted extensions of the compliance deadline.

In acting to delete this requirement FRA is proposing to clarify the intent of the regulation expressed in the Note to § 231.1. FRA proposes to do this by recaptioning § 231.1 and rewording paragraph (a) slightly. Additionally, FRA proposes both to recaption §§ 231.37 and 231.28 to indicate clearly that they apply to newer equipment and to eliminate the cross references in the Note to § 231.1 that express that intent.

Regulatory Impact

This NPRM has been evaluated in accordance with existing regulatory policies. It is neither a "major" rule as defined under Executive Order 12291 nor a "significant" rule as defined under DOT policies and procedures. The elimination of the regulation would have a direct impact on railroads and private car owners that possess such box and other house cars. According to industry estimates this proposal would permit savings in excess of $10 million. The rule would have a positive economic impact by allowing these entities to avoid the retrofit costs, but that impact would not be significant for any individual car owner because of the wide diversity of ownership. Because the economic impact of the regulation's elimination, as proposed, is expected to be minimal, FRA has determined that further economic evaluation is not necessary.

Although the proposed rule may have a slight impact on some small entities that own or lease such cars, that impact will be neither a significant nor an adverse economic impact. Based on the facts set forth in this MPRM. it is certified that the rule, as proposed, will not have significant impact on a

substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

There are no information collection requirements directly or indirectly contained in this NPRM.

Environmental Impact

On June 16, 1980, FRA published (45 FR 40854) revised procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive orders, and DOT Order 5610.1C.

These FRA procedures require that an "environmental assessment" be performed prior to all major FRA actions. The procedures categorically exempt certain actions from the requirements for an environmental assessment because they are not "major" actions as that term is defined under FRA procedural rules (45 FR 40854).

The FRA environmental procedures also contain a provision that enumerates seven criteria which, if met, demonstrate that a non-categorically exempt action is not a "major" action for environmental purposes. These criteria involve diverse factors, including the availability of adequate relocation housing; the possible inconsistency of the action with Federal, State or local law; the possible adverse impact on natural, cultural, recreational, or scenic environments; the use of properties covered by section 4(f) of the DOT Act; and the possible increase in traffic congestion. This proposed rule meets the seven criteria that establish an action as a non-major action.

Public Participation

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should identify the regulatory docket number and notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Persons desiring that receipt of their communications be acknowledged should attach a stamped, pre-addressed postcard to the first page of their communication. Communications received before December 15, 1983 will be considered before final action is taken on the proposed rule.

All comments received will be available for examination by interested persons at any time during regular business hours in Room 5101, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

In addition, FRA will hold a public hearing on this proposal in Washington, D.C. The public hearing will be held beginning at 10:00 a.m. on December 12, 1983 in Room 8334 of the Nassif Building, located at 400 Seventh Street, SW., Washington, D.C.

List of Subjects in 49 CFR Part 231

Railroad safety.

In consideration of the foregoing, FRA proposes to amend Part 231, Title 49, Code of Federal Regulations, as set forth below:

The Proposed rule

1. In § 231.1 the section heading, the introductory language (note), and paragraph (a)(1) are revised to read as follows:

§ 231.1 Box and other house cars built or placed in service before October 1, 1966.

Except for box and other house cars that comply with either section 231.27 or section 231.28, each box and other house car shall be equipped to meet the following specifications:

(a) *Handbrake.*—(1) *Number*—One efficient handbrake which shall operate in harmony with the power brake installed on the car. Each such handbrake shall (i) provide the same degree of safety as the design shown on plate A, or (ii) provide the same degree of safety as that specified in § 231.27.

* * * * *

2. In § 231.27, the section heading is revised to read as follows:

§ 231.27 Box and other house cars without roof hatches built or placed in service after October 1, 1966.

* * * * *

3. In § 231.28, the section heading is revised to read as follows:

§ 23.28 Box and other house cars with roof hatches built or placed in service after October 1, 1966.

Authority: Secs. 2, 4, and 6, 27 Stat. 531, as amended, secs. 1 and 3, 32 Stat. 943, as amended, sec 6(e) and (f), 80 Stat. 939, 45 U.S.C. 2, 4, 6, 8, and 10, 11–16, and 49 U.S.C. 103(c)(1).

Issued in Washington, D.C., on October 24, 1983.

Thomas A. Till,

Deputy Administrator.

[FR Doc. 83-29247 Filed 10-26-83; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Giant Panda Added to Appendix III of Endangered Species Convention

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international shipment of certain wildlife and plant species, which are listed in appendices to this treaty. Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other Parties in the control of trade.

The People's Republic of China has submitted the giant panda, *Ailuropoda melanoleuca*, for inclusion in CITES Appendix III and has proposed its future transfer to Appendix I. The Service requests comments on whether the United States should enter a reservation on the Appendix III amendment and on whether the United States should support or oppose the Appendix I amendment proposal. Presently, the Service intends to support both listings.

DATES: The Appendix III amendment enters into effect on December 6, 1983, for all Parties except those entering a reservation. Nations that are now Parties to CITES may only enter reservations on or before that date. For this reason, the Service will only be able to consider all comments received by November 30, 1983, in determining whether the United States should enter a reservation. The Service also will consider all comments received by December 30, 1983, in determining whether the United States should support the proposed transfer of the species to Appendix I.

ADDRESS: Please send correspondence concerning this notice to the Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, in room 547, 1717 H Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Jachowski, at address given above, or telephone (202) 653-5948.

SUPPLEMENTARY INFORMATION: The CITES Secretariat circulated a notification to all Party nations on September 7, 1983, to inform them of the present amendment. In accordance with the provisions of paragraph 1 of Article XVI of CITES, the Government of the People's Republic of China submitted to the Secretariat the following species for inclusion in Appendix III:

Mammalia

Carnivora

Ursidae, *Ailuropoda melanoleuca* (giant panda)

In accordance with the provisions of CITES Article XVI, paragraph 2, inclusion of this species in Appendix III will take effect 90 days after the date of the notification, i.e. on December 6, 1983, for all Parties except those entering a reservation.

The Government of the People's Republic of China asked the Secretariat to convey to Party nations a request that they immediately prohibit any commercial or unauthorized trade in live specimens and products in order to support their efforts to protect this species. Any specimen of this species, whether alive or dead, will be covered by the provisions of CITES, as will any readily recognizable part or derivative.

The trade in specimens of species included in Appendix III requires export permits from the nation that has included the species in Appendix III. The import of specimens of these species from nations other than the nation that includes the species in Appendix III requires prior presentation of a certificate of origin or, in the case of re-export, a certificate from the nation of re-export.

As a Party to CITES, the United States has an opportunity to reserve on amendments to the appendices. Article XVI of CITES enables any Party to exempt itself from implementing CITES for a particular species if it makes a reservation with respect to that species. It must do so during the period of 90 days after the Secretariat notifies the Parties of an amendment placing the species in Appendix III.

The Service requests comments on whether the United States should enter a reservation on this recent amendment. At this time, the Service does not propose to recommend a reservation. It would consider doing so only if evidence is presented to show that implementation of the amendment would be contrary to the interests or laws of the United States.

The CITES Secretariat subsequently circulated a notification to all Party nations on September 14, 1983, explaining that the Appendix III listing was intended as an interim measure until the species could be listed in Appendix I. The Secretariat transmitted a supporting statement for the proposed Appendix I listing. Copies of the document are available upon request from the Office of the Scientific Authority (see address above).

The People's Republic of China requested that its Appendix I proposal be considered by the postal procedures in CITES Article XV. Under these procedures, the United States has an opportunity to comment on the proposal. If any Party nation formally objects to the proposal, then the United States also will have an opportunity to vote on the proposal. At this time, the Service proposes to endorse the proposal and if a vote is required, to vote in favor of it. The Service requests information and comments from the public in order to determine the most appropriate response to this proposed Appendix I amendment.

Note.—The Department has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). This rule would implement a change in the list of species in the CITES appendices that already has been accomplished, and to which the United States is bound unless it enters a reservation. Even if the United States were to reserve on the listing, international trade with nonreserving Parties would require permits or equivalent documents.

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

PART 23—[AMENDED]

§ 23.23 [Amended]

Accordingly, the Service proposes to amend the list of species contained in § 23.23 of Part 23, Title 50 of the Code of Federal Regulations, by adding the giant panda to the list of species included in Appendix III.

(16 U.S.C. 1531 et seq.; 87 Stat. 884, as amended)

Dated: October 13, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-29248 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 31024-205]

Foreign Fishing; Permit Fees, Etc.

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of comment period.

SUMMARY: NOAA issues this notice to extend the comment period on a proposed rule to establish the 1984 foreign fishing permit fees. This extension of the public comment period results from several requests from the public. The extension will allow the public additional time to prepare comments on provisions of the proposed rule.

DATE: Comments must be received on or before November 3, 1983.

ADDRESS: Send comments to Fees, Permits, and Regulations Division, F/M12, National Marine Fisheries Service, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: John D. Kelly, 202-634-7432.

SUPPLEMENTARY INFORMATION: NOAA issued a proposed rule at 48 FR 41788 on September 19, 1983, to amend the foreign fishing regulations. By that notice, NOAA proposed (1) to establish the 1984 foreign fishing permit fee: (2) to clarify that permits will not be issued unless any financial assurances required by the Secretary of Commerce are paid and that permits may be effective for limited periods; (3) to waive the surcharge for the Fishing Vessel and Gear Damage Compensation Fund (FVGDC) in 1984. The comment period on the proposed rule closed on October 19, 1983.

NOAA has received several requests to extend the comment period. The requests have centered on a need for additional time to develop more detailed comments on the provision concerning conditions for issuing permits. Specifically, commenters wishing to address the proposed amendment of § 611.3(c)(3) to clarify that all fees, surcharges, and other financial assurances required by the Secretary must be paid before fishing permits will be issued and the proposed amendment of § 611.3(f)(2) to codify the Secretary's authority to limit foreign fishing operations as a restriction of the permit to a period less than the remainder of the calendar year. Additional comments

on all provisions of the proposed rule are invited until November 3, 1983.

Some commenters have asked for an elaboration of the agency's interpretation of "financial assurances" and "limiting the effective periods of some permits to periods less than the remainder of the calendar year". The following provides additional information on these provisions.

With regard to the first, financial assurances may include certain performance bonds or guarantees related to conservation and management. Currently, under the Magnuson Act such assurances may be required when certain vessels or foreign nations have not cooperated in serious enforcement matters. Restatement of this authority in Part 611 is intended to advise foreign nations and U.S. joint venture companies that the Secretary may exercise this authority in addressing serious enforcement concerns.

With regard to limiting the effective periods of permits, certain permit applications may be conditionally approved on the basis of an agreement by the foreign fishing vessel owner or company to provide certain benefits to the U.S. industry or to ensure that a fishing vessel owner or operator who has formerly established a poor enforcement record complies with the terms and conditions of fishing in the fishery conservation zone. As an example, the 1983 foreign fishing permits for vessels supporting U.S. vessels fishing Atlantic squid were issued for effective period of 45 days. Performance of the foreign vessel was reviewed by the Regional Director during the 45-day period as a basis for a decision to extend the effective period for a subsequent 45 days. The proposed rule would set out the Secretary's authority in Part 611.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: October 25, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-29388 Filed 10-26-83; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 611

[Docket No. 31004-197]

Foreign Fishing; Poundage Fee Schedule

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes that 1984 poundage fee schedule for foreign vessels fishing in the fishery conservation zone. Under this fee schedule, foreign vessels would pay for 26 percent of the FY 1983 Magnuson Fishery Conservation and Management Act costs. Comments are requested on this fee schedule. This rule is needed to comply with section 204(b)(10) of the Magnuson Fishery Conservation and Management Act.

DATE: Comments must be received on or before November 28, 1983.

ADDRESS: Send comments to: Fees, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington D.C. 20235.

Copies of the draft regulatory impact review and initial regulatory flexibility (RIR/IRFA), a paper on the methods used to develop the schedule, and a detailed breakdown of NMFS costs are available at this address.

FOR FURTHER INFORMATION CONTACT: John D. Kelly, 202-634-7432.

SUPPLEMENTARY INFORMATION: NOAA proposes a schedule of fees for fishing during 1984 by foreign vessels in the U.S. fishery conservation zone (FCZ). The new schedule would result in collections of about $45.1 million. This amount is determined as described below. As in previous years, no fee would be collected by the Federal government for U.S.-caught fish received at sea by foreign flag processing vessels (joint ventures).

Background

Section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) states, in part, "The fees * * * shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act * * * during [FY 1983] the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during [1982] bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during [1981]".

Fees have been collected for foreign fishing since 1977 under annual schedules contained at § 611.22. Fee collections totaled $7.1 million in 1977, $8.8 million in 1978, $10.8 million in 1979, $16.7 million in 1980, $24.1 million in 1981, and $33.4 million in 1982. Collections have not been completed for 1983, but about $43 million is anticipated. Prior to 1981, poundage fees had been assessed at a rate of 3.5 percent of the ex-vessel value of a species. Significant increases in fees since 1981 result from an amendment of the Magnuson Act under Pub. L. 96-561. Pub. L. 96-561, in part, requires recovery of at least a foreign share of the cost which bears to the total costs of carrying out provisions of the Act the same ratio as the foreign catch bears to the total catch. In proposing the fee schedule for 1983, NOAA established but did not exercise its authority to collect fees in excess of costs (47 FR 51336).

FY 1983 Costs of Carrying Out the Purposes of the Magnuson Act

The Federal government's costs of carrying out the provisions of the Magnuson Act in FY 1983 were calculated by using the same estimating techniques that were used to estimate costs required for the development of the fee schedules for 1982 [see 46 FR 55729, November 12, 1981) and for 1983 (see 47 FR 51336, November 12, 1982, and 48 FR 27075, June 13, 1983). All National Marine Fisheries Services (NMFS) units submitted documentation of the planned use of their funding allocations. The documents are "operations plans", which include a narrative description of activities and the amount budgeted for labor, travel, contracts, etc. The operations plans were analysed to identify the costs of performing functions directed toward provisions of the Magnuson Act, without regard to legislative authorization for certain activities predating the Magnuson Act. NOAA's policy is to calculate the full direct and indirect costs, not incremental costs, for performing services for others (NOAA Budget Handbook, Chapter 2, Section 3). Documentation of NMFS' determination of Magnuson Act costs is available at the above address. The documentation specifies, by unit, the amount of each operations plan considered to contribute to the total cost of carrying out the provisions of the Magnuson Act. Using this process, the total FY 1983 NMFS cost was $63.8 million. Comparative data for establishing the 1984 fee target are included in Table 1, which lists FY 1982 costs and the FY 1983 costs for all Federal agencies carrying out provisions of the Magnuson Act.

The Department of State (DOS) estimated its FY 1983 costs at $280,000 the same level as in FY 1982. Although NOAA costs for the U.S.-Canadian boundary negotiations are included within the costs, DOS negotiations costs

are not included as part of the $280,000. NOAA costs in the Northeast Fisheries Center and the Northeast Regional office include $608,500 for these negotiations of which $90,000 is offset by the DOS.

Coast Guard costs in FY 1983 for enforcing the Magnuson Act are $97.3 million, an increase of $19.2 million over its FY 1982 *estimated* costs. Review of the *actual* FY 1982 costs shows that the Coast Guard expended $89.6 million in fact for Magnuson Act enforcement. Thus, the net increase of the Coast Guard FY 1983 effort is only $7.7 million over its actual FY 1982 Magnuson Act costs. This increase is attributed to the net growth in fishery law enforcement during FY 1983 and inflation. Cutter and aircraft utilization for fisheries enforcement has increased by approximately 12 percent to date in FY 1983 when compared to FY 1982.

Table 1. FY 1983 Estimated Agency Costs for Purposes of the Magnuson Act (in thousands of dollars).

	FY 1982		FY 1983		
	FMC costs	AGENCY costs	FMC costs	AGENCY costs	Differences
NMFS					
WO	$13,157.0		$14,426.4		+ $1,269.4
F/NEC	11,576.0		11,378.8		- 197.2
F/SEC	8,999.5		9,726.7		+ 727.2
F/SWC	5,485.2		5,318.2		- 167.0
F/NWC	10,676.0		10,865.0		+ 189.0
F/NER	2,749.6		3,655.3		+ 905.7
F/SER	2,625.9		2,582.0		- 43.9
F/SWR	1,773.3		2,013.4		+ 240.1
F/NWR	2,065.8		2,455.7		+ 389.9
F/AKR	1,919.6		1,404.1		- 515.5
Sub-Totals		$61,027.9		$63,825.6	+ $2797.1
OTHER NOAA					
SHIP COSTS	2,982.0		9,502.8		+ 6,520.8
ADMIN.	506.3		532.9		+26.6
SEA GRANT	493.0		493.0		0.0
Proc. & Personnel	490.0		490.0		0.0
NESIS	245.0		254.8		+ 9.8
Sub-Totals		$4,716.3		$11,273.5	$6,557.2
DOC		$147.8		$153.9	+$6.1
Coast Guard		78,100.0		97,272.7	+19,172.7
DOS		280.0		280.0	0.0
Grand Totals		$144,272		$172,805.7	+$28,533.7

The total cost of carrying out the purposes of the Magnuson Act in FY 1983 is $172.806 million. This total is proposed to be adopted for calculating the foreign fishing fee target in 1984.

Ratio of the 1982 Foreign Catch to Total Catch

Principles applied since enactment of Pub. L. 96–561 for estimating the ratio of the foreign catch to the total catch in the fishery conservation zone (FCZ) and territorial waters are again used for the 1982 ratio. The U.S. catch in international waters and freshwater and the U.S. catch of tunas is subtracted from the total U.S. reported commercial catch to obtain the U.S. commercial catch in the FCZ and territorial waters (which include internal waters). The resulting commercial catch is corrected to international standards by adding the weight of mollusk shells. The total U.S. catch in the FCZ and the territorial waters is obtained by adding the preliminary recreational catch to the corrected commercial catch.

The foreign catch in the FCZ is taken from "Fisheries of the United States" but adjusted by removing the Canadian catch in the FCZ. This procedure was used in the 1982 and 1983 foreign fee schedules and sustained as appropriate. Table 2 lists the 1982 data used for this ratio.

Table 2. Estimate of Ratio of Foreign Catch to Total Catch, 1982

		Metric Tons
Total U.S. reported catch 1/		3,231,119
Exclusions:		
International Waters (exc. Tunas)	12,532	
Tunas	199,326	
Freshwater (inc. G. Lakes alewives)	61,471	
Total		-273,330
U.S. commercial catch in Territorial Waters and Fishery Conservation Zone (FCZ)		2,957,789
Correction for mollusks 2/		732,299
Recreational catch 3/		227,828
Total U.S. catch, Territorial Waters and FCZ		3,917,916
Foreign catch, FCZ, less Canadian catch 4/		1,384,796
Total catch, Territorial Waters and FCZ (Pub. L. 94-265 as amended)		5,302,712

Using the formula specified in Section 204(b)(10) of the Magnuson Act, foreign catch is divided by the total of foreign and U.S. domestic catch in the FCZ and territorial waters using the data shown in the table above as follows:

Foreign catch ÷ Total Catch = Ratio of Foreign to Total catch

1,384,796 mt ÷ 5,302, 712 = .26114

This means that 26.1 percent of the total catch is caught by foreign vessels

1/ This figure and all following figures for U.S. commercial catch from pages 8-11, "Fisheries of the United States, 1982." Calculated in pounds and converted to metric tons --figures may not add to total.

2/ Addition of mollusk shells. U.S. statistics for internal use include only edible portions of mollusks, but international standard is whole animal.

3/ Based on preliminary 1980 data.

4/ From page 14, "Fisheries of the United States, 1982."

The 1984 Foreign Fishing Fee Collection Target

Section 204(b)(10) of the Magnuson Act requires that foreign fishing vessel owners or operators pay at least an amount calculated from the ratio of the foreign catch to the total catch. Therefore, 26.1 percent of the total costs ($172.8 million calculated in Table 1) should be paid by foreign vessels. That portion of the total costs is $45.1 million and is referred to as the 1984 fee target.

Fee target (1984) = ($172.805 million) × (0.261) = $45.102 million.

The foreign fee collection target proposed for 1984 of $45.1 million is a 4.6 percent increase over the fee target for 1983. This increase is smaller than the increases in prior years, because foreign fishing decreased in 1982.

Proposed Species Fees

Current exvessel values for fish harvested by foreign vessels were last used as a basis for the foreign fee schedule in 1981. Fees in 1981 were assessed at 3.5, 7, or 10 percent of the 1980 exvessel value. A 3.5 percent rate was used if a higher rate would prevent the optimum yield from being achieved or if a higher rate would violate certain provisions of Governing International Fishery Agreements. A 10 percent rate was used if lower rates would conflict with sound conservation and management, including economic considerations.

Fees in the subsequent years 1982 and 1983, were increased by uniformly adjusting the individual species fees in 1981 upward to achieve the respective fee targets for those years. Prior to adopting the fees proposed in this schedule, NOAA reviewed current exvessel values and the rates at which fees should be assessed. A copy of the review is available at the above address. New exvessel values were adopted as a result and the rates for butterfish, *Illex* squid, and Alaska pollock were increased from 7 percent to 10 percent.

The use of variable rates in 1981 effectively assigned a management value to each species. If NOAA believed a species was more valuable for management reasons, it assessed a fee at 10 percent of the exvessel value which was 1.43 times greater than the fee calculated at the standard rate of seven percent. An alternative method would have been to increase the value by a factor of 1.43 and assess the fee at the seven percent rate. That alternative method is used in this proposed schedule in order to derive a uniform rate of fees to be applied to each species which is consistent with decisions made in 1981. The ratio of the actual fee rate to seven percent is called the management factor and the value of a species derived by multiplying its exvessel value by its corresponding management factor is its management value. Thus, if a species is of greater management value, i.e., it is assigned a 10 percent rate, its management value is derived by multiplying the management factor (10÷7, or 1.43) times its proposed exvessel value. If the species is of lesser management value, the management value is derived by multiplying the management factor (3.5÷7, or 0.5) times its proposed exvessel value. The proposed exvessel values, management factors, and management values for each species are listed in columns (1) through (3) of Table 3.

NOAA assumes that levels of foreign catch in 1984 will be about the levels of prior years but that there will be no directed foreign fisheries for Pacific whiting, *Illex* squid, butterfish or in the Pacific billfish and sharks fisheries. The total management value for the anticipated 1984 foreign catch in Northwest Atlantic fisheries, Alaska fisheries, and Pacific Seamount fishery is $284,825,290. The total management value will be used in calculating the poundage fees.

The total fees will be collected in the form of poundage fees and permit fees. Permit fees are used to cover the administrative cost of issuing permits and therefore should be deducted from the total foreign fee collection target which was calculated to cover total cost. Administrative permit costs are estimated to be $94,100 in 1984 and are deducted from the total foreign fee collection target of $45.1 million, thus

leaving $45.0 million to be covered by poundage fees.

To allocate the $45.0 million target poundage fee to the various species that will be caught by foreign vessels, the $45 million target fee is calculated as a percent of total management value—$284.8 million.

$45/$284.8=15.8 percent

This percent is then applied to the management value for each species to get the proposed fee for 1984. For example, 15.8 percent of the management value of $1,000/metric ton gives a fee of $158/metric ton of butterfish caught. Similarly, 15.8 percent of the red hake management value of $184/mt gives a fee of $29/mt. These fees are shown in column 4 of Table 3 along with the 1983 fees in column 5 which are shown for comparison purposes. A paper is also available at the above address which discusses in greater detail the methods used to develop the proposed fees.

TABLE 3. SPECIES AND POUNDAGE FEE
[Values and fees shown in dollars per metric ton, unless otherwise noted; factor is non-dimensional]

	Species	Proposed 1984 exvessel Value Col (1)	Proposed 1984 Management Factor Col (2)	Proposed Management Value 1984 Col (3)	Proposed 1984 Fee Col (4)	Fina 1983 Fee Col
1.	Butterfish	699	1.43	1,000	158	150
2.	Hake, red	369	0.5	184	29	15
3.	Hake, silver	393	0.5	197	31	18
4.	Herring, river	179	1.0	179	28	22
5.	Mackerel, Atlantic	321	1.0	321	51	51
6.	Other finfish (Atlantic	937	1.0	937	148	101
7.	Sharks (Atlantic)	423	1.0	423	67	64
8.	Squid, Illex	268	1.43	383	61	29
9.	Squid, Loligo	860	1.0	860	136	110
10.	Shrimp, royal red	-	1.43	-	reserved	463
11.	Atka mackerel	267	1.0	267	42	17
12.	Cod, Pacific.	294	1.43	420	66	58
13.	Flatfish (Alaska)	381	1.0	381	60	22
14.	Flounders (Pacific)	381	1.0	381	60	116
15.	Jack mackerel	198	0.5	99	16	15
16.	Pacific ocean perch	399	1.43	570	90	93
17.	Other groundfish (Alaska)	358	1.0	358	57	19
18.	Other fish (Pacific)	220	1.43	315	50	46
19.	Pollock, Alaska	125	1.43	178	28	29
20.	Sablefish (Alaska)	664	1.43	950	150	140
21.	Sablefish (Pacific)	705	1.43	1,008	159	150
22.	Rockfish	434	1.0	434	69	55
23.	Snails	-	-	-	40	1/ 40
24.	Squid (Pacific)	145	1.0	145	23	22
25.	Whiting, Pacific	176	0.5	88	14	10
26.	Western Pacific corals (per kilogram)	50	1.0	50	79	70
27.	Seamount groundfish	397	1.0	397	63	29
28.	Dolphinfish (mahi mahi)	1,500	1.0	1,500	237	110
29.	Wahoo	225	1.0	225	36	17
30.	Sharks (Pacific)	123	1.0	123	19	18
31.	Swordfish Pacific	2,337	1.0	2,337	369	342
32.	Striped marlin (Pacific)	3,752	1.0	3,752	593	549
33.	Other Pacific billfish	1,503	1.0	1,503	337	220

1/ 1983 fee proposed for 1984.

Other Matters

NOAA requested additional comments on alternative procedures for collecting foreign fishing fees in the preamble to the proposed rule published in November 12, 1982 (47 FR 51336). Some comments were received. However, NOAA understands that this question of alternative procedures is still under discussion by many interested members of the public. Therefore, NOAA continues to provide the opportunity for such comments which should be directed to the above address.

Classification

NOAA has prepared a regulatory impact review (RIR) that discusses the economic consequences and impacts of the proposed fee schedule and its

alternatives. Copies of the RIR are available at the above address. Based on the RIR, the Administrator, NOAA, has determined that the proposed schedule does not constitute a major rule under E.O. 12291. The regulatory impact review demonstrates that the proposed fee schedule complies with the requirements of section 2 of E.O. 12291.

The General Counsel for the Department of Commerce has certified that the proposed fee schedule will not have a significant economic impact upon a substantial number of small entities for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This certification has been forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Because the proposed fee schedule will not have a significant economic impact upon a substantial number of small entities, a regulatory flexibility analysis is not required.

NOAA Directive 02-10 published at 45 FR 49312 (July 24, 1980) adopts internal procedures to implement the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*). Under those procedures, programmatic functions with no potential for significant environmental impacts are generally excluded from NEPA requirements.

The proposed fee schedule has no direct impact on the fishery resources in the FCZ. At the most, a fee schedule might affect the harvesting strategy of foreign fishing vessels and result in a different species mix being removed from the environment; however, the proposed schedule meets the criterion that fees should minimize disruption of traditional fishing patterns on target species. The proposed schedule is not a significant change from the 1983 fee schedule. Since this fee schedule will not prevent the harvesting of the total allowable level of foreign fishing (TALFF), and the environmental impact of harvesting the TALFF is described for each fishery management plan, no further environmental assessment is necessary.

This proposed rule has no information collection provisions for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: October 25, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 611—[AMENDED]

For the reasons above, 50 CFR Part 611 is proposed to be amended as follows:

1. The authority citation for § 611.22 is:

Authority: 16 U.S.C. 1801 *et seq.;* 22 U.S.C. 1980.

2. Table 1 of § 611.22 is revised to read as follows:

§ 611.22 Fee schedule for foreign fishing.

* * * * *

TABLE 1.—SPECIES AND POUNDAGE FEE

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
1. Butterfish	158
2. Hake, red	29
3. Hake, silver	31
4. Herring, river	28
5. Mackerel, Atlantic	51
6. Other finfish (Atlantic)	148
7. Sharks (Atlantic)	67
8. Squid, Illex	61
9. Squid, Loligo	136
10. Shrimp, royal red	(1)
11. Atka mackerel	42
12. Cod, Pacific	66
13. Flatfish (Alaska)	60
14. Flounders (Pacific)	60
15. Jack mackerel	16
16. Pacific ocean perch	90
17. Other groundfish (Alaska)	57
18. Other fish (Pacific)	50
19. Pollock, Alaska	28
20. Sablefish (Alaska)	150
21. Sablefish (Pacific)	159
22. Rockfish	69
23. Snails	40
24. Squid (Pacific)	23
25. Whiting (Pacific)	14
26. Western Pacific corals	(2) 79
27. Seamount groundfish	63
28. Dolphinfish (mahi mahi)	237
29. Wahoo	36
30. Sharks (Pacific)	19
31. Swordfish (Pacific)	369
32. Striped marlin (Pacific)	593
33. Other Pacific billfish	337

[1] Reserved.
[2] Kilogram.

[FR Doc. 83-29387 Filed 10-26-83; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 48, No. 209
Thursday, October 27, 1983

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement Regarding Management of Depression-era Structures on the National Forests of the Pacific Northwest Region of the U.S. Forest Service in Washington and Oregon

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to Section 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the U.S. Forest Service, U.S. Department of Agriculture, and the Washington and Oregon State Historic Preservation Officers, providing for the management of depression-era structures on the National Forests in Washington and Oregon. The proposed Programmatic Memorandum of agreement will establish mechanisms for evaluating and assuring appropriate treatment of approximately 600 historic structures.

Comments due: November 28, 1983.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, Western Division of Project Review, 730 Simms Street, Room 450, Golden, Colorado 80401.

Dated: October 24, 1983.

Robert R. Garvey, Jr.,
Executive Director.

[FR Doc. 83-29243 Filed 10-26-83; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Bylaws of Corporation

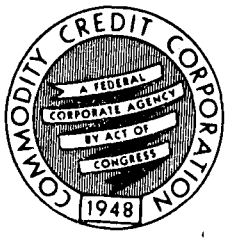
The bylaws of the Commodity Credit Corporation, amended September 26, 1983, are as follows:

Offices

1. The principal office of the Corporation shall be in the City of Washington, District of Columbia, and the Corporation shall also have offices at such other places as it may deem necessary or desirable in the conduct of its business.

Seal

2. There is impressed below the official seal which is hereby adopted for the Corporation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced.



Meetings of the Board

3. Regular meetings of the Board shall be held, whenever necessary, on Wednesday at 9:30 a.m. in the Board meeting room in the U.S. Department of Agriculture in the City of Washington, D.C. Notice of such meetings shall be provided in the same manner as is specified for special meetings in Paragraph 4. No regular meetings of the Board shall be held except in accordance with provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

4. Special meetings of the Board may be called at any time by the Chairman, the Vice Chairman, or by the President, or the Executive Vice President and shall be called by the Chairman, the Vice Chairman, the President, or the Executive Vice President at the written request of any five Directors. Notice of special meetings shall be given either personally or by mail (including intradepartmental mail channels of the Department of Agriculture or interdepartmental mail channels of the Federal Government) or by mailgram, and notice by telephone shall be personal notice. Any Director may waive in writing such notice as to himself, whether before or after the tim of the meeting, and the presence of a Director at any meeting shall constitute a waiver of notice of such meeting. No notice of an adjourned meeting need be given. Any and all business may be transacted at any special meeting unles otherwise indicated in the notice thereof. No special meetings of the Board shall be held except in accordance with provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

5. The Secretary of Agriculture shall serve as Chairman of the Board. The Deputy Secretary of Agriculture shall serve as Vice Chairman of the Board and, in the absence or unavailability of the Chairman, shall preside at meetings of the Board. In the absence or unavailability of the Chairman and the Vice Chairman, the President of the Corporation shall preside at meetings o the Board. In the absence or unavailability of the Chairman, the Vic Chairman, and the President, the Directors present at the meeting shall designate a Presiding Officer.

6. At any meeting of the Board a quorum shall consist of five Directors. The act of a majority of the Directors present at any meeting at which there i a quorum shall be the act of the Board.

7. The General Counsel of the Department of Agriculture, whose offic shall perform all legal work of the Corporation, and the Associate Genera Counsel in the Office of the General Counsel who is in immediate charge of legal work for the Corporation shall, as General Counsel and Associate Genera Counsel of the Corporation, respectively, attend meetings of the Board.

8. The Executive Vice President, the Vice President who is the Associate Administrator of the Agricultural Stabilization and Conservation Service and the Secretary shall attend meetings of the Board. Each of the other Vice Presidents and Deputy Vice Presidents, and the Controller shall attend meeting of the Board during such time as the meetings are devoted to consideration matters as to which they have responsibility.

9. Other persons may attend meetings of the Board upon specific authorization by the Chairman, Vice Chairman, or President.

Compensation of Board Directors

10. The compensation of each Director shall be prescribed by the Secretary of Agriculture. Any Director who holds another office or position under the Federal Government, the compensation for which exceeds that prescribed by the Secretary of Agriculture for such Director, may elect to receive compensation at the rate provided for such other office or position in lieu of compensation as a Director.

Officers

11. The officers of the Corporation shall be a President, Vice Presidents, and Deputy Vice Presidents as hereinafter provided for, a Secretary, a Controller, a Treasurer, a Chief Accountant, and such additional officers as the Secretary of Agriculture may appoint.

12. The Under Secretary of Agriculture for International Affairs and Commodity Programs shall be ex officio President of the Corporation.

13. The following officials of the Agricultural Stabilization and Conservation Service (referred to as ASCS), Foreign Agricultural Service (referred to as FAS), Food and Nutrition Service (referred to as FNS), and the Agricultural Marketing Service (referred to as AMS) shall be ex officio officers of the Corporation:

Administrator, ASCS; Executive Vice President.
Administrator, FAS; Vice President.
Administrator, FNS; Vice President.
Administrator, AMS; Vice President.
General Sales Manager and Associate Administrator, FAS; Vice President.
Associate Administrator, ASCS; Vice President.
Deputy Administrator, State and County Operations, ASCS; Deputy Vice President.
Deputy Administrator, Commodity Operations, ASCS; Deputy Vice President.
Deputy Administrator, Management, ASCS; Deputy Vice President.
Deputy Administrator, Program Planning and Development, ASCS; Deputy Vice President.
Executive Assistant to the Administrator, ASCS; Secretary.
Supervisory Staff Assistant (Audits and Dockets), Office of the Administrator, ASCS; Deputy Secretary.
Director, Fiscal Division, ASCS; Controller.
Deputy Director, Fiscal Division, ASCS; Treasurer.
Chief, Financial Systems and Procedures Branch, Fiscal Division, ASCS; Chief Accountant.

The person occupying, in an acting capacity, the office of any person designated ex officio by this paragraph 13 as an officer of the Corporation shall, during his occupancy of such office, act as such officer.

14. Officers who do not hold office ex officio shall be appointed by the Secretary of Agriculture and shall hold office until their respective appointments shall have been terminated.

The President

15. (a) The President shall have general supervision and direction of the Corporation, its officers and employees.

(b) The President shall establish and direct an Office of the Secretariat. Such office shall be responsible for obtaining or developing, or as the President determines, information on major program or policy proposals submitted to the Board.

The Vice Presidents

16. (a) The Executive Vice President shall be the chief executive officer of the Corporation and shall be responsible for submission of all Corporation policies and programs to the Board. Except as provided in paragraphs (b), (c), (d), and (e) below, the Executive Vice President shall have general supervision and direction of the preparation of policies and programs for submission to the Board, of the administration of the policies and programs approved by the Board, and of the day-to-day conduct of the business of the Corporation and of its officers and employees.

(b) The Vice President who is the Administrator, Foreign Agricultural Service, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of the Foreign Agriculture Service. He shall also have responsibility for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of the Foreign Agricultural Service. He shall also perform such special duties and exercise such powers and may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(c) The Vice President who is Administrator, Agricultural Marketing Service, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of the Agricultural Marketing Service. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or President of the Corporation.

(d) The Vice President who is the General Sales Manager and Associate Administrator, Foreign Agricultural Service, shall be responsible for preparation for submission by the Executive Vice President to the Board of policies and programs of the Corporation which are for performance through the facilities and personnel of the foreign Agricultural Service. He shall also have responsibility for the administration of those operations of the Corporation, under the policies and programs approved by the Board, which are carried out through facilities and personnel of the Foreign Agricultural Service. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(e) The Vice President who is the Administrator, Food and Nutrition Service, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of the Food and Nutrition Service. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

17. The Vice President who is the Associate Administrator, Agricultural Stabilization and Conservation Service, and the Deputy Vice Presidents shall assist the Executive Vice President in the performance of his duties and the exercise of his powers to such extent as the President or the Executive Vice President shall prescribe, and shall perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, the President of the Corporation, or the Executive Vice President of the Corporation.

The Secretary

18. The Secretary shall attend and keep the minutes of all meetings of the Board; shall attend to the giving and serving of all required notices of meetings of the Board; shall sign all papers and instruments to which his signature shall be necessary or appropriate; shall attest the authenticity of and affix the seal of the Corporation upon any instrument requiring such action and shall perform such other

duties and exercise such other powers as are commonly incidental to the Office of Secretary as well as such other duties as may be prescribed, from time to time, by the President or the Executive Vice President.

The Controller

19. The Controller shall have charge of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements, claims activities, and formulation of prices in accordance with established policies; and shall perform such other duties as may be prescribed, from time to time, by the President or the Executive President.

The Treasurer

20. The Treasurer, under the general supervision and direction of the Controller, shall have charge of the custody, safekeeping and disbursement of all funds of the Corporation; shall designate qualified persons to authorize disbursement of corporate funds; shall direct the disbursement of funds by disbursing officers of the Corporation or by the Treasurer of the United States, Federal Reserve Banks and other fiscal agents of the corporation; and shall issue instructions incidental thereto; shall be responsible for documents relating to the general financing operations of the Corporation, including borrowings from the United States Treasury, commercial banks and others; shall arrange for the payment of interest on and the repayment of such borrowings; shall arrange for the payment of interest on the capital stock of the Corporation; shall coordinate and give general supervision to the claims activities of the Corporation and shall have authority to collect all monies due the Corporation, to receipt therefor and to deposit same for the account of the Corporation; and shall perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time to time, by the Controller.

The Chief Accountant

21. The Chief Accountant, under the general supervision and direction of the Controller, shall have charge of the general books and accounts of the Corporation and the preparation of financial statements and reports. He shall be responsible for the initiation, preparation and issuance of policies and practices related to accounting matters and procedures, including official inventories, records, accounting and related office procedures where standardized, and adequate subsidiary records of revenues, expenses, assets and liabilities; and shall perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time to time, by the Controller.

Other Officials

22. Except as otherwise authorized by the Secretary of Agriculture or the Board, the operations of the Corporation shall be carried out through the facilities and personnel of the Agricultural Stabilization and Conservation Service, the Foreign Agricultural Service, the Food and Nutrition Service, and the Agricultural Marketing Service in accordance with any assignment of functions and responsibilities made by the Secretary of Agriculture and, within his respective agency or office, by the Administrators of the Agricultural Stabilization and Conservation Service, Foreign Agricultural Service, Food and Nutrition Service, Agricultural Marketing Service, or the General Sales Manager of the Foreign Agricultural Service.

23. The Directors of the divisions and commodity offices of the Agricultural Stabilization and Conservation Service shall be contracting officers and executives of the Corporation in general charge of the activities of the Corporation carried out through their respective divisions or offices. The responsibilities of such Directors in carrying out activities of the Corporation, which shall include the authority to settle and adjust claims by and against the Corporation arising out of activities under their jurisdiction, shall be discharged in conformity with these bylaws and applicable programs, policies, and procedures.

Contracts of the Corporation

24. Contracts of the Corporation relating to any of its activities may be executed in its name by the Secretary of Agriculture or the President. The Vice Presidents, the Deputy Vice Presidents, the Controller, the Treasurer, and the Directors of the divisions and commodity offices of the Agricultural Stabilization and Conservation Service may execute contracts relating to the activities of the Corporation for which they are respectively responsible.

25. The Executive Vice President who is the Administrator of the Agricultural Stabilization and Conservation Service and, subject to the written approval by such Executive Vice President of each appointment, the Vice Presidents, the Deputy Vice Presidents, the Controller, and the Directors of the divisions and commodity offices of the Agricultural Stabilization and Conservation Service may appoint, by written instrument or instruments, such Contracting Officers as they deem necessary, who may, to the extent authorized by such instrument or instruments, execute contracts in the name of the Corporation. A copy of each such instrument shall be filed with the Secretary.

26. Appointments of Contracting Officers may be revoked by written instrument or instruments by the Executive Vice President or by the official who made the appointment. A copy of each such instrument shall be filed with the Secretary.

27. In executing a contract in the name of the Corporation, an official shall indicate his title.

Annual Report

28. The Executive Vice President shall be responsible for the preparation of an annual report of the activities of the Corporation, which shall be filed with the Secretary of Agriculture and with the Board.

Amendments

29. These bylaws may be altered or amended or repealed by the Secretary of Agriculture, or subject to his approval by action of the Board at any regular meeting of the Board or at any special meeting of the Board, if notice of the proposed alteration, amendment, or repeal be contained in the notice of such special meeting.

Approval of Board Action

30. The actions of the Board shall be subject to the approval of the Secretary of Agriculture.

I, Ray F. Voelkel, Secretary, Commodity Credit Corporation, do hereby certify that the above is a full, true, and correct copy of the bylaws of Commodity Credit Corporation, as amended September 26, 1983.

In witness whereof I have officially subscribed my name and have caused the corporate seal of the said Corporation to be affixed this 20th day of October, 1983.

Ray F. Voelkel,

Secretary, Commodity Credit Corporation.

[FR Doc. 83-29197 Filed 10-26-83; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Bridger-Teton National Forest Grazing Advisory Board; Meeting

The Bridger-Teton National Forest Grazing Advisory Board will meet at 1:00 p.m. December 6, 1983, in the Conference Room of the Sublette County Library, Pinedale, Wyoming. The purpose of this meeting is to discuss utilization of range betterment funds and the development of allotment management plans.

The meeting will be open to the public. Persons who wish to attend should notify Forest Supervisor Reid Jackson, Box 1888, Jackson, Wyoming 83001, telephone (307) 733-2752. Written statements may be filed with the board before or after the meeting.

The board has established the following rules for public participation:

1. If a group wishes to be heard at the meeting, they are required to select a chairman to voice their ideas.

2. Persons or groups may send written statements to the Forest Supervisor for presentation at the meeting.

3. The Chairman of the Forest Grazing Advisory Board will set aside a time period on the agenda for public comment.

October 18, 1983.

Reid Jackson.

Forest Supervisor.

[FR Doc. 83-29203 Filed 10-26-83; 8:45 am]

BILLING CODE 3410-11-M

Food Safety and Inspection Service

[Docket No. 83-032N]

SLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists memoranda issued by the Standards and Labeling Division (SLD), Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service (FSIS), and available to the public which contain significant new applications or interpretations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy in the labeling area.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Hibbert, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION: FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132, and 381.134) to be used on federally inspected meat and poultry products. Pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the regulations promulgated thereunder, meat and poultry products which do not bear approved labels may not be distributed in commerce.

FSIS's prior label approval program is conducted by label review experts within SLD. A variety of factors, such as continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which SLD must resolve as part of the prior label approval process. In interpreting the Acts or regulations to resolve these issues, SLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by SLD are issued in writing in memorandum form. This document lists those SLD policy memoranda issued from April 1, 1983, through September 30, 1983.

Persons interested in obtaining copies of any of the following SLD policy memoranda, or in being included on a list for automatic distribution of future SLD policy memoranda may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Memo No.	Title and date	Issue	Reference
058A	Smoked Products, August 5, 1983 (Replaces Policy Memo 058).	What guidelines should be followed when approving labeling for products prepared with natural smoke and/or smoke flavor (natural or artificial)?.	9 CFR 317.2 and 381.119, and Policy Memo 040.
060	Composite Ingredients Statements, September 27, 1983.	Whether a single composite listing of ingredients may be used on a finished meat or poultry label (e.g., pepperoni pizza) for a multi-ingredient component (e.g., pepperoni) to accommodate various formulations of the multi-ingredient component.	9 CFR 317.2, 317.8, 381.118, and 381.129.

The SLD policies specified in these memoranda will be uniformly applied to all relevant labeling applications unless modified by future memoranda or more formal Agency action. Applicants retain all rights of appeal regarding decisions based upon these memoranda.

Done in Washington, D.C., on October 12, 1983.

C. Ronald Brewington,

Acting Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service.

[FR Doc. 83-29238 Filed 10-26-83; 8:45 am]

BILLING CODE 3410-10-M

CIVIL AERONAUTICS BOARD

Announcement of Approval of Information Collection by the Office of Management and Budget Under the Paperwork Reduction Act (44 U.S.C. 35)

On October 3, 1983, the Office of Management and Budget approved the extension of the following information collection:

Information collection contained in the Board's "Essential Air Service Survey"—extended through October 31, 1986, under OMB No. 3024-0049.

Robin A. Caldwell,

Chief, Information Management Division, Office of Comptroller.

October 19, 1983.

[FR Doc. 83-29232 Filed 10-26-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41321]

British American Air, Inc. Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference is assigned to be held in the above-entitled proceeding on November 10, 1983, at 9:30 a.m. (local

time) in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., October 24, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-29231 Filed 10-26-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41414]

Northern Air Lines, Inc., Fitness Investigation; Cancellation of Hearing

Notice is hereby given that the hearing in the above-entitled proceeding, earlier scheduled to have been on November 10, 1983, is hereby cancelled until further notice.

Dated at Washington, D.C., October 24, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-29233 Filed 10-26-83; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Indiana Advisory Committee; Amendment

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 Indiana Advisory Committee of the Commission originally scheduled for November 3-4, 1983, at Gary, Indiana, (FR Doc. 83-28510 on page 48693) has been changed.

The meeting will be held on November 17-18, 1983. Time and place will remain the same.

Dated at Washington, D.C., October 24, 1983.

John I. Binkley,

Advisory Committee, Management Officer.

[FR Doc. 83-29249 Filed 10-26-83; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-535-001]

Cotton Shop Towels From Pakistan; Preliminary Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Pakistan of cotton shop towels, as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 11.87 percent *ad valorem*. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of the merchandise subject to this investigation which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or the posting of a bond on this merchandise in an amount equal to the estimated net subsidy. If this investigation proceeds normally, we will make our final determination by January 5, 1984.

EFFECTIVE DATE: October 27, 1983.

FOR FURTHER INFORMATION CONTACT: Paul Thran, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377-1766.

SUPPLEMENTARY INFORMATION:

Preliminary Determination:

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that the government of Pakistan (GOP) provides certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), to manufacturers, producers, or exporters in Pakistan of cotton shop towels, as described in the "Scope of Investigation" section of this notice. We estimate the net subsidy to be 11.87 percent *ad valorem*.

Case History

On July 29, 1983, we received a petition from counsel for Milliken and Company filed on behalf of the U.S. industry producing cotton shop towels. The petition alleged that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided, directly, or indirectly, to manufacturers, producers, or exporters in Pakistan of cotton shop towels. We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on August 18, 1983, we initiated an investigation (48 FR 38661).

Since Pakistan is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the International Trade Commission (ITC) of our initiation. On September 12, 1983, the ITC determined that there is a reasonable indication that imports of cotton shop towels are materially injurying a U.S. industry.

We presented a questionnaire concerning the allegations to the Embassy of Pakistan in Washington, D.C. on September 6, 1983 and requested a response by October 7, 1983. In a letter dated September 21, 1983, the GOP requested a postponement of the due date of the response. We granted the GOP a one week extension.

The GOP submitted a response to our questionnaire on October 18, 1983.

Scope of Investigation

The product covered by this investigation is shop towels of cotton. The merchandise is currently classified under item number 366.2740 of the *Tariff Schedules of the United States Annotated* (TSUSA). The cotton shop tower industry in Pakistan is an unorganized cottage industry. The GOP has provided us with a list of companies which received authorization to export shop towels to the United States. The period for which we are measuring subsidization is 1982.

Analysis of programs

In its response, the GOP provided data for the applicable period. The Towel Manufacturers' Association of Pakistan (TMAP) also provided a response. However, due to the unorganized cottage industry nature of Pakistani shop towel production the TMAP could provide company-specific information on only five companies. Due to time constraints we were not able to use all the information provided in the responses. Based upon our analysis to date of the petition and the responses to our questionnaire, we have preliminarily determined the following:

I. Programs Preliminarily Determined to Confer Subsidies

We preliminarily determine that subsidies are being provided to manufactures, producers, or exporters in Pakistan of cotton shop towels under the programs described below.

1. *Rebates on Exportation.* The petitioner alleged that the government of Pakistan provides exporters of shop towels with cash rebates which are calculated as a percentage of the f.o.b. value of the exported product. In the 1980 case on Certain Textile and Textile Mill Products from Pakistan (45 FR 37873), the Department determined this program to be countervailable. The *ad valorem* value of the benefit was 12.5 percent.

The petitioner also alleged that the GOP provides a 2 percent customs duty rebate, a 3.8 percent excise duty rebate and a 0.35 percent sales tax rebate on exported goods. This program operates under the Pakistan Customs Act of 1969.

As the GOP has provided no information linking the amount or kind of the rebates with actual costs incurred, we determine that these rebates are paid without regard to specific duties and taxes incurred in the production of shop towels. Therefore, they are countervailable.

The GOP has provided updated information on the value of the cash rebates program. On August 28, 1983, the value of the cash rebates for shop towels was reduced to 7.5 percent. Our policy has been to recognize changes in programs where we can confirm the change and have no reason to believe that the benefit has been shifted to other programs. Both criteria are met in this case. We find the value of the cash rebates to be 7.5 percent.

The GOP also has provided information on the correct values of two other programs. The value of the customs duty rebate is 0.37 percent and the value of the sales tax rebate is 0.11 percent. The value of the excise rebate is correct at 3.8 percent. The total *ad valorem* value of all the rebate programs is 11.78 percent.

2. *Income Tax Reduction.* The GOP provides a 55 percent reduction of taxes attributable to income generated by products made for export. This program was determined countervailable in the previous investigation of textile products from Pakistan. The responses did not provide sufficient information for purposes of the preliminary determination. However, as receipt of this benefit is based solely on export performance, it is countervailable. Therefore, we used petitioner's information in valuing this subsidy. The *ad valorem* value of the subsidy is 0.013 percent.

3. *Preferential Export Financing.* The GOP permits short-term export financing to be provided to exporters at rates considerably lower than those otherwise charged on short-term loans in Pakistan. This program was determined countervailable in the previous investigation of textile products from Pakistan. The responses did not provide sufficient information for purposes of the preliminary determination. However, as receipt of this benefit is based solely on export performance, it is countervailable. Therefore, we used petitioner's information in valuing this subsidy. The *ad valorem* value of the subsidy is 0.08 percent.

II. Programs Determined Not To Be Used

We preliminarily determine that the following programs were not used by manufacturers, producers, or exporters of cotton shop towels from Pakistan.

Import Duty Rebates

The petitioner alleged that the GOP provides rebates on imports of items which are not phyically incorporated into the exported products. The GOP response indicated that it provided no benefits under this program to the shop towel industry.

Preferential Export Insurance

The GOP, through the Pakistan Insurance Corporation, provides exporters with insurance against non-payment by foreign purchasers. Petitioner alleged that the premiums charged are insufficient to cover the costs of the program. The response of the TMAP indicates that no shop towel companies have made use of this program.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of cotton shop towels from Pakistan which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the notice in the **Federal Register**, and to require a cash deposit or the posting of a bond for each entry of the merchandise in the amount of 11.87 percent *ad valorem.*

This suspension shall remain in effect until further notice.

ITC Notification

In accordance with section 703 (d)(3) and (f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprovileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring or threatening to materially injure a U.S. industry, before the later of 120 days after the Department makes its preliminary affirmative determination or 45 days after the Department makes a final affirmative determination.

Public Comment

In accordance with section 355.35 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on November 30, 1983, at the U.S. Department of Commerce, Room 3092, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by November 23, 1983. Oral presentations will be limited to issues raised in the briefs.

All written views should be filed in accordance with 19 CFR 355.34, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Dated: October 24, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-29235 Filed 10-26-83; 8:45 am]

BILLING CODE 3510-25-M

[A-580-006]

Lightweight Polyester Filament Fabrics From the Republic of Korea; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that lightweight polyester filament fabrics (LPFF) from the Republic of Korea (Korea) are being sold in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determination, and the ITC will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threating to materially injure, a U.S. industry. We have directed the U.S. Customs service

to continue to suspend the liquidation of entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after August 8, 1983, in accordance with our preliminary determination, for Tae Wang Mulsan Co., Ltd.; Shin Taeyang Co.; Seong An Textile Co., Ltd.; and Yuyang Textile and Apparel Ltd. Young Shin Textile Co., Ltd., previously subject to suspension under the preliminary determination, is now *de minimis*.

We have determined that nine producers should be excluded from this determination. Those firms which are subject to the suspension of liquidation and those firms which are excluded from this action are indicated in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: October 27, 1983.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, D.C. 20230; telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that LPFF from Korea are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). We have found either no margins or *de minimis* margins for sales of LPFF produced by nine of the thirteen firms investigated. These nine firms are excluded from this determination. The firms investigated are indicated in the "Suspension of Liquidation" section of this notice.

Case History

On January 4, 1983, we received a petition filed by counsel for Burlington Industries, Inc., Milliken & Co.; J.P. Stevens & Co., Inc.; Dan River, Inc.; Texfi Industries; Frank Ix & Sons, Inc.; and Bloomsburg Mills, Inc. on behalf of the U.S. industry producing LPFF. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioner alleged that LPFF from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry. The allegations of sales at less than fair value included an allegation that home market sales are being made at less than the cost of production in Korea.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on January 24, 1983 (48 FR 3797). The ITC subsequently found, on February 18, 1983, that there is a reasonable indication that imports of LPFF are materially injuring, or are threatening to materially injure, a U.S. industry.

The petitioner alleged that at least three Korean companies produce LPFF for export to the United States. However, we identified 13 producers and exporters which account for approximately 90 percent of the exports to the United States. Questionnaires were presented in Korea to these producers and exporters on February 24, 1982.

On March 21, 1982, we received a letter from counsel for the Korean LPFF producers and exporters requesting additional time in which to respond because of the numerous companies and complicated products. Thirty additional days were granted and we received 11 responses on April 26, 1982 and an additional two on May 2, 1983. Responses were received from Chang Young Co., Ltd.; Dong Sung Trading Co., Ltd.; Kabul Ltd.; Namsun Moolsan Co., Ltd.; Sam-A Co., Ltd.; Seong An Textile Co., Ltd.; Shin Taeyang Co.; Silla Textile Co., Ltd.; Sunkyong Limited; Tae Wang Mulsan Co., Ltd.; Tongkook Corporation; Young Shin Textile Co., Ltd.; and Yuyang Textile and Apparel Ltd.

On May 20, 1983, we found this case to be extraordinarily complicated becuse of the large number of complex transactions and the large number of firms whose activities had to be investigated. We postponed our preliminary determination until August 2, 1983 (48 FR 23471).

On August 2, 1983, we preliminarily determined that LPFF from Korea were being sold in the United States at less than fair value (48 FR 35979). We held a hearing on September 15, 1983, to allow the parties an opportunity to address the issues.

On October 17, 1983, we received a letter from counsel for the Korean LPFF producers and exporters requesting that the final determination be extended until October 21, 1983. We extended our final determination until that date.

Scope of Investigation

The products covered by this investigation are lightweight polyester filament fabrics currently provided for in items 338.5009, 338.5011, 338.5012, 338.5013, and 338.5015, of the *Tariff Schedules of the United States Annotated (TSUSA)*.

Since the 13 respondents produced and exported approximately 90 percent of the LPFF from Korea to the United States during the period of this investigation, we limited our investigation to them.

We investigated sales of LPFF by these respondents during the period from July 1, 1982, to December 31, 1982.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for the majority of sales by the Korean producers because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price for each type of LIFF based on the f.o.b., c.&f., or c.i.f., packed price to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, Korean inspection expenses and customs clearance charges, wharfage, brokerage and handling, ocean or air freight, and transportation insurance.

A portion of the sales for Sunkyong Limited and Tongkook Corporation were made on the basis of exporter's sales price because the marchandise was sold to unrelated purchasers after importation into the United States. For these sales, we made additional deductions, where appropriate, for U.S. brokerage and handling, U.S. customs duties, U.S. inland freight, warehousing, commissions and other selling expenses incurred in the United States. We made an addition to purchase price and to exporter's sales price for import duties which were rebated or not collected by reason of the exportation of the merchandise to the United States, pursuant to section 772(d)(1)(B) of the Act.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales, and where appropriate, constructed value. For purposes of determining similar merchandise under section 771(16) of the Act, we made comparisons based on categories selected by an industry expert retained by the Department of Commerce.

The petitioner alleged that sales in the home market were at prices below the

cost of producing LPFF. We examined production costs which included all appropriate costs for materials, fabrication and general expenses. We found sales below the cost of production within certain categories of such or similar LPFF examined. In accordance with section 773(b) of the Act, in our analysis we disregarded any sales at prices which did not permit recovery of all costs within a reasonable period of time in the normal course of trade, where sales within any of the categories were made over an extended period of time and in substantial quantities. Disregarding such sales, we found for certain categories that sufficient sales of such or similar merchandise were made at or above the cost of production in the home market. Therefore, those sales were used in making price-to-price comparisons with sales in the U.S. market. If, within these such or similar categories, all home market sales of particular fabric types identical or most similar to particular fabrics sold to the United States were disregarded pursuant to section 773(b) of the Act, we used sales of the most similar home market merchandise made at or above the cost of production for comparison to those U.S. sales, after appropriate adjustments. Where sales remaining above the cost of production in a such or similar category were inadequate as a basis for the determination of foreign market value, we used constructed value to determine the foreign market value of the particular fabric types included in that category of such or similar merchandise.

Where we made price-to-price comparisons, the home market prices were based on ex-factory or f.o.b., delivered, packed prices to unrelated purchasers. From these prices we deducted, where appropriate, inland freight. We made adjustments, where appropriate, for differences in credit costs in accordance with § 353.15(b) of the Commerce Regulations, and for differences associated with the cost of materials, labor, and directly related factory overhead in accordance with § 353.16 of the Commerce Regulations. On the home market sales we also deducted the home market packing cost and added the cost of U.S. packing.

Where we used exporter's sales price, we deducted home market indirect selling expenses to offset U.S. Commissions and other U.S. selling expenses.

Where we used constructed value as a basis for foreign market value, we calculated it to include the cost of materials, fabrication, general expenses, profit and the cost of packing. The amount added for general expenses was either the statutory minimum of 10 percent of the sum of material and fabrication costs, or the actual reported general expenses, whichever was higher. The amount added for profit was the statutory minimum of 8 percent of the sum of materials, fabrication costs, and general expenses because the actual profit was either not reported or was less than 8 percent.

Since fabrics in the greige stage of the production sequence are intermediate products in that they are not suitable for use in garments, we determine them not to be such or similar to fully finished fabrics. In the case of Shin Taeyang, there were no home market sales of such or similar merchandise available for comparison to certain of its sales to the United States of dyed goods. In these situations, the foreign market value was calculated on the baisis of constructed value.

Verification

In accordance with 776(a) of the Act, we verified the information used in making this determination, by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and selected documents containing relevant information.

Results of Verification

We made fair value comparisons on all U.S. sales reported by the respondents. We have found that the foreign market value of LPFF exceeded the United States price on 9.59 percent of the sales we compared. These margins ranged from 0.000 percent to 41.359 percent. The overall weighted-average margin on all sales compared is 0.614 percent. The weighted-average margins for individual companies investigated are presented in the "Suspension of Liquidation" section of this notice.

Petitioner's Comments

Comment 1. Respondents failed to provide the necessary information needed to calculate the cost of producing individual fabrics.

Detailed fabric-by-fabric information on labor costs, yarn costs, energy costs, production processes, equipment efficiency, and the amount of each cost factor used in each step of the production process was not provided in the questionnaire responses, nor were complete descriptions of the fabrics produced. Therefore, the Department should disregard the respondents' cost information and substitute the best information available.

DOC Position. During verification the respondents provided additional information relating to calculating the cost of producing LPFF products, including: the price of primary factors of production (labor specific types of yarn, energy, etc.), the quantity and type of equipment used, the prices paid for each type of yarn, dye and other raw materials, and the number of employees at each stage of the production process, their wage and other compensation levels, internal industrial engineering standards and fabric descriptions. The LPFF production cost elements submitted by each respondent company were reconciled with its general ledger and financial statements to assure that the cost of production schedules submitted included all costs incurred. The Department has determined that with this additional information it has all the data needed to calculate the cost of producing individual fabrics.

Comment 2. Petitioner maintains that the allocation methods used by respondents to determine weaving costs, yarn costs, labor costs per hour, dyeing costs, working loss and packing costs were improper in that they are not reasonably related to the actual expenses incurred during each stage of the production process. The Department should disregard the cost information that is not based on fully-disclosed, proper methods of allocation, and base foreign market value on constructed value, as the best available information.

DOC Position. During verification, we found that respondents generally did build costs, by fabrication process, from the prices of factors of production, as follows:

- *Raw Materials Costs*—Each of the LPFF manufacturers purchased raw yarn from unrelated companies. Actual invoice prices for specific yarns were used as the basis for preparing the respondents' submissions.
- *Raw Materials Use*—Yarn costs were generally allocated to each product on the basis of the weight of raw materials required to produce the greige fabric for each product according to company specific engineering standards.
- *Weaving Labor Cost*—Several different methods were used by the respondents to allocate direct weaving labor to specific LPFF Products. These were:

—Actual invoice prices for specific fabrics where the respondent contracted their weaving process to other companies.

—Allocation of weaving labor and overhead costs based on actual hours worked on each LPFF product.

—Allocation of weaving labor and overhead based on raw material weight or production volume, adjusted by the company's specific engineering standards. The allocation methods have generally been used to estimate the cost of production in the normal course of business by these companies prior to the investigation.

—Allocation of weaving labor costs based on raw material weight or production volume.

In cases where the companies did not use a detailed method for their cost allocations, the Department examined their books and records to determine if a more refined method could be developed. The nature of the companies' operation, and records maintained by the companies did not permit such a refinement. Based on all information available, the Department accepted these companies' methods as being reasonable methods.

• *Dyeing and Finishing Cost*—All but three of the respondents subcontracted dyeing and finishing operations to other companies. In every case, actual invoice prices for specific fabrics were used as the basis for preparing the respondents' submissions. Outside contractors did not charge different prices for different shades produced. Instead, one price was negotiated for all dyeing and finishing in a specific time period (e.g., one quarter).

None of the remaining three companies allocated dyeing and finishing costs to each LPFF product solely by production volume or value (e.g., one company allocated dyeing and finishing labor to each product based on the time necessary for the tenter machine to complete the dyeing process for each item produced according to the company's engineering standards). Indirect manufacturing overhead costs were generally fully allocated to production using the same basis as direct manufacturing costs. In some cases, these allocations were made on the basis of raw material weight or volume.

• *Selling, General, Administrative and Financial Expense*—These costs were generally allocated to LPFF production by either production volume or value.

We have determined that the allocation methods used by the respondents to determine fabrication costs reasonably reflect the actual expenses incurred at each stage of production. Therefore, we have used this data in our final determination.

Comment 3. Petitioners believe the questionnaire responses are not reliable, as there are variations between companies in reported costs that are far greater than reasonably would be attributable to differences in efficiency and inconsistencies in production costs for similar fabrics produced by the same firm.

DOC Position. Although the company specific examples of alleged inconsistencies were not made available to us prior to the verification, we were able to use the information obtained during verification, to satisfactorily resolve all material inconsistencies raised by the petitioners. Reasons for the apparent inconsistencies include:

• The use of expensive yarns, such as silver metallic yarn, which increases the cost of production in fabrics that, based upon weight and yarn count, normally would have lower materials costs than do heavier, more dense fabrics if the same yarns are used for each fabric.

• The accounting for certain shrinkage factors in variable overhead rather than in materials costs as the petitioner had assumed.

• A price increase despite a materials cost decrease due to changes in one company's labor productivity.

• Differences in printing costs from company-to-company due to differences between the prices paid for subcontracted printing and the costs of in-house printing allocated using company standards.

• Comparison of the printing costs of two companies' "printed" fabrics which are actually printed by different methods.

Other inconsistencies were resolved by checking actual materials used against company specific manufacturing standards. No significant discrepancies were noted.

Comment 4. Related party transactions between Korean manufacturers, yarn suppliers, weavers, and finishers necessitate the substitution of costs for transaction prices between the related parties.

DOC Position. We separately verified related party transactions. We determined that the suppliers' cost information contained all cost elements listed in the financial statements and company ledgers, and that the prices charged the respondents exceeded actual costs.

Comment 5. Since the link between import duties paid by yarn suppliers on imported inputs and the duty drawback granted to the Korean fabric producers is tenuous, the duty drawback adjustment should not be allowed.

DOC Position. During verification, we examined import documents for both raw material inputs and manufactured yarn which accompanied the yarn purchased by the Korean fabric manufacturers. Upon export, these documents are filed with the Korean authorities by the ultimate exporter in order to receive the duty drawback.

Section 772(d)(1)(B) of the Act and § 353.10 of the Commerce Regulations allow an adjustment for the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected by reason of the exportation of the merchandise to the United States. Only rebates actually received by the Korean manufacturers on the exportation of the LPFF, upon whose component materials the original Korean import duties had been collected, were included in the duty drawback allowed during the period of investigation.

Comment 6. Petitioner maintains that home market viability tests and price-to-price comparisons should be examined on each fabric sold.

DOC Position. Section 773(a) of the Act requires that the determination of foreign market value be based on sales, or in the absence of sales, offers for sale of "such or similar" merchandise in the home market, if "such or similar" merchandise is sold or offered for sale in that market. Section 773(a)(1)(B) of the Act limits the use of home market sales as a basis for the determination of foreign market value to those situations in which the quantity of sales or offers for sale of "such or similar" merchandise in the home market is adequate. This test for the adequacy of home market sales is commonly called the home market viability test. Pursuant to the directive of § 353.4 of the Commerce Regulations, we grouped together all merchandise sold in the home market which is either "such or similar" to the merchandise sold to the United States, and then determined whether the quantity of this merchandise was adequate.

All comparisons we made are between fabrics produced in Korea by the same organization as the merchandise which is the subject of the investigation, and are of the same class or kind of merchandise, in that they are lightweight fabrics woven substantially from polyester continuous filament yarns.

In the instant investigation, based on the opinion of a fabric expert as to the comparability of specific fabrics, we established categories of "such or similar" merchandise, pursuant to section 771(16)(C) of the Act, on the basis of fabric designation (high-twist georgette, high-twist crepe de chine, high-twist palace crepe, other high-twist yarn products, flat silky taffeta and textured suede), the type of weave (plain, matt, dobby, fancy, jacquard),

and whether the fabric is an intermediate (greige or prepared for print), or completely finished product. Individual combinations of these three components each determine a "such or similar" group upon which a viability test was performed and within which price-to-price comparisons were made. LPFF from Korea was divided into 17 "such or similar" groups for this determination.

Fabric designations have become well established in the textile industries over the years. Since fabric manufacturers in selling, and garment manufacturers in buying, use the various fabric designations habitually and consider them to be indicative of the purposes for which particular fabrics are used, we believe that these common designations employed in the industries should properly be used in this investigation as one of the determinants of "such or similar" merchandise. Further, we believe that the system of determining "such or similar" merchandise should include consideration of weave type, since fabrics of different weave types are not likely to be used interchangeably by a garment designer, even though they have the same fabric designation.

Finally, farbrics of the same designation may be sold in different stages of the production sequence. For example, fabrics may be sold in the greige or the prepared for printing state, not useable in garments, but only suitable for sale as an intermediate product to some entity within a textile industrial complex, to undergo further processing. Greige or prepared for printing fabrics may be contracted for by a converter months before the determination of the final form of the finished fabric. For these reasons we do not consider greige or prepared for printing fabrics to be "such or similar" to fully finished fabrics.

We believe that the fabric designations and weave types we have used account for the major factors influencing the cost of manufacture and market value of the basic fabrics, such as weight, twist, presence or texturizing and complexity of manufacture, so that fully finished fabrics of the same designation and weave type are such or similar.

Additionally, where adjustments are necessary to account for differences in physical characteristics of fabrics which are due to differences between dyeing and the various types of printing, we were able to calculate these differences in cost of manufacture.

Comment 7. Petitioner maintains that Tae Wang Mulsan's submission understates the unit cost of production by approximately 20 percent. Petitioner cites this as illustrative of the generally dificient character of the respondents' cost data, and as support for their position that the respondents' cost information is inadequate to serve as the basis for dumping analysis.

DOC Position. We agree with the petitioner that in both Tae Wang Mulsan's questionnaire response and ancillary worksheets, the presentation of total cost and total quantity of fabrics produced and sold in both greige and dyed states is uncertain. The response appears to double count the output of greige fabric sold in a dyed state, and there is no way to clearly separate the costs and quantities of fabric produced and sold in greige and dyed states. This problem arises due to the fact that the company's perpetual inventory system does not readily distinguish between greige and dyed fabrics.

An analysis was prepared to verify the total expenses and total produced quantity of each product produced and sold by Tae Wang Mulsan in 1982. We determined that the cost of sales as reported in the company's financial statements is within one percent of the cost accounted for in the company's submission.

Respondents' Comments

Comment 1. The third and fourth quarter cost of production figures submitted by the respondents are fully-loaded costs and should be used to calculate the cost of producing LPFF sold in the home market during the period of investigation rather than costs on a yearly or six-month basis.

DOC Position. The costs reported in each quarter accurately reflect the cost of producing the merchandise in that quarter. We have verified that the Korean manufacturers have submitted fully-loaded quarterly cost information. Since the raw materials cost of polyester filament yarn was decreasing throughout 1982 and there is a very short lag time between the production and sale of the merchandise in question, we believe that quarterly cost of production data provides the most accurate measure of the cost of producing LPFF in Korea.

Comment 2. The weighted-average home market prices should be computed on a quarterly basis in order to avoid distortions in comparisons with individual export sales prices.

DOC Position. We verified that the quarterly production cost data reported by the Korean manufacturers were fully-loaded costs. Therefore, the cost of producing the merchandise in question has been calculated on a quarterly basis (*See* DOC position with respect to Respondents' Comment 1). Since home market as well as export sales prices generally declined during the third and fourth quarters of 1982, reflecting the decrease in costs, the Department believes the calculation of weighted-average home market prices on a quarterly rather than a semi-annual basis more reasonably reflects the home market prices at the time of the export sales in question. Therefore, weighted-average home market prices were calculated on a quarterly basis.

Comment 3. Respondents maintain that all high-twist LPFF sold in the home market is "such or similar" to the merchandise exported to the United States; therefore, all sales in the home market of high-twist LPFF should be aggregated for determining the viability of the home market.

DOC Position. We established "such or similar" product groupings within each of the three main yarn-based categories of LPFF (flat, textured, and high-twist) (*See* DOC Position with respect to Petitioner's Comment 6). As required by § 353.4 of the Commerce Regulations, the Department conducted home market viability tests for each of these "such or similar" product groupings in order to determine the adequacy of home market sales of "such and similar" merchandise.

Comment 4. Credit expenses on sales involving payment by promissory note should include the imputed expense of credit for the period of time between delivery of the merchandise and the receipt of cash therefor, and the amount of the discount from the face value of the note resulting from the seller's sale of the note prior to its maturity date.

DOC Position. We determine that these differences in home market and U.S. credit expenses are allowable as circumstances of sale adjustments pursuant to 19 CFR 353.15(b) of our regulations.

By imputing an interest expense from the date of delivery to the date of payment, the expense incurred for granting credit is recognized. Further, when a note received for payment of a sale is discounted prior to its maturity, this discount represents the credit cost and we recognize this.

Comment 5. The only element of nonoperating expenses properly allocable to the cost of producing the merchandise under investigation is a financing expense; all other elements should be excluded.

DOC Position. The cost of production must include all costs necessary for the manufacture of the product under investigation. Although costs may be presented on the financial statements in many ways, such as part of cost-of-

sales, general expenses or non-operating expenses, we are not governed by the representation of the costs of the financial statement but by the substantive nature and their relationship to the product. Therefore, we examined the individual non-operating expenses and non-operating income items to decide if these items should be properly included.

Items which pertained exclusively to other lines of business and export sales were not included in the cost of production for home market sales. Items which pertained to the over-all operations of the company were included as part of general and administrative expenses. In all cases, except for Dong Sung Trading Co., Ltd., the amount of the adjustment was insignificant. In that one case, an adjustment to the costs was made.

The non-operating export sales items which were incurred by the manufacturers were not directly related to production. These non-operating indirect selling expenses were reviewed for the two companies engaging in sales under section 772(c) of the Act (exporter's sales price) for which indirect selling expenses would be part of a sale price adjustment. In one case, there were no such indirect expenses and in the other case, the adjustment was insignificant.

Comment 6. No adjustment is necessary to the Korean manufacturers' cost data for seconds, shorts, and remnants.

DOC Position. The Korean LPFF manufacturer did not adjust their cost of production to account for the costs associated with the production of second and third quality merchandise. The companies represented said that they did not maintain records of their experience in this area.

Because the production of second and third quality merchandise is part of the normal operations of the LPFF industry, we developed estimates of the increase in costs, based upon petitioner's information, to the first quality resulting from the production and sales of second and third quality merchandise. Costs were adjusted accordingly.

Suspension of Liquidation

In accordance with section 733(d) of the Act, on August 8, 1983, we instructed the United States Customs Service to suspend liquidation of all entries of LPFF from Korea with the exception of the LPFF produced by Chang Young Co., Ltd.; Dong Sung Trading Co., Ltd.; Silla Textile Co., Ltd.; Sam-A Co., Ltd.; Kabul Ltd.; Namsun Moolsan Co., Ltd.; Sunkyong Limited; and Tongkook Corporation (48 FR 35979). As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended for Seong An Textile Co., Ltd.; Shin Taeyang Co.; Yuyang Textile and Apparel Ltd.; and Tae Wang Mulsan Co., Ltd. which were previously subject to suspension. Except for Chang Young Co., Ltd.; Dong Sung Trading Co., Ltd.; Silla Textile Co., Ltd.; Sam-A Co., Ltd.; Kabul Ltd.; Namsun Moolsan Co., Ltd.; Sunkyong Ltd.; Tongkook Corp.; and Young Shin Textile Co., Ltd., the Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the U.S. price. This suspension of liquidation will remain in effect until further notice. Companies excluded from this determination are identified by an asterisk (*) in the chart below:

Firm	Weighted-average margin percentage
*Chang Young Co., Ltd	0.000
*Dong Sung Trading Co., Ltd	0.000
*Kabul Ltd	0.000
*Namsun Moolsan Co., Ltd	0.015
*Sam-A Co., Ltd	0.015
Seong An Textile Co., Ltd	1.876
Shin Taeyang Co	0.852
*Silla Textile Co., Ltd	0.000
*Sunkyong Ltd	0.246
Tae Wang Mulsan Co., Ltd	4.052
*Tongkook Corp	0.194
*Young Shin Textile Co., Ltd	0.062
Yuyang Textile and Apparel Ltd	4.829
All other companies	0.614

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess an antidumping duty on LPFF from Korea entered, or withdrawn, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. prices.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: October 21, 1983.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 83-29192 Filed 10-26-83; 8:45 am]

BILLING CODE 3510-25-M

[C-469-035]

Vitamin K From Spain; Final Results of Administration Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of Administration Review of Countervailing Duty Order.

SUMMARY: On September 9, 1983, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on vitamin K from Spain. The review covers the period January 1, 1982 through December 31, 1982.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: October 27, 1983

FOR FURTHER INFORMATION CONTACT: Alan Long or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 40770) the preliminary results of its administrative review of the countervailing duty order on vitamin K from Spain (41 FR 50419, November 16, 1976). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Spanish vitamin K, commercially known as menadione sodium bisulfite. Such merchandise is currently classifiable under item 412.6420 of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1982 through December 31, 1982 and two programs: (1) a rebate of indirect taxes upon exportation under the Desgravacion Fiscal a la Exportacion ("the DFE"), and (2) an operating capital loans programs.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We recieved on comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine the net subsidy to be 2.51 percent for the period January 1, 1982 through December 31, 1982.

The Department will instruct the Customs Service to assess countervailing duties of 2.51 percent of f.o.b. invoice price on any shipments exported on or after January 1, 1982 and entered, or withdrawn from warehouse, for consumption or or before June 20, 1982.

On June 21, 1982, the International Trade Commission ("the ITC") notified the Department that the Spanish government had requested an injury detemination for this order under section 104(b) of the Trade Agreements Act of 1979. Should the ITC find that there is material injury or likelihood of material injury to an industry in the United States, the Department will instruct the Customs Service to assess countervailing duties, in the amount of the estimated duties required to be deposited on all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 21, 1982, and through the date of the ITC's notification to the Department of its determination.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 1.64 percent of the entered value, as provided for by section 751(a)(1) of the Tariff Act, on any shipment of Spanish vitamin K entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administration review. The Department now intends to conduct the next administration review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of ther Tariff Act (19 U.S.C. 1675(a)(1)), and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: October 21, 1983.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 83-29237 Filed 10-26-83; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Request for a National Voluntary Laboratory Accreditation Program for Activated Carbon

In accordance with that portion of the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP) pertaining to private sector organizations (15 CFR 7c.4(c)), notice is hereby given by the National Bureau of Standards of the receipt of a letter dated September 20, 1983, from the American Society for Testing and Materials (ASTM) Committee D-28 of Activated Carbon. The letter requests the development of a laboratory accreditation program (LAP) to accredit laboratories that test activated carbon. The ASTM letter, which is set out at the conclusion of this notice, includes a statement of need and the procedures followed in support of its request.

The ASTM Committee D-28 meets the conditions set out in 15 CFR 7c.3(b). A copy of the September 20, 1983 letter from ASTM Committee D-28 has been filed in the Central Reference and Records Information Facility (CRRIF), Room 6622, Main Commerce Building, 14th Street between E Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Any person desiring to comment regarding the need for this LAP is requested to do so no later than December 27, 1983. Comments should be sent directly to ASTM Committee D-28, Mr. Richard D. Rivers, American Air Filter Company, P.O. Box 35260, Louisville, KY 40232.

A copy of such comments should be sent to Mr. John W. Locke, Manager, Laboratory Accreditation, NBS, TECH B141, Washington, D.C. 20234; (301) 921-3431. Additional inquiries related to NVLAP can also be directed to Mr. Locke.

Dated: October 24, 1983.

John W. Lyons,

Acting Director, National Bureau of Standards.

September 20, 1983.

Dr. Ernest Ambler, Director, National Bureau of Standards, Washington, D.C. 20234

Dear Dr. Ambler: In accordance with Section 7c.4 of Title 15 of the Code of Federal Regulations, the ASTM Committee D-28 on Activated Carbon requests that you establish a laboratory accreditation program (LAP) under the National Voluntary Laboratory Accredition Program (NVLAP) to accredit laboratories which test activated carbon to the requirements of applicable standards.

For the purpose of defining the scope of this proposed LAP, "activated carbon" includes a group of granular carbonaceous substances processed to enhance their gas-adsorptive properties.

The applicable product standard is ASTM D4069, "Impregnated Activated Carbon Used to Remove Gaseous Radioiodines from Gas Streams." A copy is attached. The following test methods listed in the product standard should be included in the LAP:

1. Methyl Iodide Efficiency, 30 oC, 95% RH (ASTM D3803, Method A).
2. Methyl Iodide Efficiency, 80 oC, 95% RH (ASTM D3803, Method B).
3. Elemental Iodine Efficiency, 30 oC, 95% RH (ASTM D3803, Method D).
4. Elemental Iodine Efficiency, 100 oC (ASTM D3803, Method E).

Number of Laboratories

There are approximately 9 laboratories that perform this testing in the U.S.A. and several foreign laboratories which may be interested and eligible to become accredited under this proposed LAP.

Users of Laboratories

Users of accredited laboratory services would include operators of nuclear power plants and fuel reprocessing facilities; contractors responsible for the construction, maintenance and decommissioning of such facilities; laboratories (including national laboratories) involved in research and regulatory studies for the nuclear industry; and military agencies involved in nuclear power reactor applications.

Need for this LAP

National Need: Radioiodine isotopes are unavoidable by-products of nuclear power production. Substantial quantities are produced by fission of uranium and thorium during power-reactor operation. In addition, smaller quantities are produced for medical and research purposes in research reactors and particle accelerators. These radioiodine isotopes pose hazards, not only to workers within nuclear facilities, but to the public at large. The hazard exists in day-to-day operation, and is multiplied greatly by the possibility of massive accidental releases. Because of the high damage level of radioiodine to vital organs (the thyroid in particular), and because of the concentration of iodine which takes place in the food chain, the ability to trap radioiodine compounds

under all possible generation situations with high efficiency is essential to a safe, viable nuclear technology. The test procedures to be certified under this LAP are designed to demonstrate the effectiveness of the material most commonly used for rodioiodine trapping in nuclear facilities. The listed tests evaluate the tested activated carbons under a range of conditions approximating normal and accident environments. The standard (ASTM D4069) sets pass levels which will yield tolerable, minimal worker and public exposure to radioiodine compounds in nuclear facilities with correctly-designed containment systems.

Benefits to Public Interest: It is of utmost importance to public safety that nuclear systems have containment equipment which is *designed* to hold worker and public exposure to minimal levels. It is equally important that procedures be established to assure that the materials used in such systems continue to have the quality specified in system design throughout the life of the facility. Activated carbon in any filtration system must be replaced periodically. The only way its quality can be assured is through batch-by-batch tests correctly carried out to proven standards by competent, appropriately equipped laboratories. This is the aim of this set of standards, and this LAP. Neither the manufacture or the evaluation of activated carbon for radioiodine capture is simple. The LAP is needed to assure the delivery of filtration media meeting standards which have been determined to be necessary.

Importance of Standards for Commerce, Consumer Well Being, or Public Health and Safety: Radioiodine compounds have become powerful tools for medical diagnosis and therapy. The very qualities that provide these benefits, however, make them dangerous when they enter the human body undetected and uncontrolled. Radioiodine can destroy a cancerous thyroid gland, saving a life and allowing pharmaceutical replacement of thyroid function; it can also destroy a healthy thyroid, and take a life. Radioiodine compounds are peculiarly insidious because they provide no easily detectable indication of their presence at levels already hazardous. Hence, the need for containment at the source. A truly massive release from a nuclear power plant would require evacuation of people from the surrounding territory and destruction of grazing animals because of radioiodine pollution alone. Widespread processing of milk in areas beyond the evacuation zone would be needed to prevent hazard to children.

An additional benefit accrues when the public is protected by reliable, quality-controlled systems. Their perception of danger is justifiably reduced, and they are then more willing to examine the technology involved on a rational basis, and to accept it within reasonable economic constraints. This, in turn, can yield lower costs for necessary services like electric power.

Existing Valid Testing Methodology

Test Procedures

Properties of the activated carbon tested (hardness, moisture content, particle size, etc). These tests involve relatively simple equipment, and are standardized versions of tests which have been performed for many years in the activated carbon industry. They are helpful in assuring the uniformity and repeatability of the activated carbons specified under D4069, but there is no major concern in the industry as to the reliability of testing done under these methods. However, the second group of tests-all contained in ASTM D3803 (enclosed)—is far more complex. It first describes a system of feeding radioiodine-labelled compounds to standardized samples of activated carbon. It then details procedures for measuring the fraction of the radioiodine which passes through the carbon bed in the course of the test, and the amount retained in the bed. Several different patterns of temperature and humidity are specified for this group of tests. These conditions are designed to simulate normal and predicted post-accident operating conditions for the carbon beds. These methods have been developed by ASTM Committee D28. The history of their development and evaluation to date is described in the paragraph, "Procedures Used in Formulating This Request," below.

Feasibility and Practicality of Administering a LAP: It appears that a LAP for this standard is no less feasible or practical than the LAP's now established under NVLAP. Most laboratories which could be involved have expressed desire for the program. Potential industry users and ASTM Committee D28 are prepared to consult with NBS on the program. The standard is unequivocally defined and has been in use for more than a year by the target laboratories.

Procedures Used in Formulating This Request

The following steps were taken by ASTM Committee D28 in arriving at this request for a LAP:

The committee was organized in 1962 to develop standards for testing and specifying activated carbon products. It has three subcommittees:

D28.02 Liquid Phase Applications
D28.03 Definitions
D28.04 Gas Phase Applications

The development of standards related to use of activated carbon in nuclear safety systems has been the responsibility of Subcommittee D28.04. D 28 Subcommittees operate under the rules of ASTM, which maintain open access to all interested parties. Membership is dependent on technical qualifications, but every effort has been made to recruit members from a wide spectrum of industry interests. The entire group of nuclear activated carbon standards each went through several draft versions, which were discussed and amended in open committee meetings. Final versions were submitted to three separate ballots (Subcommittee, Committee, and Society-wide). In all cases, there were certain negative votes which were answered, either by clarification (with the dissenting voter agreeing to reverse his vote), by committee majority adoption of the dissenting opinion, or by a committee majority vote that the complaint was "not persuasive." Records of these procedures have been maintained throughout the development of these standards.

Athough ASTM D28.04 has been the committee with responsibility for these standards, it has not been alone in its interest. The ASME Committee on Nuclear Air and Gas Treatment (CONAGT) has made use of ASTM D 28 standards in writing its own guideline standards for design and testing of nuclear safety systems (ANSI/ASME N509, Nuclear Power Plant Air Cleaning Units and Components and ANSI/ASME N510, Testing of Nuclear Air-Cleaning Systems).

In addition, CONAGT and ASTM D 28 have cooperated in implementing and analyzing an interlaboratory comparison of the test methods of ASTM D3803. In May of 1982, a letter was circulated from ASTM D28.04 notifying 21 organizations of its intent to pursue a NVLAP Certification Program. The circulation list included all known U.S. laboratories engaged in testing nuclear grade activated carbons, plus suppliers of nuclear safety systems using this material and several regulatory agencies involved in setting standards for and maintaining quality of this material. A questionnaire was sent along to determine which of the pertinent ASTM standards should be included in the NVLAP program. Twelve responses to this questionnaire were received. The consensus of these responses was that the NVLAP program was needed, and probably should include all ten of the test standards listed in Specification D4069. However, the problems involved in obtaining persons knowledgeable in all of these test procedures to serve as laboratory auditors convinced D 28 that, as a first step, the LAP should be limited to test methods in D3803. Satisfactory reproducibility had been obtained for all the tests called out by D4069. For Standard D3803, however, some difficulties have been observed recently during an interlaboratory comparison sponsored by the ASME CONAGT committee. Carefully subdivided samples of activated carbons, both new and removed from nuclear power plant service, were distributed to a group of laboratories for test "in accordance with ASTM D3803." The results obtained had variance wider than would have been expected. ASTM Committee D28.04 was asked to examine the data sets to seek an explanation for this variance. Committee D28.04 found that the conditions of ASTM D3803 had not been met by the majority of participants, either as a result of misunderstanding or from lack of equipment exactly meeting the requirements of D3803. These problems indicated to D28.04 the clear need for laboratory accreditation, and prompted moving forward on this request for a NVLAP program.

We assert that the ASTM Committee D 28 qualifies under the due process requirements of the NVLAP Part 7c Procedures for private sector organizations to make this request.

Development of Technical Details

We are ready to provide technical support for the development of the details for administering this LAP. In addition, we hope to identify technical experts for your use in assessing applicant laboratories. We hope

that members of ASTM Committee D 28 can continue to contribute in the development of technical requirements for accrediting laboratories to implement this LAP.

Please let us know if we can provide any other information or assistance you may need. We look forward to the National Bureau of Standards' favorable consideration of this request.

Sincerely,

Richard D. Rivers,

Chairman, ASTM Committee D-28.04, American Air Filter Company, P.O. Box 35260, Louisville, Kentucky 40232.

[FR Doc. 83-29182 Filed 10-26-83; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products From the People's Republic of China

October 24, 1983.

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 October 28, 1983. For further information contact Diana Bass, (202/377-4212).

Background

A CITA directive establishing import limits for specified categories of cotton, wool and man-made fiber textile products, including Categories 351, 447, 448 and 640, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1983, was published in the **Federal Register** on August 19, 1983 (48 FR 37686). Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, the Government of the People's Republic of China has notified the Government of the United States of its intention to use flexibility in the form of swing to be applied to the current-year limits for these categories. The limit for Category 640 is being reduced accordingly to account for swing being applied to Categories 351, 447 and 448.

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) and May 3, 1983 (48 FR 19924).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

October 24, 1983.

Committee for the the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of August 19, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1983.

Effective on October 28, 1983, the directive of August 19, 1983 is hereby further amended to adjust the previously established levels of restraint for Categories 351, 447, 448, and 640 to the following under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983:[1]

Category	Adjusted 12-month level of restraint [1] (dozen)
351	304,500
447	72,676
448	19,425
640	1,001,332

[1] The levels have not been adjusted to reflect any imports exported after December 31, 1982.

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.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-29193 Filed 10-26-83; 8:45 am]

BILLING CODE 3510-25-M

Adjusting Import Restraint Limits for Certain Cotton Apparel Products From India

October 24, 1983.

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 October 31, 1983.

A CITA directive dated December 27, 1982 (47 FR 58339) established import restaint limits for specified categories of cotton, wool and man-made fiber textile products, including Categories 338/339.340 and 341, produced or manufactured in India, exported during the twelve-month period which began on January 1, 1983, which may be entered into the United States for consumption beginning January 1, 1983. At the request of the Government of India, flexibility provided under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982 is being applied in the form of swing to the limits for Categories 338/339/340 and 341, increasing the limit for women's, girls' and infants' woven cotton blouses in Category 341 to 2,589,181 dozen. To account for the increase in Category 341 the limit for cotton shirts and blouses in Category 338/339/340 is being reduced by a corresponding amount in equivalent square yards from 987,857 dozen to 909,915 dozen. These adjustments apply to merchandise, produced or manufactured in India and exported during the agreement year which began on January 1, 1983 and extends through December 31, 1983.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

October 24, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 27, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in India.

Effective on October 31, 1983, the directive of December 27, 1982 is hereby amended to adjust the previously established twelve-month limits for Categories 338/339/340 and 341 to the following amounts: [1]

[1] The Agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain Categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[1] The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 21, 1982 provides, in part, that: (1) specific limits may be exceeded by designated percentages for swing, carryover, and carryforward and (2) administrative arrangements of adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Category	Adjusted 12-month limit [1] (dozen)
338/339/340	909,915
341	2,589,181

[1] The limits have not been adjusted to account for any imports in the categories, exported after December 31, 1982.

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.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-29194 Filed 10-26-83; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

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 6, 1983; Tuesday, December 13, 1983; Tuesday, December 20, 1983; and Tuesday, December 27, 1983 at 10:00 a.m. in Room 1E801, the Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) 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 & Requirements) 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 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 material 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, D.C. 20301.

Dated: October 24, 1983.

M.S. Healy,

OSD Fedeal Register Liaison Officer, Department of Defense.

[FR Doc. 83-29251 Filed 10-26-83; 8:45 am]

BILLING CODE 3810-01-M

Defense Mapping Agency

Defense Mapping Agency Advisory Committee on Mapping, Charting and Geodesy (MC&G); Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of the DMA Advisory Committee on MC&G has been scheduled as follows:

Tuesday and Wednesday 22 and 23 November 1983, DMA Special Program Office for Exploitation Modernization, McLean, Virginia. The entire meeting, commencing at 0800 hours each day is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical MC&G issues and advise the Director, DMA on related scientific and technical matters.

Dated: October 24, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 83-29250 Filed 10-26-83; 8:45 am]

BILLING CODE 3810-01-M

Military Traffic Management Command

Directorate of Personal Property; Domestic Household Goods Program

We refer to the DoD notice appearing in 48 FR 45144, subject as above, on October 3, 1983, and are hereby extending the date for submission of written comments until 4:30 p.m. e.s.t. on November 4, 1983. All carriers who have already submitted written comments under the prior deadline of October 17, 1983, may withdraw, change, or supplement them.

Correction: In the original notice we refer in the third column, 17th line from bottom, "Tenders *or* rate bureaus." This should be corrected to read "Tenders *of* rate bureaus."

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

October 17, 1983.

[FR Doc. 83-29157 Filed 10-26-83; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER84-27-000]

Centel Corp.; Filing

October 24, 1983

The filing Company submits the following:

Take notice that on October 13, 1983, Centel Corporation (Centel) tendered for filing a Wholesale Contract between Centel and Western Power and the Municipal City of Cimarron, Kansas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29216 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-6-000]

Central Illinois Light Co.; Application

October 24, 1983.

Take notice that on October 14, 1983, Central Illinois Light Company (Applicant) filed an application with the Commission seeking authority pursuant to Section 204 of the Federal Power Act to issue short-term debt obligations in the aggregate principal amount not exceeding $66,000,000 outstanding at any time with final maturities of not later than December 31, 1986.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29217 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-31-000]

Central and South West Services, Inc.; Filing

October 24, 1983.

The filing Company submits the following:

Take notice that on October 14, 1983, Central and South West Services, Inc. (CSWS) tendered for filing an Operating Agreement among Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company and CSWS, dated September 28, 1983. CSWS states that the purpose of the Operating Agreement is to provide the contractual basis for coordinated planning, construction, operation and maintenance of the operating subsidiaries of Central and South West Corporation.

CSWS requests an effective date of December 14, 1983, and therefore requests waiver of the Commission's notice requirements.

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 16, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29218 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-33-000]

Cleveland Electric Illuminating Co.; Filing

October 24, 1983.

The filing Company submits the following:

Take notice that on October 14, 1983, Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 15 MW of power from the 345 kv interconnection point to CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI requests an effective date of October 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 16, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29219 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-29-000]

Dayton Power & Light Co.; Filing

October 24, 1983.

The filing Company submits the following:

Take notice that on October 14, 1983, the Dayton Power and Light Company (DP&L) tendered for filing an executed Service Agreement For Partial Requirements And/Or Transmission Wheeling Service To Municipalities For Resale (Service Agreement) between DP&L and the Village of Lakeview, Ohio.

DP&L states that the proposed Service Agreement permits the Village of Lakeview to receive partial requirements and transmission wheeling service from DP&L under its FERC Electric Tariff, Original Volume No. 2. The previous service agreement between DP&L and the Village of Lakeview under which the Village of Lakeview received pursuant to DP&L's FERC Electric Tariff Original Volume No. 1, is superseded.

DP&L requests an effective date of October 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1983. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29220 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-30-000]

Florida Power Corp.; Filing

October 24, 1983.

The filing Company submits the following:

Take notice that on October 14, 1983, Florida Power Corporation (Florida Power or Company) tendered for filing an executed agreement between itself and Seminole Electric Cooperative, Inc. (Seminole). It provides rates and terms and conditions for (1) supplemental service, stratified into base load and intermediate/peaking service, (2) transmission/distribution service and (3) load following service. The present filing, together with the interchange contract filing on August 22, 1983 in Docket No. ER83-695-000, are requested to become effective on the first day of the month after Seminole's 600 MW No. 1 generating unit begins commercial operation. The Company submits that good cause exists for waiver of the 60-day notice requirement. The unit is expected to begin commercial operation on December 1, 1983.

The Company presently provides service to Seminole to supplement capacity and energy from the Southeastern Power Administration and from Seminole's entitlement share of Crystal River No. 3 unit. In 1982 the Company provided over 90% of Seminole's demand and energy requirements at delivery points within the Company's service area. This figure will decrease to less than 30% when the first Seminole unit comes on line and will decrease further when a second 600 MW unit goes into service in January 1985.

The stratified rate in the agreement is intended to insure that the reduction in revenues from Seminole is reasonably related to the reduction in base load costs.

The demand and non-fuel energy charges are as follows:

	Demand (kW/Mo)	Nonfuel energy (kWh)
Base Load	$9.14	$0.00420
Intermediate/Peaking	4.35	0.00789

The Company states that the fuel charges for each type of service are to be based on actual monthly fuel costs of units designated as base load or intermediate/peaking.

The Company further states that a transmission charge of $1.54 per month, applies to all delivery points and an additional distribution charge, $1.59 per month, applies to delivery points below 69 Kv.

Copies of the filing were served on Seminole and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 16, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29221 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-32-000]

Idaho Power Co.; Filing

October 24, 1983.

The filing Company submits the following:

Take notice that on October 14, 1983, Idaho Power Company (Idaho) tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during August, 1983, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company, Supplement 22
Montana Power Company, Supplement 20
Sierra Pacific Power Company, Supplement 20
Portland General Electric Company, Supplement 15
Washington Water Power Company, Supplement 11
Los Angeles Dept. of Water & Power, Supplement 12
City of Burbank, Supplement 12
City of Pasadena, Supplement 12
City of Glendale, Supplement 12
San Diego Gas & Electric Company, Supplement 10
Southern California Edison, Supplement 13

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 16, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29222 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-412-001]

Kansas Gas & Electric Co.; Refund Report

October 24, 1983.

Take notice that on October 7, 1983, Kansas Gas and Electric Company ("KG&E") submitted for filing a Refund Report to the Cities of Neodesha, Winfield, and Mulvane, Kansas, in compliance with a Commission Letter Order dated August 1, 1983 in Docket No. ER82-412-000.

KG&E states that this refund is to correct the Statement of Refunds dated September 8, 1983. KG&E inadvertently excluded refunds due because of a 1¢ per kW reduction in the charge for service provided under Service Schedule E, Transmission Service for Outside Firm and Participation Power Purchases.

KG&E further states that this Statement of Refunds details the refund calculation made for customers taking service under Service Schedule E from March 1, 1983 through June 30, 1983.

Neodesha, Kansas received a refund of $333.85. Winfield, Kansas received a refund of $1,532.27, and Mulvane, Kansas, received an amount of $298.27.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before November 3, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29223 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-26-000]

Montana Power Co.; Filing

October 24, 1983.

The filing Company submits the following:

Take notice that on October 11, 1983, the Montana Power Company (Montana), tendered for filing a revised Appendix I as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

As a result of BPA's review, Montana's Average System Cost was adjusted as follows:

Jurisdiction	Filed rate	Adjusted rate
Montana	17.65 mills/kWh	17.00 mills/kWh.

A copy of the filing was served upon BPA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 3, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29224 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-28-000]

Northern States Power Co.; Filing

October 24, 1983.

The filing Company submits the following:

Take notice that on October 13, 1983, Northern States Power Company (Wisconsin) (NSP) tendered for filing a wholesale electric service agreement, dated June 22, 1983, between NSP and the City of Whitehall (City), a municipal corporation in Trempealeu County, Wisconsin. NSP states that the June 22, 1983 agreement supersedes a previous agreement between the parties dated June 2, 1970. NSP further states that the June 22, 1983 agreement was executed to reflect the fact that the City has installed its own substation which, among other things, will enable the City to take service from NSP without having to pay the distribution substation demand charges in NSP's W-1 Rate Schedule.

NSP requests an effective date of September 28, 1983, and therefore requests waiver of the Commission's notice requirements.

A copy of this filing has been filed upon the City.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29225 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-35-000]

Northern States Power Co.; Filing

October 24, 1983.

The filing Company submits the following:

Take notice that on October 17, 1983, Northern States Power Company (NSP) tendered for filing copies of its Firm Power Resale Agreement.

NSP states that this agreement replaces those contracts existing between NSP and its wholesale customers that were cancelled by NSP pursuant to notice on April 30, 1983.

NSP requests an effective date of December 16, 1983.

Copies of this filing have been served upon Northern States Power Company's Minnesota wholesale customers affected by this filing and the Minnesota Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 16, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29226 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER80-241-001]

Superior Water, Light & Power Co.; Compliance Filing

October 24, 1983.

Take notice that on October 12, 1983, Superior Water, Light and Power Company ("SWL&P") submitted for filing its Rate Schedule W-8 Revised, in compliance with a December 11, 1981 Commission Letter Order approving the Settlement Agreement.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before November 3, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29227 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER77-473-001]

Superior Water, Light and Power Co.; Compliance Filing

October 24, 1983.

Take notice that on October 12, 1983, Superior Water, Light and Power Company, submitted for filing its Rate Schedule W-6 Revised, in compliance with the Commission's Order "Approving the Settlement Agreement."

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before November 3, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29228 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER77-59-001]

Superior Water, Light and Power Co.; Compliance Filing

October 24, 1983.

Take notice that on October 12, 1983, Superior Water, Light and Power Company ("SWL&P") submitted for filing its Rate schedule W-5 Revised, in compliance with the January 9, 1978 Commission Order "Approving Settlement Agreement".

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before November 3, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29229 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP75-119-008]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Petition To Amend

October 24, 1983.

Take notice that on October 5, 1983, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001 filed in Docket No. CP75-119-008 a petition to amend the order accompanying Federal Power Commission Opinion No. 789,[1] issued on March 7, 1977, as amended, to authorize transportation of natural gas from a new source of supply in South Pass Blocks 24 and 27, offshore Louisiana, to be received by Tennessee at a previously authorized point of receipt, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that Tennessee is presently authorized to receive from Shell Oil Company, at specified points, up to 22,500 Mcf per day of natural gas produced from certain specified sources, and to transport such gas for Shell Oil Company to an interconnection at Yscloskey, Louisiana, with Creole Gas Pipeline Company (Creole) for redelivery by Creole to Air Products and Chemicals Inc. (Air Products).

As stated in Tennessee's petition, Tennessee purchases gas supplies from Shell Offshore, Inc. (Shell), successor in interest to Shell Oil Company under, *inter alia*, a gas sale and purchase contract dated June 16, 1976 (Shell's FERC Rate Schedule No. 1), which covers gas produced from various areas, including South Pass Blocks 24 and 27, offshore Louisiana. Tennessee further states that Shell has advised that portions of these blocks are located in the offshore Federal Domain and, further, that by virtue of a reservation clause in the gas sale and purchase contract, such Federal Domain gas is available for transportation. Tennessee notes that inasmuch as the Commission's revised policy announced in Opinion No. 10/B would now permit such transportation, Shell has requested that Tennessee receive such gas at a previously authorized receipt point, such point being designated in the transportation agreement between Tennessee and Shell as "Delivery Point 'B,' " for transportation under the authorization issued herein.

Tennessee further maintains that, in Opinion No. 10-B, the Commission, *inter alia*, revised its previous policy with respect to end-use restrictions imposed upon pipeline certificates for the transportation of producer reservation gas, indicating that such restrictions are no longer in the public interest. Accordingly, Tennessee also requests that the Commission provide that the authorization for the transportation of gas from the new source is free of any end-use restriction.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Nov. 21, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29230 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. CP83-506-000]

Texas Eastern Transmission Corp.; Application

October 24, 1983.

Take notice that on September 12, 1983, Texas Eastern Transmission Corporation (Tetco), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP83-506-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), authorized by the Commission in Docket No. CP79-364, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tetco states that, pursuant to a gas transportation agreement dated June 7, 1979, it was transporting up to 100,000 dt equivalent of natural gas per day on a firm basis and up to 50,000 dt equivalent of natural gas per day on an interruptible basis. Tetco was receiving the gas from Transcontinental Gas Pipe Line Corporation for Northern's account in Calcasieu Parish, Louisiana, and delivering gas to Houston Pipe Line Company for Northern's account in Chambers County, Texas.

Tetco states that, pursuant to an amendment to the transportation agreement dated April 12, 1979, Northern will not require the certificated transportation service beyond December 31, 1983, because Northern has made arrangements to have the gas transported on a self-implementing basis pursuant to Part 284 of the Commission's Regulations. It is asserted that no facilities will be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 21, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance

with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 the 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 application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 Tetco to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29212 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1800-000]

Thomas A. Greenquist; Application

October 24, 1983.

The filing individual submits the following:

Take notice that on October 13, 1983, Thomas A. Greenquist, filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

President—Bangor Hydro-Electric Company

Director—Bangor Hydro-Electric Company

Director—Maine Yankee Atomic Power Company

Vice President—Maine Electric Power Company, Inc.

Director—Maine Electric Power Company, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 384.214). All such motions or protests should be filed on or before November 10, 1983. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29213 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-36-000]

Vermont Electric Power Co.; Filing

October 24, 1983.

The filing Company submits the following:

Take notice that on October 14, 1983, Vermont Electric Power Company (Vermont) tendered for filing the following documents affecting Rate Schedule No. 236:

Exhibit B—Adds Berlin in Substation to Substation Participation Agreement

Exhibit C—One Line Diagram for Berlin Substation

Exhibit D—Exclusive costs for Berlin Substation

Exhibit E—Common use costs for Berlin Substation

Vermont requests an effective date of June 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 16, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-29214 Filed 10-26-83; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies; First Southern Bank Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Hlding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Southern Bank Corp.*, Englewood, Florida; to acquire 100 percent of the voting shares or assets of Englewood Bank of Charlotte County, Englewood, Florida (a proposed *de novo* bank). Comments on this application must be received not later than November 21, 1983.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Onarga Bancorp, Inc.*, Onarga, Illinois; to acquire 80 percent or more of the voting shares or assets of Bank of Chebanse, Chebanse, Illinois. Comments on this application must be received not later than November 21, 1983.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *J.R. Montgomery Bancorporation*, Lawton, Oklahoma; to acquire 0.19 percent of the voting shares or assets of City National Bank and Trust Company,

Lawton, Oklahoma. Comments on this application must be received not later than November 21, 1983.

D. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Texas Commerce Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of Texas Commerce Bank—Richardson, N.A., Richardson, Texas, a proposed new bank. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas. Comments on this application must be received not later than November 20, 1983.

Board of Governors of the Federal Reserve System, October 21, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-29152 Filed 10-26-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities; Citicorp, et al.

The orgainzations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views 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 comment that requests a hearing must include 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 that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York (finance company and credit-related insurance activities; Colorado): To relocate a wholly-owned subsidiary of Citicorp, Citicorp Person-to-Person Englewood Industrial Bank, from Englewood, Colorado, to Littleton, Colorado. From this new location Citicorp Person-to-Person Englewood Industrial Bank will continue to engage in operating as an industrial loan company in the manner authorized by Colorado law, including the following previously approved activities: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of credit related life and accident and health insurance by licensed agents or brokers, as required; the issuing of thrift certificates and thrift passbook certificates; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The service area for all the aforementioned previously approved activities shall continue to be the entire State of Colorado. Comments on this application must be received not later than November 8, 1983.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Colorado National Bankshares, Inc.*, Denver, Colorado (credit related insurance activities; Colorado): To act through its subsidiary, Colorado National Insurance Agency, as insurance agent or broker for life, disability and hazard insurance coverages directly related to extensions of credit of three newly acquired banking subsidiaries, Colorado National Bank-Southwest, Littleton, Colorado; Colorado National Bank-East Boulder, Boulder, Colorado; and Colorado National Bank-Fort Collins, Fort Collins, Colorado. The respective geographic scopes for these activities will be the cities of Boulder and Fort Collins, Colorado and the southwest quadrant of Littleton, Colorado. Colorado National Bankshares earlier secured approval to engage in insurance activities by Board Order of July 1, 1974. Comments on this application must be received not later than November 14, 1983.

2. *Security Corporation*, Duncan, Oklahoma (electronic data processing for banking applications and EDP related management consulting services; Oklahoma): To engage, through its subsidiary, Security Data Processing Co., in marketing electronic data processing for banking applications and EDP related management consulting services to financial institutions in accordance with Regulation Y. This activity will be performed from an office in Duncan, Oklahoma, serving the State of Oklahoma. Comments on this application must be received not later than November 21, 1983.

3. *Security Corporation*, Duncan, Oklahoma (MICR encoding, proof of deposit, statement preparation and check processing related management consulting services; Oklahoma): To engage, through its subsidiary, Security Check Processing Co. in marketing MICR encoding, prood of deposit, statement preparation and check processing related management consulting services to financial institutions in accordance with Regulation Y. These activities will be performed from an office in Duncan, Oklahoma, serving the State of Oklahoma. Comments on this application must be received not later than November 21, 1983.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Taxes 75222:

1. *Coronado Bancshares, Inc.*, El Paso, Texas (credit-related insurance activities; Texas): To act through its subsidiary Coronado Life Insurance Company, as agent for the sale for credit life and disability insurance in conformance with Section 601(A) of the Garn-St Germain Depository Institutions Act of 1982. These activities will be conducted from an office located in El Paso, Texas, serving primarily El Paso County, Texas. Comments on this application must be received not later than November 18, 1983.

Board of Governors of the Federal Reserve System, October 21, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-29153 Filed 10-26-83; 8:45 am]

BILLING CODE 6210-01-M

Deerwood Bancorporation, Inc.; Formation of Bank Holding Company

Deerwood Bancorporation, Inc., Deerwood, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring an additional 53.9 percent for a total of 63 percent of the voting shares of The First National Bank of Deerwood, Deerwood, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Deerwood Bancorporation, Inc, Deerwood, Minnesota, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to engage directly in the operation of a general insurance agency in a town with a population not exceeding 5,000 persons. These activities would be performed from an office in Deerwood, Minnesota, and the geographic area to be served is Deerwood, Minnesota, an the 30 mile radius surrounding Deerwood, Minnesota. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views 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.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank, not later than November 17, 1983.

Board of Governors of the Federal Reserve System, October 21, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-29150 Filed 10-26-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Farmers State Bancorp., et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Farmers State Bancorp,* Union City, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers State Bank of Union City, Union City, Ohio. Comments on this application must be received not later than November 21, 1983.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Dickson Financial Corporation,* Dickson, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Dickson, Dickson, Tennessee. Comments on this application must be received not later than November 21, 1983.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Financial Associates, Inc.,* Kenosha, Wisconsin, to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Kenosha, Kenosha, Wisconsin. Comments on this application must be received not later than November 21, 1983.

Board of Governors of the Federal Reserve System, October 21, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-29151 Filed 10-26-83; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 82-0798—The Dexter Corporation's proposed acquisition of voting securities of Alpha Chemical and Plastics Corporation; Mercer Plastics Company, Incorporated; H&R Realty Corporation and Mercer Properties, (Eric F. Ross, UPE).	Oct 13, 1983
(2) 83-0793—Safeway Stores, Incorporated's proposed acquisition of assets of Brentwood Markets, Incorporated.	Do

Transaction	Waiting period terminated effective
(3) 83-0794—Second D. Samson Trust's proposed acquisition of voting securities of Ferro Union Corporation, (Associated Metals and Minerals Corporation, UPE).	Do.
(4) 83-0782—CenterCare's proposed acquisition of assets of United Hospitals Incorporated.	Do.
(5) 83-0814—Otto W. Zylstra's proposed acquisition of voting securities of Rena-Ware Distributors, Inc., (Oneida, Ltd., UPE).	Do.
(6) 83-0807—The Seagram Company Limited's proposed acquisition of voting securities of General Beverage Company, (The Coca-Cola Company, UPE).	Do.
(7) 83-0778—DWG Corporation's proposed acquisition of voting securities of AXIA Incorporated.	Oct 18, 1983.
(8) 83-0760—DWG Corporation's proposed acquisition of voting securities of Peabody International Corporation.	Do.
(9) 83-0816—Paine Webber Incorporated's proposed acquisition of voting securities of First Mid America, Inc..	Oct 13, 1983.
(10) 83-0813—Fairfield Communities Inc.'s proposed acquisition of voting securities of The Florida Companies.	Do.
(11) 83-773—J. Sainsbury plc's proposed acquisition of voting securities of Shaws Supermarkets, Incorporated.	Oct 14, 1983.
(12) 83-0790—SEI Corporation's proposed acquisition of A.G. Becker Paribas, Incorporated, (Compagnie Financiere de Paribas, UPE).	Do.
(13) 83-0789—Ruddick Corporation's proposed acquisition of voting securities of Food World, Incorporated.	Oct 20, 1983.
(14) 83-0809—Peter Sajovich's proposed acquisition of voting securities of Deseret Pacific Mortgage, (Deseret Federal Savings and Loan Association, UPE).	Do.
(15) 83-0828—Hong Kong and Shanghai Banking Corporation's proposed acquisition of voting securities of CM & M Group, Incorporated.	Do.
(16) 83-0782—Proposed consolidation of CenterCare and United Hospitals Incorporated.	Oct 13, 1983.
(17) 83-0818—Mid Con Corporation's proposed acquisition of assets of Sun Company.	Oct 19, 1983.
(18) 83-0815—American Healthcare Management, Inc.'s proposed acquisition of voting securities of Huntington Health Services,.	Do.
(19) 83-0811—Peabody Holding Company, Inc.'s proposed acquisition of assets of Armco, Inc..	Do.
(20) 83-0788—Farm House Foods Corporation's proposed acquisition of voting securities of Fairbank Farms, Incorporated, (Keith Fairbank and Pricilla Fairbank, UPE).	Do.
(21) 83-0796—Irving Rubin's proposed acquisition of assets of the Container Products Operation of United States Steel Corporation.	Do.
(22) 83-0786—Trinity Industries Incorporated's proposed acquisition of voting securities of Halter Marine, Inc. (Harold P. Halter, UPE).	Do.

FOR FURTHER INFORMATION CONTACT: Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc.83-29171 Filed 10-26-83; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collections Under Review by the Office of Management and Budget (OMB): Collections Specific to a Contract or Contracting Action (Not Required by Regulations)

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice of information collections; existing.

SUMMARY: The General Services Administration (GSA) plans to request the Office of Management and Budget (OMB) to review and approve existing information collections for the continued collection of data. GSA is required under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), to consider comments on proposed collections of information that will affect the public.

DATES: Comments on these information requests must be submitted on or before November 7, 1983.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and John Gilmore, GSA Clearance Officer, GSA (ORAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jim Flowers on 202-566-0666.

SUPPLEMENTARY INFORMATION:

1. *Purpose.* These collections of information are necessary for GSA to effectively manage the following program areas: Procurement, contracting, archives and records, utilization and disposal of perperty, transportation, ADP and telecommunications, supply and services, public buildings and space, and stockpile activities.

2. *Coverage.* These collections include: General solicitations (questions directed to 10 or more respondents), certain solicitations (that are required from less than 10 respondents), requirements imposed by certain types of contracts (but not required by law), and collections of data required in a particular acquisition (which are not covered by law but for agency benefits).

3. *Obtaining copies of information proposals.* A copy of these proposals may be obtained from the Directives and Reports Management Branch (ORAI), Room 3004, GS Building, Washington, DC 20405, telephone (202-566-0666).

Dated: October 20, 1983.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 83-29188 Filed 10-26-83; 8:45 am]

BILLING CODE 6820-34-M

Agency Collections of Information Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice of existing collections of information

SUMMARY: The General Services Administration (GSA) plans to request the Office of Management and Budget (OBM) to review and approve the collections of information identified below to monitor and evaluate compliance with agency requirements. These are necessary for the continued collection of data. GSA is required under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), to consider comments on collections of information that affects the public.

DATES: Comments on these collections must be submitted on or before November 21, 1983.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB (OMB), Washington, DC 20503, and John Gilmore, GSA Clearance Officer, GSA (ORAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss on 703-696-5180.

SUPPLEMENTARY INFORMATION:

1. *Title, purpose, annual respondents, responses, burden hours.*

a. *Request for Extension of Time.* The collection helps to determine the merits of granting constructions firms an extension of time to complete contractual agareements (400; 800; 134).

b. *Sale of Used Items to Government.* The collection helps to evaluate contractors proposals for the sale of used items in place of new items (790; 3,160; 23,503).

c. *Contractor Use of Government Supply Sources.* The collection helps to determine if schedule contractors are authorized to use Government supply sources in performing certain contracts (300; 2,100; 525).

d. *Contractor Use of Interagency Motor Pool Vehicles.* The collection helps to evaluate contractors requests to obtain interagency vehicles and related services for official business only (70; 105; 53).

e. *Contractor's Signature Authority.* This collection ensures that only

authorized persons sign contracts (18,525; 555,750; 9,448).

f. *Security Display.* This requirement ensures the protection of classified information for construction and/or architect-engineer contracts (5,000; 40,000; 40,000).

g. *Examination of Records by Comptroller General/Audit.* The requirement ensures that contractors properly use Federal resources (19,336; 386,720; 64,582).

h. *Information Regarding Previous Contracts.* The collection helps to evaluate the effectiveness of firms (2,000; 30,000; 7,500).

i. *Claims and Appeals.* The collection helps to evaluate and resolve contractual issues by mutual agreement (7,500; 150,000; 150,000).

2. *Obtaining copies of collection proposals.* A copy of these proposals may be obtained from the Directives and Reports Management Branch (ORAI), Room 3009, GS Building, Washington, DC 20405, telephone (202-566-0666).

Dated: October 20, 1983.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 83-29189 Filed 10-26-83; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Federal Allotments to States for Social Services Expenditures Pursuant to the Title XX—Social Services Block Grant Act; Promulgation for Fiscal Year 1985

AGENCY: Office of Human Development Services, HHS.

ACTION: Notification of allocation of Title XX—Social Services Block Grant Allotments for fiscal year 1985.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal Year 1985 pursuant to Title XX of the Social Security Act, as amended. The allotments to the States published herein are based upon the authorization set forth in Section 2003 of the Act and are contingent upon congresssional appropriations actions for the fiscal year. If the Congress enacts and the President approves an amount different from the authorization, the allotments would be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: HDS Regional Administrators.

SUPPLEMENTARY INFORMATION: Section 2003 of the Social Security Act authorizes $2.6 billion for Fiscal Year 1985 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receive an amount which bears the same ratio to $2.6 billion as its allocation for Fiscal Year 1981 to $2.9 billion;

(2) The remainder of the $2.6 billion is allotted to each State in the same proportion as that State's population is to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 1985, the allotments are based upon the Bureau of Census population statistics contained in its publication "Current Population Reports" (Series P-25, No. 930, issued April 1983), which is the most recent satisfactory data available from the Department of Commerce at this time as to the population of each State and of all States.

EFFECTIVE DATE: These allotments shall be effective October 1, 1984.

Fiscal Year 1985 Federal Allotment to States for Social Services—Title XX Block Grants

Total	$2,600,000,000
Alabama	44,031,722
Alaska	4,891,173
Arizona	31,937,795
Arkansas	25,583,737
California	276,094,421
Colorado	34,003,701
Connecticut	35,209,744
Delaware	6,722,571
District of Columbia	7,046,416
Florida	116,316,110
Georgia	62,971,058
Guam	448,276
Hawaii	11,100,059
Idaho	10,776,214
Illinois	127,840,517
Indiana	61,094,992
Iowa	32,440,313
Kansas	26,890,283
Kentucky	40,949,613
Louisiana	48,710,721
Maine	12,652,280
Maryland	47,627,516
Massachusetts	64,556,781
Michigan	101,720,761
Minnesota	46,153,464
Mississippi	28,487,173
Missouri	55,288,120
Montana	8,944,816
Nebraska	17,710,959
Nevada	9,838,181
New Hampshire	10,619,875
New Jersey	83,060,601
New Mexico	15,176,036
New York	197,199,134
North Carolina	67,214,541
North Dakota	7,481,931
Northern Marianas	89,655
Ohio	120,503,758
Oklahoma	35,477,754
Oregon	29,581,545
Pennsylvania	132,497,181
Puerto Rico	13,448,276
Rhode Island	10,698,045
South Carolina	35,768,097
South Dakota	7,716,439
Tennessee	51,938,002
Texas	170,632,695
Utah	17,353,613
Vermont	5,762,204
Virgin Islands	448,276
Virginia	61,318,333
Washington	47,404,175
West Virginia	21,753,435

Fiscal Year 1985 Federal Allotment to States for Social Services—Title XX Block Grants— Continued

Wisconsin	53,211,047
Wyoming	5,605,865

Dated: October 17, 1983.

David Rust,

Director, Office of Policy Coordination and Review.

Approved: October 21, 1983.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 83-29181 Filed 10-26-83; 8:45 am]

BILLING CODE 4130-01-M

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part D of the statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, office of Human Development Services (OHDS) (45 FR 64253): (1) To reduce the Administration on Developmental Disabilities from five divisions to three by removing the public affairs function (centralized at HDS-level) and placing the management services functions under a small staff in the Office of the Commissioner and (2) to consolidate the functions of the ten regional offices on Developmental Disabilities into four expanded area offices. The changes are as follows:

1. Part D, Chapter DF, "The Administration on Developmental Disabilities," as published in the **Federal Register** on September 29, 1980 (45 FR 64264), is to be deleted in its entirety and replaced by the following:

DF.00 Mission. The Administration on Developmental Disabilities (ADD) is the principal HDS component established to enable States to increase the provision of quality services to persons with developmental disabilities through the design and implementation of a comprehensive and continuing State Plan which makes optimal use of all existing Federal and State resources for the provision of treatment, services and habilitation in the least restrictive environment and for the assurance of the protection of rights of all individuals with developmental disabilities.

The Administration on Developmental Disabilities advises the Assistant Secretary for Human Development Services on the formulation, development, implementation and review of legislation and policies affecting developmentally disabled persons. Acts as an advocate to assure

the rights of handicapped persons. Serves as a resource of information and a clearinghouse for service providers for national, regional, State and local levels in the development of policies and programs to reduce or eliminate physical, mental, social and environmental barriers experienced by developmentally disabled persons. Supports and encourages programs or services to prevent developmental disabilities.

DF.10 Organization. The Administration on Developmental Disabilities is under the direction of the Commissioner, who reports directly to the Assistant Secretary for Human Development Services, and consists of:

Office of the Commissioner Division of Program Operations

Division of Program Development and Demonstrations

DF.20 Functions. A. Office of the Commissioner provides executive leadership and direction to the Administration on development Disabilities. Estabishes goals and objectives of programs for developmentally disabled persons; directs the administration of formula and discretionary grant programs; serves as advisor to the Assistant Secretary on programs, issues and problems affecting handicapped individuals in the target population of Human Development Services programs and on the concerns of developmentally disabled persons, in particular. Assures consideration of the rights and needs of the developmentally disabled and other handicapped individuals in Human Development Services program planning and policy development.

Serves as a focal point on matters and issues concerning developmentally disabled persons between the various HDS Regional Offices, the Commissioner/ADD, other ADD Divisions, and other HDS Headquarters staff. Facilitates interagency program coordination and program integration to meet the needs of developmentally disabled persons. Coordinates on issues and interprets policies affecting the developmentally disabled and/or services to meet their needs and assure their rights and entitlements. Coordinates with HDS Regional Administrators on program issues and progress affecting their Region and coordinates Developmental Disabilities Program objectives requiring involvement of other HDS programs at the regional level.

Reviews and analyzes reports and makes contacts with governmental and nongovernmental agencies and individuals to secure necessary information for policy development. In coordination with the Office of Public Affairs/HDS, develops a strategy of public affairs for increasing public awareness of the needs of developmentally disabled persons and programs designed to meet their needs.

Oversees the Management Information system (MIS) operation, including data collection, maintenance and preparation of final reports on program data. Carries out special projects, including gathering information and assisting in preparation of briefings and reports. Coordinates preparation of the ADD statistical budget submission and related OMB forms clearance activities.

Formulates budget in accordance with HDS guidelines and instructions; works with the HDS Office of Management Services to prepare budget presentations for use at the Departmental, Ofice of Management and Budget, and Congressional levels. Exercises funds control for all formula grants, discretionary grants and contracts and for salaries and expenses. Performs audit coordination activities for ADD audits, assuring appropriate response and coordination with HDS.

Responsible for management and administration of the issuance of formula grants for the basic state and protection and advocacy programs; and review and processing of financial management reports for each state for each fiscal year.

Directs internal administrative support functions such as executive secretariat and assignments tracking, Freedom of Information Act and Privacy Act coordination, personnel services, and other administrative liaison functions in accordance with HDS and HHS guidelines.

Provides administrative and committee management support to the National Council on the Handicapped and other Federal commissions on interagency committees established by statute or admimistrative policy. Plans and coordinates special conferences involving Federal and non-Federal agencies.

B. Division of Programs Operations is responsible for the development of Federal guidelines, criteria and procedures which govern delivery of services authorized by the Developmental Disabilities Act at the State and local levels. Provides coordination and guidance for programs applicable to individuals with developmental disabilities.

Develops planning and management procedures and methods for the monitoring and analysis of State Plans and reports to assure consistent application of ADD policies and procedures; advise Commissioner on trends, issues, and progress; contributes to the development and implementation of long and short range plans, goals, and objectives.

Coordinates national program trends with other HDS programs and HHS agencies. Studies, reviews and analyzes other Federal programs providing services applicable to developmentally disabled persons for the purpose of intergrating and coordinating programs. Develops strategies and designs for joint reviews of State Plans of other Federal/State program services. Identifies potential areas for development of interagency agreements and jointly funded service initiatives for State program services.

C. Division of Program Development and Demonstrations provides program development services including program evaluation, environmental reform, and specialized services initiatives and demonstration projects. Provides direction to assist applicants for discretionary grants and contracts authorized under the Developmental Disabilities Act; reviews discretionary grants for the Commissioner; facilitates State review and comment on applications for discretionary grants and contracts; makes recommendations to the Commissioner on requests for discretionary grants and contracts and assists in monitoring and evaluating national level discretionary grants.

Plans for and implements experimental program services based on feedback from State and local organizations on program needs. Formulates and prepares annual demonstration, and evaluation plans. Coordinates and administers the University Affiliated Facilities (UAFs) activities; and develops quality assurance criteria.

Originates cross-cutting program development initiatives with other units of ADD, HDS, HHS, and other governmental Departments. Responsible for coordinating the planning cycle regarding goals and objectives.

Develops and initiates legislation, regulations, guidelines, policy documents, issuances and actions (with team participation by other units of ADD, HDS, HHS and other governmental agencies) to fulfill mission and goals of the Developmental Disabilities Act as amended.

Works with the Small and Disadvantaged Business Utilization Specialist in the Office of Equal Opportunity and Civil Rights to identify 8(a) firms that have capabilities to

perform contracts and advises 8(a) firms about ADD programs.

In liaison with HDS/OMS and OPD, is responsible for discretionary grants and contracts management, technical assistance, and policy interpretation. Reviews and analyzes data and information regarding DD programs and services.

Serves as liaison with national consumer organizations representing developmentally disabled constituents; advises on matters and concerns of consumer representative groups, including inter-governmental representatives; provides liaison activity between national organizations and program administrative offices; and provides coordination on consumer representatives' involvement in planning and program policy direction for the Developmental Disabilities Program.

2. Part D, Chapter DD, Section DD.20 E., "The Regional Offices on Developmental Disabilities," as published in the **Federal Register** on September 29, 1980 (45 FR 64269) is to be deleted and replaced by the following:

D. The Regional Offices on Developmental Disabilities are located in Regions III, VI, VII, and IX. The areas designated by the standard Federal Regions are covered by the DD Regional Offices as follows: Regions I, II, and III by Region III; Regions IV and VI by Region VI; Regions V, VII, and VIII by Region VII; and Regions IX and X by Region IX. Each office, under the direct supervision of the Regional Administrator, serves as the administrative focus between the Central Office and State and local governments and other organizations for the consideration of program issues and policies affecting service needs and rights of developmentally disabled persons.

Provides information for and contributes to the development of national policy for the Developmental Disabilities (DD) Program. Establishes goals and objectives for the area served based on national policy and program priorities of ADD. In collaboration with Regional Administrator, provides direction and coordination on the implementation of the DD Program and advises the Commissioner on Developmental Disabilities regarding issues surfaced by the States which hamper efforts to implement the DD Program.

Works with State and local program administrators and public officials to promote DD Programs and services provided under Pub. L. 95-602, as amended, the Developmental Disabilities Assistance and Bill of Rights Act. Reviews, for compliance with Federal requirements, and approves DD State plans, amendments and subsequent annual reports. Assists States and local governments, as requested, in the development and operation of the basic State grant program and of State protection and advocacy systems. Recommends successful practices and/or takes positive action which will facilitate efforts of States to fill gaps in their programs.

Provides assistance to applicants for discretionary grants and contracts authorized under the Developmental Disabilities Act. Makes recommendations for approval or disapproval of discretionary grants and contracts. Assists in monitoring and evaluating University Affiliated Facilities (UAFs) and special projects of national significance.

Interprets statutes and regulations consistent with policy guidance of the Central Office. Insures adherence by recipients of funds to program objectives, applicable policy, regulations and procedures as set forth by the Administration on Developmental Disabilities and the Office of Human Development Services. Assists agencies and grantees in application of policy and specific operational issues requiring resolution.

Collaborates with the Regional Director of Financial Operations in planning the conduct of financial reviews. Makes decisions on approval, referral, or disallowance of claims for Federal Financial Participation, and reviews estimates, budget projections, and reports of expenditure for the formula grant programs.

Coordinates the Developmental Disabilities Program activities with other programs of HDS and other Federal programs at the Regional and State levels to enhance regional assistance for programs for the developmentally disabled. Advises on opportunities for coordination between and among other Federal program services. Analyzes programs for developmentally disabled persons funded by States through other Federal-State programs in the area served.

Consults with Regional Administrators on the planning and implementation of crosscutting program initiatives concerning developmentally disabled persons across HDS programs in their area relative to children, youth and families, the aging, and Native Americans. Develops and promotes linkages between the DD Program and other Federal/State program services in the States through leadership in the development, design, and implementation of comprehensive program services plans.

Dated: October 19, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-29180 Filed 10-26-83; 8:45 am]

BILLING CODE 4110-92-M

Public Health Service

National Center for Health Services Research; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, appropriateness, and use of external counterpulsation (Cardiassist device). Specifically, we are interested in whether external counterpulsation in general and the Cardiassist device in particular is a reasonable and necessary tool for the treatment of Killip Class II myocardial infarction and if there are special limitations or other indications for their use.

For the purposes of this announcement, external counterpulsation (Cardiassist device) is defined as an external pressure circulatory assist system which provides counterpulsation therapy to improve cardiac function through preferential perfusion of the coronary arteries. It accelerates the establishment of coronary collateral flow in the treatment of ischemic disease. External counterpulsation is based upon the same principle as the intravascular technique; that is, modification of aortic pressure during the cardiac cycle by phase displacement of blood. It augments diastolic pressure and reduces systolic pressure slightly, thereby increasing coronary artery perfusion and myocardial oxygen supply while reducing cardiac oxygen demand and work.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment

should do so in writing no later than December 19, 1983, or within 45 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies since 1970 and other information related to the characterization of the patient population most likely to benefit, the clinical acceptability, and the effectiveness of this technology. Proprietary information is not being sought, but published information may be submitted.

Written material should be submitted to: National Center for Health Services Research, Office of Health Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, Maryland 20857.

Further information is available from Dr. Bruce Waxman, Health Science Analyst, at the above address or by telephone (301) 443-4990.

Dated: October 19, 1983.

Harold Margulies,

Director, Office of Health Technology Assessment, National Center for Health Services Research.

[FR Doc. 83-29239 Filed 10-26-83; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AR 017085]

Arizona; Order Providing for Opening of Public Lands

October 20, 1983.

1. In an exchange of land made under the provisions of Section 8 of the Act of June 28, 1934 (48 Stat. 1272, as amended, 43 U.S.C. 315g), the following land has been reconveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 13 S., R. 30 E.,
Sec. 10, N½SE¼.

The area described contains 80 acres in Cochise County.

2. At 10 a.m. on November 28, 1983, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable laws, the land described in paragraph 1 is hereby opened to operation of the public land laws, generally. All valid applications received at or prior to 10 a.m. on November 28, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on November 28, 1983, the land described above will be open to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 28, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

4. At 10 a.m. on November 28, 1983, the land described above will be open to applications and offers under the mineral leasing laws. All applications received on November 28, 1983 prior to 10 a.m. will be considered as simultaneously filed as of 10 a.m. on November 28, 1983, and a drawing will be held in accordance with 43 CFR 1821.2-3, if necessary. Those received thereafter shall be considered in the order of filing.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-29158 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-84-M

Call for Coal Resource Information and Notification of Draft Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for coal resource information and notice of Draft Resource Management Plan (DRMP) public meeting for the Kemmerer Resource Area, Rock Springs District, Wyoming.

SUMMARY: As stated in the Notice of Intent published on October 7, 1981 (**Federal Register**, Vol. 46, No. 194, pages 49651-49652), the Rock Springs District has initiated a resource management plan/environmental impact statement (RMP/EIS) to guide future management actions on the public lands within the Kemmerer Resource Area. This call for coal resource information is a new regulation procedure (43 CFR 3420.1-2) and is being issued to assure that Federal coal resources and potential development are given adequate consideration in this RMP/EIS.

All parties are invited to identify any new coal areas they are interested in having considered for possible future leasing. This does *not* include areas already covered by coal planning in the Pioneer Trails Management Framework Plan (MFP) Coal Amendment (BLM 1982). Consult this amendment or contact the Kemmerer Resource Area at the address below for identification of specific coal areas already planned.

The BLM will not conduct any coal resource inventories for this RMP/EIS. Parties interested in Federal coal leasing and development in new areas will be expected to provide coal resource data for their areas of interest. A public meeting will be held prior to initiating the writing of the Kemmerer Draft Resource Management Plan (DRMP) to provide the public information on the issues to be addressed, the constraints in formulating solutions for these issues, and the alternatives being considered. This meeting will afford the public an opportunity to provide information such as new interest in coal leasing, new data on oil/gas development, new anticipation of socioeconomic impact, range information, wildlife data, etc., that should be considered in the DRMP document. It will also provide an opportunity for the public to comment on the BLM's proposed approach to the DRMP.

DATES: The planning schedule for this DRMP cannot be delayed due to court orders and other mandates. Therefore, new coal areas of interest for possible leasing consideration and associated coal data must be submitted to the Kemmerer Resource Area by December 30, 1983. The final RMP is scheduled for completion by October of 1985. Areas of interest and coal data that are inadequate or that are not received by December 30, 1983, will be considered in future planning efforts.

The public meeting will be held at the Senior Citizens Center, 105 Park Avenue in Kemmerer, Wyoming, beginning at 7:00 p.m., December 8, 1983. Information concerning specifics to be discussed may be obtained from the Kemmerer Resource Area.

ADDRESS: Please direct your inquiries and send all applications and associated coal resource data to: Kemmerer Resource Area, P.O. Box 632 (U.S. Highway 30), Kemmerer, Wyoming 83101.

FOR FURTHER INFORMATION CONTACT: Ron Wenker, Area Manager at the address above, or phone 307-877-3933.

Gene C. Herrin,

Associated District Manager.

[FR Doc. 83-29162 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-84-M

Cooperative Management Agreement Program; Nominations Requested

AGENCY: Susanville District, California, Bureau of Land Management, Interior.

ACTION: Nominations Requested—Cooperative Management Agreements.

SUMMARY: The Susanville District of the Bureau of Land Management is requesting nominations for the "Cooperative Management Agreement" program. The purpose and objective of the program is to provide livestock operators (or associations) who have demonstrated good rangeland management practices with: (1) Recognition of good stewardship; (2) a larger role in managing grazing on the public lands; and (3) the assurance of tenure needed to encourage private investment in rangeland improvements. By so doing, the Bureau of Land Management (BLM) will be encouraging operators to maintain or initiate good grazing management practices, while also reducing Federal expenditures for improving and managing the public lands.

For additional detail, contact "Bureau of Land Management, 705 Hall Street, Susanville, California 96130; Telephone (916) 257-5381.

C. Rex Cleary,

District Manager, Susanville District. California.

[FR Doc. 83-29159 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-84-M

Release of Coal Geophysical Logs; Big Horn, Prairie, Rosebud, and Treasure Counties, Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management is releasing full scale geophysical and lithologic logs for 54 coal exploration holes drilled during 1982 in Big Horn, Prairie, Rosebud, and Treasure Counties, Montana. The purpose of the drilling was to evaluate the thickness, quality, and extent of Federally-owned coal.

DATE: The logs are available for public inspection or may be purchased as to October 27, 1983.

FOR FURTHER INFORMATION CONTACT: Jackie Samsal, Supervisor, Records Assistance Section, Division of Mineral Resources, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, MT 59107 (406-657-6564), or George D. Mowat, Supervisory Geologist, Minerals Development Section, Branch of Solids (406-657-6846).

SUPPLEMENTARY INFORMATION: As part of the Federal Coal Management program, the Bureau of Land Management funded drilling of 54 coal exploration holes during the summer and fall of 1982. As a result, geophysical logs (Gamma, Density, Resistivity, and Caliper) were obtained for a total of 31,809 feet. Lithologic (sample) logs, which have been correlated to the geophysical logs, have been compiled from the cuttings of each drill hole. Two of the drill holes were cored for coal and the analyses for these seams are also available. Detailed information on these holes can be found in Table 1:

TABLE 1.—1982 BLM COAL DRILLING SUMMARY SHEET, MONTANA—BY DRILL HOLE NUMBER—(REVISED 10-14-83)

Hole No.	Date drilled/ logged	Quadrangle	County	Location	Elevation feet	Depth drilled feet	Depth logged feet	Cored interval
B-82-1	8-15-82	Birney SW	Rosebud	T. 5 S., R. 41 E., Sec. 36, 196 FNL, 118 FWL	4,024	1,075	1,075	
B-82-3	8-24-82	Birney	Rosebud	T. 6 S., R. 42 E., Sec. 9, 750 FSL, 375 FWL	3,420	695	695	
B-82-4	8-17-82	Birney	Rosebud	T. 6 S., R. 42 E., Sec. 20, 2,425 FSL, 1,625 FWL	3,275	415	415	
B-82-5	8-26-82	Birney	Rosebud	T. 6 S., 42 E., Sec. 22, 1,800 FNL, 2,350 FEL	3,310	665	655	
B-82-6	8-14-82	Birney	Rosebud	T. 6 S., R. 42 E., Sec. 26, 300 FNL, 2,150 FEL	3,322	635	635	
B-82-7A&B	7-30-82	Birney	Rosebud	T. 6 S., R. 42 E., Sec. 26, 330 FNL, 750 FEL	3,836	1015	1,015	(Log stops at 350'. Run 2 Logged to 870'
B-82-8A	8-2-82	Birney	Rosebud	T. 7 S., 42 E., Sec. 2, 1,100 FNL, 100 FEL	3,770	940	940	
B-82-8B	8-3-82	Birney	Rosebud	T. 7 S., 42 E., Sec. 2, 1,100 FNL, 100FEL	3,770	N.A.	N.A.	(Incorrect pen setting. Logged to 860'.
B-82-8C	8-10-82	Birney	Rosebud	T. 7 S., R. 42 E., Sec. 2, 1,100 FNL, 100 FEL	3,770	480	480	70'-85', 180'-215', 355'-375', 395'-415'. 435'-460'.
B-82-9	8-27-82	Birney	Rosebud	T. 6 S., R. 42 E., Sec. 1, 1,475 FNL, 875 FWL	3,245	415	414	
B-82-10	8-13-82	Birney	Rosebud	T. 7 S., R. 42 E., Sec. 5, 1,200 FSL, 825 FEL	3,302	615	615	
B-82-11	82-12-82	Lacey Gulch	Rosebud	T. 7 S., R. 42 E., Sec. 11, 400 FSL, 700 FWL	3,903	915	915	
B-82-12	8-14-82	Lacey Gulch	Rosebud	T. 7 S., R. 42 E., Sec. 13, 1,700 FNL, 1,700 FEL	3,846	855	855	
B-82-13	8-30-82	Lacey Gulch	Rosebud	T. 7 S., R. 43 E., Sec. 19, 2,400 FNL, 550 FEL	3,340	835	600	
B-82-14	9-8-82	Lacey Gulch	Rosebud	T. 7 S., R. 42 E., Sec. 25, 1,450 FNL, 350 FEL	3,451	495	495	
B-82-15A	8-14-82	Lacey Gulch	Rosebud	T. 7 S., 42 E., Sec. 27, 400 FSL, 2,450 FEL	3,893	115		Not logged.
B-82-15B	8-24-82	Lacey Gulch	Rosebud	T. 7 S., R. 42 E., Sec. 27, 1,850 FSL, 2470 FEL	3,900	915	825	
B-82-17	9-9-82	Lacey Gulch	Big Horn	T. 8 S., R. 42 E., Sec. 8, 400 FSL, 1,600 FEL	3,732	615	615	
B-82-18	9-9-82	Lacey Gulch	Big Horn	T. 8 S., R. 42 E., Sec. 17, 1,850 FSL, 2,500 FWL	3,955	595	594	
B-82-19	8-11-82	Spring Gulch	Rosebud	T. 7 S., R. 41 E., Sec. 29, 3,050 FNL, 500 FEL	3,640	535	535	
B-82-21	8-27-82	Spring Gulch	Rosebud	T. 7 S., R. 41 E., Sec. 26, 2,250 FSL, 2,000 FEL	3,395	380	380	

TABLE 1.—1982 BLM COAL DRILLING SUMMARY SHEET, MONTANA—BY DRILL HOLE NUMBER—(REVISED 10-14-83)—Continued

Hole No.	Date drilled/ logged	Quadrangle	County	Location	Elevation feet	Depth drilled feet	Depth logged feet	Cored interval
B-82-22	8-25-82	Spring Gulch	Rosebud	T. 7 S., R. 42 E., Sec. 18, 1,500 FNL, 1,500 FWL	3,355	375	375	
B-82-24	8-29-82	Spring Gulch	Big Horn	T. 8 S., R. 41 E., Sec. 16, 1,500 FNL, 2,650 FWL	3,515	521	520	
B-82-25	8-28-82	Rosebud	Rosebud	T. 8 S., R. 41 E., Sec. 14, 1,000 FNL, 650 FEL	3,720	535	535	
B-82-28	7-28-82	Browns Mtn	Rosebud	T. 7 S., R. 43 E., Sec. 4, 4,475 FNL, 2,530 FWL	3,310	518	472	
PDC-13	8-13-82	Birney SW	Rosebud	T. 6 S., R. 41 E., Sec. 34, 1,000 FSL, 2,200 FWL	3,465	N.A.	362	Log of case water well.
PDC-14	8-13-82	Birney SW	Rosebud	T. 6 S., R. 41 E., Sec. 34, 1,000 FSL, 2,200 FWL	3,465	N.A.	150	Twin of PDC-13.
R-82-1	9-25-82	Pine Butte School	Big Horn	T. 9 S., R. 42 E., Sec. 33, 600 FSL, 1,100 FWL	4,110	730	730	
P-82-2	9-23-82	Pine Butte School	Big Horn	T. 9 S., R. 42 E., Sec. 28, 1,000 FNL, 900 FEL	4,098	795	795	
R-82-3	9-26-82	Holmes Ranch	Big Horn	T. 9 S., R. 42 E., Sec. 30, 700 FSL, 950 FWL	3,990	715	715	
R-82-4	10-4-82	Holmes Ranch	Big Horn	T. 9 S., R. 41 E., Sec. 27, 1,325 FNL, 1,450 FEL	3,920	695	655	
R-82-5	10-7-82	Holmes Ranch	Big Horn	T. 9 S., R. 41 E., Sec. 29, 2,900 FNL, 2,650 FWL	3,930	1,075	440	(Caved-in.)
R-82-6A	9-26-82	Holmes Ranch	Big Horn	T. 9 S., R. 41 E., Sec. 11, 1,200 FNL, 400 FEL	3,916	535	535	(Logged too fast.)
R-82-6B	9-28-82	Holmes Ranch	Big Horn	T. 9 S., R. 41 E., Sec. 11, 1,200 FNL, 400 FEL	3,916	N.A.	N.A.	(2nd run-logged to 425'.)
R-82-7	10-4-82	Holmes Ranch	Big Horn	T. 9 S., R. 41 E., Sec. 16, 2,100 FSL, 1,600 FEL	3,765	N.A.	345	(Water well.)
R-82-8	9-21-82	Holmes Ranch	Big Horn	T. 9 S., R. 42 E., Sec. 6, 750 FSL, 4,450 FWL	4,090	609	608	
R-82-9	9-23-82	Pine Butte School	Big Horn	T. 9 S., R. 42 E., Sec. 17, 1,700 FNL, 1,900 FEL	4,025	835	835	
R-82-10	9-25-82	Pine Butte School	Big Horn	T. 9 S., R. 42 E., Sec. 24, 30 FNL, 1,500 FEL	3,908	815	815	
R-82-11	9-14-82	Pine Butte School	Big Horn	T. 8 S., R. 42 E., Sec. 32, 550 FNL, 2,525 FEL	4,138	875	875	
R-82-12	9-21-82	Holmes Ranch	Big Horn	T. 8 S., R. 41 E., Sec. 24, 1,850 FSL, 1,850 FWL	4,080	475	472	
R-82-13	9-13-82	Pine Butte School	Big Horn	T. 8 S., R. 42 E., Sec. 33, 33 FNL, 261 FEL	4,059	775	750	
R-82-14	10-5-82	Decker	Big Horn	T. 9 S., R. 40 E., Sec. 25, 1,650 FSL, 2,450 FWL	3,750	875	875	
R-82-15	9-12-82	Pine Butte School	Big Horn	T. 8 S., R. 42 E., Sec. 29, 225 FNL, 300 FEL	4,194	895	895	
R-82-16	9-24-82	Pine Butte School	Big Horn	T. 9 S., R. 42 E., Sec. 14, 200 FSL, 150 FWL	3,941	855	855	
R-82-17	9-24-82	Pine Butte School	Big Horn	T. 9 S., R. 42 E., Sec. 35, 317 FNL, 92 FEL	3,766	435	435	
R-82-18	9-22-82	Pine Butte School	Big Horn	T. 9 S., R. 42 E., Sec. 9, 28 FNL, 55 FEL	3,963	635	635	
R-82-19WW	10-4-82	Holmes Ranch	Big Horn	T. 9 S., R. 41 E., Sec. 14, 700 FSL, 2,200 FEL	3,630	N.A.	400	(Water well.)
R-82-20WW	10-6-82	Holmes Ranch	Big Horn	T. 9 S., R. 41 E., Sec. 20, 3,300 FNL, 1,050 FEL	3,680	N.A.	227	(Water well.)
TCS-1-82	10-8-82	Trail Creek School	Rosebud	T. 3 N., R. 39 E., Sec. 35, 1,550 FSL, 1,750 FWL	3,117	215	215	
MC-1-82	10-10-82	McClure Creek	Rosebud	T. 2 N., R. 39 E., Sec. 5, 750 FSL, 1,500 FEL	3,245	305	305	
MC-2-82	10-9-82	McClure Creek	Treasure	T. 2 N., R. 38 E., Sec. 2, 1,900 FSL, 450 FEL	3,640	735	735	
CW-1-82	10-10-82	Colstrip West	Rosebud	T. 3 N., R. 40 E., Sec. 26, 650 FSL, 2,000 FWL	3,278	200	200	
CC-13-82	10-12-82	McClure Reservoir	Prairie	T. 12 N., R. 49 E., Sec. 5, 125 FNL, 2,500 FEL	2,875	715	715	
CC-14-82	10-19-82	McClure Reservoir	Prairie	T. 12 N., R. 49 E., Sec. 9, 10 FNL, 900 FWL	2,731	495	495	
CC-19-82	10-21-82	Calypso	Prairie	T. 13 N., R. 50 E., Sec. 30, 2,500 FSL, 1600 FWL	2,650	550	550	
CC-20-82	10-21-82	Calypso	Prairie	T. 13 N., R. 49 E., Sec. 26, 725 FNL, 1,400 FWL	2,630	535	535	
Total[1]						31,528	31,809	

[1]Total "logged" footage is larger than the "drilled" footage due to the number of cased water wells that were discovered and logged during the drilling program.

The geophysical-lithologic logs and coal analyses are available for public inspection and purchase at the above address. Purchase price for the entire package, including full scale geophysical logs, sample logs and analyses is $311.00. The sample log-analyses package alone can be purchased for $31.00. Individual full scale geophysical logs are available for $5.00 each. Individual sample logs and analyses can be purchased for $0.25 per sheet.

Date: October 21, 1983.

Kannon Richards,

Acting State Director.

[FR Doc. 83-29164 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-84-M

[M 59727 (ND)]

Request for Public Comment on Fair Market Value and Maximum Economic Recovery; Emergency Coal Lease Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale.

The lands included on Coal Lease Application M 59727(ND) are located in Mercer County, North Dakota, approximately 2 miles northwest of the town of Beulah near the Indian Head Mine and are described as follows:

T. 144 N., R. 88 W., 5th P.M.
Sec. 14: N½SW¼, SW¼SW¼
Sec. 22: N½NE¼NE¼, W½NE¼, NW¼
380.00 acres.

One economically minable bed, the Beulah-Zap, is found in this tract. The Beulah-Zap seam averages 9.5 feet in thickness and contains an estimated 1.83 tons of recoverable lignite. The Beulah-Zap seam is lignite and averages (as received) 6,785 BTU/lb. with 37.8 percent moisture, 0.8 percent sulfur, and 6.5 percent ash.

The public is invited to submit written comments on the fair market value and the maximum economic recovery of the tract.

DATES: Comments must be received on or before November 18, 1983.

ADDRESS: For more complete data on this tract, please contact Jeanette Bejot (telephone 407-657-6291), Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

SUPPLEMENTARY INFORMATION: In accordance with Federal Coal Management regulations 43 CFR Parts 3422 and 3425, not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information:

Comments should be sent to Bureau of Land Management, Economic Evaluation Section, 100 East "B" Street, Room B005, Casper, Wyoming 82601, Attention: Tim MacGillvray (telephone 307-261-5735), and should address, but not necessarily be limited to the following information:

1. The quality and quantity of the coal resource;
2. The mining method or methods which would achieve maximum economic recovery of the coal, including specification of seams to be mined and the most desirable timing and rate of production;
3. The guantity of coal;
4. If this tract should be evaluated as part of a larger mining unit (i.e., a tract which does not in itself form a logical mining unit);
5. The configuration of any larger mining unit of which the tract may be a part;
6. Restrictions to mining which may affect coal recovery;
7. The price that the mined coal would bring in the market place;
8. Costs, including mining and reclamation, of producing the coal;
9. The percentage rate at which anticipated income streams should be discounted, either in the absence of inflation or with inflation, in which case the anticipated rate of inflation should be given;
10. Depreciation and other accounting factors;
11. The value of any surface estate where held privately;
12. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area; and
13. Any comparable sales data of similar coal lands.

The values given above may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

Dated: October 21, 1983.

Michael J. Penfold,
State Director.

[FR Doc. 83-29160 Filed 10-26-83; 10:28 am]
BILLING CODE 4310-84-M

Rock Springs District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Rock Springs District Grazing Advisory Board. Notice of this meeting is required under Pub. L. 92-463.

DATE: December 9, 1983, 9:30 a.m. until 4:00 p.m.

ADDRESS: Bureau of Land Management District Office, Highway 191 North, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307-382-5350).

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks.
2. Approval of the transcript of the August 25, 1983 meeting.
3. Bureau of Land Management fence standards and definitions.
4. Weed control activities.
5. Cooperative Management Agreements.
6. Range projects and cattleguard maintenance.
7. Update on wild horse gathering activities.
8. Restoration of AUMs suspended in the Red Desert area for wild horses.
9. Public comment period.
10. Arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:30-2:00 p.m., or file written statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, by December 8, 1983. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A transcript of the meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Gene C. Herrin,
Associate District Manager.

[FR Doc. 83-29161 Filed 10-26-83; 8:45 am]
BILLING CODE 4310-84-M

Notification of Suspension of the Simultaneous Oil and Gas Leasing "Lottery"

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of suspension of the Simultaneous Oil and Gas Leasing "Lottery" and Suspension of Posting of Available Lands.

SUMMARY: The Bureau of Land Management periodically issues oil and gas leases in areas outside of known geologic structures (KGS) on a noncompetitive basis through a drawing of applications filed on selected parcels. The use of this method of issuing leases known as simultaneous oil and gas leasing is temporarily suspended. The September drawing will not be held until it has been verified that the parcels are not included in a KGS. Nor will

leases be issued from previous drawings that were not processed and completed prior to October 12, 1983, until it is determined that they are not located within a KGS. Additionally, the Notice of Lands Available for Oil and Gas Filings scheduled for November 1983 will not be posted nor the drawing held. Subsequent Notices of Lands Available will be posted when it can be determined that the parcels to be listed are not part of a KGS.

EFFECTIVE DATE: October 27, 1983.

FOR FURTHER INFORMATION CONTACT: Timothy Foley, Division of Fluid Mineral Leasing, Bureau of Land Management (620), 18th and C Streets NW., Washington, D.C., 20240, telephone (202/FTS) 653-2236.

Dated: October 24, 1983.

J. Steven Griles,

Acting Assistant Secretary.

[FR Doc. 83-29178 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-84-M

[OR 34957, OR 36019, OR 36020]

Oregon: Cancellation of Realty Action; Competitive/Modified Competitive Sale of Public Land; Lake County Oregon

The Notices of Realty Action, published in the **Federal Register** Document No. 83-6084, Volume 48, No. 48, pages 10133 and 10134, Thursday, March 10, 1983 and **Federal Register** Document No. 83-12181, Volume 48, No. 89, pages 20507 and 20508, Friday, May 6, 1983, are hereby cancelled and all involved properties withdrawn from public sale.

The properties withdrawn from sale are being reappraised and will be formally reoffered at a future date.

For additional information regarding this cancellation, contact the Lakeview District Office, P.O. Box 151, Lakeview, Oregon 97630 or phone (503) 947-2177.

October 18, 1983.

Richard L. Harlow,

Acting District Manager.

[FR Doc. 83-29166 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-84-M

Oregon and Washington; Use Fee for Commercial Recreation Activities

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, Oregon and Washington; Special Recreation Permit Fees.

SUMMARY: The document establishes the required fee for permitted commercial recreation related activities which occur on public lands managed by the Bureau of Land Management in Oregon and Washington.

DATE: October 25, 1983.

FOR FURTHER INFORMATION CONTACT: Ken White, Outdoor Recreation Planner, Bureau of Land Management, (503) 231-2113.

SUPPLEMENTARY INFORMATION: Costs associated with Special Recreation Permit management have risen dramatically over the past several years, as have the costs associated with providing and maintaining the services, facilities and the natural resources where permitted recreation activities occur. In order to continue existing commercial recreation permit programs, an increase in fees is required to recover the costs of issuing and administering the permits and to provide a return for commercial use of federal resources.

In May 1982 the Bureau of Land Management announced proposed 1983 recreation fee increases, including the establishment of a commercial permit fee of $2.00 per user day. After review of the public comments received, the Oregon State Director determined that special recreation permit fee increases should be deferred until 1984. With respect to commercial permit fees, this decision allowed additional time for the Bureau of Land Management to obtain further input from the outfitter industry relative to alternative fee structures.

The fee schedule which appeared in the **Federal Register** on May 18, 1983 (48 FR 22462) and was discussed with a special outfitter committee, is an escalating rate table where fees are determined by categories of adjusted daily charges collected by the permittee from each participant. Based upon a determination that this escalating fee schedule represents a fair and equitable return for the privilege of using federal resources for commercial purposes and pursuant to Section 304 of the Federal Land Policy and Management Act (43 USC 1734) and regulations at 43 CFR 8372.4, a Special Recreation Permit fee schedule for commercial use of land managed by the Bureau of Management in Oregon and Washington is established at $100.00 minimum or the amount from the following table, whichever is greater:

Adjusted daily charge collected by permittee from each participant	Fee paid to the bureau per user day in 1984	Fee paid to the bureau per user day in 1985
$8.00 or less	$0.25	$0.25
8.01 to 20.00	.25	.40
20.01 to 35.00	.40	.80
35.01 to 50.00	.65	1.30
50.01 to 75.00	.95	1.90
75.01 to 100.00	1.30	2.60
100.01 to 125.00	1.70	3.40
125.01 to 150.00	2.05	4.10
150.01 to 175.00	2.45	4.90
175.01 to 200.00	2.80	5.60
200.01 to 250.00	3.40	6.75
250.01 to 300.00	4.15	8.25
Over 300.00	(1)	(2)

[1] 1½% of adjusted daily charge per participant.
[2] 3% of adjusted daily charge per participant.

For purposes of this fee suhedule, adjusted daily charges refers to the daily charge per participant less any off-site transportation and/or lodging expenses before or after the permitted use.

Dated: October 17, 1983.

Paul Vetterick

Acting State Director.

[FR Doc. 83-28791 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-84-M

[U-52775]

Utah; Realty Action Sale of Public Lands in Grand County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands in Grand County, Utah, U-52775.

SUMMARY: The Bureau of Land Management, based upon land use plans and field examination, has determined that the following described lands are suitable for sale at no less than fair market value, under the authority of Section 203(a)(3) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1731).

Legal description	Acerage
T.21S., R.22E., SLB&M, sec. 30, NW¼ SW¼ NE¼	10

The above described lands will be sold in a direct sale to Grand County, Utah, under the authority of Section 203(f)(2) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713).

The terms and conditions of the sale are:

1. The sale of the land is subject to all existing rights, including oil and gas lease U-17251.

2. A right-of-way is reserved to the United States for ditches and canals constructed under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. All mineral rights will be reserved to the United States.

For a period of 45 days from the date

submit comments to the Utah State Director, University Club Building, 136 E. South Temple, Salt Lake City, Utah 84111. Any adverse comments will be evaluated by the State Director, who may vacate or modify this notice. In absence of any action by the State Director, this notice will represent the final determination of the Department of the Interior.

The land will not be offered for sale until 60 days after the date of this notice.

Additional information is available from the Moab District Office, P.O. Box 970, Moab, Utah 84532, or the Grand Resource Area, P.O. Box M, Moab, Utah 84532.

Gene Nodine,

District Manager.

October 19, 1983.

[FR Doc. 83-29205 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-84-M

[N-38759]

Nevada; Realty Action—Non-Competitive Sale; Public Lands in Washoe County, Nevada

The following land has been examined and identified as suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750); 43 U.S.C. 1713) at no less than fair market value:

Mount Diablo Base & Meridian

T. 30 N., R. 22 E.,
Sec. 13, E½E½;
Sec. 24, E½NE¼.

The above-described land comprising 240 acres, is being offered as a direct sale to Empire Farms, of Yerington, Nevada. Empire Farms owns approximately 1,200 acres of irrigated cropland adjacent the parcel, and apparently has adequate existing water rights to develop the additional 240 acres.

The sale is consistent with the Bureau's planning system. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. Disposal of these lands has been reviewed and approved by the Washoe County Commissioners and the Nevada Division of State Lands. The land will not be offered for sale for at least 60 days after the date of this notice.

The patent, when issued, will 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, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Those rights for powerline purposes which have been granted to Sierra Pacific Power Company, its successors or assigns, by Permit No. N-11396, under the Act of March 4, 1911, 36 Stat. 1253, 43 U.S.C. 9611.

Detailed information concerning the sale is available for review at the Winnemucca District Office, Bureau of Land Management, 705 East Fourth Street, Winnemucca, Nevada 89445.

For a period of 45 days from the date of publication in the Federal Register, interested parties may submit comments to the State Director at P.O. Box 12000, Reno, Nevada 89520. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. If no action is taken by the State Director, this realty action will become a final determination of the Department of the Interior.

Dated: October 19, 1983.

Robert J. Neary,

Acting District Manager.

[FR Doc. 83-29201 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-84-M

[OR 36556]

Oregon: Proposed Bombing and Aerial Gunnery Range; Lake County, Oregon; Public Meeting

The Oregon Air National Guard will present their proposal for a bombing and aerial gunnery range, to be located near Alkali Lake, Oregon, at a public meeting hosted by the Bureau of Land Management, Lakeview District Office. The meeting will be held on November 22, 1983 at 7:00 p.m. in the Lakeview District Office Conference Room, Lakeview, Oregon.

The military proposes to withdraw approximatley 3,840 acres for exclusive use as an impact area. An additional 20,500 acres would be leased to provide a safety buffer zone around the impact area.

Affected public land is described as follows:

Willamette Meridian, Lake County, Oregon

Exclusive Use area

T. 28 S., R. 23 E.,
Sec. 31, a portion of;
Sec. 32, a portion of;
Sec. 33, a portion of;
T. 29 S., R. 23 E.,
Sec. 4, all;
Sec. 5, all;,
Sec. 6, a portion of;
Sec. 7, a portion of;
Sec. 8, all.

Non-Exclusive Use Area

T. 28 S., R. 23 E.,
Sec. 19, a portion of;
Sec. 20 to 22, inclusive;
Sec. 23, a portion of;
Sec. 26, a portion of;
Sec. 27 to 29, inclusive;
Sec. 30, a portion of;
Sec. 31, a portion of;
Sec. 32, a portion of;
Sec. 33, a portion of;
Sec. 34, a portion of;
Sec. 35, a portion of;
T. 29 S., R. 23 E.,
Sec. 3, a portion of;
Sec. 6, a portion of;
Sec. 7, a portion of;
Sec. 9, all;
Sec. 10, a portion of;
Sec. 15, a portion of;
Sec. 16 to 21, inclusive;
Sec. 22, a portion of;
Sec. 27, a portion of;
Sec. 28 to 30, inclusive;
Sec. 31, N ½;
Sec. 32, N ½;
Sec. 33, N ½;
Sec. 34, a portion of.
T. 29 S., R. 22 E.,
Sec. 12, all;
Sec. 13, all;
Sec. 24, all;
Sec. 25, all;
Sec. 36, N ½

The military would use the area for training Air National Guard pilots in air to ground delivery of ordinance. The ordinance would be restricted to inert bomb simulators, with or without marking charges, and non-explosive non-incendiary 20 and 30mm cannon rounds.

The meeting is being held to inform the public of the proposed range and to allow the public to provide input and voice any concerns about the proposed use.

Comments at the meeting may be written or oral. Written comments must be received in the District Office by December 2, 1983. Send written comments to Area Manager, Warner Lakes Resource Area, P.O. Box 151, Lakeview, Oregon 97630.

For further information, contact Warner Lakes Area Manager, Lakeview District Office, (503) 947-2177.

October 18, 1983.

Richard L. Harlow.

Acting District Manager.

[FR Doc. 83-29187 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-84-M

[M-57761 SD]

South Dakota; Realty Action—Competitive Sale of Public Land in Custer County, South Dakota

AGENCY: Bureau of Land Management, Miles City District, South Dakota Resource Area Office, Interior.

ACTION: Notice of realty action M-57761-SD, competitive sale of public land in Custer, South Dakota.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1976) at no less than fair market value:

Black Hills Meridian

Township 6 North, Range 2 East, Section 25, NE¼NW¼, containing 40 acres.

The land will be offered for sale by a combination of sealed and/or oral bids utilizing competitive bidding procedures, on December 28, 1983, ad 1:30 pm, M.S.T., Custer County Courthouse, Custer, South Dakota.

The subject land is located approximately 11 miles east southeast of Dewey, South Dakota, in Custer County. The parcel has section line access and is being offered for sale because it is isolated from other blocks of public land and is difficult and uneconomical to manage. This parcel is covered with ponderosa pine and has deeply eroded drainages.

The proposed sale is consistent with the Bureau's planning system and Custer County government officials have been notified of the sale. The transfer of the tract into private ownership will benefit the public interest and provide for better land management.

Terms and conditions: The terms and conditions applicable to this sale are as follows:

1. All minerals will be reserved to the United States, together with the right to explore, prospect for, mine, and remove same under applicable law and regulations.

2. A right-of-way for ditches or canals will be reserved to the United States in accordance with 43 U.S.C. 945.;

3. The sale of these lands will be subject to all valid existing rights and reservations of record.

4. Access to this parcel must be in compliance with County and State regulations.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, Miles City District Office, P.O. Box 940, Miles City, Montana 59301. Any adverse comments will be evaluated by the BLM Montana State Director, who may vacate or modify this realty action and issue a final determination, In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the sale, including environmental assessment, and the record of public discussions is available for review at the Miles City District Office, Miles City, Montana, or the South Dakota Resource Area, Belle Fourche, South Datota.

SUPPLEMENTARY INFORMATION:

Bidder Qualifications: The bidder must be a U.S. citizen or, in the case of a corporation, subject to the laws of any state or the U.S. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests therein under the laws of the State of South Dakota. Bids must be made by the principal or his agent.

Bid Standards: No bid will be accepted for less than the appraised fair market value which will not be disclosed, and bids must include all of the land identifed in this notice.

Method of Bidding: The land will be sold by a combination of sealed and/or oral bids. Sealed bids will be opened first, followed by oral bidding. Bidding will begin at the highest sealed bid, or in the absence of sealed bids, at the call of the oral bidder. A sealed bid is not required to qualify for oral bidding.

Each bid must be accompanied by a cartified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior, Bureau of Land Management, for not less than one-fifth of the amount bid.

Sealed bids will be received at the South Dakota Resource Area Office, 301 Roundup Street, Belle Fourche, South Dakota 57717, until 1:00 pm, M.S.T., December 28, 1983.

Sealed bids will be opened in the *Custer County Courtroom, Custer, South Dakota*, with oral bidding following the opening of the sealed bids.

The sealed bid envelope must be marked in the lower left-hand corner as follows:

Public Land Sale M-57761 SD

Date:

If two or more envelopes containing valid bids of the same amount are received, the detremination of which is to be considered the highest bid shall be by drawing.The drawing, if required, shall be held immediately following the opening of the sealed bids. The highest qualifying sealed bid shall then be publicly delared.

Sale Continuation: In the event this parcel is not sold at the intital sale offering, the parcel will then be available for sale over the counter on a first come, first served basis, at the South Dakota Resource Area Office, 310 Roundup Street, Belle Fourche, South Dakota.

Dated: October 20, 1983.

Robert A. Teegarden,

Acting District Manager for the State Director.

[FR Doc. 83-29196 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-84-M

[4-19952-I-CA-LM; CA 12957]

Exchange of Public and Private Lands in Humboldt County, California

The United States issued an exchange conveyance document to the Simpson Redwood Company on September 30, 1983, for the following described lands, under the Act of October 21, 1970 (84 Stat. 1067; 16 U.S.C. 460y):

Humboldt Meridian, California

T. 11 N., R. 2 E.,
  Sec. 26, NW¼SW¼;
T. 10 N., R. 3 E.,
  Sec. 21, SW¼SW¼;
  Sec. 31, NE¼NE¼;
T. 11½ N., R. 3 E.,
  Sec. 31, Lots 1, 2, and 3;
  Sec. 32, Lots 1, 2, 3, and 4;
  Sec. 33, Lots 1, 2, 3, and 4;
  Sec. 34, Lots 1, 2, 3, and 4;
  Sec. 35, Lots 1, 2, 3, and 4;
T. 12 N., R. 3 E.,
  Sec. 28, NE¼NE¼;
  Containing 917.22 acres.

In exchange for these lands, the United States acquired the following described lands from the Simpson Redwood Company:

Humboldt Meridian, California

Parcel One

The Northeast Quarter of the Southeast Quarter of Section 7, Township 3 South, Range 2 East, Humboldt Base and Meridian.

Parcel Two

The West Half of the Southwest Quarter and the Southeast Quarter of the Southwest Quarter of Section 8, Township 3 South, Range 2 East, Humboldt Base and Meridian.

Parcel Three

The Southwest Quarter of Section 16, Township 3 South, Range 1 West, Humboldt Base and Meridian.

Parcel Four

Lots 2, 3, and 4 and the Southwest Quarter of the Northeast Quarter and the Southeast Quarter of Section 2, Township 7 North, Range 3 East, Humboldt Base and Meridian.

The North Half of the Northeast Quarter, the Southeast Quarter of the Northeast Quarter, the Northeast Quarter of the Southeast Quarter and the South Half of the Southeast Quarter of Section 11, Township 7 North, Range 3 East, Humboldt Base and Meridian.

The East Half of the East Half of Section 12, Township 7 North, Range 3 East, Humboldt Base and Meridian.

The North Half of the Northeast Quarter, the Southwest Quarter of the Northeast Quarter, the Northeast Quarter of the Northwest Quarter, the East Half of the Southwest Quarter and the West Half of the Southeast Quarter of Section 14, Township 7 North, Range 3 East, Humboldt Base and Meridian;

Containing 1,361.98 acres.

The purpose of this exchange was to acquire the non-Federal lands for inclusion in the King Range National Conservation area. The public interest was well served through completion of this exchange.

An equalization payment in the amount of $29,800.00 was paid to the United States.

Dated: October 19, 1983.

Eleanor Wilkinson,

Chief, Lands & Locatable Minerals Section, Branch of Lands & Minerals Operations.

[FR Doc. 83-29210 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-84-M

Bakersfield District Cooperative Management Agreements; Nominations Open

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening of nominations for cooperative management agreements in the Bakersfield District.

SUMMARY: Nominations of grazing operators within the Bureau of Land Management's Bakersfield District to be considered for a Cooperative Management Agreement (CMA) will be accepted starting November 1, 1983. The purpose of Cooperative Management Agreements is to provide livestock operators (or associations), who have demonstrated good rangeland management practices, with: (1) Recognition of good stewardship; (2) a larger role in managing grazing on the the public lands; and (3) the assurance of tenure needed to encourage private investment in rangeland improvements.

A Cooperative Management Agreement is a formal, written agreement between the BLM and a livestock operator that recognizes the operator as the steward of an allotment. Through the agreement, the livestock operator agrees to graze livestock in a manner that will achieve the management objectives of the allotment.

Cooperative Management Agreements will have a tenure period of 10 years. The BLM and the operator will jointly evaluate the allotment at the end of the first five years to determine if objectives are being met.

DATE: Nominations will be open for 60 days, and will close on December 31, 1983.

ADDRESS: Nominations should be sent to: Bakersfield District Office, Bureau of Land Management, Attn: Range, 800 Truxtun Avenue, Rm. 311 Bakersfield, CA 93301

FOR FURTHER INFORMATION CONTACT: Ken Volpe, District Range Conservationist, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301; (805) 861-4191.

Dated: October 20, 1983.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 83-29211 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-84-M

[4-19952-I-CA-LM; CA 13279]

Conveyance of Public Land; Riverside County, California

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), Ladyvest, N.V., c/o Frank De Marco, Jr., 707 Wilshire Boulevard, Los Angeles, California 90017, has purchased by competitive sale public land in Riverside County, California, described as:

San Bernardino Meridian, California

T. 7 S., R. 8 E.,

Sec. 18, S½ Lot 1 and S½ Lot 2 of SW¼.

Containing 76.83 acres.

The purpose of this notice is to inform the public and interested state and local governmental officials of the issuance of the conveyance document to Ladyvest, N.V.

Dated: October 19, 1983.

Eleanor Wilkinson,

Chief, Lands & Locatable Minerals Section Branch of Lands and Minerals Operations.

[FR Doc. 83-29209 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Availability of Fryingpan-Arkansas Project Water From Ruedi Reservoir and Initiation of Contract Negotiations With Municipal and Domestic Users and Competitive Bidding for Contracts by Industrial Users

In accordance with procedures established by the Department of the Interior and as required by the Reclamation Reform Act of 1982, the Bureau of Reclamation announces the availability of water and its intention to initiate negotiations with municipal and domestic users and solicit competitive bids from industrial users for assignable water service contracts from the regulatory capacity of Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado. The Colorado River Water Conservation District and the Colorado Water Conservation Board will be consulted during these proposed actions.

Contracts providing for the delivery of water may require further compliance with the National Environmental Policy Act of 1969 and the Endangered Species Act of 1973, as amended. All pertinent Reclamation Instructions will be complied with.

The Bureau constructed Ruedi Dam and Reservoir as a feature of the Fryingpan-Arkansas Project. The primary purposes of the dam and reservoir are to provide replacement water to satisfy simultaneous demands of senior diversions in western Colorado at the time Fryingpan-Arkansas Project diversions are made to the Arkansas River Basin in eastern Colorado and to furnish water and regulatory storage to western Colorado water users. Ruedi Dam and Reservoir are located on the Fryingpan River approximately 14 miles east of Basalt, Colorado. The Fryingpan River is a tributary of the Roaring Fork River, a tributary of the Colorado River.

Ruedi Reservoir has a total storage capacity of 102,369 acre-feet which includes an active storage capactiy of 101,280 acre-feet and 1,089 acre-feet of inactive and dead storage. Based on a study period from 1948 through 1980, the firm average annual yield of Ruedi Reservoir is estimated to be 87,300 acre-feet, of which up to 28,000 acre-feet are available for replacement of Fryingpan-Arkansas Project diversions and 59,300 acre-feet would be available from the

regulatory capacity, assuming a use pattern for a municipal and industrial water supply. Four contracts were executed in May 1982 for a total of 7,850 acre-feet of water leaving 51,450 acre-feet available for additional water service contracts.

The Bureau operates and maintains Ruedi Dam and Reservoir in accordance with the provisions of Reclamation law, the authorizing act, and more particularly the "Operating Principles for the Fryingpan-Arkansas Project" published as H. Doc. 130, 87th Cong., 1st sess. In summary, the operating principles provide for (1) release of water from the replacement capacity upon request by the State Engineer to the extent that water would have been available to senior rights without project diversions to the Arkansas River Basin, and (2) water stored in the regulatory capacity may be sold or leased by the United States to water users in Colorado for any purpose recognized by the laws of the United States. Charges for the use of such water shall be established by the Secretary of the Interior by appropriate contracts. Any sale of water outside the natural basin of the Colorado River can only be made with the consent of the Colorado River Water Conservation District.

Pursuant to this notice, negotiations will be undertaken for municipal and domestic use assignable contracts and solicitation for competitive bidding for industrial use assignable contracts for water service from the regulatory capacity to satisfy demands of users. An entity will be considered to have a demand if (1) it has a need, (2) it is capable of making beneficial use of the requested water, and (3) is legally constituted to contract with the United States.

In accordance with public notices published on April 21, 1983, in newspapers in the Colorado River Basin in Colorado, negotiations will be limited to those municipal and domestic users from whom requests were received by the Regional Director, Lower Missouri Region, by May 20, 1983. Requests have been received from 13 entities who have identified a demand for municipal and domestic uses.

In the interest of national defense and acting through its Office of Naval Petroleum and Oil Shale Reserves, the Department of Energy has requested 4,100 acre-feet of industrial water annually for use in connection with its oil shale reserves (NOSR-1 and NOSR-3) in western Colorado. The Bureau intends to contract directly with the Department of Energy for 4,100 acre-feet of water service annually from Ruedi Reservoir for its naval oil shale reserve requirements.

Requests have been received from 10 industrial entities who have identified a demand for industrial use. The Bureau will offer for competitive bidding approximately 27,500 acre-feet of industrial water service from the regulatory capacity of Ruedi Reservoir.

Sealed bids on a quantity of water not less than 100 acre-feet annually will be accepted from qualified industrial users. The minimum acceptable rates for the amount of water service requested will be set forth in the invitation for bid. In addition, each bidder may submit a schedule for minimum deliveries at the established per acre-foot rates for which he agrees to take or pay for the delivery of and/or bid a cash bonus for the right to contract for water service.

Industrial water service contracts will be offered to those qualified bidders submitting the highest per acre-foot bids until the available industrial water supply from the regulatory capacity is contracted for. Apparent successful bidders will be determined within 60-calendar days, and contracts will be offered to successful bidders within 180-calendar days, after bid opening. Each bidder will be required to furnish a bid guarantee equal to 1 year's standby charge ($15 per acre-foot) for the quantity of water submitted for bid, which will be nonrefundable if the contractor fails to execute a contract, if offered. For the successful bidders executing contracts, this amount will be credited toward the first year's water service charges. The United States reserves the right to reject any bid. Bid guarantees will be refunded to unsuccessful bidders and to those whose bids are rejected.

The bid opening will be held at 2 p.m. on December 14, 1983, in conference room E 2411, second floor, Building 20, Denver Federal Center, Denver, Colorado.

Each industrial user may submit one bid for the quantity of water for which it has a need and for which it is capable of putting to beneficial use within a reasonable time. Successful bidders will be selected on the basis of the highest present worth value of revenues per acre-foot returned to the United States through the year 2000. This will be determined by the total of the bonus bid plus the present worth of revenues from water delivery charges to be paid for agreed-to-minimum annual deliveries at established per acre-foot rates through the year 2000 divided by each bidder's quantity of water submitted for bid. All revenues from water service charges will be discounted to present worth based on the 10-year United States Treasury bond rates as specified in the invitation for bid.

Complete bidding instructions and a copy of the standard industrial water service contract are included in the Invitation for Bid for Industrial Water Service for Ruedi Reservoir available from the Regional Director, Bureau of Reclamation, Attention LM-440, P.O. Box 25247, Denver, Colorado 80225. Copies may be obtained in room E 2719, Building 20, Denver Federal Center, Denver, Colorado, and from the Project Manager, Bureau of Reclamation, 764 Horizon Drive, Grand Junction, Colorado.

All meetings scheduled by the Bureau to discuss the terms and conditions of the proposed municipal and domestic water service contracts shall be open to the general public as observers. Advance notice of meetings shall be furnished to only those parties having previously given a written request for such notice. The notice will be provided at least 1 week prior to any meeting. Requests should be submitted to the above address.

If little or no public interest in these negotiations is evidenced, as gaged by the response to this notice and local news releases, the availability of the proposed contracts for public review and comment will not be publicized through the **Federal Register** or other media. When the proposed contracts become available for review, copies may be obtained from the Regional Director, Lower Missouri Region, at the above address. Notice of availability of proposed contracts shall be furnished only to those parties who have previously given a written request for such notice. All written correspondence concerning the proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383).

For further information on contract negotiations or bidding, please contact Robin D. McKinley at (303) 234-3327 or at the above address.

Dated: October 21, 1983.

William C. Klostermeyer,

Acting Commissioner of Reclamation.

[FR Doc. 83-29165 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Availability of Final Environmental Impact Statement on Trinity River Basin Fish and Wildlife Management Program; Trinity River, Northwestern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises that the final Environmental Impact Statement on the Trinity River Basin Fish and Wildlife Management Program, Northwestern California, is available for public review. Propsed is a management program to restore salmon, steelhead trout, deer and other fish and wildlife resources in Trinity River Basin in northwestern California. Developed by a joint Federal-State-local task force under Bureau of Reclamation lead, the sixty million dollar proposal would span a ten-year period and consist of eleven actions such as watershed rehabilitation, spawning riffle construction, monitoring, and fish hatchery modification. No significant adverse impacts are foreseen. Three alternative subjects of these same actions and alternatives to five of the actions were also evaluated in the EIS. No one commenting on the draft EIS expresssed opposition to the program and many expressed full support.

DATE: Written comments are requested by November 29, 1983.

ADDRESS: James J. McKevitt, Field Supervisor, U.S. Fish and Wildlife Service, Division of Ecological Services, 2800 Cottage Way, Room E-2727, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Jody Hoffman, U.S. Fish and Wildlife Service, ES, 2800 Cottage Way, Room E-2727, Sacramento, California 95825, (916) 484-4731.

Copies of the EIS have been distributed to all participants in the scoping and draft review process, those who requested copies, identified agencies and organizations representing interested user groups, and central libraries within Humboldt, Shasta, Sacramento and Trinity Counties.

Richard Myshak,

Regional Direrctor, Region I.

[FR Doc. 83-29195 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Kerr-McGee Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0830, Block 229, Ship Shoal Area, offshore Louisiana.

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 Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans 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 a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 21, 1983.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 83-29191 Filed 10-26-83; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30249]

Rail Carriers; the Atchison, Topeka and Santa Fe Railway Company—Merger Exemption—Toledo, Peoria & Western Railroad Company

Decided: October 19, 1983.

On August 23, 1983, a notice of exemption was served finding that the merger of the Toledo, Peoria & Western Railroad (TP&W) into The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) was a corporate simplification of the type specifically exempted from the necessity for prior review and approval under 49 CFR 1180.2(d)(3).

The employee protective conditions in *New York Dock Ry.-Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) (*New York Dock*), were imposed to protect employees of TP&W or Santa Fe who may be adversely affected by the merger. Indentical conditions had been previously imposed to protect affected emloyees when control of TP&W by Santa Fe was approved.

On September 19, 1983, Leo Sera filed a petition to intervene. He states that he has a pending dispute with the TP&W that concerns job selection rights arising out of TP&W's takeover of certain Penn Central trackage. He further states his belief that this merger will adversely affect him and other TP&W employees. He requests permission to file appropriate pleadings.

Our regulations do not provide for a proceeding on a notice of class exemption. Cf. *Improvement of TOFC/COFC Regulation*, 364 I.C.C. 731, 736-37 (1981). The only relief available after publication would be a petition for reconsideration alleging that the transaction does not fall within an exempt class. Mr. Sera's petition makes no such allegation and will be dismissed.[1]

It is ordered:

1. The petition by Leo Sera to intervene in this proceeding is dismissed.

2. This decision is effective on the service date.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-29206 Filed 10-26-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30309]

Rail Carriers; Willard R. Formyduval—Acquisition Exemption—Aberdeen and Briar Patch Railway Company, Exemption

On October 4, 1983, Willard R. Formyduval (Formyduval), filed a Notice of Exemption pursuant to 49 CFR 1180.2(d)(2) concerning his proposed

[1] Since the *New York Dock* conditions were imposed for the protection of adversely affected employees, petitioner has recourse to arbitration. Cf. *Railroad Consolidation Procedures*, 366 ICC 75, 79-80 (1982).

acquisition of the stock of the Aberdeen and Briar Patch Railway Company (ABP Railway), of Pinehurst, NC from ABP Management Corporation. Formyduval currently owns 77 percent of the Warrenton Railroad Company, of Warrenton, NC (Warrenton Railroad).

This transaction does not involve a class I rail carrier, is an acquisition of a nonconnecting carrier, and does not look toward ultimate connection of the lines and is, thus, within that class of transactions considered exempt under 49 CFR 1180.2(d)(2).

As a condition to use of the exemption, any ABP Railway or Warrenton Railroad employee affected by the acquisition will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). This will satisfy the statutory requirements of 49 U.S.C. 10505(g)(2).

Decided: October 19, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-29207 Filed 10-26-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Secretary

Information Collections Under Review

OMB has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all the entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the agency Clearance Officer (from whom a copy of the form and supporting documents is available); (2) The office of the agency issuing this form; (3) The title of the form; (4) The agency form number, if applicable; (5) How often the form must be filled out; (6) Who will be required or asked to report; (7) An estimate of the number of responses; (8) An estimate of the total number of hours needed to fill out the form; (9) An indication of whether Section 3504(H) of Pub. L. 96-511 applies; (10) The name and telephone number of the person or office responsible for OMB review. Copies of the proposed forms and supporting documents may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer Larry E. Miesse—202-633-4312

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

- Immigration and Naturalization Service, Department of Justice

Application for Waiver of the Foreign Residence Requirement of section 212(e) of the I&N Act
On occasion
Individuals or households
Provides for obtaining information under Section 212(e) of the Immigration and Nationality Act for application for the granting of a waiver of foreign residence requirements under certain conditions: 1,300 respondents; 433 hours; not applicable under 3504(h)
Rob Veeder—395-4814

- Immigration and Naturalization Service, Department of Justice

Application for Removal
On occasion
Individuals or Households
Used to determine the eligibility of an applicant under section 250 of the I&N Act, which provides that an alien in the United States who has fallen into distress or needs public aid, may apply for removal from the United States: 22 respondents; 4 hours; not applicable under 3504(h)
Rob Veeder—395-4814

- Immigration and Naturalization Service, Department of Justice

Application by Refugees for waiver of Grounds of Excludability
On occasion
Individuals or households
Application required to implement the waiver of excludability provisions in the Refugee Act of 1980. Data used to determine eligibility for waiver and to report to the Congress the reasons for granting such waivers: 2,500 respondents; 625 hours; not applicable under 3504(h)
Rob Veeder—395-4814

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

- National Institute of Justice/National Criminal Justice Reference Center, Department of Justice

Directory of Criminal Justice Information Sources Entry Questionnaire
Biennually
State or local governments, businesses or other for-profit, non-profit institutions
Facilitates information exchange among criminal justice professionals and other interested parties. This centralized listing of organizations providing information services in various criminal justice areas includes a description of each agency, its areas of interest and activity, user restrictions, and contract information: 125 respondents; 37.5 hours; not applicable under 3504(h).
Rob Veeder—395-4814

New Collection

- Bureau of Justice Statistics, Department of Justice

Victimization Risk Supplement (VRS) to the National Crime Survey (NCS)
On occasion
Individuals or households
Used to collect data on lifestyle variables which may affect a person's vulnerability to crime victimization: 22,464 respondents; 3,744 hours; not applicable under 3504(h)
Rob Veeder—395-4814

Dated: October 21, 1983.

Larry E. Miesse,

Agency Clearance Officer, Department of Justice.

[FR Doc. 83-29168 Filed 10-26-83; 8:45 am]

BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION

Recipient Fund Balances; Instruction

AGENCY: Legal Services Corporation.

ACTION: Instruction on recipient fund balances 83-4.

SUMMARY: The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355(a) 88 Statute 378, 42 U.S.C. 2996 et. seq., as amended, Pub. L. 95-222 (December 28, 1977). Section 1008(e) of the Legal Services Corporation Act provides:

The Corporation shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the **Federal Register** at least 30

days prior to their effective date all its rules, regulations, guidelines, and instructions.

The Legal Services Corporation hereby publishes LSC Instruction 83-4, Recipient Fund Balances.

EFFECTIVE DATE: November 28, 1983.

FOR FURTHER INFORMATION CONTACT: Gail Francis, Director, Grants and Budget Unit, Office of Field Services, Legal Services Corporation, 733 Fifteenth Street, N.W., Washington, D.C. 20005; (202) 272-4080.

Fund Balance Instruction

I. Purpose

The purpose of this Instruction is to provide notice and direction to recipients of Legal Services Corporation funding. The objective is to ensure the timely allocation of Corporation funds for the effective and economical provision of high quality legal assistance to eligible clients. To that end, recipients will henceforth be permitted to maintain and reprogram from year to year fund balances of no more than 10% of their Legal Services Corporation support.

A waiver of this provision to a maximum of 25% may be obtained under certain conditions. Funds carried over in excess of 10% or the level permitted by a specific waiver will be recovered as set forth in Section III—Policy.

II. Definitions

A. LSC "support" for the reporting period shall be defined as the sum of: (1) The annualized LSC grant awards; (2) any investment of derivative income earned which is attributable to any annualized Corporation grants (interest, rents, etc.); and (3) reimbursements or recoveries of attorney fees, proceeds from the sale of assets, or other compensation or income related to any annualized Corporation grants.

B. The LSC "fund balance amount" shall be determined solely by reference to the recipient's annual audit. (The fund balance reported in the recipient's annual audit is subject to review and approval by the Corporation's Audit Division. Non-compliance with provisions of the Corporation's *Audit and Accounting Guide for Recipients and Auditors* may result in an increase or decrease in the fund balance as reported in the audit.)

C. The *"fund balance percentage"* shall be determined by expressing the fund balance amount as a percentage of the recipient's LSC support for the reporting period.

III. Policy

A. In the absence of a waiver from the Corporation, any fund balance amount in excess of 10 percent of support shall be repaid to the Corporation in a lump sum or by a mutually agreeable payment plan. The payment plan may be accomplished by pro rata deductions from the recipient's grant checks for a specific number of months.

B. After the Corporation's receipt and review of the recipient's annual audit, written notice regarding any such reduction and/or deduction relating to the fund balance shall be provided to the recipient 30 days prior to such reduction and/or deduction being made.

C. In no way shall any such reduction and/or deduction be construed to permanently affect the annualized funding level of such recipient.

D. "Recipient" as used in this part means any recipient as defined as Section 1002(6) of the LSC Act and any grantee or contractor receiving funds from the Corporation under Section 1006(a)(1)(B) or 1006(a)(3) of the Act.

E. A waiver of the 10 percent ceiling may be granted at the discretion of the Corporation in extraordinary circumstances; such waivers may be granted by the Corporation to a maximum of 25 percent. Further, in addition to the established 10 percent ceiling, recipients who operate compensated private bar programs or components shall be granted a waiver to allow them to maintain carryover not to exceed 25 percent of the expense for attorneys fees as reported in the current audit, provided that the carryover is utilized to fund a cash reserve or encumbrance system for payment of attorney fees. Under no circumstances will a recipient be allowed to retain a fund balance in excess of 25 percent of support.

F. All one-time or special purpose grants awarded by the Corporation shall have an effective date and a termination date. Such grants are not subject to this fund balance policy. Revenue and expenses relating to such grants must be reported separately in the year-end audit. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses related to such grants as a part of the audit.

No funds awarded under one-time or special purpose grants may be expended subsequent to the termination date of the grant without the prior written approval of the Corporation. All unexpended funds under such grants must be returned to the Corporation.

IV. Process

A. Any recipient whose audited fund balance exceeds the ceiling set forth in Section I of this Instruction shall submit to the Corporation, within 120 days after the close of its fiscal year, a statement of the fund balance which occurred according to the annual audit required by Section 1009(c)(1) of the Legal Services Corporation Act, as amended. The funds will be recovered as set forth in Section III of the Instruction unless excluded by a specific waiver.

B. The recipient may, within 120 days after the close of its fiscal year, apply to the Grants and Budget Unit of the corporation for a waiver of the 10 percent ceiling.

Such application must specify:

(1) The fund balance amount according to the recipient's annual audit;

(2) The reason that such fund balance has been attained;

(3) The recipient's plan for the disposition or reserve of such fund balance amount;

(4) The amount of fund balance projected to be carried forward at the close of the recipient's then current fiscal year; and

(5) The extraordinary circumstances justifying the retention of the fund balance.

C. The decision of the Grants and Budget Unit regarding the granting of a waiver shall be guided by the statutory mandate requiring the provision of high quality services in an effective and economical manner. Special consideration will be given for:

(1) Emergencies, unusual occurrences, or other extraordinary circumstances giving rise to the existence of a fund balance in excess of 10 percent, and the special needs of clients;

(2) The need for a recipient which operates a compensated private bar program or component to maintain a cash reserve.

Dated: October 24, 1983.

Gregg L. Hartley,

Director, Office of Field Services.

[FR Doc. 83-29183 Filed 10-26-83; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal

Regulations. This is the required notice of permit applications received.

DATE: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by November 28, 1983. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the 21 July 1983 **Federal Register**, page 33372.

The applications received are as follows:

1. *Applicant:* Donald B. Wiggin, ITT/Antarctic Services, Inc., 621 Industrial Avenue, Paramus, New Jersey 07652.

Activity for Which Permit Requested: Enter Specially Protected Area.

The applicant proposes to enter Specially Protected Area No. 17, Litchfield Island, to inspect a survival cache for boating operations, and to place notification signs identifying the island as a Specially Protected Area. The inspection of the survival cache is conducted twice annually and is an operational requirement for boating safety.

Location: Palmer Station Vicinity, Antarctica.

Dates: December 1, 1983 to May 1, 1985.

2. *Applicant:* William M. Hamner, Department of Biology, University of California, Los Angeles, California 90024.

(This application modifies the permit application of William M. Hamner, published in the **Federal Register** on July 21, 1983.)

Activity for Which Permit Requested: Taking; import into U.S.A.; enter Specially Protected Area.

The applicant proposes to study the transformation of liquids in krill into the stomach oil storage products of various seabird predators, and to document photographically the behavior of marine mammals, seabirds, and fish that are krill predators. The applicant proposes to concentrate on 4 penguin species which are pursuit divers that feed in groups on krill underwater. He requests shotgun collection of 25 specimens of each species for both stomach content analysis and collection of stomach oils. The applicant proposes to collect up to 75 live specimens of each species at sea with a gill net. The captured penguins will be forced to regurgitate stomach contents and will then be released. The other 3 birds of central interest, the Antarctic Tern, the Snow Petrel and Wilson's Storm Petrel, are all surface pickers with krill feeding strategies quite different from those of penguins. The applicant requests shotgun collection of specimens of each of these species for both stomach content analysis and stomach oil samples.

The applicant request is for taking the following species:

SHOTGUN

Species	Number
Adelie Penguin	25
Chinstrap Penguin	25
Gentoo Penguin	25
Macaroni Penguin	25
Antarctic Tern	25
Cape Pigeon	25
Snow Petrel	25
Southern Fulmar	125
Wilson's Storm Petrel	25
Black-browed Albatross	5
Giant Petrel	5
Blue Petrel	5
Antarctic Petrel	5
White-chinned Petrel	5
Peal's Petrel	5
Silver-gray Fulmar	5
Prion	5
Arctic Tern	5
S. Black-backed Gull	5
South Polar Skua	5
Brown Skua	5
Blue-eyed Shag	5
American Sheathbill	5
Cape Pigeon	5

CAPTURE AND RELEASE

Adelie Penguin	75
Chinstrap Penguin	75
Gentoo Penguin	75
Macaroni Penguin	75

Photography—(will not require handling or catching animals. Long lens photography will minimize their disturbance.)

Birds:
Black-browed Albatross
Giant Petrel
Blue Petrel
Silver-gray Fulmar
Cape Pigeon
Prion
S. Black-backed Gull
Antarctic Petrel
White-headed Petrel
Peal's Petrel
Snow Petrel
Wilson's Petrel
Brown Skua
South Polar Skua
Antarctic Tern
Arctic Tern
Blue-eyed Shag
American Sheathbill
Adelie Penguin
Chinstrap Penguin
Gentoo Penguin
Macaroni Penguin
Rockhopper Penguin

Mammals:
Antarctic Fur Seal
Crabeater Seal
Elephant Seal
Leopard Seal
Ross Seal
Weddell Seal
Blue Whale
Fin Whale
Humpback Whale
Killer Whale
Sei Whale
S. Right Whale

Location: Antarctic Peninsula area, Litchfield Island.

Dates: December 1, 1983 to April 30, 1984.

Authority to publish this notice has been delegated by the Director, NSF to the Director, Division of Polar Programs.

Edward P. Todd,
Division Director, Division of Polar Programs.

[FR Doc. 83-29202 Filed 10-26-83; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Boston Edison Co.; Establishment of Atomic Safety and Licensing Board

[Docket No. 50-293-OLA; ASLBP No. 84-493-01 LA]

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Boston Edison Company

Pilgrim Nuclear Power Station
Facility Operating License No. DPR-35

This Board is being established pursuant to a notice pblished by the Commission on August 31, 1983, in the **Federal Register** (48 FR 39537 ff) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing." The proposed amendment would revise the operating license and the provisions in the Technical Specifications relating to changes to permit reactor operation at power levels in excess of 70% of rated power with one recirculation loop out of service.

The Board is comprised of the following administrative judges:

B. Paul Cotter, Jr., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Mr. Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Oscar H. Paris, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 21st day of October, 1983.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 83-29259 Filed 10-26-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440]

Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Unit 1); Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated September 27, 1983, Terry Lodge requested on behalf of Steven Sass and the Sunflower Alliance that the Director, Office of Inspection and Enforcement, appoint an independent consultant to investigate the circumstances surrounding a crane accident at Unit 1 of the Perry Nuclear Power Plant, open the plant to inspection by the general public, and initiate proceedings to determine whether the construction permit for the plant should be revoked in light of the independent consultant's findings. The petition is being considered pursuant to 10 CFR 2.206 and, accordingly, appropriate action will be taken on the petition within a reasonable time.

Copies of the petition are available for public inspection in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the local public document room for the Perry plant at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Bethesda, Maryland, this 20th day of October, 1983.

For the Nuclear Regulatory Commission.

Richard C. DeYong,

Director, Office of Inspection and Enforcement.

[FR Doc. 83-29254 Filed 10-26-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Co. of New York; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-26, issued to Consolidated Edison Company of New York (the licensee), for operation of the Indian Point Nuclear Unit No. 2 located in Westchester County, New York.

The amendment would revise the Technical Specifications to reflect provisions consistent with the appropriate Edition and Addenda of Section XI of the ASME Boiler and Pressure Vessel Code, in accordance with the Licensee's application for amendment dated May 5, 1977. Specifically the inservice inspection requirements in section 4.2 of the Technical Specifications would be replaced with a commitment to an inservice inspection program as specified in 10 CFR 50.55a. This change is an addition of requirements into the Technical Specifications since the requirements of Section XI of the ASME Boiler and Pressure Vessel Code are more comprehensive than those in the current Technical Specifications.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards for a no significant hazards determination by providing certain examples (48 FR 14870). One of these examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the Technical Specifications. Since the proposed change involves additional commitments to inservice inspection not currently in the Technical Specifications, the staff proposes to determine that the application does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By November 28, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30/day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Chief, Operating Reactors Branch No. 1, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Thomas J. Farrelly, Esquire, 4 Irving Place, New York, New York, 10003, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the White Plains Public Library, 100 Martime Avenue, White Plains, New York 10610.

Dated at Bethesda, Maryland, this 24th day of October, 1983.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 83-29255 Filed 10-26-83; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270, 50-287]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, issued to Duke Power Company (the licensee), for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3 (the facilities) located in Oconee County, South Carolina.

The amendments would authorize changes to the Common Technical Specifications for Units Nos. 1, 2, and 3 at the Oconee Nuclear Station in accordance with the licensee's application for amendment dated February 9, 1983, as supplemented by submittals dated February 28, 1983 (Generic Offsite Dose Calculation Manual) and April 28, 1983 (Plant Specific Offsite Dose Calculation Manual). The amendments would permit operation after approval of changes to the Radiological Effluent Technical Specifications that bring them into compliance with Appendix I of 10 CFR Part 50. The amendments would specifically deal with such changes as indicating shared instrumentation among the three operating units at the Station. They would provide new Technical Specification sections defining limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring; concentration, dose and treatment of liquid, gaseous and solid wastes; total dose; radiological environmental monitoring that consists of a monitoring program, land use census, and interlaboratory comparison program. These changes also incorporate into the Technical Specifications the bases that support the operation and surveillance requirements. In addition, some changes would be made in administrative

controls, specifically dealing with the process control program and the offsite dose calculation manual.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the Technical Specifications.

The Commission, in a revision to Appendix I, 10 CFR Part 50, required licensees to improve and modify their radiological effluent systems in a manner that would keep releases of radioactive material to unrestricted areas during normal operation as low as is reasonably achievable. In complying with this requirement it became necessary to add additional restrictions and controls to the Technical Specifications to assure compliance. This caused the addition of Technical Specifications described above. The Commission proposes to determine that the application does not involve a significant hazards consideration since the change constitutes additional restrictions and controls that are not currently included in the Technical Specifications in order to meet the Commission mandated release of "as low as is reasonably achievable."

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By November 28, 1983, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to interevene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satify the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement with satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of the amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facilities, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700).

The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to J. Michael McGarry, III, DeBevoise and Liberman, 1200 17th Street, N.W., Washington, D.C. 20036, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Dated at Bethesda, Maryland, this 24th day of October 1983.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 83-29256 Filed 10-26-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating License and Proposed No Significant Hazards Consideration Determinations and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to facility Operating License nos. NPF-9 and NPF-17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina. These amendments were requested by the licensee in a letter dated August 2, 1983.

One amendment would change Technical Specification 4.6.5.3.1 to increase the surveillance interval for verifying that the ice condenser inlet doors can be opened and closed properly and to increase the size of the sample required to be tested during each surveillance. The change would increase the surveillance interval from 6 months to 9 months and at the same time increase the sample size from 25% to 50%.

A second amendment would change Technical Specification Table 3.5-5, response time for steam line isolation from $\leq$ 9 seconds to $\leq$ 7 seconds. The change would reflect the response time value used in the safety analysis report.

A third amendment would change Technical Specification Table 3.7-4b to reflect deletion of 1 mechanical snubber on the Unit 2 Diesel Generator Lube Oil System and 1 mechanical snubber on the Unit 2 Safety Injection System. Deletion of these snubbers is allowed by the terms of the technical specification.

A fourth amendment would change Technical Specification 4.6.1.1.a to exempt locked valves, blind flanges and deactivated automatic valves located inside the annulus from monthly surveillance requirements. A similar exemption applies to components inside containment. Surveillance on the annulus components would be performed during cold shutdown.

A fifth amendment would change Technical Specification 4.6.1.3.b to require an overall containment airlock leakage test whenever maintenance has been performed on the air locks that could affect the air locking sealing capability. This change would constitute an exemption to Appendix J to 10 CFR Part 50.

The sixth amendment would change Technical Specification Table 3.6-1, by adding several secondary containment penetrations that were inadvertently omitted from the table due to administrative errors.

The seventh amendment would correct several Technical Specification administrative and typographical errors.

The eighth amendment would change Technical Specification Table 3.3-1 concerning the action required in the event one of the four instrumentation channels per steam generator is inoperable which actuate reactor trip upon low-low-steam generator water level. The change would allow bypassing the inoperable channel for up to 2 hours for surveillance testing of the remaining operable channels.

The ninth amendment would change Technical Specification 4.7.10.2.a to exclude sprinkler system valves from surveillance requirements which are inaccessible during plant operation and would add Specification 4.6.10.2.C.4 to require verifying the positions of those valves at least once per 18 months.

The final amendment would change Technical Specification 3.6.4.3/4.6.4.3 by clarifying that the Primary Containment Distributed Ignition System consists of two redundant trains to assure compatibility with operability as defined on a per train basis.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Because the function of the ice condenser doors is to mitigate the consequences of accidents, the proposed amendment to Technical Specification 4.6.5.3.1 does not involve a significant increase in the probability of an accident previously evaluated or a significant reduction in a margin of safety. Because no changes in operating conditions will result from the change in surveillance test interval, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because no changes in any accident analyses will result from the change in the surveillance test interval, the proposed amendment does not involve any increase in the consequences of an accident previously evaluated.

Because the proposed amendment to Technical Specification Table 3.3-5 is more restrictive than the current response time for steamline isolation and because it reflects both the FSAR Chapter 6 steamline break containment analysis and the Chapter 15 steamline break core analysis, the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated or a significant reduction in a margin of safety. Because the proposed amendment is more restrictive in operating conditions, the amendment

does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because no changes in any accident analyses will result from the change in response time, the proposed amendment does not involve any increase in the consequences of an accident previously evaluated.

Because the proposed amendment to Technical Specification Table 3.7–4b deleting 2 safety-related mechanical snubbers is based on meeting ASME code by reanalysis in one case and by installation of a rigid support in the secondary case, the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated or a significant reduction in a margin of safety. Because no change in operating condition will result, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because no changes in any accident analysis will result, the proposed amendment does not involve any increase in the consequences of an accident previously evaluated.

Because the proposed amendment to Technical Specification 4.6.1.1.a reduces the frequency of surveillance of the status of penetrations in the annulus but meets the acceptable criteria in the Standard Review Plan, Section 6.2.4, and because these penetrations are locked, sealed, or otherwise secured in the closed position, which the staff previously approved for Unit 1, the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated or a significant reduction in a margin of safety. Because no change in operating condition will result, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because no changes in any accident analysis will result, the proposed amendment does not involve any increase in the consequences of an accident previously evaluated.

The proposed amendment regarding the testing of the containment airlock leakage would reduce such testing from testing after each opening of the airlock in the current technical specification to testing when maintenance has been performed on the airlock that could affect the air locking capability. Because this change has little significance on Technical Specification 4.6.1.3.a requiring a seal integrity test prior to estabilshing containment integrity and once every 72 hours, the proposed amendment to Technical Specification 4.6.1.3.b does not involve a significant increase in the probability of an accident previously evaluated or a significant reduction in a margin of safety. Because no change in operating condition will result, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because no changes in any accident analysis will result, the proposed amendment does not involve any increase in the consequences of an accident previously evaluated.

Because the proposed amendment to Technical Specification Table 3.6–1 adds several additional penetrations to Table 3.6–1 of the Technical Specifications which were inadvertently omitted, the addition being more restrictive than existing requirements, the proposed amendment to Technical Specification Table 3.6–1 does not involve a significant increase in the probability of an accident previously evaluated or a significant reduction in a margin of safety. Because no change in operating condition will result, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because no changes in any accident analysis will result, the proposed amendment does not involve any increase in the consequences of an accident previously evaluated.

Because the proposed amendments to 5 Technical Specifications involve only administrative or typographical changes, the proposed amendments do not involve a significant increase in the probability of an accident previously evaluated or a significant reduction in a margin of safety. Because no change in operating condition will result, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because no changes in any accident analysis will result, the proposed amendment does not involve any increase in the consequences of an accident previously evaluated.

Because the proposed amendment to Technical Specification Table 3.3–1, achieves consistency within the technical specifications for continued operation with one steam generator low-low water level channel inoperable on reactor trip system instrumentation and because operation with one inoperable channel would be for a limited time period (up to 2 hours) to perform monthly surveillance testing, the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated or a significant reduction in a margin of safety. Because the change in operating condition is for a limited period of time, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because no changes in any accident analysis will result, the proposed amendment does not include any increase in the consequences of any accident previously evaluated.

Because the proposed amendment relates to surveillance of sprinkler system valves which are inaccessible during plant operation and are either locked or electrically supervised and meet the guidelines in the Standard Review Plan, extending the surveillance frequency from 31 days to 18 months as proposed in Technical Specification 4.7.10.2.a does not involve a significant increase in the probability of an accident previously evaluated or a significant reduction in a margin of safety. Because no change in operating condition will result, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because no changes in any accident analysis will result, the proposed amendment does not involve any increase in the consequences of an accident previously evaluated.

Because the proposed amendment to Technical Specification 3.6.4.3/4.6.4.3 achieves consistency throughout the technical specification by clarifying that these are two redundant trains of igniters in the Primary Containment Distributed Ignition System and because operability is more restrictive when two igniters on the same train are inoperable, the proposed technical specification does not involve a significant increase in the probability of an accident previously evaluated or a significant reduction in a margin of safety. Because no change in operating condition will result, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because no changes in any accident analysis will result, the proposed amendment does not involve any increase in the consequences of an accident previously evaluated.

Based on the foregoing, the Commission proposes to determine that each of these proposed license amendments does not involve significant hazards considerations.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By November 28, 1983, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for hearings and petitions for leave to intervene shall be filed in accordance with the Commision's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If requests for hearings or petitions for leave to intervene are filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the requests and/or petitions and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commision, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Albert Carr, Duke Power Company, P.O Box 33189, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242.

Dated at Bethesda, Maryland, this 21st day of October 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Licensing Branch No. 4, Division of Licensing.

[FR Doc. 83-29257 Filed 10-26-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas & Electric Corp., Availability of Safety Evaluation Report for R.E. Ginna Full-Term Operating License

Notice is hereby given that the Nuclear Regulatory Commission's Office of Nuclear Reactor Regulation has published its Safety Evaluation Report on the proposed conversion of Provisional Operating License No. DPR-

18 to a Full-Term Operating License for the R.E. Ginna Nuclear Power Plant located in Wayne County, New York. Notice of Consideration of Issuance of Full-Term Operating License was published in the **Federal Register** on December 8, 1972 (37 FR 26144).

The report is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the Local Public Document Room, Rochester Public Library, 115 South Avenue, Rochester, New York 14604, for inspection and copying. The report (NUREG–0944) can also be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 14th day of October, 1983.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 83–29258 Filed 10–26–83; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on November 17 and 18, 1983 in Room 5026, New Executive Office Building, Washington, D.C. The meeting will begin at 6:00 p.m. on November 17, recess and reconvene at 8:00 a.m. on November 18, Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The November 17 session and a portion of the November 18 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1), (2), and 9 (B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

The portion of the meeting open to the public will begin at 10:00 a.m. Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, Which House Science Council at (202) 456–7740, prior to 3:00 p.m. on November 16. Ms. Boyd is also available to provide further information regarding this meeting.

Dated: October 21, 1983.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

[FR Doc. 83–29190 Filed 10–26–83; 8:45 am]

BILLING CODE 3170-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: Hydropower Assessment Steering Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Review of Hydropower Assessment Steering Committee's Charter.
- Discussion of BPA Procurement Process: Development of a Work Statement.
- Discussion of Section 1204(b)(2) of Council's Fish and Wildlife Program (Cumulative Effects).
- Discussion of Section 1204(c) of Council's Fish and Wildlife Program (Protected Areas).
- Discussion of Work Schedule.
- Formation of Subgroups.
- Business.
- Public Comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee.

DATE: October 31, 1983, 9:00 a.m.

ADDRESS: The meeting will be held at the Council Hearing Room in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 83–29163 Filed 10–26–83; 8:45 am]

BILLING CODE 0000-00-M

SMALL BUSINESS ADMINISTRATION

Small Business Investment Company, Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.301(c) sets forth the SBA Regulations governing the maximum annual cost of money to small business concerns for Financing by small business investment companies.

Section 107.301(c)(2) requires that SBA publish from time to time in the **Federal Register** the current Federal Financing Bank (FFB) rate for use in computing the maximum annual cost of money pursuant to § 107.301(c)(1). It is anticipated that a rate notice will be published each month.

13 CFR 107.301(c) does not supersede or preempt any applicable law that imposes an interest ceiling lower than the ceiling imposed by that regulation. Attention is directed to new subsection 308(i) of the Small Business Investment Act, added by section 524 of Pub. L. 96–221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Effective November 1, 1983, and until further notice, the FFB rate to be used for purposes of computing the maximum cost of money pursuant to 13 CFR 107.301(c) is 11.615% per annum.

Dated: October 21, 1983.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 83–29236 Filed 10–26–83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[CM-8/678]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting of the Working Group on Transborder Data Flows (TBDF) of the Advisory Committee on International Investment, Technology, and Development on Monday, November 21, from 10:00 a.m. to noon. The meeting will be held in the Loy Henderson Conference Room of the State Department, 2201 C Street, NW., Washington, D.C.

An agenda for the meeting will include a report on the 3rd Session of the OECD Committee for Information, Computer and Communications Policy (ICCP), October, 1983, and preparations for the ICCP Symposium on TBDF, November 30–December 2, 1983.

Members of the public wishing to attend the meeting must contact Mr. Lincoln's office (202–632–2728) in order to arrange admittance to the State Department. Please use the "C" street entrance.

The Chairman of the Committee will, as time permits, entertain oral comments from members of the public attending the meeting.

Dated: October 18, 1983.

Philip T. Lincoln, Jr.,

Executive Secretary.

[FR Doc. 83-29200 Filed 10-26-83; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/677]

National Bipartisan Commission on Central America; Closed Meetings

The National Bipartisan Commission on Central America will meet in closed sessions on Wednesday November 16, 1983 and Thursday, November 17, 1983. The meetings will commence at 10 a.m. and will be held in Room 1105, Department of State, Washington, D.C.

These sessions will be closed to the public pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and (c)(9). The disclosure of classified material and revelation of considerations contributing to policy development could adversely affect U.S. foreign relations and would substantially undermine the conduct of U.S. foreign policy and the ability of the Commission to provide advice to the President, the Secretary of State and the Congress. These additional meetings have been scheduled to supplement those previously announced (48 FR 40338 and 48 FR 43755) to permit further discussion of security topics and other issuess.

Requests for further information should be directed to Sharon Mussomeli, Room 1004, Department of State. She may be reached by telephone on (202) 632–7804.

Dated: October 19, 1983.

Harry W. Shlaudeman,

Executive Director.

[FR Doc. 83-29199 Filed 10-26-83; 8:45 am]

BILLING CODE 4710-29-M

[CM-8/676]

Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on November 14, 1983 at the U.S. Naval Observatory, Room 300, Building 52, 34th and Massachusetts Avenue, NW., Washington, D.C. The meeting will begin at 8:30 a.m.

Study Group 7 deals with time-signal services by means of radiocommunications. The purpose of the meeting is to review the progress of work in preparation for the international Study Group 7 meeting to be held in November 1983.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, D.C. 20520 (telephone (202) 632–2592).

Dated: October 20, 1983.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 83-29198 Filed 10-26-83; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-83-23]

Petitions for exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comment on petitions received must identify the petition docket number involved and must be received on or before November 18, 1983.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No.———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination of the Rules Docket (AGC–204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., October 21, 1983.

John H. Cassady,

Assistant Chief Counsel Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
22457	American Airlines Flight Safety	14 CFR 121.99 and 121.351	To extend Exemption 3462, which expires Jan. 1, 1984, to permit petitioner to operate its airplane in extended overwater operations over the Gulf of Mexico to the Yucatan Peninsula with one of two installed high frequency communication radio systems inoperative at the time of departure and with only one long-range navigational radio system as the primary means of navigation for the extended overwater operations, subject to certain limitations.
23749	Dow Corning Corp	14 CFR Portions of Parts 21 and 91	To permit petitioner to operate its Falcon 10-026. Faclon 10-180, and King Air 200-BB547 in accordance with a minimum equipment list.
23782	Continental Airlines	14 CFR Part 121, Portions of Appendix H	To permit petitioner to conduct training and checking under Phase II using petitioner's DC-9 SIM 2, advanced simulator which does not meet the "continuous field of view" requirement.
23757	Evergreen State Balloon Co	14 CFR 101.13(a)(4)	To allow relief from the prohibition on conducting moored balloon operations within 5 miles of an airport.
23778	Department of Navy, NAVSWC, Atlanta, GA	14 CFR 91.70 (a) and (b)	To allow high speed operations in conjunction with low level bombing training operations in the Ft. Lauderdale Airport Traffic Area and adjacent airspace.
23760	Alaska, State of, Division of Forestry	14 CFR 91.79 (b) and (c)	To allow relief for accomplishment of fire suppression and natural resources missions and for the purpose of dropping aerial retardent or water in congested areas.
18114	The Flying Tiger Line, Inc	14 CFR 121.547(c) and 121.583(a)	To extend Exemption 2600B, which expires Jan. 31, 1984, to permit petitioner to carry a reporter, photographer, or journalist aboard its B-747 and DC-8 airplanes without complying with the passenger-carrying requirements of Part 121, subject to certain conditions and limitations.
8429	Northern Air Cargo, Inc	14 CFR 91.39 and 121.157	To amend and permanently extend Exemption 770M, which terminates on December 31, 1983, and which permits petitioner to use its restricted category C-82 airplanes to carry only out-sized cargo for compensation or hire subject to certain other conditions and limitations. The petitioner requests relief from the out-size cargo conditions of present exemption.
23768	Mountain West Helicopters	14 CFR 135.261(b)	To permit petitioner to operate its helicopters in a hospital emergency medical evacuation service without complying with the duty time limitations.
12638	Airport Transport Association of America obh/ Capital Air, Inc.	14 CFR 121.99 and 121.351.(a)	To amend Exemption 2081F to include Capital Air, Inc., in the provisions of the exemption to operate turbojet airplanes on certain routes between certain New York oceanic control area reporting points and San Juan with one of two installed high frequency communications systems inoperative at the time of departure and without maintaining two-way radio communications between each airplane, and the dispatch office along with named routes subject to certain conditions.
22436	American Airlines	14 CFR 121.99 and 121.351(a)	To extend Exemption 3493, which expires Jan. 31, 1984, to permit petitioner to operate its turbojet aircraft on routes in the New York Oceanic Control Area between the east coast and Bermuda with one of its two installed high frequency communications systems inoperative at the time of departure and without maintaining two-way radio communications between each aircraft and the dispatch office along the named route.
23784	Royal American Airways	14 CFR 121.291	To permit petitioner to increase the passenger seats on the 700 series Viscount aircraft to 60 without conducting a demonstration of emergency evacuation procedures.
23714	Ragsdale Aviation, Inc	14 CFR 91.181	To allow petitioner to charge for necessary expenses as listed in § 91.181(d) when demonstrating single and multi piston-engine aircraft.
19242	Northwest Orient	14 CFR 91.32(b)(i)(ii) and 121.333(c)(2)	Extension of Exemption 2795A which permits petitioner to operate B-747-100 aircraft above flight level 410 without one pilot at the controls of the aircraft wearing and using an oxygen mask secured, sealed, and supplying oxygen.
23765	American Airlines	14 CFR 121.434(e)	To allow petitioner to meet 50 percent of the required operating experience for flight attendants in a simulated flight of at least 2.5 hours on a static airplane in lieu of actual aircraft operating experience.
23777	OMAC Inc	14 CFR 23.49	To allow certification of OMAC Model I without compliance with the 61-knot stall speed requirements.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23678	Robert G. Rubens	14 CFR 121.383(c)	To permit petitioner to continue to serve as a pilot under Part 121 operations beyond the date of his 60th birthday. *Denied Sept. 23, 1983.*
23680	Air-Lift Associates, Inc	14 CFR 135.244	To permit petitioner to use pilots in command for commuter flights without the pilot flying 15 hours with a qualified check pilot prior to assignment on the commuter route. *Denied Sept. 22, 1983.*
23470	Suburban Airlines, Inc. (SAL)	14 CFR 121.667(a)	To reconsider Denial of Exemption 3731 to permit petitioner's pilots in command to take off and continue the flight without a visual flight rule (VFR) flight plan being filed with the nearest FAA communication station as long as the flight operates in VFR weather. *Denied Sept. 26, 1983.*
23527	Edward Caskey	14 CFR 65.91(c)(1)	To permit petitioner to apply for an inspection authorization although he does not meet the 3-year requirements for continuously holding a mechanic certificate. *Denied Oct. 5, 1983.*
23545	Robert J. Rechs	14 CFR 61.39, 61.45, 61.105, and 61.107	To permit petitioner to take a flight test for an airship pilot rating in an experimental aircraft that uses hot air for bouyancy rather than helium. *Denied Oct. 5, 1983.*
23656	Kenneth W. Larson	14 CFR 121.383(c)	To permit petitioner to continue to serve as a pilot under Part 121 operations beyond the date of his 60th birthday. *Oct. 12, 1983.*
23693	Robert S. Jondahl	14 CFR 121.383(c)	To permit petitioner to continue to serve as a pilot under Part 121 operations beyond the date of his 60th birthday. *Oct. 13, 1983.*
23676	Supersonic Express Corp	14 CFR Part 91, § 91.55, and Appendix B § 2(b).	To permit petitioner an exemption from the sonic boom restrictions for an unspecified period of time. *Denied Oct. 14, 1983.*
23568	Air Vegas, Inc	14 CFR 135.113, formerly § 135.53	To permit petitioner to operate its Cessna 404 aircraft, configured with 9 passenger seats, in Part 135 passenger-carrying operations with one passenger occupying a pilot seat. *Granted Sept. 22, 1983.*
23543	Arnautical, Inc	14 CFR 61.63(d) (2) and (3), and 61.157(d)(1)	To permit petitioner's trainees to complete a practical test in an airplane simulator, as set forth in Appendix A to Part 61, for the issuance of a type rating to be added to any grade of pilot certificate. *Sept. 23, 1983.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
21605	Alaska Airlines, Inc	14 CFR 121.574(a)(1)	To reinstate Exemption 3304, which expired July 31, 1983, to permit petitioner to carry and operate oxygen storage and dispensing equipment for medical use by patients requiring emergency medical attention and being carried as passengers when the equipment is furnished and maintained by hospitals within the State of Alaska, subject to certain conditions and limitations. *Granted Sept. 23, 1983.*
23773	Air Pacific, Ltd	14 CFR portions of Parts 21 and 91	To operate one leased, U.S.-registered Douglas DC-10-30 (DC-10) aircraft, N821L, using an FAA-approved minimum equipment list and Western Airlines' continuous airworthiness maintenance and inspection program. *Granted Sept. 26, 1983.*
NM-9	Lockheed-California Co	14 CFR 25.1303(c)(1), 25.1581, and 25.703(a).	To permit the amended type certification of the Model L-1011-385-3 with: (1) An overspeed warning tolerance 6 knots greater than allowed by the FAR, (2) a flight manual whose performance section is computed from British Civil Air Regulations criteria rather than FAR criteria, and (3) a takeoff warning system that does not automatically actuate if the airplane's wing flaps or leading edge devices are not within the approved range of takeoff position. *Granted Sept. 22, 1983.*
23745	SwissAir	14 CFR portions of Parts 21 and 91	To allow SwissAir to operate and maintain two Boeing 747 aircraft using an FAA-approved continuous airworthiness maintenance program. *Granted Sept. 27, 1983.*
20818	Ransome Airlines	14 CFR 135.429(a) and 135.435	Extension of Exemption 3166A to permit petitioner to employ Societe Nationale Industrielle Aerospatiale, Sasmat Rousseau Aviation, Turbomeca, and Ratier-Figeac, all located in France, and Lucas Aerospace Limited, located in England to perform maintenance, preventive maintenance, and alterations on Nord 262 airplanes listed in the operations specifications of Ransome Airlines subject to conditions and limitations. *Granted Sept. 28, 1983.*
23697	Fischer Bros. Aviation	14 CFR 121.61(c)(1)	To allow Mr. James Sessor to serve as director of maintenance for petitioner, with less than 5 years experience in maintenance of large aircraft. *Granted Sept. 28, 1983.*
NM-8	The de Havilland Aircraft of Canada, Ltd	14 CFR 25.571(e)(2)	To allow petitioner's DHC-8 aircraft to be certificated without meeting the propeller blade impact requirements. *Granted Sept. 30, 1983.*
23361	Japan Air Lines Co	14 CFR 11.53	To amend Exemption 3664 to permit petitioner to operate two additional leased, U.S.-registered B-747 aircraft, N212JL and N213JL, and to extend the exemption to permit petitioner to continue to operate a leased, U.S.-registered Boeing B-747 aircraft using an FAA-approved minimum equipment list in conjunction with an FAA-approved maintenance and inspection program. *Granted Oct. 12, 1983.*
21960	Florida Aircraft Leasing Corp	14 CFR 91.31	Amendment to Exemption 3458 to allow petitioner to operate certain of its aircraft without complying with the zero fuel and landing weight requirements of the operating limitations prescribed for these aircraft in the FAA-approved flight manual, subject to certain conditions and limitations. The amendment would delete Douglas DC-6A, S/Ns 44102 and 44619 and DC-6B SN 44894 from, and add Douglas DC-6A, S/N 44602, to, the exemption. *Granted Oct. 13, 1983.*
17399	Flying Tiger Line, Inc	14 CFR 121.4583(a)(8)	Renewal of Exemption 2520B, which expired March 31, 1983, to allow petitioner to carry dependents of its employees on DC-8 cargo aircraft subject to certain conditions and limitations. *Granted Oct. 3, 1983.*
18920	Transamerica Airlines, Inc. (TIA); World Airways, Inc. (WLD).	14 CFR 65.51, 121.105, 121.107, 121.395, 121.465, 121.533, 121.535, 121.593, 121.595, 121.599, and 121.601.	To reconsider the Partial Grant of Exemption 2947C issued to both petitioners on April 29, 1983 and which would have terminated, as amended, on September 30, 1983, and which permits both petitioners to conduct scheduled passenger service over certain routes, authorized by the Civil Aeronautics Board, utilizing the flight control/dispatch procedures, communication procedures, and enroute servicing and maintenance procedures of Part 121 that are applicable to supplemental air carriers. *Granted Sept. 29, 1983.*
23288	Butler Aviation International Inc	14 CFR 135.165(b)	To permit petitioner to operate its Hawker Siddeley, HS-125-400A, in extended overwater operations with only one Omega long-range navigation system and one high frequency communication system. *Granted Sept. 30, 1983.*
23748	Airpac, Inc	14 CFR 121.411, and 121.413	To use British Aerospace pilots to train petitioner's pilots, check airmen, flight instructors, and flight crew members in the BAe 146 aircraft. That training will be conducted in the United Kingdom. *Granted Oct. 3, 1983.*
23647	Embry-Riddle Aeronautical University	14 CFR 141.65	To permit petitioner to recommend graduates of its certified flight instructor courses for certificates without taking the Federal Aviation Administration flight or written test. *Granted Oct. 4, 1983.*
23664	Parks Industries, Ltd., Inc	14 CFR 21.195	To permit petitioner, who is a manufacturer, to apply for an experimental airworthiness certificate for an aircraft to be used for market surveys and sales demonstrations. *Granted Oct. 5, 1983.*
21961	Deere & Co	14 CFR 91.45	To permit petitioner to conduct certain ferry flights in a Lockheed L-1329 JetStar with one engine inoperative without obtaining a special flight permit for each flight. *Granted Sept. 26, 1983.*
22286	Finnair	14 CFR 21.197	To extend Exemption 3450, which expires Jan. 1, 1984, to allow petitioner to use a special flight permit with continuing authorization for DC-10-30 aircraft N-345HC subject to certain conditions and limitations. *Granted Oct. 17, 1983.*
23802	Pan American World Airways	14 CFR 21.181	To allow the operation of a Boeing B-707-321 aircraft, N880PA, using an FAA-approved minimum equipment list. *Granted Oct. 17, 1983.*
23667	Idaho Helicopters, Inc	14 CFR 43.3(g)	To permit petitioner's pilots, who are appropriately trained and certificated, to remove, inspect, clean as necessary, and reinstall magnetic chip detector plugs in certain aircraft. *Granted Oct. 18, 1983.*

[FR Doc. 83-29167 Filed 10-26-83; 8:45 am]
BILLING CODE 4910-13-M

Maritime Administration

Maritime Advisory Committee—Working Group on Ship Costs

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Maritime Advisory Committee's Working Group on Ship Costs will meet Thursday, November 10, 1983, at 8:30 a.m. The meeting will be held in The Whitehall Club, 17 Battery Place, 29th Floor, Room 6, New York, New York. The Working Group is developing recommendations relating to vessel capital costs, auxiliary equipment costs and corporate management costs

to assist in making the industry more competitive in worldwide marine transportation. The meeting will be open to the public on a space available basis.

By Order of the Maritime Administrator.

Date: October 21, 1983.

Georgia P. Stamas,

Secretary.

[FR Doc. 83-29177 Filed 10-26-83; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Safety Defect Investigations of Volkswagen Brake Lines and Fuel Pump Electrical Circuits; Public Proceeding Cancelled

The National Highway Traffic Safety Administration has cancelled the public proceeding announced in the **Federal Register** of September 16, 1983 (44 FR 41669) regarding its initial determination of safety-related defects in certain vehicles manufactured or imported by Volkswagen of America, Inc. One initial determination covered the service braking systems in 1975–1980 Volkswagen Rabbits and Sciroccos manufactured in Germany by Volkswagen AG. The other intitial determination covered certain components of the fuel pump electrical circuit in 1977–1980 Rabbits; 1976–1982 Sciroccos; 1980–1982 Jettas; 1976–1980 Dashers; 1980 Volkswagen pick-up trucks; 1980–1982 Volkswagen covertibles; 1976–1979 Audi Fox; and 1980–1981 Audi 4000 vehicles manufactured or imported by Volkswagen of America, Inc. and equipped with gasoline-powered fuel injected engines. The meeting was to be held at 10:00 a.m. on October 24, 1983 in Room 2230 of the Department of Transportation Building, 400 Seventh Street, SW., Washington, DC 20590.

(Sec. 152, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1412); delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 20, 1983.

George L. Parker,

Acting Associate Administrator for Enforcement.

[FR Doc. 83-29179 Filed 10-24-83; 12:30 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular Public Debt Series—No. 31-83]

Notes of Series 2-1985; Interest Rate

October 20, 1983.

The Secretary announced on October 19, 1983, that the interest rate on the notes designated Series Z-1985, described in Department Circular—Public Debt Series—No. 31-83 dated October 13, 1983, will be 10½ percent. Interest on the notes will be payable at the rate of 10½ percent per annum.

Carole J. Dineen,

Fiscal Assistant Secretary.

[FR Doc. 83-29185 Filed 10-26-83; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

Application for Recordation of Trade Name: "Zahnradfabrik Friedrichshafen, AG."

AGENCY: U.S. Cusoms Service, Department of the Treasury.

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Zahnradfabrik Friedrichshafen, AG.," used by Zahnradfabrik Friedrichshafen, AG., a corporation organized under the laws of the West Germany, located at D-7990 Friedrichshafen 1, West Germany.

The application states that the trade name is used in connection with the following merchandise manufactured and distributed throughout the world: gear units for machines; machine parts; brake testing stands; testing instruments and parts for land vehicles.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATE: Comments must be received on or before December 27, 1983.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229; (202-566-5765).

Dated: October 21, 1983.

Marilyn G. Morrison,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 83-29184 Filed 10-26-83; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 209
Thursday, October 27, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Consumer Product Safety Commission	1
Federal Communications Commission	2
Federal Election Commission	3
Federal Mine Safety and Health Review Commission	4, 5
Federal Trade Commission	6
National Labor Relations Board	7
National Mediation Board	8

1

CONSUMER PRODUCT SAFETY COMMISSION

Commission Meeting

TIME AND DATE: 10 a.m. Wednesday, November 2, 1983.

LOCATION: Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C. 20207.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

Complaint Handling Process: FY 83 Report

The staff will brief the Commission on the results of a study of Consumer Complaint Processing in FY 83.

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 Avenue, Bethesda, Md. 20207; 301-492-6800.

[S-1511-83 Filed 10-25-83; 4:06 pm]

BILLING CODE 6355-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From October 19th Open Meeting

October 18, 1983.

The following item has been deleted at the request of the Office of Commissioner Dawson from the list of agenda items scheduled for consideration at the October 19, 1983 Open Meeting and previously listed in the Commission's Notice of October 12, 1983.

Agenda, Item No., and Subject

Audio—1—*Title:* License Renewal Applications of Pacifica Foundation for Station WPFW (FM), Washington, D.C. *Summary:* The Commission considers a petition to deny filed by the American Legal Foundation.

William J. Tricarico,
Secretary, Federal Communications Commission.

[S-1504-83 Filed 10-25-83; 10:25 am]

BILLING CODE 6712-01-M

3

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 1, 1983, 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, telephone: 202-523-4065.

Marjorie W. Emmons,
Secretary of the Commission.

[S-1506-83 Filed 10-25-83; 1:41 pm]

BILLING CODE 6715-01-M]

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 19, 1983.

TIME AND DATE: 10 a.m., Wednesday, October 26, 1983.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. U.S. Steel Mining Co., Inc., Docket No. PENN 82-337; Petition for Discretionary Review. (Issues include whether the administrative law judge properly concluded that the operator violated 30 CFR 75.1105, which deals in part with the ventilation of underground battery-charging stations, and that the violation was significant and substantial.)
2. Ralph Yates v. Cedar Coal Co., Docket No. WEVA 82-360-D; Petition for Discretionary Review. (Issues include whether the administrative law judge erred in dismissing the discrimination complaint.)
3. Youghiogheny & Ohio Coal Co., Docket No. LAKE 83-36; Petition for Discretionary Review. (Issues include whether the administrative law judge properly concluded that the operator violated 30 CFR 75.308, which deals with methane accumulations in face areas, and whether the judge appropriately assessed the penalty.)
4. David Hollis v. Consolidation Coal Company, Docket No. WEVA 81-480-D. (Issues include whether the judge erred in dismissing the discrimination complaint.)
5. Mid-Continent Resources, Inc., Docket No. WEST 82-174. (Issues include whether the judge properly concluded that the operator violated 30 CFR 75.511, which deals with safe performance of electrical work on equipment.)
6. Energy Fuels Nuclear, Inc., Docket No. WEST 81-385-M. (Issues include whether the judge erred in concluding that the operator did not violate 30 CFR 57.6-116, which deals with safe ignition of fuses.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

Jean Ellen,
Agenda Clerk.

[S-1502-83- Filed 10-25-83; 10:26 am]

BILLING CODE 6735-01-M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 19, 1983.

TIME AND DATE: 10 a.m., Wednesday, November 2, 1983.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the following case:

1. Secretary of Labor, Mine Safety and Health Administration v. Metric Constructors, Inc., Docket No. SE 80-31-DM. (Issues include whether the administrative law judge properly concluded that the operator discriminatorily discharged miners, and whether he awarded the miners appropriate relief.)

TIME AND DATE: Following oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the above case. It was determined by a majority vote of Commissioners that this meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

Jean Ellen,
Agenda Clerk.

[S-1503-83 Filed 10-25-83; 10:27 am]

BILLING CODE 6735-01-M

6

FEDERAL TRADE COMMISSION

TIME AND DATES: 10 a.m., Tuesday, October 25, 1983.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Meeting with Delegation from Japan Fair Trade Commission led by its Chairman to consider enforcement policies.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Information (202) 523-1892; recorded message (202) 523-3806.

[S-1505-83 Filed 10-25-83; 11:55 am]

BILLING CODE 6750-01-M

7

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 10 a.m., Wednesday, 26 October 1983.

PLACE: Board Conference Room, sixth floor, 1717 Pennsylvania Avenue NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(9)(B) (disclose information the premature disclosure of which would * * * be likely to significantly frustrate implementation of a proposed agency action * * *.)

MATTERS TO BE CONSIDERED: Internal case-handling procedures.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570, telephone (202) 254-9430.

Dated at Washington, D.C., October 25, 1983.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[S-1507-83 Filed 10-25-83; 3:21 pm]

BILLING CODE 7545-01-M

8

NATIONAL MEDIATION BOARD

TIME AND DATE: 2 p.m., Wednesday, November 2, 1983.

PLACE: Board Hearing Room, Eighth floor, 1425 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of October, 1983.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, telephone (202) 523-5920.

Dated: October 25, 1983.

[S-1509-83 Filed 10-25-83; 3:25 pm]

BILLING CODE 7550-01-M

federal register

Thursday
October 27, 1983

Part II

Department of Labor

Wage and Hour Division, Employment Standards Administration

Service Contract Act; Labor Standards for Federal Service Contracts

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 4

Service Contract Act; Labor Standards for Federal Service Contracts

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule

SUMMARY: This document provides the final text of regulations on Labor Standards for Federal Sevice Contracts, 29 CFR Part 4, issued under the Service Contract Act. Major revisions to the stayed January 1981 regulations include a two-step determination procedure where the geographic place of contract performance is unknown; elimination of the provisions that made bid specifications principally for services subject to the Act when the principal purpose of the contract as a whole is not for services, and the related provision that made separate janitorial and maintenance specifications on contracts for lease of building space subject to the Act; guidelines indicating when contracts for major overhaul or modification of equipment are subject to the Service Contract Act or Walsh-Healey Act; an exemption for certain contracts for the maintenance and repair of automated data processing equipment including office information systems, and certain scientific and medical apparatus, and for maintenance and repair of office/business machines when such work is performed by the manufacturer or supplier of the equipment; modification of the provisions that covered many timber sales contracts to provide that generally their principal purpose is sale and they are not subject to the Act; modification of the provisions that covered demolition/sales contracts to provide that they are covered if the principal purpose is service but not if it is sale; revisions to ease the procedure for obtaining additional classifications when such actions have been taken in the past; and a limitation of the application of section 4(c) of the Act to situations where the successor contractor performs the contract in the same locality as the predecessor contactor. It has been determined that proposed revisions to cover only contracts performed principally by service employees, and to exempt research and development contracts, should not be made. In addition, significant revisions have been made to the proposed regulations to apply the limitation on section 4(c) where contracts are reconfigured only to situations where the predecessor contracts were for the same or similar work functions performed by substantially the same job classifications; to eliminate the exemption for visitor information services from the exemption for certain concessions serving the general public; and, in the proposal concerning maintenance of wash-and-wear uniforms, to clarify that a requirement of daily washing is special treatment requiring compensation and further, that with respect to section 4(c) wage determinations, the amount negotiated for uniform maintenance is deemed to be the cost thereof.

DATES: Effective date: December 27, 1983. However, also see the **SUPPLEMENTARY INFORMATION** below for dates of applicability.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (telephone: 202-523-8305).

SUPPLEMENTARY INFORMATION: On December 28, 1979, and December 12, 1980, proposals were published in the **Federal Register** (44 FR 77036, 45 FR 81785) to make certain revisions to 29 CFR Part 4, Service Contract Act; Labor Standards for Federal Service Contracts. The purpose of these changes was to revise, update, and clarify this regulation.

On January 16 and 19, 1981, revised Part 4 was published in the **Federal Register** (46 FR 4320; 46 FR 4886) as a final rule. However, pursuant to the President's Memorandum of January 29, 1981, the Department published a notice in the **Federal Register** on February 12, 1981 (46 FR 11971), delaying implementation of this regulation until April 17, 1981. The Department further delayed its implementation until August 15, 1981, in order to permit reconsideration pursuant to Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 28, 1981); 46 FR 33515 (June 30, 1981); 46 FR 36140 (July 14, 1981). This executive order required the Department to postpone the effective date of major rules promulgated in final form which had not yet become effective; the order required the Department to reconsider those rules to ensure, *inter alia*, that the rules maximize the net benefits to society at the least net cost, that the rules are clearly within the authority delegated by law and consistent with congressional intent, and that any factual conclusions upon which the rule is based have substantial support in the agency record, with full attention to comments of the public in general and of persons directly affected in particular.

On August 14, 1981, after reconsideration in accordance with Executive Order 12291, a new regulatory proposal substantially revising several provisions of the January 1981 regulation, was published in the **Federal Register** (46 FR 41380) and the previously published rule was further postponed until action could be taken on the new proposal (46 FR 41044).

Interested persons were affored the opportunity to submit comments to the Wage and Hour Division within 60 days after publication of the proposal in the **Federal Register**. Subsequently, on October 13, 1981, a notice was published in the **Federal Register** (46 FR 50397) extending the time for public comment until December 1, 1981, in order to leave the record open while public hearings were conducted on the proposed rule at Merritt Island, Florida, on November 19 and 20, 1981. *See* 45 FR 51405 (October 20, 1981).

Comments were received from approximately 1,600 interested parties, including Members of Congress, contracting agencies, contractor associations, contractors, labor organizations, universities, business organizations, and many individuals, particularly employees covered by the Act. Contractor associations and business organizations submitting comments included the Computer and Business Equipment Manufacturers Association (CBEMA), the Scientific Apparatus Makers Association (SAMA), the Natonal Council of Technical Service Industries (NCTSI), the Council of Defense and Space Industry Associations (CODSIA), the United States Chamber of Commerce (C of C), the American Electronics Association (AEA), and the National Forest Products Association (NFPA).

Among the individual firms who commented were International Business Machines Corporation, Texas Instruments Incorporated, Hewlett-Packard Company, Honeywell Information Systems, Inc., Eastman Kodak Company, Sperry Corporation, and Xerox Corporation.

A number of colleges and universities submitted comments, including Yale University, the University of Chicago, Harvard University, and Princeton University.

Labor organizations commenting on the proposal included the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), the

International Association of Machinists and Aerospace Workers (IAM), the Laborers' International Union of North America (LIUNA), the United Brotherhood of Carpenters and Joiners of America (UBC), the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada-Motion Picture Laboratory Technicians Local 780 (IATSE), the International Brotherhood of Electrical Workers (IBEW), the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Teamsters), the Service Empolyees International Union (SEIU), the Seafarers International Union (SIU), the United Plant Guard Workers of America (UPGWA), and others. Among those Federal agencies submitting comments were the Department of Defense (DOD), the Department of Energy (DOE), the National Aeronautics and Space Administration (NASA), the General Services Administration (GSA), the Office of Advocacy of the Small Business Administration (SBA), and the Department of the Interior.

The following is an analysis of the provisions for which substantive changes were proposed in the final regulations published on January 16, and 19, 1981, as well as discussion of any additional provisions on which major comments were received and suggestions for revisions made. The analysis includes an outline of the history of the provision, including (a) its contemporaneous construction, (b) a description of the corresponding provision (if any) in the existing regulations, (c) current practice, (d) a description of the corresponding provision (if any) in the January 1981 regulations, and (e) a description of the provision proposed on August 14, 1981. This is followed by a description of the major comments received. Finally, the analysis explains the final decision made. With respect to each issue involving statutory interpretation, we have taken into consideration the principle that the Service Contract Act is remedial legislation which should be broadly construed to effectuate its purpose, but at the same time recognizing that this rule cannot defeat the intent of Congress or the evident meaning of the Act. 3 Sutherland ¶60.01 (1974) ed.).

Sections 4.1b(a), 4.10(b)(2), 4.163(c)—Effective Date of Variance Decisions

Section 4(c) of the Act provides generally that every contractor under a contract which succeeds a contract for substantially the same services is required to pay its service employees at least the wages and fringe benefits provided in the collective bargaining agreement, if any, which were applicable to the preceding contract. An exception is provided, however, if the collective bargaining agreement was not reached as a result of arm's-length negotiations or if the Secretary finds after a hearing that the negotiated wages and benefits are substantially at variance with those prevailing in the locality. On occasion, a decision that there is a substantial variance is not reached and a new wage determination issued until after contract award and commencement of performance. The question which arises is whether that wage determination should be retroactive to commencement of performance.

History of Provision

(a) Contemporaneous construction—It has generally been the Department's practice, on the rare occasions when this issue has arisen, to issue wage determinations retroactive to commencement of performance where the result is to increase the wages which otherwise would have been required, but to issue wage determinations prospectively only where there is a decrease in wages so as not to recoup wages from the workers.

(b) Existing regulations—There is no corresponding provision.

(c) Current practice—Same as (a).

(d) January 1981 regulations—Provided that all wage determinations issued after a finding of substantial variance would be effective as of the date of the decision of the administrative law judge or, if appealed, the Board of Service Contract Appeals.

(e) Proposed regulations—Same as (d).

Comments

DOE and NASA expressed concern over the timeliness of substantial variance decisions under section 4(c) of the Act if, as proposed, a new wage determination issued as the result of a finding of a substantial variance does not become applicable until the date of the decision of the Administrative Law Judge, or if appealed, the decision of the Board of Service Contract Appeals. They commented that, unless the decision is made retroactive to the start of the contract, the regulations needed to provide some time limits to insure the expeditious handling of substantial variance proceedings so that the process would be effective in rectifying serious imbalances between collective bargaining agreements and locally prevailing wage rates and fringe benefits.

Discussion of Final Rule

As section 4.163(c) explains, the legislative history of the 1972 amendments makes clear that the collectively bargained "wages and fringe benefits shall continue to be honored * * * unless and until the Secretary finds, after a hearing, that such wages and fringe benefits are substantially at variance with those prevailing in the locality for like services" (S. Rept. 92-1131, 92nd Cong. 2d Sess. 5). Therefore, it is the Department's view that retroactive wage determinations, as suggested by the agencies and as practiced by the Department in the past in some circumstances, are not consistent with the Act. It is also our view that a uniform rule (unlike that observed in the past) is appropriate, and that neither the contractor nor the workers should be penalized by retroactive application of the new wage determination. Accordingly, sections 4.1b(a) and 4.163(c) are adopted as proposed with minor clarification.

With respect to the comments regarding time limits for the handling of substantial variance hearings, we note that certain time limits are provided in this regulation as well as in 29 CFR Parts 6 and 8 in order to facilitate the expeditious handling of substantial variance hearings. It appears that the imposition of stricter time limits on the hearings themselves would not be practical because of great variations in the scope and complexity of the issues which often need to be considered. In response to this concern, however, we are amending section 4.10(b)(2) to provide that, within 30 days, the Administrator will respond to a request for a substantial variance hearing or notify the requesting party of a delay if additional time is necessary to consider the matter.

Sections 4.3, 4.4, and 4.53—Locality Basis of Wage Determinations When Place of Contract Performance Is Unknown at Time of Bid Solicitation

Section 2 (a) of the Act requires that the minimum monetary wages and fringe benefits specified in a wage determination be "in accordance with prevailing rates * * * in the locality." Since the Act does not define "locality", a problem arises with respect to those contracts where, due to the nature of the procurement, the place of contract performance (usually a contractor's plant) cannot be established at the time of bid solicitation.

History of Provision

(a) Contemporaneous construction—Initially, following the recognition of the problem, the locality of the government installation or facility issuing the bid solicitation was the preferred locality, regardless of where the contract would be performed. This approach was overturned in *Descomp* v. *Sampson*, 377 F. Supp. 254, 266 (D. Del 1974), in which the court concluded that the term "locality" as used in the Act "refers to the area where the services are actually performed." The Department then adopted a composite approach under which the locality encompassed the entire geographic area in which, based on the nature of the procurement, the contract would likely be performed. Thus, the composite "locality" might encompass several states or even be nationwide in scope. However, in *Southern Packaging and Storage Co., Inc.* v. *United States*, 618 F.2d 1088 (4th Cir. 1980), the Fourth Circuit held that nationwide composite wage determinations normally are not permissible and required in that case that DOL issue separate wage determinations for each potential contractor's locality. The court further postulated that nationwide wage determinations might be permissible "in the rare and unforeseen service contract which might be performed at locations throughout the country and which would generate truly nationwide competition."

(b) Existing regulations—A general discussion of locality is set forth at section 4.163, but there is no specific provision concerning locality where place of performance is unknown.

(c) Current practice—As a result of *Southern Packaging*, when the place of performance is unknown at the time of bid solicitation, separate wage determinations are generally issued whenever prospective bidders are identified in advance by the contracting agency. When no such information is provided, or the number of prospective bidders is too numerous, a composite wage determination is issued.

(d) January 1981 regulations—Provided generally at section 4.53 that the proper locality shall be "defined in each such [wage] determination upon the basis of all the facts and circumstances pertaining to that determination," ordinarily limited to a particular county or metropolitan area, but in some circumstances a State or a region. In addition, the regulation noted that the court in *Southern Packaging* held that normally a nationwide wage determination would not be permissible. There was no specific provision in these regulations concerning the appropriate locality where the place of performance cannot be ascertained at the time of bid advertisement.

(e) Proposed regulations—Provided the same general provision concerning locality as the January 1981 regulations. In addition, specified at section 4.4(b) that where the place of performance is unknown at time of bid advertisement, "wage determinations will generally be issued for each locality identified by the [contracting] agency" under a two-step procedure, the first step being identification by the agency of prospective bidders and their localities, and the second, issuance of wage determinations for the locality of each bidder. The proposal provides that in "extraordinary circumstances," where the two-step procedure is not practicable, the procedure may be altered upon the request of the contracting agency and wage determinations for one or more composite localities may be issued.

Comments

The concept of a two-step procurement procedure was supported generally by DOD, GSA, NCTSI, and the C of C. DOD suggested that the former one-step procedure should be available at the contracting agency's option, utilizing the locality of the procuring agency. NCTSI, on the other hand, stated that exceptions should never be allowed.

The proposal was opposed by IAM, LIUNA, and SEIU, which asserted that a two-step procurement procedure would grant a competitive advantage to bidders in "low wage" areas and channel contract awards to those areas. The unions cited legislative history which they interpreted as being contrary to a two-step procurement procedure. They also cited the rejection by a House oversight subcommittee in 1974 and 1975 of a two-step procedure, as well as DOL's 1976 withdrawal of proposed regulations which would have established such a procedure. The SEIU suggested that instead of the two-step procedure, the Department should utilize the locality of the procuring agency or the predecessor contractor.

The Department of Interior objected to a two-step procedure for advertised solicitations on the ground that excessive delays would occur. It recommended the procedure be limited to negotiated procurements only.

Discussion of Final Rule

The Department continues to be of the view that the proposed two-step procedure is the best means of addressing the problem of procurements where the place of performance is unknown. This new procedure is designed to insure that the successful bidder will be required to pay at a minimum the rates prevailing in the geographic location where the work is performed. Such a process is consistent with the purpose of the Act to prevent the importation of wage rates from other areas and disruption of labor markets which would occur under other methods, such as the locality of the procuring agency or the predecessor contractor.

Central to the unions' contention that a two-step procedure is not in accord with the Act's remedial purpose is their belief that the proposal would tend to channel contract awards to low wage areas. However, while the legislative history reflects an intent to apply a flexible and realistic definition of the term "locality", Congress did not consider the problem of defining "locality" in situations where the place of performance is unknown. Certainly there is nothing in the legislative history to suggest that Congress intended that service contracts would not be awarded and employees would not perform work on contracts in areas where lower wages prevail. Nor does the legislative history evidence a congressional intent that potential bidders in widely divergent locations should be subject to a single "prevailing" wage standard for all communities across the country, each of which has its own distinct wage patterns. Rather, the concept that wage determinations should reflect wages being paid in the area where the work is performed is basic to prevailing wage legislation, to prevent Government contracts from disrupting local wage standards.

Furthermore, the House subcommittee oversight hearings cited by the unions are not considered to be evidence of the intent of Congress at the time of enactment, since they transpired well after the passage of the original Act and the 1972 amendments, and did not even purport to reflect the views of that entire, subsequent session of Congress. In addition, DOL's 1976 decision not to adopt a two-step procedure does not preclude it from reviewing the matter and reaching a different conclusion at this time, particularly in light of the subsequent decision in *Southern Packaging*, discussed above. That decision not only required issuance of two-step wage determinations in that case, but also necessitated a reexamination of the Department's policies.

While the Department recognizes that the two-step procedure will place an administrative burden on contracting agencies and DOL because of the need

to issue two solicitations and the possible issuance of multiple wage determinations, the Department is of the view that this increased workload burden would normally be manageable. The problem of the proper locality to utilize when it is not known in advance where a service contract will be performed arises in relatively few procurements per year. For example, in fiscal year 1979, out of a total of about 36,000 contracts for which wage determinations were issued by the Department, some 700 involved unknown places of performance. See *Southern Packaging, supra* at 1091. Careful advance planning should avoid long delays in procurements. Moreover, the regulations provide that if situations arise where a two-step procurement procedure is impracticable, other appropriate methods of issuing wage determinations can be used.

Althouth recommended modifications to the two-step procedure were closely reviewed, the Department has concluded that the proposed language provides the most appropriate regulatory procedure. It is accordingly adopted with a clarification that in situations where the two-step procedure is not practicable, the Department may use a modified procedure after consultation with the contracting agency.

Section 4.6(b)(2)—Conformance of Wage Rates for Classifications of Employees Not Listed on a Wage Determination

Since the SCA requires the issuance of prevailing wage rates for the various classes of employees performing on a contract, a method of establishing rates is needed for those classes of employees which are not listed on an applicable wage determination (WD) because no wage data regarding such classes are available or because the contracting agency did not request a rate for such classes.

History of Provision

(a) Contemporaneous construction—The Act has always been interpreted to permit such a procedure. The method initially chosen is in the existing regulations (paragraph (b) below).

(b) Existing regulations—Provide that any class of employee to be employed on the contract which is not listed on the applicable WD must be classified (i.e., "conformed") by the contractor so as to provide a reasonable relationship between the wage rate of that class and the listed classes. Further, the contractor must pay such conformed classes the wage rates and fringe benefits agreed to by the interested parties, who are the contractor, the employees or their representative (normally a collective bargaining agent) and the contracting agency. Such wage rates and fringe benefits become an enforceable part of the WD. In case of disagreement among the interested parties, the matter is submitted to DOL for resolution.

(c) Current practice—Same as (b).

(d) January 1981 regulations—Provided clearer rules for the conformance process, including a requirement that the procedure be completed within 30 days of initial work on the contract by the unlisted class of workers. In addition, these rules required that all conformance actions be submitted to DOL for review, accompanied by evidence in writing of the agreement of the employees (where the action is not submitted as a dispute).

(e) Proposed regulations—Revised the January 1981 regulations to provide an indexing procedure to simplify the conformance procedure where the rates were previously conformed, allowing a contractor to apply a mathematical formula to the previously conformed rate (increasing the previously conformed rate by an amount equal to the average percentage increase between the rates in the previous WD and those in the current WD) without obtaining DOL approval or the agreement of the workers involved. In addition, under section 4.51(c) of the proposal, the Department would establish rates by the increased use of "slotting" techniques for many classifications which previously required conformance, thereby reducing the need for conformance in the first place. Under this technique, wage rates for classifications for which survey data do not exist would generally be determined by a comparison with classifications of similar job duties or skill for which data are available.

Comments

NCTSI maintained that an employee's acceptance of employment of a contract should be conclusive evidence of employee assent to a wage rate. NCTSI and DOD argued that a written agreement regarding a conformed rate should be unnecessary. DOD, NCTSI, and CODSIA commented that the provision providing for DOL review of conformances agreed to by the interested parties is unnecesary. The IAM, the Teamsters, LIUNA, and IATSE contended that the revised procedures deemphasize employee participation in the conformance process.

Dissussion of Final Rule

We have carefully reviewed the proposed conformance procedure concerning required written employee agreement of the conformed rates. The Department continues to believe that the participation of affected employees in the conformance process is necessary to avoid problems which have occurred when contractors have not considered them part of the process. We have concluded, however, that requiring specific written evidence of employees' agreement is not necessary to achieve that purpose, so long as the position of the employees is made clear. In view of the conclusion, it would be contrary to the Department's mandate under the Paperwork Reduction Act to impose a new and unnecessary paperwork burden on the public. Instead, the producer is simplified to require the employer to supply general information regarding the agreement or disagreement of the employees to the conformed rate.

The Department disagrees with the union' comments that indexing procedures will fail to protect employee rights. Although the procedure provides for the unilateral application of a mathematical formula by the contractor, its utilization will ensure that unlisted classes will receive the same wage rate adjustment as the listed classes of workers. Since employees' rights are therefore protected, it is unnecessary to impose the burden of reporting or to go through the conformance procedure. It is also the Department's view that the use of both slotting and indexing should reduce the delays and disputes occuring under the current conformance procedures.

However, in order to ensure that appropriate conformance action is taken, the proposal providing for DOL review of all conformances except those accomplished by indexing will be adopted. Such review, together with the clarifications in the process contained in the regulation, should rectify significant past enforcement problems, and assure observance of the contract conforming requirements. In the past, serious compliance problems where conformance actions were not taken or were not appropriate were frequently not discovered until an investigation was already underway, with the result that the compliance review was unduly protracted.

Section 4.6(r) and 4.187(f)—Resolution of Disputes Arising Under the Act

From time to time, questions have arisen concerning the extent of the Department's authority vis a vis the contracting agencies to resolve disputes concerning SCA labor standards.

History of Provision

(a) Contemporaneous construction—It has always been the Department's position that by virtue of its authority under section 4 of the Act, its procedures are the exclusive procedures for resolution of disputes arising under the Act, and that the agency boards of contract appeals have no such authority.

(b) Existing regulations—Provide procedures for resolution of disputes concerning violations of the Act in 29 CFR Part 6. See also existing section 4.189.

(c) Current practice—Same as (a) and (b) above.

(d) January 1981 regulations—Section 4.187 stated that contractor appellate rights concerning violations are contained in Part 6, and explicity provided that appeals in such matters have not been delegated to the contracting agencies and cannot be appealed under the contract disputes clause.

(e) Proposed regulations—Same as January 1981.

Comments

The DOD questioned whether the Department's procedures pertaining to disputes regarding violations of the Act in this section may be in conflict with the requirements of the Contract Disputes Act of 1978.

Discussion of Final Rule

Section 14 of the Contract Disputes Act of 1978 sets forth specific amendments made by Congress to existing statutes. Significantly, no change, repeal, amendment, or reference was made to the SCA. Therefore, in our view, the Department's statutory authority to resolve disputes, pursuant to section 4(a) of the SCA, is not diminished by section 14 of the Contract Disputes Act. This conclusion is corroborated by section 6(a) of the Contract Disputes Act, which states in pertinent part that "the authority of this subsection shall not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine."

To ensure effective and consistent administration, the authority to resolve disputes under SCA has always resided in the Department of Labor, the agency which has, in addition to the statutory enforcement authority, the expertise in the law and the regulations. In the Department's view, no change in its exercise of authority would be appropriate without an explicit statutory provision or statement of Congressional intent.

Accordingly, § 4.187(f) is adopted as proposed with minor clarification. Furthermore, to avoid any confusion or misunderstanding by contractors in this regard, a new § 4.6(r) has been added to the contract clause to provide that all labor standards disputes under the contract will be resolved pursuant to DOL procedures.

Section 4.8—Notice of Awards

In the past, a mechanism has been considered necessary to advise DOL of contract awards to assist in its enforcement program.

History of Provision

(a) Contemporaneous construction—A provision that agencies notify DOL of contract award has been considered within DOL's regulatory authority.

(b) Existing regulations—Require notification to DOL of contracts subject to the Act in excess of $2500.

(c) Current practice—Same as (b).

(d) January 1981 regulations—Same as (b).

(e) Proposed regulations—Same as (b).

Comments

None received.

Discussion of Final Rule

The Wage and Hour Division is now receiving data identifying contract awards subject to the SCA directly from the Federal Procurement Data System (FPDS).

It will therefore be unnecessary for those contracting agencies which submit data on the award of contracts subject to the SCA into the FPDS to continue to furnish Standard Form 99, Notice of Award of Contract, to DOL.

Accordingly, section 4.8 is amended to provide that a Standard Form 99 need not be submitted to DOL for contract awards subject to the SCA if the agency submits Standard Form 279, FPDS Individual Contract Action Report (or its equivalent) to the FPDS, or if the contracting agency makes other arrangements with the Wage and Hour Division for notifying it of such contract awards.

In the interest of reducing the paperwork and reporting burdens further, the regulations is also revised to require the submission of Standard Form 99 only for contracts in excess of $10,000. This regulatory action in no way alters the statutory requirement that contracting agencies incorporate the proper stipulations in all contracts exceeding the coverage threshold of $2,500.

We encourage those agencies which do not submit contract award data to FPDS to contact the Wage and Hour Division for making such other arrangements so that we may ultimately discontinue the use of Standard Form 99 in its entirety. We estimate the elimination of Standard Form 99 will result in an annual cost savings to the Federal Government of approximately $410,000, without loss of employee protection.

Section 4.11—Arms's Length Proceedings

Section 4(c) of the Act provides that a successor contractor would not be bound by the wage and fringe benefit provisions of a predecessor contractor's collective bargaining agreement if that agreement was not reached "as a result of arm's-length negotiations."

History of Provision

(a) Contemporaneous construction—The provision has rarely been construed, but has been interpreted to refer to collusive agreements intended to take advantage of the SCA scheme.

(b) Existing regulations—Contain only passing references to this provision.

(c) Current practice—Same as contemporaneous construction. Although no explicit hearing procedures exist, cases on this issue have been referred to administrative law judges for hearing.

(d) January 1981 regulations—Provided a procedure for determination of whether arm's length negotiations occurred and interpreted the provision to exclude arrangements with an intent to take advantage of the scheme, as well as situations where the NLRB has determined that "good faith" bargaining did not occur.

(e) Proposed regulations—Similar to January 1981 regulations, but also provided NLRB decisions on "good faith" bargaining may be used as guidance.

Comments

IBEW, SEIU, IAM, and NCTSI objected to the provision in the proposed regulations that decisions under the National Labor Relations Act (NLRA) regarding "good faith" bargaining may be used as guidance in determining whether "arm's length" negotiations have occurred. These commentators asserted that standards of "good faith" bargaining under the NLRA are not proper criteria for deciding questions of "arm's length" negotiations under the SCA.

IBEW presented a detailed analysis of the legislative history of the 1972

Amendments which added section 4(c) to the Act. The union noted that the original bill to amend the Act (H.R. 11884) included a "negotiations in good faith" standard. However, IBEW also pointed out that in subsequent testimony before a House Subcommittee, the Department of Labor stated that the "good faith" standard used under the NLRA assumed a situation where adversity between the parties is normal and difficulties can be expected in getting them to bargain in good faith, whereas section 4(c) of the SCA would foster exactly the opposite atmosphere, with difficulties in assuring that the parties *will* bargain at arm's length. Following this testimony, a substitute bill (H.R. 15376) which contained an "arm's length" standard instead of a "good faith" standard was introduced, and ultimately enacted.

Discussion of Final Rule

There does not appear to be any dispute that a mechanism is needed to determine whether arm's length negotiations have occurred.

After further consideration, however, it has been determined that the comments that decisions under the NLRA regarding "good faith bargaining" are inappropriate to determinations of whether "arm's length" bargaining occurred under the SCA are well taken. As the IBEW comments indicate, the "good faith" requirement under the NLRA is useful to prevent overly antagonistic relationships between bargaining parties, and does not address the potential problems under section 4(c) of the SCA, whereas an "arm's length" requirement is necessary to prevent so-called "sweetheart" agreements conferring benefits not in the public interest.

Accordingly, the final regulation is modified to remove the reference to "good faith" determinations under the NLRA.

Section 4.51(b)—Determination of Prevailing Rates

Except in situations where the predecessor contractor's employees were covered by a collective bargaining agreement, the Act requires payment of those rates determined by the Secretary to be prevailing for the various classes of service employees in the locality.

History of Provision

(a) Contemporaneous construction—In practice, DOL has interpreted the prevailing wage as the wage paid the majority of employees in the class, and if there in no majority, then the median or mean wage.

(b) Existing regulations—No definition of prevailing wage is set forth in the regulations. A general provision is set forth at section 4.164.

(c) Current practice—Same as (a). Most wage determinations are derived from surveys conducted by the Bureau of Labor Statistics.

(d) January 1981 regulations—Provided that wages would be determined as set forth in (a) above, stating that the "median" is the preferred rule over the average.

(e) Proposed regulations—Same as (d), but also provided for "slotting" of wage rates for classifications where there is not sufficient wage data. See discussion of § 4.6(b)(2), Above.

Comments

NASA, DOE, and the C of C suggested that wage determinations should provide for the payment of a range of rates to the various employees within a given classification. These commentators argued that the issuance of a single prevailing wage rate for each classification does not reflect actual industry pay practices. The C of C also recommended as an alternative that wage determination rates be based on the average of the lower 50 percent of the wages paid. The SBA Office of Advocacy commented that single rate paid to a majority of workers in a classification should not be adopted as prevailing, and that the weighted average rate should be used in all cases.

Discussion of Final Rule

After consideration of the comments, the Department has concluded that the rate range and similar proposals would be contrary to the statutory intent and, therefore, could not be adopted through regulation. Establishment of a wage determination with a rate range would have the practical result of permitting contractors to pay the lowest wage, and not the "prevailing" wage. Although Congress was obviously aware that different employers compensate their employees at various rates of pay, it nevertheless established under the SCA (as it had previously under the Davis-Bacon Act) the principle that a single prevailing wage rate established for each particular classification is the minimum rate permitted to be paid to all employees working in that classification on a Government contract.

Regarding the SBA comment on the use of a "majority" rate and that a weighted average should be used in all cases, the Department believes that the term "prevailing" contemplates that wage determination rates mirror, to the extent possible, those actually paid in appropriate localities. Thus, the Department has concluded that its longstanding policy of designating a "majority" rate as the "prevailing" rate is appropriate as a definition of first choice under the SCA. In the absence of a majority rate, it is the Department's view that the median or mean (weighted average) is appropriate; however, it is the Department's view that generally the median is a more reliabe indicator of central tendency and therefore the preferred rule. On the other hand, the mean may be more appropriate where the wage distribution is skewed, or where there are statistical reliability and consistency problems associated with the wage sample.

Similarly, to use the average of the lower 50 percent of the wages paid as suggested by the C of C would arbitrarily exclude the upper 50 percent and therefore would not be consistent with the prevailing wage concept in the Act.

Accordingly, § 4.51(b) is adopted as proposed.

Section 4.55(a)—Review and Reconsideration of Wage Determination—Review by the Administrator

History of Provision

(a) Contemporary Construction—An informal procedure has always been available to seek review of wage determinations.

(b) Existing regulations—No review procedure is set forth in the rules.

(c) Current practice—Same as (a).

(d) January 1981 regulations—Specifically provided for review of wage determinations by the Administrator, to be accomplished within 30 days unless the Administrator advised that more time was necessary. However, no request for review would be considered after bid opening or commencement of a negotiated contract. Additional appeal was provided to the Secretary.

(e) Proposed regulations—Same as (d) except that appeal would be to the Board of Service Contract Appeals pursuant to 29 CFR Part 8, separately issued concurrently with this rule.

Comments

Several contracting agencies recommended more stringent time limits for requests for reveiw of wage determinations, in order to assure that procurement schedules are not disrupted.

Discussion of Final Rule

The Department has an obligation to ensure the issuance of proper wage determinations. Since requests for proposals or commencement of

negotiations often occur many months before contract award or commencement, tying the cut-off date for requests for review of a wage determination to such actions, as several agencies proposed, would provide too severe a limitation on the time available for interested parties to request such reviews. However, the Department recognizes the need to minimize disruption of procurements. Therefore, this paragraph is revised to clarify that there will be no review of wage determinations after bid opening or later than 10 days before commencement of performance of a negotiated procurement. Interested parties will need to submit requests for review in sufficient time for the Administrator to accomplish the review to the wage determination by that date.

Sections 4.110, 4.132—Coverage of Separate Contract Specifications Principally for Services

Section 2(a) of the Service Contract Act provides as follows: "Every contract (and any bid specification therefor) entered into by the United States * * *, the principal purpose of which is to furnish services in the United States through the use of service employees shall contain the following: * * *."

In interpreting the coverage of the Act, the issue arises whether the Act applies to separate service requirements in contracts principally for some other purpose, such as supply or construction. More specifically, the issue is whether the parenthetical language, "(and any bid specification therefor)," should be interpreted as referring to individual line items which are principally for services in a contract, or to the bid solicitation documents and the resulting contract as a whole. Under the first interpretation the Act would apply to any line item for services in a contract, even if the contract as a whole were not principally for services. Under the second interpretation, the Act would apply only to contracts (and their solicitation documents) which as a whole were principally for services.

History of Provision

(a) Contemporaneous construction—As a general matter the Department's contemporaneous rulings under SCA provided that contracts were covered if they were principally or "chiefly" for services and that if any work under those contracts was subject to the Walsh-Healey Act, it was exempt. However, for contracts of a hybrid nature involving separate service and non-service requirements or specifications, SCA was considered to apply to the separate specifications principally for services without regard to the purpose of the contract as a whole.

(b) Existing regulations—The pertinent sections addressing coverage are 29 CFR §§ 4.110, 4.111, 4.122, 4.131(a), 4.116(c), 4.132, and 4.134(b). As a general matter, nearly all of these sections refer to "contracts" and their principal purpose. For example, section 4.111 states that, "[i]f the principal purpose is to provide something other than services of the character contemplated by the Act and any such services which may be performed are only incidental to the performance of a contract for another purpose, the Act does not apply." Only §§ 4.116(c) and 4.132 use the term "specification." Section 4.132, entitled "Services and other items to be furnished under single contract," provides that "[i]f the principal purpose of a contract specification is to furnish services through the use of service employees within the meaning of the Act, the contract to furnish such services is not removed from the Act's coverage merely because, as a matter of convenience in procurement, it is combined in a single contract document with specifications for the procurement of different or unrelated items." It then provides as an example a situation where bids are invited separately for supply of new typewriters and repair of existing typewriters, under separate bid specifications, and because one company is the successful bidder on both, the specifications for each are then combined in one contract for convenience. In such a case the regulation provides that the "principal purpose" test would be applicable to the specifications for maintenance and repair, rather than the combined contract. A similar provision in § 4.116(c) concerns separate specifications for services and construction, combined in one contract for the convenience of the Government.

(c) Current practice—Separate line items or specifications for services in contracts which are not otherwise principally for the purpose of furnishing services are considered covered by the Act. However, that interpretation is not clearly articulated in the current interpretative regulations (see § 4.132). Therefore, many contracting officers did not include SCA requirements in contracts which were principally for the purpose of purchasing or leasing equipment, but which include the maintenance and repair of that equipment; this was particularly true of GSA contracts for ADP equipment. When the issue of the correctness of the Department's interpretation surfaced publicly for the first time in 1977, GSA and the ADP industry strongly disagreed with the Department's position, claiming that it was contrary to the statutory language, congressional intent, and the Department's regulations. See the discussion of the Department's special treatment of such contracts below at § 4.123(e) (1), (2), and (3). Subsequently, the General Accounting Office issued a report to Congress on application of the SCA to the ADP industry which strongly attacked the merits of the Department's position on its interpretation of the "bid specification" language of the act. See Comp. Gen. Rept. Nos. HRD-80-102, Sept. 16, 1980 and HRD-80-102(A), March 25, 1981.

(d) January 1981 regulations—New section 4.110(b) stated that the Act applied to separate contract specifications for services, even where the contract as a whole was not principally for services, and that the term "contract" included separate line items for service specifications. Similar provisions were included in other sections, particularly in §§ 4.1a(e) and 4.132.

(e) Proposed regulations—Section 4.110(b) of the January 1981 regulations was eliminated from the proposal, and § 4.132 was revised to make provide that the Act applies only if services are the principal purpose of the contract as a whole. Conforming amendments were made to other sections.

Comments

The Department of the Interior, CBEMA, the NFPA, and others favored the proposed legal interpretation which would apply the Act only where the contract *as a whole* is principally for the furnishing of services. They commented that there is nothing in the legislative history of the Act to indicate the Act is intended to apply to anything but entire contracts whose principal purpose is to provide services. The NFPA asserted that the statutory phrase "(and any bid specification therefore)" refers to the inclusion of wage determinations in bid solicitations and not to the coverage of separate line items or work requirements within a contract.

The AFL-CIO, SEIU, LIUNA, IAM, UPGWA, SIU, and IATSE argued that the proposal was offered without any rational and ignores the statutory language and intent of section 2(a) of the Act, as well as §§ 4.116(c) and 4.132 of the current regulations. Therefore, they state that the proposal would in effect, repeal the provision of the Act regarding "any bid specification therefor." LIUNA and IAM argued that the proposed

interpretation allows contracting agencies to evade their responsibilities under the Act by merging various unrelated activities into one contract.

Discussion of Final Rule

The Department has carefully reexamined its position regarding the scope of coverage of the Service Contract Act. After consideration of the question, the Department has concluded that the reference in the Act to "bid specification" did not extend the Act's coverage to individual specifications principally for services within contracts principally for another purpose.

It is the Department's view that, like the reference in the Davis-Bacon Act to "advertised specifications," the reference to "bid specification" is not a coverage provision, but was intended to mean only that the advertised specifications on which contractors bid, as well as the resultant awarded contract, shall contain the required wage determination provisions. This interpretation is consistent with the Act's statutory language and its legislative history.

First, the language of the parenthetical phrase "(and any bid specification therefor)" on its face refers to a *bid*, specification for a contract, rather than to individual specifications within the contract itself; to interpret the phrase as referring only to line items of a contract simply reads the word "bid" out of the statute.

In addition, other provisions of the Act are inconsistent with the theory that the Act applies to individual specifications of the contract. Thus section 2(b)(1), which provides for minimum wage payments on covered contracts, applies only to "any contract with the federal government the principal purpose of which is to furnish services through the use of service employees * * *." No mention is made of separate specifications or provisions within a contract whose principal purpose as a whole is not "to furnish services." Similarly, section 8(b) of the Act defines a "service employee" as "any person engaged in the performance of a contract * * * the principal purpose of which is to furnish services * * *." Again, no reference is made to specifications or line items of a contract. Moreover, subsections (1), (2), and (4) of section 2(a) refer to "the contract" without reference to specifications of line items.

The legislative history of the statute supports this interpretation (which had been explicit in the 1963 bill, not enacted, H.R. 1678, 88th Cong., 2d Sess.). Thus the Act's sponsor, Congressman O'Hara, explained in floor debate on the bill enacted: "The bill is aplicable to advertised or negotiated contracts, in excess of $2,500, the principal purpose of which is for the furnishing of services through the use of service employees, as defined in the bill. * * * *Provisions regarding wages and working conditions must be included in these contracts and bid specifications.* (Cong. Rec. (Daily) H-24387 (September 20, 1965). (Emphasis added.)

Furthermore, the House report on the Service Contract Act, House Report No. 948, 89th Cong., 1st Sess. (1965), confirms that the Act was intended to cover entire contracts the principal purpose of which was to supply services. The House Report on the bill states at p. 3 that "[t]he bill is applicable to advertised or negotiated *contracts, in excess of $2,500, the principal purpose of which is for the furnishing of services through the use of service employees,* as defined in the bill." (Emphasis added.) This is fully consistent with the statements by Congressman O'Hara and by the Solicitor of Labor during the 1965 hearings that janitorial services performed under a contract primarily for lease of a building would not be covered by the Act. See 1965 House Hearings on H.R. 10238 at 9–10; 1965 Senate Hearings on H.R. 10238 at 20.

Finally, the Department does not believe, as some of the labor organizations suggest, that the proposed regulation would encourage the contracting agencies to evade their responsibilities under the Act. We cannot presume that the agencies will in bad faith attempt to evade the spirit, if not the letter, of the careful and comprehensive reevaluation of these regulations. Rather, we presume that they will structure their contracts on the basis of their legitimate procurement needs. However, if such evasion in fact occurs in the future, the Department will look into the situation and determine what corrective measures can be taken.

Accordingly, it is the Department's view that the interpretation that SCA covers separate service specifications when the principal purpose of the contract as a whole is for supply or some purpose other than the furnishing of services, is overly broad. This interpretation is without support in the legislative history and is inconsistent with other provisions of the Act. Furthermore, it renders the principal purpose provision of the Act virturally a nullity, since if every individual contract specification principally for services were subject to the Act, the effect theoretically would be coverage of all service requirements under any contract, whether principally for construction, supply, or services. Therefore, the Department has determined that the Act is intended to apply only to contracts whose principal purpose is the furnishing of services. Thus, the proposal is adopted with a minor, clarifying change.

Section 4.110–4.113—Interpretation of Statutory "Principal Purpose" Test for Coverage Under SCA

Section 2(a) of the Act requires that wage determinations be incorporated in all contracts in excess of $2,500, "the principal purpose of which is to furnish services in the United States through the use of service employees."

History of Provision

(a) Contemporaneous Construction—The Department's contemporaneous construction is expressed in the existing regulations. See paragraph (b) below.

(b) Existing regulations—In deciding questions of coverage, the current regulations provide that if a contract is principally for services (as opposed to some other purpose such as manufacturing or construction), it is subject to the Act if it is performed at least in part in the United States and if it is performed "through the use of service employees". The current regulations define this phrase to mean the use of any service employees or, where the services are performed in part by bona fide, noncovered executive, administrative or professional employees (as defined in 29 CFR Part 541 issued under the Fair Labor Standards Act), more than a minor or incidental use of service employees.

(c) Current practice—Same as (b). In practice a 10 to 20 percent guideline has been used to determine whether there is more than a minor use of service employees.

(d) January 1981 regulations—Same as (c) except that the exception from coverage for minor use of service employees was treated as a tolerance under secion 4(b) and the regulations set forth specifically the 10 to 20 percent guideline.

(e) Proposed regulations—Sections 4.110 and 4.113 of the proposed regulations would have altered the scheme for determining coverage by providing a dual principal purpose test, under which a contract would be subject to the Act only if it is principally for services and is also performed principally (i.e., in the majority) by service employees. The proposed regulations continued to provide, as set forth in the existing regulations, that if a contract is performed in part within and in part outside the United States, any

portion performed "in the United States" is covered by the Act.

Comments

The SAMA, NCTSI, C of C, the National Society of Professional Engineers, several individual contractors, and the SBA commented in favor of the proposed revision of the principal purpose test, without any detailed rationale in support of their position. DOD, on the other hand, favored a more subjective approach, applying SCA to a contract only if the most important contract services are performed by service employees, as distinguished from professionals. The CBEMA comments reflected the view that the proper interpretation of the statutory "principal purpose" language would require a tripartite coverage test, under which a contract would be covered only if it is principally for services, to be performed prinicipally in the United States and principally through the use of service employees.

The dual principal purpose test contained in the proposed regulations was vigorously opposed by the AFL-CIO, IAM, LIUNA, SEIU, Teamsters, IATSE, SIU, and UPGWA. The labor organizations argued generally that on its face the statutory "principal purpose" language refers only to the nature of the contract work, meant only to distinguish among contracts according to their procurement purpose, and does not refer to the level of use of service employees. Thus, they asserted, the current regulations are correct in providing that a contract principally for services is subject to the Act if it is performed "through the use of service employees."

Many of the labor commentators cited portions of the Act's legislative history as evidence of a Congressional intent to "close the gap" in labor standards protections for Government contract employees by covering under the SCA all employees (other than bona fide executive, administrative, and professional employees) not employed on construction contracts covered by the Davis-Bacon Act or supply contracts covered by the Walsh-Healey Public Contracts Act. These commentators also stressed the remedial nature of the original legislation and stated that the 1972 and 1976 amendments expanded those protections by increasing the scope of the Act's coverage, thereby supporting a board interpretation of the statutory coverage provisions.

IAM and LIUNA asserted that in light of the legislative history, if Congress had intended to cover only service contracts performed "pricipally by service employees," it would have put such language in the statute. IAM and LIUNA also stated that in the preamble to the proposed regulations the Department did not offer any justification for the revision of the principal purpose test.

The SIU opposed the position in section 4.112(b) of both the current and proposed regulations that only those portions of contracts for transportation by marine vessels which are performed within U.S. waters are subject to the Act. SIU recommended that the regulations be revised to provide that all contracts on American flag ships are deemed to be performed entirely within the United States, regardless of the actual place of contract performance.

DOD commented that vessels contracted to carry cargo to U.S. installations overseas, with minimal time spent in U.S. ports and waters, should not be subject to the Act while within the United States, terming such coverage inappropriate and unnecessary since the services are not performed principally in the United States

Discussion of Final Rule

After a thorough review, the Department has concluded that the interpretation expressed in the existing regulations is the correct interpretation of the Act's "principal purpose" provision.

In deciding the application of the principal purpose test, it is necessary to consider the Act's legislative history as the best indicator of Congressional intent in the matter. The 1965 legislative history contains no definitive guidance, but reveals only, as provided in the Department's existing regulations, that contracts would not be covered if service employees perform only incidental functions. H.R. Rep. No. 948, 89th Con., 1st Sess. 3 (1965). Throughout the subsequent history, and in particular when Congress amended the Act in 1976, it is evident that Congress considered that all employees who performed services on contracts principally for services were covered by the Act, except bona fide administrative, executive and professional employees, and that this was explicitly accomplished by the 1976 amendments. See, *e.g.*, Cong. Rec. (Daily) H. 10626–28 (Sept. 21, 1976). Significantly, the 1976 amendment to the definition of "service employee" as a person engaged in contracts "the principal purpose of which is to furnish services in the United States," omitted any reference to "through the use of service employees."

Finally, it is our view that a plain reading of the phrase "through the use of service employees" requires only some use of service employees, i.e., where there is more than a minor use of service employees (as distinguished from executive, administrative and professional employees) to perform services under a contract principally for services, the contract is subject to the Act.

With respect to the reference in the Act to "in the United States," it is the Department's view that it is intended to be only a routine provision regarding the geographic scope of the Act. Thus whenever contract services are performed "in the United States" as defined in section 8(d) of the Act, those services are covered. The alternative of making it an element of coverage would lead to the anomalous result that all services, *wherever* performed, are covered if most of the contract services are performed in the United States.

Furthermore, the legislative history, in describing the Act's applicability, contains no reference to "in the United States" as a limitation on coverage. Thus, early drafts of the SCA unambiguously provided coverage of all service contracts in which work was performed in the United States. Significantly, in explaining the changes in the final version of the SCA, which represented a consensus among the government agencies, the Solicitor of Labor did not mention any coverage changes other than raising the threshold from $2,000 to $2,500. 1965 House Hearings on H.R. 10238 at 6–7.

The Department has decided, however, that it would be proper to establish a "significant or substantial" standard to determine whether a contract is performed "in the United States". This would be consistent with the longstanding interpretation in the current regulations of the term "through the use of service employees". Excluded from coverage would be contracts under whch only a minor or incidential portion of the services is performed within the United States as defined in section 8(d) of the Act. Thus, this revision will address the administrative difficulties raised by the DOD if SCA is applied to those contracts involving minimal time in domestic waters. Appropriate changes are made in § 4.112 of the final regulations.

With regard to the recommendation by SIU regarding the geographic scope of the Act's coverage, the recommendation contradicts the explicit language of the statute, contains no support in the legislative history, and cannot be adopted.

Section 4.114(b)—Liability of Prime Contractor for Violations by Subcontractors

History of Provision

(a) Contemporaneous construction—The Department has always taken the position that the prime contractor, as the party who contracts with the Government, is responsible for all violations of the Act, including those of its subcontractors.

(b) Existing regulations—Section 4.114 explains that under the Act and the regulations (see the contract clauses at section 4.6), the prime contractor agrees that the labor standards will be observed by subcontractors as well as itself, that the prescribed clauses will be incorporated in all subcontracts, and that the Act's sanctions may be invoked against it for any failure to comply.

(c) Current practice—Same as (a).

(d) January 1981 regulations—Explicitly provided that the prime contractor is jointly and severally liable with any subcontractor for any acts, omissions or underpayments which would constitute a violation of the prime contract, and that the Act's sanctions may be invoked against both the prime and the subcontractors.

(e) Proposed regulations—Same as (d) but clarified that the sanctions may be invoked "where appropriate" under the circumstances of the case.

Comments

NASA, DOE, and CODSIA argued that there was no statutory or judicial basis for placing liability for SCA violations committed by subcontractors on the prime contractor. NCTSI stated that the prime contractor should not be responsible for violations beyond its control, while the C of C commented that the prime contractor should not be liable except where fraud occurs or the subcontractor cannot be located.

IAM and SEIU objected to the differences between the language of this section and the language of the corresponding section in the stayed regulations of January 1981, implying that the proposed regulation limits the liability of prime contractors only to monetary violations by their subcontractors

Discussion of Final Rule

As explained, the provision that the prime contractor is liable in the event its subcontractors violate the Act and thus breach the contract clauses by failing to pay the required contract wages and fringe benefits has been in the regulations since 1968. It follows established case law under both the Service Contract Act and the Davis-Bacon Act. See, *e.g., Robert C. Johnson Trucking Co.*, SCA-1160, Administrator (January 4, 1982); *Ernest Simpson Constr. Co.*, 79-DB-181, ALJ, 24 WH Cases 484 (October 18, 1979).

The prime contractor's liability arises from the fact that by contracting with the Government, the prime contractor agrees as a term of the contract that the prescribed labor standards will be observed with respect to all employees on the contract. See 41 U.S.C. 351; 29 CFR § 4.6. Furthermore, liability is apparent from section 3 of the Act, which provides for witholding of contract funds in the case of violation; the Government can only withhold funds from the prime contractor, not from a subcontractor.

The union comments appear to reflect a misunderstanding of the intent of the regulatory revision. The language of this section is simply a clarification of existing practice. In addition to the withholding of contract funds, any other enforcement sanction, including debarment, will be invoked when appropriate under the circumstances of a particular case. For example, when a prime contractor fails to ensure that SCA provisions are incorporated in the subcontract or directs or condones violations made by a subcontractor, unusual circumstances justifying relief from debarment would likely be found not to exist.

Accordingly, no changes are made in this section.

Sections 4.116(b) and 4.131(f)—Coverage of Contracts for Property Demolition, Dismantling and Removal

When the Department reexamined its position on timber sales contracts, discussed below at §§ 4.130(a), 4.131(f), the issue was also raised of the principal purpose of property demolition, dismantling and removal contracts where the contractor obtains the salvage material removed.

History of Provision

(a) Contemporaneous Construction—It has been the Department's position that such contracts, even if labeled as a sale, are principally for removal services and covered by the Act.

(b) Existing regulations—§ 4.116(b) provides that contracts for demolition or dismantling of buildings are subjects to the Act, if not followed by construction (and therefore subject to the Davis-Bacon Act). The provision is silent concerning contracts where the contractor obtains the salvage material removed, but coverage of such contracts is implicit in § 4.141(a).

(c) Current practice—Same as (a). However, the office responsible for most such contracts at GSA has advised that it did not apply the Act to such contracts.

(d) January 1981 regulations—Specifically provided that such contracts are subject to the Act.

(e) Proposed regulations—Provided that such contracts are covered by the Act if the facts show that their principal purpose is to furnish services through the use of service employees, but not if their principal purpose is sales.

Comments

The AFL-CIO, IAM and LIUNA opposed the proposed revision. LIUNA and IAM contended that it is misleading to characterize demolition contracts as contracts for sales, noting that, while a contractor's primary interest may be the acquisition of salvaged materials, the Government's primary concern is to clear land or remove a building, and that the sale of any material, although it may be a substantial portion of the contract, is only of secondary interest.

Discussion of Final Rule

As stated above, the reexamination of the issue of coverage of timber sales contracts, as well as the issue of the interpretation of the principal purpose provisions of the Act, necessitated a review of coverage of demolition/sales contracts because of the apparent similarity of these types of contracts. Consistency requires that a determination be made as to whether the principal purpose of such demolition/sales contracts is services or sales. If the facts show that the Government's principal purpose in the contract is the obtaining of dismantling and removal services, where no further construction is contemplated (in which case the contract would be subject to the Davis-Bacon Act), such a contract is covered by SCA even though the contract or receives salvaged materials. However, if the principal purpose of the contract is in fact the sale of material and the services provided under such a contract are only incidental to the sale, then the contract is not subject to the Act. This approach is required by our view that the Act only applies if the principal purpose of the contract is services.

Accordingly, the proposed revision is adopted.

Section 4.117—Work Subject to the Walsh-Healey Act: Overhaul and Modification of Equipment

SCA, as discussed above, applies to employees on federal contracts, the principal purpose of which is the furnishing of services, while the Walsh-

Healey Public Contracts Act (41 U.S.C. 35, et seq.) ("PCA") provides labor standards protections for employees on federal contracts in excess of $10,000 for the manufacture or furnishing of materials, supplies or equipment. Over the years many disputes have arisen concerning whether SCA or PCA or both should be applied to contracts for the overhaul and modification of aircraft engines and other equipment.

History of Provision

(a) Contemporaneous construction—In the 27 years prior to the enactment of SCA, it was the position of the Department that contracts for equipment reconditioning, involving complete teardown and reassembly, constituted "manufacture" and were therefore within the scope of PCA. With the enactment of the SCA in 1965, such contracts generally were considered to be covered by both Acts. This "dualism" position was based upon the view that the contracts were principally for services but contained a significant manufacture or supply requirement as well. To eliminate problems implementing dualism, administrative exemptions from PCA of contracts deemed principally for services, and thus subject to SCA, were proposed in 1966 and 1973, but the proposals were never adopted.

(b) Existing regulations—§4.122 of the existing SCA regulations (29 CFR Part 4) sets forth the general principle of dual coverage. The regulation states that where a contract principally for services exceeds $10,000, and also has as a significant purpose the furnishing of equipment or materials, part of the work under such a contract is exempted by section 7(2) of the SCA since it is work required to be done pursuant to PCA labor standards. The regulation goes on to specify that those service employees who are "engaged in or connected with the manufacture, fabrication, assembling, handling, supervision or shipment" under the contract are subject only to the PCA. Other contract employees such as guards or clericals, are not subject to PCA and are therefore outside the scope of the exemption and covered by SCA labor standards.

(c) Current practice—It is the position of the Wage and Hour Division that dual coverage generally is applicable to major overhaul and modification contracts in accordance with the guidelines set forth in the 1974 opinion of the Administrator regarding engine overhaul, issued in connection with the decision in *Curtiss-Wright Corp.* v. *McLucas*, 364 F. Supp. 750 (D.N.J. 1973). Under these guidelines, SCA is applicable to the disassembly and overhaul portions of the contract work and PCA to the rebuilding of the equipment, including the supply of new parts. In 1978, however, the Department issued to DOD and subsequently extended indefinitely an exemption from SCA coverage for engine overhaul and modification contracts, pending the development of the criteria herein for delineating SCA and PCA coverage. Therefore, SCA currently is not applied to these contracts. In practice, there is considerable variation among the contracting agencies and confusion regarding whether and how to apply SCA and/or PCA to other equipment overhaul contracts.

(d) January 1981 regulations—This issue was reserved from inclusion in the 1981 regulations, pending finalization of these guidelines.

(e) Proposed regulations—The proposed regulation would eliminate dual coverage of overhaul and modification contracts by establishing guidelines designed to determine at what point the work on equipment is so extensive as to constitute "remanufacturing" subject to PCA only; where the work does not meet these guidelines, it is subject to SCA only.

Comments

The AEA, SAMA, NASA and DOE, as well as some individual contractors, criticized the proposed guidelines for delineating "remanufacturing" subject to the PCA. The contracting agencies (NASA and DOE) commented that the guidelines were too stringent and proposed a more relaxed standard. The AEA and SAMA generally approved the proposed regulation but stated that the guidelines were too detailed and complex. The C of C supported the proposed regulation without reservation.

The AFL-CIO, IAM, and LIUNA acknowledged that the current dual coverage position was unworkable, but disagreed that aircraft engine overhaul could be "remanufacturing" and opposed the guidelines as arbitrary and unjustified by the language and history of both SCA and PCA. They asserted that under the proposed guidelines, it could not be determined before contract award whether proposed work would be extensive enough to be exempt as "remanufacturing," stating that this is determinable only after teardown and inspection of the equipment. It is their view that our regulation should distinguish between "manufacturing" and "service" on the basis of a two-part test, derived from cited tax law cases.

Discussion of Final Rule

Section 7(2) of the SCA exempts from its coverage "any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act," demonstrating Congressional intent to eliminate overlapping of the labor standards provisions of the two acts. This regulation serves that purpose by establishing for the first time proposed guidelines to distinguish between SCA and PCA and to resolve the complex administrative problems of the Department's "dual coverage" position.

As the above discussion of the history of this regulation indicates, the Department has varied in its treatment of the question of coverage of overhaul and modification contracts. Prior to SCA there were no labor standards applicable to services rendered under government contracts, and service contracts were regarded as outside the scope of PCA coverage. However, although some services are involved in contracts for overhaul and modification, as in all manufacturing contracts, these contracts were viewed as essentially for the procurement of tangibles, with contractors furnishing supplies or materials (parts) or an end product (rebuilt equipment). Thus, a 1943 opinion concluding that a War Department contract for overhauling and "rebuilding" motors was within the purview of the PCA domonstrates the recognition of the concept of "remanufacturing" under the PCA.

When Congress enacted the SCA, it recognized the overlap between manufacture and service, and it treated this situation in the section 7(2) exemption from SCA coverage for PCA work. Because the exemption was for "work" rather than "contracts," the Department developed a position of dual coverage of these overhaul and modification contracts. This interpretation has proved to be impracticable for separating SCA and PCA work, and is especially problematic where a contractor utilizes the same employee(s) to perform both the tear down and rebuilding functions. In addition, the problem of where to draw the line between SCA and PCA work has made enforcement of the acts difficult for the Department, and has generated confusion as to the issuance of wage determinations.

Consequently, in 1978 the Secretary determined that a change was necessary and issued a temporary exemption from SCA coverage to DOD for engine overhaul contracts, pending the promulgation of new guidelines. During this period the Department consulted with labor representatives and with the major contracting agencies in order to draw upon their experience in this area;

the new section 4.117 represents the product of these efforts.

As discussed, *supra*, under "dualism,"overhaul and modification contracts were generally viewed as contracts principally for services but with a significant manufacturing component. The Secretary's experience and expertise in the administration of these two Acts, and consultations with the contracting agencies made clear that when the work involved on these contracts is so substantial as to constitute "remanufacture," the principal purpose of the contract can no longer be considered to be service. Furthermore, it was concluded that it was inappropriate to break down work which was done on a piece of equipment and consider it to be part manufacturing and part services when all of the work in fact is part of the "remanufacturing" activity. The specific guidelines in the new regulation constitute the determination of the Secretary of Labor as to when the threshold between repair services and remanufacturing is reached.

The new § 4.117 for the first time provides viable and appropriate criteria for distinguishing between SCA and PCA coverage. The Department has determined that the degree of specificity in the proposed guidelines is necessary for this coverage determination, in order (1) to eliminate confusion and possible overlap between the different labor standards statutes, and (2) to ensure that only overhaul or modification which in fact is in the nature of manufacturing activity and which is so extensive as to constitute "remanufacturing" is subject to Walsh-Healey. Contracts for maintenance or repair, in contrast, are within the purview of the SCA.

With respect to the comments that it cannot be determined before contract award which statute applies to proposed work, we note that the criteria were developed after consultations with the major contracting agencies, utilizing their practical experience and special expertise in this area. Agencies should be able to anticipate the needs of a particular contract, initially determine whether the proposed work principally involves "remanufacturing" based on the guidelines, and incorporate the appropriate labor standards (SCA *or* PCA) prior to soliciting bids.

It was suggested in the comments that the proposed guidelines are contrary to case law because they fail to distinguish coverage between the two Acts by a conjunctive "functional character" and "proprietary interest" test. However, the commentators cited no relevant rulings under SCA pr PCA for this proposition; in fact, the proprietary interest test is clearly inconsistent with precedent under PCA. Court decisions identifying a manufacturer under federal tax law would not, in our view, be determinative of SCA and PCA coverage, given the different focus and purpose of the tax code from that of the prevailing wage statutes. Furthermore, to the extent that tax law cases are relevant, they do not clearly establish such a conjunctive test. They do, however, support the principle of this regualtion, that rebuilding equipment within the specified guidelines constitutes manufacturing rather than furnishing services. *E.g., Hartley* v. *United States*, 252 F.2d 262, 266 (5th Cir. 1958); *Hackendorf* v. *United States*, 243 F.2d 760, 762–63 (10th Cir. 1957).

Accordingly, § 4.117 is adopted as proposed with minor editorial changes.

Section 4.118—Contracts for Carriage Subject to Published Tariff Rates

Section 7(3) of the Act exempts from the Act "any contract for the carriage of freight or personnel * * * where published tariff rates are in effect." Clarification is considered necessary, particularly regarding the application of this exemption to Government packing and crating contracts.

History of Provision

(a) Contemporaneous construction—Packing and crating contracts have been considered subject to the Act since their principal purpose is the furnishing of packing and crating services and the transportation is considered incidental thereto.

(b) Existing regulations.—The provisions regarding the statutory exemption provide at section 4.6(m)(3) an administrative exemption for such carriage subject to the rates covered by section 22 (recodified as section 10721) of the Interstate Commerce Act. Section 4.118 explains that the service contracted for must be "actually governed" by published tariff rates for such carriage; and that typically for such contracts, there is on file with the ICC or state body a tariff rate applicable to the transportation, and the transportation contract with the Government is evidenced by a bill of lading citing the published tariff rate.

(c) Current practice—same as (a).

(d) January 1981 regulations—Substantively the same as (b). Instead of § 4.6, the statutory exemption was set forth at § 4.115(b) and the administrative exemption was set forth at § 4.123(d).

(e) Proposed regulations—Same as (d).

Comments

None received.

Discussion of Final Rule

A clarifying revision has been made in this section to provide that carriage subject to section 10721 of the ICA must be in accordance with applicable regulations governing such rates. Consistent with our view that SCA coverage, and likewise exemptions, are determined by the principal purpose of a contract, the regulation also clarifies that only contracts principally for the "carriage of freight or personnel" are exempt. Thus, the exemption does not apply where the principal purpose of the contract is packing, crating, handling, loading, and/or storage of goods prior to or following line-haul transportation to the ultimate destination. The fact that substantial local drayage to and from the contractor's establishment (such as a warehouse) may be required in such contracts does not alter the fact that their principal purpose (i.e., the Government's purpose and need) is other than the carriage of freight. See *Williams Moving Co.* v. *United States*, 697 F.2d 842 (8th Cir. 1983).

This section is so revised.

Section 4.123(e) (1), (2), and (3)—Exemption for Contracts for Maintenance and Repair of Certain ADP, Scientific and Medical, and Office and Business Equipment

Section 4(b) of the Act provides the Secretary general authority to exempt contracts from the Act where he determines that such exemption is necessary and proper in the public interest or to avoid the serious impairment of government business and is in accord with the remedial purpose of the Act to protect prevailing labor standards. The issue has arisen concerning the appropriateness of application of SCA to contracts for repair or maintenance of ADP, high technology, and other equipment, and therefore whether an exemption should be granted for such contracts.

History of Provision

(a) Contemporaneous construction—The Department has, since 1966, consistently held the maintenance and repair of all types of equipment, including automated data processing (ADP) equipment, scientific and medical apparatus, and office and business machines to be covered by the Service Contract Act.

(b) Existing regulations—Under current regulations, there is no provision exempting the contracts at issue from the Act. Electronic equipment

maintenance and operation is listed at § 4.130(h) as a type of covered contract.

(c) Current practice—A question arose publicly in 1977, when the Department formally advised GSA for the first time that, pursuant to its policy on bid specifications, provisions for maintenance and repair in GSA's contracts for the purchase or lease of ADP equipment were subject to SCA. Up until this time, such GSA contracts did not contain SCA provisions because of its belief that the contracts were not subject to the Act. In view of the sharp disagreement by GSA and the industry, which also claimed that compliance with SCA's requirements would be so disruptive as to prevent it from doing business with the Government, the Department, in August 1979, issued a short-term exemption from the Act for such ADP lease/purchase contracts, in order to permit GSA to complete its FY 1980 procurements. Subsequently, although the exemption was not extended (specific exemptions were issued, however, for a few national security contracts), the Department issued interim wage determinations for maintenance and repair of ADP equipment and scientific and medical equipment with high technology as an essential element, and for GSA supply schedule contracts for business machines which included requirements for maintenance and repair of the equipment. These interim wage determinations, issued pursuant to section 4(b) of the Act, permitted contractors to pursue their normal wage policies by allowing them to pay the same wages they paid their employees on private contracts.

In the meantime, GAO issued a report examining the issue of application of SCA to maintenance and repair of ADP and other high technology equipment, and strongly recommend that the Secretary exempt such contracts. Comp. Gen. Report Nos. HRD-80-102 (Sept. 16, 1980) and HRD-80-102(A) (March 25, 1981). Although this recommendation was not adopted at the time, the special interim wage determinations issued pursuant to section 4(b) of the Act have remained in effect pending action on the proposed exemptions.

(d) January 1981 regulations—Specifically provided, at section 4.130(a)(34), that maintenance and repair of all types of equipment, including ADP and office equipment, is covered by the Act. The Department did not deal with a requested exemption from the Act for contracts for maintenance or repair of ADP, medical and scientific equipment, and office and business machines. 46 FR 4329 (Jan. 16, 1981).

(e) Proposed regulations—Exempted from all the provisions of the Service Contract Act contracts for the maintenance of repair of:

(1) Automated data processing equipment, including office information systems, procured pursuant to P.L. 89-306 (40 U.S.C. 759);

(2) Scientific and medical apparatus or equipment which has automated data processing or other high technology as an essential element; and

(3) Office and business machines not otherwise exempt pursuant to paragraph (1) above.

Comments

The proposed exemptions were supported generally by several trade associations representing firms in the affected industries, numerous individual firms, and three Federal agencies. Commentators in this group include CBEMA, SAMA, AEA, the Health Industries Manufacturers Association, the National Micrographics Association, the C of C, IBM, Hewlett-Packard, Digital Equipment Corporation, Texas Instruments, Honeywell, Kodak, DOD, GSA and SBA. Several individual firms endorsed the CBEMA comments.

Numerous industry commentators asserted that Congress did not intend the Act to apply to the product support services performed by the "high technology" industry. They stated that the intent of Congress in enacting the SCA was to prevent price competition for labor-intensive service contracts from depressing prevailing wage standards, i.e., to eliminate "wage busting," and that the nature of the "high technology" product support service business is not conducive to wage busting. They also stated that the Act's legislative history does not mention these services in discussions of the types of contracts intended to be covered. In addition, CBEMA, SAMA, and others in this group submitted detailed comments and factual support for the proposed exemptions.

CBEMA presented a survey of firms in the ADP and business equipment field regarding the merit pay systems used to compensate employees engaged in equipment maintenance and repair services. This survey showed that under merit pay systems, employees are assigned on the basis of experience and skill to one of several job classification levels, and generally are relatively highly paid. In addition, firms typically have different pay structures in different areas of the country. Several commentators noted that the relatively high pay is due to the rapid growth in these industries, the relative shortage of skilled employees, and the investment made in job training.

Many industry commentators also remarked that their merit pay systems were incompatible with the requirements of the SCA because it is inherent in the system that some employees are paid below the mean or median rate of pay in the industry. Thus, they asserted, in order to comply with the Act, firms would have to change their methods of doing business in one of several ways, all of which they found disruptive and costly. Accordingly, several corporations stated that, rather than restructure their pay systems, they would cease performing contracts covered by the Service Contract Act.

Further information indicates that the preponderance of total industry contracts with the Federal Government is for commercial products and servicing of those products at standard commercial prices. The CBEMA submission suggested that for the typical industry contractor the Government service business is a small part of the total product service business. The CBEMA survey found that the median percentage of service business performed for the Federal Government was 7 percent. The maintenance and repair of equipment furnished to the Government, as to other customers, is of an "on-call nature" and, therefore, is sporadic and intermittent. In addition, the employees in question are not principally assigned to Government contract work but perform such work as an integral part of their day-to-day duties of servicing equipment in commercial establishments. Service is provided to the customer as operational problems result and, in some cases, as preventive maintenance is scheduled.

Several industry commentators, as well as GSA and DOD, also recommended specific changes in the scope of the proposed exemptions. CBEMA and SAMA recommened that the provisions in sections 4.123(e)(1), (2), and (3), applying the exemptions to "contract requirements" be changed to refer to "contracts" on the grounds that the Act should apply on a "contract" basis, not a "contract requirement" (i.e., specification) basis.

GSA, DOD, and CBEMA recommended deleting the provision in proposed section 4.123(e)(1) limiting that exemption to equipment procured "pursuant to P.L. 89-306 (40 U.S.C. 759)," known as the Brooks Act, which generally concerns procurement of ADP equipment. GSA remarked that the nature and characteristics of ADP maintenance services are independent of coverage under the Brooks Act. DOD

noted that several classes of its ADP equipment that are not subject to the Brooks Act are repaired under the conditions cited by the Department in its rationale for proposing the exemptions.

CBEMA and SAMA recommended that the scope of section 4.123(e)(2) be clarified by deleting the phrase "ADP or other high technology" and applying the exemption to scientific and medical equipment "where the application of microelectronic circuitry or other technology of at least similar sophistication is an essential element."

CBEMA and SAMA also suggested that proposed section 4.123(e)(2) be made more precise by citing certain Federal Supply Classification (FSC) classes as being largely composed of the types of equipment within the exemption. Hewlett-Packard, AEA, Health Industries Manufacturers Association, and others recommended that, in place of the proposed three-part exemption, the Department adopt a single, comprehensive exemption applicable to "commercial product support services", under which the contractor would make certifications regarding the commerciality of the services and the use of the same compensation plan for both Government contract employees and other employees. Hewlett-Packard asserted that such an exemption would minimize the definitional problems inherent in the Department's proposal, and would protect against "wage busting." SAMA also endorsed an exemption of this type as an alternative approach.

The proposed exemptions in §§ 4.123(e)(1), (2), and (3) were opposed in their entirety by the AFL-CIO, IAM, Teamsters, IATSE, SEIU, LIUNA, and the United Brotherhood of Carpenters.

The AFL-CIO and IAM asserted that the terms and legislative history of the original Act and the 1976 amendments evidence a Congressional intent to cover all classes of service workers and service contracts not specifically exempt under section 7 of the Act. They also argued that the 1972 amendments restricted the Department's authority to adopt industrywide exemptions such as those proposed. In addition, the union commentators advanced arguments in rebuttal of the Department's rationale for proposing the exemptions.

The AFL-CIO, IAM and the Teamsters asserted that the Act was intended to protect prevailing wage standards whether those standards are high or low, and pointed out that any doubts in this respect were settled by the 1976 amendments clarifying SCA coverage of white collar employees. The AFL-CIO and IAM commented that, to the extent that merit pay systems may be incompatible with SCA compliance, this is not unique to the "high technology" industry.

The union comentators also argued that it was improper to grant legal concessions because firms threaten to cease doing business with the Government. The Teamsters asserted that the Department's claim that necessary services could not be obtained absent the exemptions cannot be reconciled with the accompanying claim that the contracts in question are largely for servicing of standard commercial products. IAM pointed out that for many years the Government awarded numerous contracts for maintenance of the equipment in question which contained SCA prevailing wage requirements, and that no evidence has been presented that firms were unable to perform those contracts in the past because of SCA.

The AFL-CIO and IAM pointed out that the preamble to the proposal only states that "the preponderance" of the contracts in question are for service of commercial products at commercial prices. They asserted that since this is not an industry-wide characteristic, it cannot justify industry-wide exemption. These commentators also asserted that the fact that commercial prices are offered is no assurance that prevailing wage standards will be protected.

Finally, AFL-CIO and IAM stated that the Department's description of the Government contracts as a minor proportion of total business, which is performed on a sporadic basis by employees who perform such work as a part of their day-to-day duties servicing commercial businesses describes a condition common to many types of service contractors. They stated that the legislative history does not differentiate between "sporadic and intermittent" contractors and those who work full-time for the Government.

Discussion of Final Rule

It is the Department's view that the possibility of granting industry-wide administrative exemptions was not foreclosed when Congress statutorily exempted certain broad categories of contracts under section 7 of the Act, nor by the 1972 amendments tightening the criteria in section 4(b) of the Act. By its terms section 4(b) specifically authorizes the granting of administrative exemptions where its criteria are satisfied.

Turning to the exemption itself, we have concluded that, as discussed below, an exemption for maintenance, calibration, and/or repair of ADP equipment and office information systems, high technology scientific and medical equipment, and office/business machines where the services are performed by the manufacturer or supplier is appropriate where the items are commercial items, the services are based on commercial prices, and the contractor utilizes the same compensation plan for its Government contract employees as it uses for its commercial customers. (A large percentage of the contracts with requirements for servicing of such equipment would not be covered by the Act in any event since they are lease/purchase contracts and are not principally for services. See sections 4.110, 4.132.)

The principal intent of Congress in enacting the SCA was to preserve prevailing wage standards, and to prevent the "wage busting" due to intense competition which had occurred as a result of the practice of awarding Government service contracts to the lowest bidder. See H.R. Rep. No. 948, 89th Cong., 1st Sess. (1965); 1965 House Hearings at 5-6. Accordingly, although not determinative of coverage, the presence or absence of wage busting in a particular industry is considered to be a significant factor in determining whether an exemption is in accordance with the remedial purpose of the Act to protect prevailing labor standards. In this regard, it is pertinent to note that we have received no evidence that the special wage determinations discussed above, which have been issued since 1979 for most of the contracts in question and permitted contractors to pursue their normal wage policies, have had any adverse effect on the employees in the industry.

It is clear that "merit pay" systems are pervasive in the ADP industry. The comments submitted, as well as the CBEMA survey and the Comptroller General reports, demonstrate the sophistication of these pay systems, the fact that the workers, whose skills are in great demand, are relatively well paid, and that there is a potential disruption of merit pay systems from the application of SCA. Although the Department recognizes that commercial pricing factors are unique to those types of Government contracts which would be exempt under the proposal, commercial pricing does diminish the possibility of cutting workers' wages to obtain Government contracts. Furthermore, the information submitted by CBEMA and the Comptroller General reports demonstrates that Government business is a small proportion of the individual firms' total business and that the employees in question perform Government work only as a part of their

day-to-day duties servicing commercial establishments, also tending to preserve wage standards for the workers on Government contracts. The foregoing factors, together with the fact that most ADP services are performed by the vendor in an effort to assure statisfactory servicing of the equipment, have led the Department to conclude that wage competition in the industry is not a significant factor in obtaining Government contracts.

Accordingly, this exemption is found to be in accordance with the remedial purposes of the Act because the affected employees are relatively highly paid pursuant to complex merit pay systems and because the nature of the industry, as described by the commentators and detailed in the Comptroller General reports, is such that price competition based on labor costs and concomitant wage abuses are highly unlikely to occur. Because the protections of SCA are therefore not necessary to these workers and because, by virtue of the nature of the industry and its merit pay plan, compliance with SCA would disrupt the merit pay system and staff assignments, thereby disrupting the workers as well as the industry, it is also found to be necessary and proper in the public interest to grant these exemptions.

Finally, the exemptions are necessary to aviod the serious impairment of Government business. It is well documented in the Comptroller General reports that in the absence of these exemptions, there is likely to be serious adverse impact on the operations of the Government, such as the potential curtailment of crucial programs and services, many of which are critical to national defense and security, as a result of segments of the industry ceasing to do business with the Government. The comments received suggest that this continues to be true.

It is true that the Department had over several years issued wage determinations for contracts for the maintenance and repair of the types of equipment in question, without any indication that industry firms were unable to perform those contracts. However, the Department has ascertained that contracting agencies had failed to include SCA provisions in the majority of such contracts, particularly contracts for service in conjunction with the lease or purchase of equipment. It is the industry's concern that full implementation of the SCA by contracting agencies will result in substantial adverse impact on it.

When viewed in the context of the overall industry position, the possible refusal to accept SCA contracts is an understandable response of individual firms attempting to preserve their economic self-interest by declining to accept business opportunities seen as disruptive and unprofitable. Since in many cases it is not feasible to obtain necessary services from other sources, it is clear that Government operations would be adversely impacted in those cases. In fact, in some cases in the past the Department has exempted individual contracts where national security agencies were confronted with the refusal of sole-source suppliers to accept SCA covered contracts.

The Teamsters' comments imply that, in view of the claim that a preponderance of the affected contracts pertain to commercial products, competitive pressures would assure that necessary services could be obtained notwithstanding a refusal by some firms to accept contracts. However, the fact that a given item of equipment is a standard commercial item merely means that it is sold to commercial and Government purchasers alike, and does not mean that a firm other than the original manufacturer of that item has the necessary expertise or access to parts to maintain it. While some of the equipment which would be exempted under the proposal can be repaired by other manufacturers, or by "service-only" firms, much of the equipment must, as a practical matter, by repaired by the original manufacturer.

In conclusion, the Department is aware that every characteristic of the industry cited by the Department in the preamble of the proposal and documented in the detailed industry comments and Comptroller General reports may not apply to every firm in the industry or to every Government contract for the services in question; however, it is clear that these characteristics apply to the industry as a general matter. Furthermore, it is the Department's conclusion that the rationale, as a whole, provides a sufficient basis under section 4(b) of the Act, provided that certain additional restrictions, discussed below, are met.

The Department has concluded, as suggested by several industry commentators, that it is necessary to limit the exemptions to the servicing of only that equipment furnished to the Government which is also furnished commercially and where the service price is based on established catalog or market prices, thus excluding from the exemption any custom-designed equipment, and limiting its application to that sector of the industry and the work force to which the rationale applies. The commercial pricing language used in the final regulation is adopted from longstanding criteria for cost and pricing data contained in DAR 3-807.7(b), 32 CFR 3-807.7(b), which are routinely used and understood by contracting officers and the industry.

The contractor is also required to certify that it will maintain the same compensation plan for employees on Government and commercial equipment. This limitation will help ensure that these contractors, who the record demonstrates pay relatively high wages to their work force, will not reduce wages to gain an unfair advantage in the competition for Government contracts. This limitation therefore further ensures that the exemptions are in accord with the remedial purposes of the Act.

In addition, the contracting officer is required to make an affirmative determination that the conditions of the exemption have been met. If the Department determines afterward that the conditions have not in fact been met, the exemption will no longer be applicable to the contract.

The Department also determined that it is necessary to continue the limitation on the exemption for office and business equipment to services performed by the original manufacturer or supplier. The record contains no support for finding that the rationale of the exemption applies to firms which only service such equipment. Indeed, the Department's experience is that the rationale does not apply to such firms.

Regarding the various other recommendations for changes in the specific provisions of the proposed exemptions, the comments by CBEMA and SAMA that any exemptions should apply on a "contract" basis, rather than to contract requirements, and the comments by DOD, GSA and CBEMA that the exemptions should not be tied to Brooks Act coverage, are well taken and have been adopted. In addition, CBEMA and SAMA's suggestion that FSC classes be cited as examples of high technology scientific and medical apparatus in § 4.123(e)(2) provides useful clarification.

With the modifications discussed, the Secretary finds that these exemptions are necessary and proper in the public interest and to avoid the serious impairment of Government business, and are in accord with the remedial purpose of the Act to protect prevailing labor standards.

Finally, we wish to note that the exercise of the exemption authority in section 4(b) of the Act is discretionary. If experience shows that the depressing of prevailing wage standards or "wage busting" occurs, the Department would

not hesitate to modify or withdraw these exemptions.

Accordingly, §§ 4.123(e) (1), (2), and (3) are modified as discussed above and are renumbered and adopted as 4.123(e)(1).

Section 4.123(e)(4)—Exemption for Research and Development (R&D) Contracts

History of Provision

(a) Contemporaneous construction—R&D contracts have always been considered subject to SCA when they are principally for the furnishing of a service (such as collection and analysis of information or testing), provided that there is more than a minor use of service employees in performing the contract services. On the other hand, R&D contracts for construction, such as a contract to build a pilot coal gasification plant, or for manufacture or supply, such as a contract for a prototype, are subject to the Davis-Bacon Act or the Walsh-Healey Public Contracts Act, respectively, rather than SCA.

(b) Existing regulations—No specific provision regarding R&D, but see section 4.113(a)(2), providing that service contracts involving more than a minor use of service employees are covered, and section 4.131(a), providing that a contract principally for services is covered even if the contract requires tangible items to be supplied as a part of the services furnished.

(c) Current practice—Same as (a).

(d) January 1981 regulations—R&D contracts were listed as a specific example of a type of contract which is covered by the Act if a significant number of service employees are used, even if they work under the direction of professional personnel and professionals perform the final analysis and reporting. At section 4.131, contracts for data collection and statistical surveys are given as examples of covered contracts, even though the contractor may be required to furnish tangible items such as written reports.

(e) Proposed regulations—An exemption for R&D contracts was proposed at section 4.123(e)(4). In addition, section 4.113, discussed above, was revised to provide that only contracts performed principally through the use of service employees are covered by the Act; and R&D contract performed principally by professional personnel was listed as an example of a contract not subject to the Act. No change was proposed in section 4.131(e).

Comments

The SBA, Counsel on Governmental Relations, American Council on Education, Association of American Medical Colleges, National Association of State University and Land-Grant Colleges, Southern Research Institute, and a number of individual colleges and universities supported the exemption for R&D contracts. Several of these commentators contended that covering such contracts went beyond the intent of SCA and that to apply the Act to such contracts would cause severe disruptions in their existing pay systems. However, they provided no evidence to substantiate this prediction.

DOD stated that, in its view, Congress did not intend the Act to cover contracts for R&D and that an exemption was thus unnecessary. DOD suggested that the regulations should simply provide that the Act does not apply to R&D contracts.

The AFL-CIO, Teamsters, LIUNA, IAM, IATSE, and the Florida Association of Professional Employees opposed the exemption on several grounds. They claimed that the legislative history of SCA did not support the view stated in the proposal that Congress did not intend the Act to apply to R&D contracts. They stated that, since the House Report cited by the Department pertained to a 1964 bill which was never enacted, it should not determine coverage of the SCA, which was passed in 1965 by a different Congress. In addition, to support their claim that the Department has not substantiated its assertion that the lack of an R&D exemption would impair Government business, the unions pointed out that numerous R&D contracts have been covered in the past. These commentators also remarked that the scope of the exemption could not be determined from the language used in the proposal.

Discussion of Final Rule

In deciding whether R&D contracts are subject to SCA, the question must be whether they are contracts, "the principal purpose of which is to furnish services * * * through the use of service employees." If R&D contracts meet this test, they are covered by the Act. DOD has suggested that although an R&D contractor engages in collection and analysis of technical and scientific information and the conduct of sophisticated tests, the principal purpose of R&D contracts is to buy a product, i.e., the information obtained. To the contrary, it is our view that the principal purpose of such contracts is the service of collection and analysis of information, testing, etc., although the information obtained is generally manifested in a report. See *Descomp, Inc.* v. *Sampson*, 577 F. Supp. 254, 261 (D. Del. 1974).

In fact, DOD's own regulations list R&D as a type of service contract, and provide: "A service contract is one which calls directly for a contractor's time and effort rather than for a concrete end product. For purposes of this definition, a report shall not be considered a concrete end product if the primary purpose of the contract is to obtain the contractor's time and effort and the report is merely incidental to this purpose." DAR § 22-101, 32 CFR § 22-101. With regard to DOD's view that R&D contracts are not performed principally through the use of service employees, see the discussion of the Act's principal purpose provision, above, §§ 4.110-4.113, which have been revised to revert to the existing principal purpose test and to eliminate the reference to R&D contracts.

Because many R&D contracts are subject to SCA, and DOL had been of the view that application of SCA was inappropriate, an exemption was proposed for R&D contracts. Unlike the proposed ADP exemption, although many commentators (especially colleges and universities) urged such an exemption, they did not provide evidence to support an exemption. After a careful analysis of the comments received, therefore, the Department has concluded that the record does not demonstrate a sufficient evidentiary basis to find that such an exemption would be "necessary and proper in the public interest or to avoid the serious impairment of government business, and [would be] in accord with the remedial purpose of the Act to protect prevailing labor standards," as required by section 4(b) of the Act. The record also indicates that the parameters of such an exemption cannot easily be determined.

Accordingly, the proposed R&D exemption is not being adopted at this time. The Department will reconsider this issue at a later date if sufficient documentation is submitted that the criteria for exemption in section 4(b) would be met.

Sections 4.130(a), 4.131(f)—Coverage of Timber Sales Contracts

A major dispute has existed for years concerning application of SCA to contracts with the U.S. Forest Service for sale of timber.

History of Provision

(a) Contemporaneous construction—It has been the Department's view since the issue first arose in 1972, that the provision of services inherent in timber sales contracts—such as land clearing, road building, fire fighting—rather than the sale of timber, was the principal

purpose of the contract. Thus, the DOL has been of the view that the contracts are principally for services and subject to SCA.

(b) Existing regulations—Section 4.116(b) provides that contracts for clearing timber are subject to SCA if not followed by construction (and therefore subject to the Davis-Bacon Act). However, the provision does not mention timber sales contracts.

(c) Current practice—The actual practice in the industry never conformed to the Department of Labor's consistent position that timber sales contracts were subject to SCA coverage. The Department of Agriculture-Forest Service (USDA/FS) has contested the Department of Labor's position since 1972 when, after discovering that the Forest Service was not including SCA provisions in its timber sale contracts, the Department of Labor began asserting SCA coverage. The USDA contended that the sale of timber is the principal purpose of timber sales contracts and has never incorporated SCA in such contracts.

(d) January 1981 regulations—In response to the Department of Labor's December 1979 proposal to incorporate its longstanding position on SCA coverage of timber sales contracts into its written regulations, 44 FR 77057 (December 28, 1979), the Secretary of Agriculture wrote to the Secretary of Labor opposing the proposed regulation, stating that it "improperly expands the application of the Service Contract Act," contrary to the statutory purposes of both the National Forest management statutes and the "principal purpose" requirement of the Service Contract Act (Letter dated March 27, 1980). The Department then reexamined the issue and concluded in section 4.131(f) of the 1981 regulations that some contracts called "timber sales contracts" have as their principal purpose the furnishing of services and thus, such contracts are subject to SCA. Some examples include contracts for the removal of trees to open up the forest for public use, or for the removal of trees that are infested with insects or are damaged by disasters. The 1981 regulations also concluded that "certain contracts for timber sales" would "not be principally for services" and therefore not subject to SCA. 46 FR 4331. However, such contracts "generally" contain specifications principally for services, such as "building of temporary roads, fire-fighting and control, erosion control, slash removal and trimming, and the removal of diseased or injured trees"; such individual specifications, under the 1981 regulations, would be covered.

(e) Proposed regulations—Section 4.131(f), which concerns "furnishing services involving more than use of labor," noted that where the contractor "receives tangible items" from the government "in return for furnishing services," the contract is covered by SCA where "the facts show that the furnishing of services is the principal purpose" of the contract. The regulation then stated specifically that "so-called 'timber sales' contracts generally are not subject to the Act because normally the services provided under such contracts are incidental to the principal purpose of the contracts," i.e., the sale of timber. Furthermore, because of the change in coverage of separate contract specifications (see sections 4.110 and 4.132), when the principal purpose of a timber sales contract is not services, the contract would not be subject to SCA coverage simply because it contains specifications which have the provision of services as their principal purpose.

Comments

Industry associations, including the National Forest Products Association, the American Pulpwood Association, the American Plywood Association, a number of timber firms and the Small Business Administration, supported the proposed regulations. Additionally, some industry comments suggested that the proposed regulations should be even stronger, and should be changed to reflect that timber sales contracts are never subject to SCA coverage.

The AFL-CIO, LIUNA, IAM, and UBC opposed the proposed regulations, contending that the sales provisions contained in such contracts are only incidental to a broad forest management program requiring a variety of services to be performed. They noted that, although a contractor may only be interested in obtaining timber, the harvesting of forests improves timber stands and thus is an essential service to the nation.

Discussion of Final Rule

Consistent with the Department's view that SCA applies only to contracts which are principally for services, the question of whether timber sales contracts are covered by SCA turns on whether the principal purpose of the contracts is considered to be sales or service. In reexamining this issue, the Department considered the statutes and regulations concerning National Forests, timber sales contracts, and Forest Service manuals. The Department of Labor now concurs with the longstanding position of the Department of Agriculture—the Department charged with administering the timber sale programs—that generally the principal purpose of timber sales contracts is sales, not service. This determination based in large part on the stated purpose of the National Forests, as contained in the Organic Act of June 4, 1897, 16 U.S.C. 475, which is "to furnish a continuous supply of timber for the use and necessities of the citizens of the United States," as well as the great concern expressed in the legislative history of the National Forest Management Act of 1976, for the importance of the National Forests to the supply of timber.

Furthermore, the Department's determination that generally the sale of timber is the principal purpose of timber sales contracts, is consistent with the USDA/FS regulations. For example, the regulations include a requirement for timber management plans which must be designed to aid in providing a continuous supply of timber for the use of United States citizens. 36 CFR 221.3. Such plans also must provide "so far as feasible" for an "even flow" of "national forest timber" to "facilitate the stabilization of communities" and "opportunities for employment." *Ibid.* Additionally, the Forest Service monitors the situation to ensure, among other things, that land classified as not suitable for timber production will be examined at least every 10 years to determine if such lands can be returned to timber production. 36 CFR 219.13(i). These examples indicate the importance of timber production for ultimate sale.

Although the legislation also requires multiple use management of the forests, and timber contracting compatible with those uses, these requirements do not detract from the determination that generally the sale of timber is the principal purpose of timber sales contracts. However, certain contracts may, in fact, be principally for some other purpose, such as clearing land or removal of diseased or dead timber. Pursuant to section 4.111, such a contract may be subject to SCA coverage, for in any given instance, the facts concerning a particular contract will determine the principal purpose of the contract.

Accordingly, the proposed regulation, which provides that generally the sale of timber, not the provision of services, is the principal purpose of the timber sales contracts and thus such contracts are generally not covered by the SCA, is adopted.

Section 4.133—Beneficiary of Contract Services

SCA by its terms applies to all contracts the principal purpose of which

is to furnish services in the United States through the use of service employees. The question which arises is whether SCA should apply to contracts where the benefit of the services to the Government is very remote, especially concession contracts such as those in the National Parks.

History of Provision

(a) Contemporaneous construction—As a result of informal correspondence after passage of the SCA and a statement by Congressman O'Hara during debate on amendments to the FLSA the following year, DOL did not apply SCA to concession contracts which principally serve the public and where the benefit to the Government is very remote. In practice, this exclusion from SCA applied to National Park Service concessions and certain FAA concessions at Dulles and National Airports.

(b) Existing regulations—Same as (a).

(c) Current practice—Same as (a); however, it is recognized that the exception from coverage is in effect an administrative exemption and that the Act contains no such restriction to contracts benefiting the Government. See *District Lodge No. 166, IAM* v. *TWA Services, Inc.*, 25 WH Cases 208 (M.D. Fla. 1981), appeal pending on other issues, 11th Cir., No. 82-3159.

(d) January 1981 regulations—Provided that the Act contains no restriction regarding the beneficiary of the contract services, but provided an exemption for National Park and similar concession contracts for the furnishing of food, lodging, souvenirs, etc., to the general public, as distinguished from the United States. Specifications within such contracts for other services such as maintenance and dissemination of information about the Government and its programs were not exempt.

(e) Proposed regulations—Substantively the same as (d) except that visitor information services would also be exempt.

Comments

NASA and DOE commented that all concession contracts which benefit the public in general and not the Government or its employees (like those of the National Park Service) should be considered not covered. They recommended that this interpretation of the Act be used in lieu of the proposal to cover concession contracts like all other contracts for services, but to exempt certain types of concession contracts pursuant to the Secretary's authority under section 4(b) of the Act.

NASA and DOE further commented on the provision in section 4.133(b) which stated that where exempt contracts include "substantial" requirements for services other than those specified as exempt, those services are not exempt. These agencies proposed that section 4.133(b) be revised to apply the proposed principal purpose concept for determining whether the entire contract is exempt or not (i.e., if a majority of the contract services are exempt, then the entire contract is exempt even though the contract also provides for substantial services which would otherwise not be exempt).

The IAM, AFL-CIO, LIUNA, and UPGWA contended that there is no statutory provision or clear legislative history to support the proposal to exempt visitor information services from SCA coverage. LIUNA and UPGWA asserted that this proposed exemption exceeds the discretion of the Secretary of Labor and that the requirements for granting exemptions contained in section 4(b) of the Act have not been satisfied. IAM noted that concession contracts for visitor information services were distinguishable from national park concessionaires in that the former bestow a direct benefit on the Government by fulfilling one of its principal functions, which is informing the public.

The AFL-CIO and the IAM also objected to the statement in the current regulations that the Act does not apply to certain concessionaires servicing the public in Federal parks. The AFL-CIO maintained that neither the original regulation nor its subsequent revisions state that such contracts are exempt under section 4(b) of the Act, and that there is no finding that what is now alleged to have been an exemption is "necessary or proper in the public interest or to avoid serious impairment of Government business." IAM stated that remarks by Congressman O'Hara, co-author of the Act, in the context of amending the Fair Labor Standards Act one year after enactment of the SCA, could not be considered legislative history, and thus do not provide a legitimate basis for the exemption.

Discussion of Final Rule

NASA and DOE's views that the Act does not cover concession contracts which primarily benefit the public must be rejected. The language of the Act makes no distinction based on the beneficiary of the contract services, and further, the Act's legislative history provides no evidence of a Congressional intent to so limit coverage. See the recent decision in *District Lodge No. 166, IAM* v. *TWA Services, Inc., supra.*

However, the Department continues to be of the view that an exemption from the Act is necessary for National Park and similar concession contracts providing food, lodging, souvenir, and similar services to the general public. Such an exception from the Act's requirements has been in the regulations since 1968. However, because of difficulties in applying the current regulation, which speaks in more general terms of contracts where the benefit to the Government is "indirect or remote," the regulation was recast in the January 1981 regulations and the proposed regulations, making it clear that the provision was an exemption and carefully delimiting its scope to the listed concession contract services.

Furthermore, it is the Department's view that the underlying purpose for the exemption does not apply to substantial requirements for services other than those listed. Therefore, NASA's recommendation that the exemption should apply if the contract is principally for exempt services is not being adopted.

The Department agrees, however, that visitor information services are of a different character than the concessionaire services listed in the exemption. Furthermore, the decision in *District Lodge No. 166* concluded that the current regulations have not exempted visitor information center services. Accordingly, the Department has determined that exempting visitor information services is not now appropriate.

The Secretary of Labor has determined, based on the information available, that because the proposed exemption is supported by statements of members of Congress made shortly after enactment, it is necessary and proper in the public interest; and further that because the proposed regulation will clarify the limits and make clear the basis of the previous regulation, it is therefore in accord with its remedial purpose to protect prevailing labor standards.

Section 4.134(b)—Service Requirements in Building Leases

The question has arisen whether the coverage provisions of the Act apply to janitorial and other building services which are furnished on an incidental basis in a contract for lease of building space for Government occupancy.

History of Provision

(a) Contemporaneous construction—The Act historically has not been applied to building lease contracts containing maintenance requirements.

(b) Existing regulations—Section 4.134(b) of the current regulations contains this noncoverage position.

(c) Current practice—Current practice is consistent with the existing regulations.

(d) January 1981 regulations—Reversed the prior policy and provided for SCA coverage where the contract contained separate specifications requiring certain specified levels and frequencies of janitorial or other maintenance services in contracts for building space.

(e) Proposed regulations—Stated that the Act does not apply to the furnishing of building services where the principal purpose of the contract is the leasing of space.

Comments

The SEIU opposed the exclusion from SCA coverage of janitorial and maintenance service specifications in building leases, stating they saw no justification for denying labor standards protections to personnel working at Government-leased facilities.

Discussion of Final Rule

As discussed above under sections 4.110, 4.132, the Department has adopted the proposal that the SCA would not apply to contracts which, as a whole, do not have as their principal purpose the furnishing of services. It follows that contracts for the lease of building space for Government occupancy, where the building owner furnishes general janitorial and other building services on an incidental basis, would be outside the Act's coverage because the leasing of the space rather than the furnishing of the building services is the principal purpose of the contract.

This position is fully consistent with the legislative history of the statute which is discussed above in §§ 4.110, 4.132, and particularly with the Solicitor of Labor's testimony during the House and Senate hearings on the bill. Accordingly, § 4.134(b) is adopted as proposed.

Section 4.145(a)—Extended Term Contracts

Section 2(a) of the Act requires that every covered contract contain a wage determination. In addition, subject to annual appropriation limitations, the Act permits contracts to be entered into for up to five years, provided that the contract provides for adjustment of wages and fringe benefits at least every two years.

History of Provision

(a) Contemporaneous construction—When a contract is entered into for a term of years, but is subject to annual appropriation by Congress, it has been considered that each year is a new contract, since the appropriation is necessary to render the contract effective. Accordingly, a new wage determination has been required each year. Similarly, exercise of an option has been considered a new contract under the act.

(b) Existing regulations—Same as (a), set forth at section 4.145(a).

(c) Current practice—Same as (a).

(d) January 1981 regulations—Substantively the same as (b) with clarifying language.

(e) Proposed regulations—Same as (d).

Comments

GSA noted that this subsection was unclear as to its application to contracts of one year duration which are not awarded on a fiscal year cycle and could be interpreted to require incorporating a new (revised) wage determination at the beginning of the new fiscal year, even though the contract had been in effect for only a few months. In their view, the same problem would occur under multi-year contracts which are not awarded on a fiscal year basis.

Discussion of Final Rule

This section is intended to cover only those contracts for terms in excess of one year and the language has been clarified accordingly. In addition, the language is amended to clarify that a new contract is deemed to begin upon the contract anniversary date in the new fiscal year, rather than at the beginning of each fiscal year, if those two dates, in fact, are different.

Section 4.152(c)—Trainee Classifications

It has been the Department's experience in administering the Act that contractors have often attempted to establish additional classifications for trainees and other subclassifications of classifications listed on the wage determinations. Accordingly, in addition to revisions to the conformable classification procedures set forth of § 4.6(b)(2), it was considered necessary to explain more fully the situations in which conformance is not permitted.

History of Provision

(a) Contemporaneous construction—Since trainees perform duties performed by other classifications on wage determinations, conformance of trainee rates has not been permitted. In addition, trainee classifications have not been issued on wage determinations unless found in a survey to prevail, or unless provided for in a collective bargaining agreement which governs the wages and benefits required to be paid pursuant to section 4(c) fo the Act.

(b) Existing regulations.—No specific provision.

(c) Current practice—Same as (a).

(d) January 1981 regulations—Specifically provided that additional classifications below the lowest rate in a job family on a wage determination cannot be established through the conformance process and therefore trainee and helper classifications cannot be conformed to the wage determination.

(e) Proposed regulations—Provided that trainee and helper classifications cannot be conformed, but also provided that trainee classifications may be used if listed in the wage determinations.

Comments

NASA and DOE objected to the prohibition against conforming trainee wage rates within a job classification if such classifications are not listed on a wage determination, stating that the provision is contrary to the prevailing wage concept, is inconsistent with DOL conformance procedures and industry pay practices, and increases contract costs.

The AFL-CIO, IAM, LIUNA, and the Teamsters objected to what they perceived as substantive differences between the language of this section and the language of the corresponding section in the stayed regulations of January 1981, which did not mention that trainee rates can be used if listed on the wage determination. The AFL-CIO stated that slotting procedures in section. 4.51(c) would lead to the increased issuance of trainee classifications on wage determinations where few currently exist. They further objected that the proposal does not contain a definition of trainees and does not provide a ratio for their use. IAM contended that the proposal represents a turnaround of DOL's position on this issue and will permit the widespread use of trainees which will lead to "wage busting."

Discussion of Final Rule

It is basic to the concept of a prevailing wage rate that such rate be the minimum permitted to be paid to all employees performing given duties in a particular classification. Therefore, the Department believes it would not be in accord with statutory intent to permit the establishment of lower level subclassifications through conformance procedures. Furthermore, conformance of subclassifications would be

inconsistent with the legislative intent that wages not be a factor in the competitive procurement process. (Appropriate variations have been provided in section 4.6(o) for apprentices, student learners and handicapped workers.) Moreover, as discussed in section 4.152(c), a wage determination will often list a series of classes within a job classification family (e.g., Technician Classes A, B, and C) where the practice prevails in the industry and where bona fide differences in the work performed exist. In such situations, the lowest level listed in considered to be the entry level and the establishment of a lower level (or intermediate levels) through conformance or otherwise is not warranted.

The union commentators appear to misunderstand the proposed regulation. The Department does not intend to alter its previous practice of issuing entry level or trainee classifications under the SCA only when they are prevailing or are mandated under section 4(c) of the Act. Therefore, the use of slotting techniques in the issuance of wage determinations will not be used to establish trainee classifications. However, the statement that trainees may be used if listed on the wage determination is being deleted to eliminate any suggestion that there will be a change in the Department's practice.

Because the specific duties performed by trainees and the extent of their use vary greatly by service occupation, it would not be appropriate to establish fixed definitions or ratios regarding trainees.

Thus, § 4.152(c) is adopted with revisions to eliminate the confusion raised by the language of the proposed regulations and simply state that trainee classifications may not be conformed.

Section 4.163(g)—Contract Reconfigurations

Section 4(c) of the Act generally requires that, where the employees of a predecessor contractor were covered by a collective bargaining agreement, the successor of a contract "under which substantially the same services are furnished" must pay its employees no less than the wages and fringe benefits provided by that agreement. Where predecessor contracts or portions thereof are reconfigured, consolidated or combined into one or more new contracts, a question arises concerning the application of section 4(c) to the new contract(s).

History of Provision

(a) Contemporaneous construction—It has been the practice of the Department since the first time this issue arose after the 1972 amendments, to apply each predecessor contractor's collectively bargained rates to the same identifiable work in the new or consolidated contract.

(b) Existing regulations—There is no corresponding provision.

(c) Current practice—Same as (a).

(d) January 1981 regulations—Provided that the protections of section 4(c) follow identifiable contract requirements which have been placed into new or consolidated contracts.

(e) Proposed regulations—Provided that in order for section 4(c) to apply when two or more previous contracts are combined into a single "reconfigured" contract, the new contract must be primarily for services which were furnished in the same locality under predecessor contracts. Further, where there is more than one such predecessor contract, the one covering the predominant part of the services called for under the new contract would control for purposes of section 4(c), and the collectively bargained wages and fringe benefits under that contract, if any, would apply to the new contract.

Comments

CODSIA favored the proposal because it would eliminate situations where employees in the same classification who previously worked on different contracts, work side by side on the new reconfigured contract and receive different rates.

The IBEW, SEIU, IAM, LIUNA, and IATSE opposed any limitations on the requirement for successor contractors to pay no less than a predecessor's negotiated rates, contending that their collective bargaining agreements would be negated, contrary to the intent of the 1972 amendments. These organizations also argued that agencies could reconfigure contracts to avoid a predecessor's negotiated wage and fringe benefit rates. In addition, the IBEW stated that, where two or more predecessor contracts for *different* services are combined, negotiated wages and fringe benefits for classifications not covered by the collective bargaining agreement under the predominant predecessor contract would be ignored under the new contract.

Discussion of Final Rule

A literal application of the policy expressed in the January 1981 regulations to reconfigured contracts results in the application of more than one predecessor collective bargaining agreement to the same services, and different negotiated rates applied to the same employee classifications on the new contract. Likewise, a similar problem arises where one predecessor has a collective bargaining agreement while another does not and the new contract combines identical work functions. In these situations, contractors have been required to pay employees working side by side, performing the same services, different wages and fringe benefits, entailing detailed records to ensure the proper rate is applied to the services performed, and potentially causing labor unrest.

While the labor organizations cited legislative history that section 4(c) was enacted to prevent wage undercutting on contract recompetitions, which they argue would include reconfigurations, they do not address the problems that arise under the current policy that section 4(c) follows identifiable work, without any limitation.

A careful analysis of the comments makes it clear that the regulatory language requires clarification. On reconsideration, we have concluded that a limitation on the application of section 4(c) is not necessary where clearly different and distinguishable services are combined in a reconfigured contract, since the problems the proposal was designed to alleviate do not arise in that situation. Such a limitation is deemed necessary, however, where two contracts involving the same or similar work functions are combined and, as a result, employees working side by side on the reconfigured contract would otherwise perform identical work but receive different rates.

Accordingly, § 4.163(g) is amended to provide that where an agency combines more than one predecessor contract involving the same or similar work functions performed by substantially the same job classifications, the predecessor contract which covers the greater portion of such work under the new contract would control for purposes of section 4(c). However, where *different* services are combined, all predecessor collectively bargained rates continue to follow identifiable work requirements into the new contract. In addition, the regulation has been revised to make it clear that the proviso is a limitation on section 4(c). The Secretary finds that in order to eliminate the anomalous situation of workers working for the same employer, side by side, and performing the same work but receiving different rates of pay, with attendant

recordkeeping difficulties and labor unrest, such a limitation is necessary and proper in the public interest and is in accord with the remedial purpose of the Act to protect prevailing labor standards.

Section 4.163(i)—Application of "Successorship" Provisions of Section 4(c) of the Act When the Successor Contract Is Performed in a Different Locality From That of the Predecessor Contract

Section 4(c) of the Act applies to every contractor "under a contract, which succeeds a contract subject to this Act and under which substantially the same services are furnished". In those instances in which the contract is not performed in the same location as the predecessor contract, the question arises whether the requirements of section 4(c) apply or whether its application is limited to those follow-on contracts performed in the same locality as the predecessor contract.

History of Provision

(a) Contemporaneous construction—It has been the Department's customary practice since passage of the 1972 amendments, which added section 4(c) to the Act, to apply its provisions irrespective of the place of performance of the successor contract.

(b) Existing regulations—Sections 4.1a(a), 4.1c, and 4.4(c) provide that the 4(c) successorship provisions apply to a contract which succeeds a contract "under which substantially the same services * * * are furnished for the same location," i.e., for the same procuring facility.

(c) Current practice—Same as (a).

(d) January 1981 regulations—Specifically provided that the successorship requirements of section 4(c) apply to all successor contracts for substantially the same services, whether performed at the same government installation or at the location of the successful bidder.

(e) Proposed regulations—Provided that the successorship requirements of section 4(c) apply to successorship contracts performed in the same locality as the predecessor contract.

Comments

The C of C and NCTSI favored the proposal on the ground that it is in accord with the Act's provisions that employees be paid the wages prevailing in the locality where the work is actually performed.

Labor organizations, including the AFL-CIO, the Teamsters, LIUNA, SEIU, and IAM, opposed the proposal, contending that there is no express limitation on locality in section 4(c) of the Act, and the only statutory test of 4(c) applicability is whether "substantially the same services are furnished" by the successor contractor as were furnished under the predecessor contract. They contended that the intent of section 4(c) was to protect collectively bargained wage rates and prevent labor instability, and that Congressional hearings held subsequent to the enactment of section 4(c) indicated that it was to apply regardless of the place of performance.

Discussion of Final Rule

In reconsidering this issue, the Department has fully reviewed the Act's legislative history. The Senate Report on the 1972 amendments states that the provisions of section 4(c) apply to successor contracts "for *services* at the *same* location." S. Rep. No. 92-1131, 92nd Cong., 2nd Sess. 4 (1972) (emphasis in original). Furthermore, limiting the application of section 4(c) to successor contracts performed in the same locality satisfies the statutory intent of protecting *local* wage rates. This is implicit in the provisio to section 4(c), providing an exception from section 4(c) if the Secretary finds after a hearing that the collectively bargained rates "are substantially at variance with those which prevail for services of a character similar in the locality." Indeed, the proviso for variance hearings to ensure that the collectively bargained rates are in line with local rates refutes the argument that section 4(c) contains no express locality provision. Concomitantly, adoption of this position should prevent disruption of locally prevailing rates when higher (or lower) rates contained in a collective bargaining agreement are imported from a different locality.

Applying section 4(c) only to those contracts where the successor contract is performed at the same location as that of the predecessor is also consistent with the legislative history which gave rise to the 1972 amendment adding section 4(c). The primary motivation for the amendment was the "wage busting" which had occurred at Cape Kennedy when the contractor which took over the operations contract did not observe the higher pay scale paid by the predecessor contractor. Cong. Rec. (Daily), S15342-15343 (Sept. 19, 1972); *The Plight of Service Workers under Government Contracts*, pp. 14-16 (Comm. Print 1971). Such "wage busting" is not a problem where the successor performs services at a different locality and thus utilizes a different work force.

However, to avoid problems which could arise if a contractor changes the place of performance after contract award, section 4.163(i) is amended to make it clear that once a contract which is subject to the provisions of section 4(c) has been awarded, section 4(c) will continue to apply if a successor prime contractor subsequently changes the place of contract performance or subcontracts work to a firm which performs the work in a different locality

Section 4.163(j)—Interpretation of 4(c) Wage Determinations

History of Provision

(a) Contemporaneous construction — It has been the Department's position that where a contract is subject to section 4(c), and where a wage determination fails to accurately set forth the terms of the underlying collective bargaining agreement, the contractor is bound to observe the terms of the collective bargaining agreement. Furthermore, where the agreement is ambiguous, it is necessary to look to the intent of the parties.

(b) Existing regulations—No specific provision.

(c) Current practice—Same as (a).

(d) January 1981 regulations—Explained the Department's position, se forth at (a).

(e) Proposed regulations—Same as (d).

Comments

CODSIA objected to the requirement that interpretations of the wage and fringe benefit provisions of a section 4(c wage determination be based on the intent of the parties to the predecessor's collective bargaining agreement. They contended that this section may restrict the right of a successor contractor to meet SCA obligations by furnishing an equivalent combination of fringe benefits and/or cash, and thus would b contrary to the language of the Act.

Discussion of Final Rule

It is the Department's view that the requirement of section 4(c) that contractors pay not less than the wages and fringe benefits "to which such service employees would have been entitled if they were employed under th predecessor contract," requires a contractor to follow the language of the agreement and, where necessary to resolve a question concerning the meaning of the language, the intent of the contracting parties. However, this section places no limit on the successor contractor's right to furnish equivalent combinations of fringe benefits or cash in meeting its obligations, but merely provides that the successor look to the provisions of the predecessor's

collective bargaining agreement and, where necessary, the intent of the parties to determine its monetary obligations under section 4(c).

In the majority of cases, the language of the agreement is clear, and the wage and fringe benefit provisions of the agreement are accurately reflected in the applicable wage determination. However, in those rare instances where the meaning of a wage or fringe benefit provision in a predecessor contractor's agreement cannot be determined by a successor contractor, the Department of Labor will assist in obtaining interpretative guidance from the parties to that agreement.

Section 4.163(j) is adopted with minor clarification.

Section 4.168(b)—Wash-and-Wear Uniform Maintenance Costs

Where the wearing of uniforms is required by the employer, the Government contract, or the nature of the work, the cost of furnishing and maintaining such uniforms is a business expense of the employer which may not be borne by the employees to the extent that it would reduce the employees' compensation below that required by the law. This is a principle that has been repeatedly applied by the Department in enforcement of the Fair Labor Standards Act, and upheld by the courts. However, the issue of whether employees incur measurable costs when maintaining so-called "wash-and-wear" uniforms has been under review for some time. The question which arises is whether, for those uniforms of wash-and-wear material which can ordinarily be included with the family wash and do not require special treatment, a uniform maintenance liability is appropriate.

History of Provision

(a) Contemporaneous Construction—It has been the Department's practice since the first time this issue arose under the SCA to conform to its enforcement practice under the Fair Labor Standards Act, i.e., to require reimbursement of the cost to employees of maintaining required uniforms.

(b) Existing regulations—Section 4.170(b) states that the cost of uniforms and their laundering is properly a business expense of the employer where the nature of the work it has contracted to perform requires the employee to wear a uniform.

(c) Current practice—The Department's practice has recently been modified in recognition of the common use of wash-and-wear uniforms, to assert no employer liability where such garments may be routinely washed and dried with other personal garments and require no special treatment.

(d) January 1981 regulations—Specifically provided for reimbursement of uniform maintenance expenses, with no special proviso for wash-and-wear uniforms.

(e) Proposed regulations—Same as (d), with the addition of a special exception for wash-and-wear uniforms, to reflect current practice.

Comments

Kentron International, Inc., commented in favor of the proposed revision. The proposal was opposed by the Textile Rental Services Association, LIUNA, and the UPGWA on the ground that it places an unfair burden on low paid employees, who must absorb the maintenance costs and for whom the cost of maintaining uniforms is not *de minimis*.

Discussion of Final Rule

The Department has concluded that as a general matter, for wash-and-wear uniforms requiring no special treatment, a uniform maintenance liability for employers would not be apppropriate because the cost of, and time spent in, maintaining such uniforms by employees is considered *de minimis*. The Department's experience has been that in such cases there is generally no practicable means of measuring either the cost or time required for washing the uniform, as a separate item.

This section has been adopted with a revision to clarify that a requirement of daily washing constitutes special treatment requiring compensation. This conforms the regulation to the policy applied under the Fair Labor Standards Act, and responds in large part to the concerns expressed by those commentators who opposed the proposal.

The provisions has also been revised to clarify that, notwithstanding the general provision regarding wash-and-wear uniforms, where wage determinations are issued under section 4(c) of the Act for successor contracts, the amount established in the predecessor collective bargaining agreement is deemed to be the cost of laundering wash-and-wear uniforms.

Section 4.171—"Bona Fide" Fringe Benefits

SCA requires at section 2(a)(2) that the Department's wage determinations set forth prevailing or, where section 4(c) applies, collectively bargained fringe benefits. The Act enumerates types of benefits and further provides that a contractor may satisfy its fringe benefit obligation by furnishing any equivalent combination of fringe benefits and/or cash payments, in accordance with rules established by the Secretary.

History of Provision

(a) Contemporaneous construction—The Department has always considered that it had the authority to establish rules for bona fide fringe benefit plans. Furthermore, the Department has generally considered that unfunded plans are not bona fide.

(b) Existing regulations—No specific discussion of bona fide fringe benefits. However, § 4.170(b) requires that a fund, plan or program be bona fide.

(c) Current practice—Same as (a); however, in the jurisdiction of the Ninth Circuit, unfunded plans are permitted. See *White Glove Bldg. Maintenance, Inc.* v. *Hodgson*, 459 F.2d 175 (1972).

(d) January 1981 regulations—Set forth rules for bona fide fringe benefits. Provided that normally unfunded fringe benefit plans are not bona fide, but provided a procedure for contractors to request approval of such a plan from the Administrator.

(e) Proposed regulations—Same as (d).

Comments

NASA and DOE asserted that the intent of this section, which explains the requirements for bona fide fringe benefits for purposes of the Act, was not clear because the term "bona fide" in subparagraph (b), concerning unfunded plans, was not defined. NASA and DOE further questioned the authority of the Department to set policy on fringe benefit plans. NCTSI maintained that the Department's authority is limited to determining only whether fringe benefits other than those enumerated in the Act are bona fide.

Discussion of Final Rule

As set forth in section 2(a)(2) of the Act, the types of benefits listed therein and benefits of a similar nature are generally considered bona fide for purposes of the Act. Subparagraph (a) of § 4.171 specifies criteria which must be met for a fringe benefit to be considered bona fide. The purpose of § 4.171 is to give force and effect to the fringe benefit provisions of the Act by ensuring that a contractor actually incurs the required monetary obligation and provides for the furnishing of the specified fringe benefits or their equivalent to its employees. The statutory authority for the Secretary to make such rules and regulations is set forth in section 4 of the Act.

Accordingly, this section is adopted as proposed with minor editorial changes.

Other Changes

In addition to the changes described in preceding sections of the preamble, minor editorial and language changes have been made in some sections of the SCA rules.

Classification—Executive Order 12291

This rule would not appear to require a regulatory impact analysis under Executive Order 12291 since the changes will result in substantial cost savings annually for both contractors and the Government while still assuring protection of local labor standards in accordance with the purposes of the Act. However, because of the importance to the Government and the public of the issues involved, the Department has concluded that the regulation should be deemed a "major rule" for purposes of the Executive Order. It has been determined, in accordance with Executive Order 12291, that of those alternatives which are consistent with the purpose of the statute, these changes provide the greatest net benefit to society at the least cost.

Summary of Final Regulatory Impact and Flexibility Analysis

The Department has prepared its final regulatory impact analysis (FRIA) to identify and quantify the cost impact of the final revisions in the Service Contract Act regulations and various alternatives that were explored and to inform the public of the economic considerations behind these revisions in accordance with Executive Order 12291.

The new rule must also consider the Regulatory Flexibility Act of 1980. This Act requires agencies to prepare regulatory flexibility analyses and to develop flexible alternatives whenever possible in drafting regulations that will have "a significant economic impact on a substantial number of small entities." The analysis, which is summarized below, also meets the requirements set forth for assessing the economic impact of the final changes in the Service Contract Act regulations on small entities as required under the Regulatory Flexibility Act.

A. SCA Coverage Revisions and Exemption Issues

1. *Preliminary Regulatory Impact Estimates*

The final regulatory impact analysis builds on the estimates developed for the proposal published on August 14, 1981 (46 FR 41380). The preliminary regulatory impact analysis estimated the cost implications of several important proposed changes affecting coverage and exemptions under the Act, including (1) the proposed exemption of research and development contracts; (2) the proposal to cover contracts under SCA only when the work is performed principally through service workers; (3) the proposed exemption of maintenance and repair services on ADP and high technology scientific and medical apparatus or equipment, and on office/business machines when performed by the manufacturer or supplier; (4) the proposal not to generally apply the Act to timber sales contracts; and (5) the proposed coverage of specifications for services only in instances where the contract as a whole is principally for services.

The PRIA estimated that the proposed changes would result in substantial cost savings over the January 1981 regulations, amounting to at least $240 million annually to both contractors and procuring agencies, while still assuring necessary protection to service employees' wages on service contracts. The Department requested comments and additional information on all economic assumptions used in the analysis, as well as any alternative suggestions designed to achieve the objectives of the Executive Order.

2. *Comments on the Preliminary Regulatory Impact Analysis*

The Department received numerous comments on the PRIA estimates and economic assumptions. These comments can be categorized into two groups. Union groups called into question the validity of the whole economic analysis. They challenged, in particular, the Department's methodology as built from highly questionable assumptions and data that failed to differentiate between industries and occupations. The end-result, in their view, was highly unreliable estimates of cost savings to contractors and procuring agencies from the proposed revisions. Moreover, they viewed the analytical deficiencies as working to inflate the cost savings. Finally, they faulted the analysis as inadequate because it failed to consider the indirect costs of the proposed regulations in terms of the loss of wage protection and jobs for workers, increased risk of substandard performance of contract work, productivity losses due to impaired labor relations and their impact on certain regions (i.e., a shift in contract awards from high wage to low wage regions). Union commentators suggested that the Department issue the final revisions contained in the January 1981 regulations.

In contrast, industry associations, agencies, and individual contractors strongly endorsed the proposed changes as vastly improving government contract administration, increasing efficiency in both agency and contract operations, and resulting in substantial budgetary savings. Those commenting on the PRIA generally viewed the estimates of cost savings as on the low side, since they ignored the "spillover effects" of wage increases for workers below the SCA rates on the wage rates of other workers (i.e., increasing wage rates for the lowest paid employees on Government contracts may require raising wages of the highest paid employees on Government and private contracts by the same percentage amount).

The Department has carefully reviewed all of these comments in finalizing the regulations and has incorporated these considerations, as appropriate, into the final regulatory impact analysis (FRIA). Since the final rule differs from the proposal in several important respects, the cost estimates were revised to reflect the changes. In addition, the final analysis uses more recent wage data available for the ADP and business equipment industries and for "blue collar" service occupations and refines the PRIA estimates of the contracting universe impacted by the final rule to the extent permitted by available data. Based on the evidence, the Department has concluded that today's final regulations will assure necessary protection of service employees' wages on contracts principally for the furnishing of services, as contemplated in the legislation. At the same time, they will produce substantial cost savings for Government contractors and procuring agencies—in the neighborhood of $124 million annually when compared to the January 1981 regulations. The following sections highlight the major methodological issues and the Department's conclusions.

3. *Methodology for Cost Savings Estimates Associated with Alternative Coverage and Exemption Provisions*

The major economic concern of industries and procuring agencies faced with potential SCA coverage is that the wage determinations required by the Service Contract Act add to the costs of federal contracts. Therefore, we attempted to assess the impact of SCA coverage (and hence the potential cost savings from the absence of SCA coverage) using a wage analysis that

compared SCA wage determinations to a range of wages found for similar service occupations in each area. Under this methodology, the portion of the wage distribution that lies below each SCA wage rate provides a measure of the possible wage cost savings in the absence of SCA coverage. This approach thus recognizes that if wages are set at the mean or median wage, Government contracting costs could still be increased to the extent that contractors could not pay wages below the prevailing rate.

Labor cost increases associated with SCA coverage can be estimated as the simple product of (1) the net dollar volume of contracts expected to contain SCA provisions under alternative regulations (after subtracting out the dollar amounts of contracts currently containing SCA provisions); (2) the percent of contract costs paid service employees; and (3) the average percentage wage increase resulting from SCA coverage expected for relevant categories of service employees. Cost savings resulting from the final regulatory changes over the regulations published in January 1981 are calculated from these wage cost estimates.

Baseline data on the current SCA contract volume for most coverage areas as well as the appropriate SCA universe is available from the Federal Procurement Data System (FPDS). The universe for timber sales contracts can be determined from Department of Agriculture data on appraisal costs, while the universe for service specifications under equipment supply contracts comes from the General Services Administration.

Estimates of the percent of contract funds used to pay service employees come from individual agencies—the Department of Defense (DOD) for R&D and related contracts, General Service Administration (GSA) for installation, maintenance, and repair of equipment and buildings, and the Department of Agriculture (DOA) for timber sales contracts.

To estimate the magnitude of wage increases associated with SCA coverage, SCA rates in effect in 1979 for selected occupational categories were compared to wage distributions for these groups obtained from BLS area wage surveys. To illustrate how this procedure works, estimates are developed below for R&D and related professional service contracts (although the final regulations do not include an exemption for R&D and related contracts). This same technique is generally transferable to other coverage areas using different data, but some modifications may be necessary (e.g., in cases where existing contracts do not contain SCA wage determinations).

For our sample of 23 technical and clerical occupations in 30 areas from area wage surveys conducted by the Bureau of Labor Statistics (BLS), every observed wage in the BLS Survey which fell below the level of the relevant SCA wage determination was identified. All wages below the SCA rate were then subtracted from the SCA determination for each occupational class in each city. Summing these differences and dividing by the number of workers in the relevant sample and the average wage produced individual estimates of the percentage increase in wages resulting from SCA for each occupation in each city. These individual estimates were next averaged across areas and occupations to provide a single representative estimate of 4.17 percent as the wage impact of SCA coverage for these clerical and technical occupations. The results using this methodology suggest that there may be some modest upward pressure on wages from SCA requirements, but its magnitude is not as large as is sometimes asserted.

In the final analysis, this percentage increase ws used to proxy possible wage effects from SCA coverage in two areas: (1) the proposed exemption of R&D contracts and alternatives under review, and (2) the proposed change in the Department's coverage interpretation which would apply the Act only to contracts performed principally through the use of service employees, and which would largely impact R&D and related contracts. This more limited role for the R&D estimated impact in the final analysis would appear in large measure to remedy the unions' criticism of widespread application of the R&D estimate to dissimilar categories of workers in the preliminary analysis.

Wage increases from coverage of timber sales contracts are estimated using this methodology but with different data applicable to the special occupations used in such contracts and in rural areas. These calculations indicate that SCA coverage would exert upward pressure on labor costs of about 1.56 percent for logging activities (assuming that prospective SCA rates would be set at or near the median).

For other non-logging land and forest management services, the resulting estimates show a similar increase of 1.8 percent in wages associated with SCA coverage. In addition, we have specific data on the ADP and high technology industries for maintenance/repair services. Applying the ADP wage distributions results in an estimated average wage increase of 6.7 percent. (The estimated impact using the new data set is substantially below the 10.7 percent estimate used in the preliminary analysis which was based on a more limited range of wages taken from a General Accounting Office report.) We also applied this 6.7 percent estimate to the maintenance and repair of other equipment no longer subject to the Act because of the final rule's determination that specifications for services which are part of nonservice contracts are not covered by the Service Contract Act because of the similarities in occupations. (This also replaces the 10.7 percent estimate used in the preliminary analysis.) Finally, the PRIA estimates that dealt with lower wage service workers, such as janitors and guards, who would no longer be covered as part of building lease contracts which contain separate specifications for the furnishing of janitorial or other maintenance services, have been revised to reflect a 1981 nationwide BLS wage distribution for janitors, which was used to proxy SCA wage effects for other lower wage workers. Assuming that SCA rates are set at the mean wage paid janitors ($5.23 per hour), these data suggest an average wage effect of 16.5 percent. This percentage is well above the 4.17 percent R&D estimate used in the preliminary analysis.

With these wage impact estimates, the cost impacts of alternative options were derived by multiplying the estimated wage increases for each contract type by the share of total contract costs paid to service employees. The estimated labor cost savings from the final revisions over the regulations published in January 1981 for each coverage and exemption issue were then calculated directly from these cost estimates. Specific applications of this methodology to the coverage and exemption areas under review and individual cost estimates are presented in the final regulatory impact analysis.

4. *Summary of Estimated Cost Savings from SCA Changes Affecting Coverage and Exemptions*

The final rule contains several important changes concerning coverage and exemptions under the Act including: (1) the exemption of maintenance, calibration, and repair services on ADP, scientific and medical apparatus or equipment where microelectronic circuitry or other technology of at least similar sophistication is an essential element, and on office/business machines when performed by the manufacturer or supplier; (2) the decision that the Act does not generally apply to timber sales contracts; and (3)'

the coverage of specifications for services only in instances where the contract as a whole is principally for services. Together, these coverage revisions and exemptions should result in substantially lower labor and administrative costs on federal contracts amounting to nearly $124 million annually. The changes are in accord with our best interpretation of Congressional intent and the criteria for exemption in section 4(b) of the Act.

It should be emphasized that these figures do not reflect the *net* savings to society. This is because they do not subtract out any indirect costs incurred by workers and the public as a result of the SCA coverage revisions and exemptions. The Service Contract Act was enacted to provide labor standards protection for the service employees of contractors and subcontractors furnishing services to federal agencies. The legislative history recognizes that statutory protection was considered necessary to prevent contractors from using wages lower than those locally prevailing to obtain a competitive advantage in securing Government contracts. Lowering wages as a means of getting contracts would otherwise be likely for many types of service contracts which are highly labor intensive and which depend on "lowest-bidder" procurement practices. SCA prevailing wage protections effectuate the "longstanding policy of Congress that the Federal Government shall not be a party to the depressing of labor standards in any area of the Nation" (111 Cong. Rec. 2437 (1965), Statement of Congressman O'Hara, co-author of the Act).

Examples of indirect costs that potentially could arise through coverage revisions and exemptions include job and wage losses (at least for employees of affected contractors), lower quality services and reduced productivity, among others. The Department recognizes the potential for these indirect costs, but unfortunately the necessary data with which to estimate their magnitude are not available. Moreover, the Department believes these costs will not be substantial for several reasons.

First, the estimates measure the savings in wage costs over the baseline of full compliance with the January 1981 rule. Yet, many of the contracts affected by the coverage revisions and exemptions do not currently contain SCA provisions. These include, for example, all of the timber sales contracts and maintenance as part of GSA building leases, and most maintenance and repair specifications under contracts for lease or supply of equipment. For workers under these contracts there are no existing SCA provisions and hence no actual wage losses. Secondly, the exemptions impact largely on high wage workers. For example, the average hourly earnings of most occupations impacted by the exemptions are well in excess of average earnings levels in the economy. CBEMA data on the earnings levels of technicians in data processing occupations average between 24–50 percent above those for all private nonfarm establishments. Finally, because the workers in the ADP and high technology industries are in great demand and because it is characteristic of the industries that Government business is only a small percentage of the total business of individual firms and that workers perform Government work as part of day-to-day duties servicing commercial establishments it is highly unlikely that job or wage losses would occur. All of these considerations and others are discussed in further detail in the final regulatory impact analysis.

B. Locality of Wage Determinations

For a small percentage of wage determinations, the place of performance of the contract is unknown at the time of bid solicitation because the contract will be performed at the location of the successful bidder's facility. Accordingly, the proper locality to use for these wage determinations is problematic.

The Department of Labor in recent years has generally issued wide-area, composite wage determinations encompassing all of the localities in which potential bidders would be located. The composite area could be a cluster of counties, a state, a region, or even the entire country. "Averaging" across localities would tend to raise contracting costs.

After further consideration of a recent court decision in *Southern Packaging and Storage Company* v. *United States, supra,* generally prohibiting nationwide rates except in extraordinary cases, and the problems of issuing wage determinations which do not reflect locally prevailing rates, the Department proposed to implement a two-step procedure that would generally result in wage determinations for the various localities of the potential bidders.

In addition, the proposal limited the application of the successorship provisions of section 4(c) of the Act to successor contracts which are performed in the same locality as the predecessor contract. The current interpretation as expressed in the January 1981 regulations imposes no such limitation, thereby requiring a successor contractor performing services at its own facility in a different locality from its predecessor contractor to pay collectively bargained rates from a different locality. This had the potential of disrupting locally prevailing wages.

Agencies and industry groups generally supported the proposed locality revisions, although they recommended modifications in the procedures to accommodate their particular view. In contrast, labor commentators opposed the two-step procurement procedure as contrary to the Act's remedial purpose, in part because it would tend to channel contract awards to "low wage" areas (i.e., it grants an unfair competitive advantage to "low wage" bidders). They likewise challenged the proposal to limit the application of the successorship provisions under section 4(c) of the Act to successor contracts performed in the same locality as the predecessor contract, on the grounds that section 4(c) contains no express limitation on locality and that the only statutory test of 4(c) applicability is whether "substantially the same services are furnished" by the successor contract as were furnished under the predecessor contract.

After careful review of the evidence, together with the legislative history of the Act, the Department has adopted these locality provisions. The Department has concluded that the two-step procurement process would prevent the "importation" of both higher and lower wage rates and consequent disruption of local labor markets that would occur under other methods. Furthermore, the Department notes that this is no support in the legislative history for any of the alternatives to the two-step procedure, including the locality of the procurement agency or of the predecessor contracts, as suggested by some commentators. However, a minor revision has been made to the procedure to permit the Department to follow the modified procedure on its own initiative, after consultation with the contracting agency. The Department has also determined that limiting the application of section 4(c) to successor contracts performed in the same locality would satisfy the statutory intent of protecting *local* wage rates and is fully consistent with the legislative history.

While the cost impact of these locality provisions cannot be quantified, the final revisions will not only decrease Government contract costs but will best assure that SCA determinations reflect

wages found in the locality where the contract is performed, as contemplated by the statute, thereby eliminating the destabilizing effects of the previous DOL procedures.

C. Changes in Conformance Procedures

In addition, the proposal introduced several changes designed to improve the operation of the conformance process. Under the proposed procedures, rates would be issued for classifications requested by agencies to the extent possible through use of slotting procedures, a widely-used technique in pay administration, to establish rates for unlisted occupations. These provisions would substantially reduce the frequency of cases requiring conformance actions because a classification is not listed on a wage determination. Also, the burdens on the Department and contracting agencies associated with DOL review of the conformance actions would be substantially lessened by allowing agencies and contractors to conform wage rates and fringe benefits which were the subject of a previous conformance action through indexing procedures.

Commentators generally supported these provisions (with some modifications), as necessary to substantially reduce the burdens on the Department and contracting agencies associated with conformance actions Accordingly, the final regulations adopt these changes in the conformance procedures.

Again, it is not possible with available data to quantify the cost reductions associated with these conformance revisions, but the administrative cost savings are expected to be substantial.

D. Application of the Act to Overhaul and Modification Contracts

The proposal contained guidelines to determine when overhaul or modification of equipment is so extensive as to constitute manufacturing subject to the Walsh-Healey Act, rather than the Service Contract Act. Work of a routine maintenance, tune-up, repair, inspection, etc., nature would continue to be subject to the Service Contract Act.

Industry viewed the proposed guidelines delineating major overhaul of equipment as overly detailed. Union commentators acknowledged that the current "dual" coverage position was unworkable. However, they opposed the proposed guidelines as arbitrary and unjustified by the language and history of both Acts as well as contrary to case law. Furthermore, it would be impossible, in their view, to determine before contract award whether proposed work would be extensive enough to be covered by Walsh-Healey as "remanufacturing", as this is determinable only after tear-down and inspection of the equipment.

After careful review of the evidence, the Department has adopted the proposed guidelines. The detailed guidelines appear necessary to distinguish between coverage under the two Acts and to eliminate possible overlapping of the differing labor standards. Moreover, agencies should be able to initially determine whether the proposed contract would involve principally "remanufacturing" based on the guidelines and their contract experience, and to incorporate the appropriate labor standards clauses prior to soliciting bids. The Department believes these guidelines will effectively deal with the complex administrative problems encountered in deciding where SCA coverage ended and Walsh-Healey coverage began under the "dual" coverage positions. In the process, the Department expects that government contracting costs for these services will be reduced, but the precise amount cannot be determined at the time.

E. Cost Impact on Small Entities

Much of these costs savings would be passed on to small contractors who take up a large part of the Federal contracting universe. For example, Employer Information Reports filed in 1980 by all Federal contractors with at least 50 employees and a $50,000 or more contract show that even at these thresholds, about 54 percent of those federal contractors were firms with fewer than 250 employees. This included 3,308 small employers with 50–90 employees and 5,540 slightly larger firms with 100–249 employees. In the logging industry, the proportion of small contractors is even larger. About 80 percent of the logging operations in 1969 were in establishments having fewer than 100 employees. Thus, even if costs are proportionate for small and large contractors, there would be a large reduction expected in contracting costs for smaller contractors.

F. Summary

The final revisions discussed above will result in substantial cost savings of at least $124 million annually for both contractors and the Government while still assuring protection of local wage rates and practices. The changes will have a substantial beneficial impact on small contractors.

Paperwork Reduction Act

Information collection requirements contained in this regulation (sections 4.6(b)(2), 4.6(e), 4.6(g)(1) (v) and (vi), and 4.6(l) (1) and (2)) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 1215–0150.

Other information collection requirements contained in this regulation (sections 4.6(g)(1) (i)–(iv) and 4.6(q)(3)) have been approved by the Office of Management and Budget and have been assigned OMB Control Number 1215–0017.

Conclusion

The Solicitor of Labor has determined in accordance with Executive Order 12291, that this regulation is clearly within the authority delegated to the Secretary of Labor by the Service Contract Act (41 U.S.C. 351, *et seq.*, 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358), which incorporates sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38 and 39), as well as 5 U.S.C. 301. The Solicitor, as set forth above in the discussion of the major issues, has determined that this regulation is consistent with the congressional intent of the Service Contract Act that contractors on Federal contracts subject to this Act pay their workers in accordance with local wage standards. The regulation also provides protection for the workers and mechanisms for enforcement, as intended by the Service Contract Act.

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

Dates of Applicability

Many of the provisions contained in these regulations reflect existing policies and interpretations of the Act or are procedural in nature. However, significant changes have been made with respect to contract clauses, contract coverage, exemptions from coverage, and provisions relating to wage determinations, including those issued pursuant to section 4(c) of the Act. Because existing contracts contain SCA provisions and wage determinations issued under the regulations and policies in existence when the contracts were awarded, the substantive revisions herein relating to contract clauses, coverage and exemptions from the Act, and wage determinations issued thereunder,

including those issued in accordance with section 4(c) of the Act, are prospective only. Accordingly, the revisions to §§ 4.1b, 4.4, 4.5, and 4.6 of Subpart A; §§ 4.116, 4.117, 4.123(e), 4.132, and 4.133 of Subpart C; and §§ 4.163(g), 4.163(i) and 4.168(b) of Subpart D of this Part shall be applicable only to contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after December 27, 1983. None of the revisions noted hereinabove shall be applicable to any contract entered into prior to that date. The remaining provisions of Subparts A, B, C, D, and E are effective on December 27, 1983.

List of Subjects in 29 CFR Part 4

Administrative practice and procedures, Employee benefit plans, Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Accordingly, 29 CFR Part 4 is revised as set forth below.

Concurrent with the publication today of this final rule, the final rules previously published in the **Federal Register** on January 16 and 19, 1981 (46 FR 4320 and 46 FR 4386, respectively) and subsequently stayed are hereby withdrawn.

Signed at Washington, D.C. on this 19th day of October, 1983.

William M. Otter,

Administrator, Wage and Hour Division.

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

Subpart A—Service Contract Labor Standards Provisions and Procedures

Sec.
4.1 Purpose and scope.
4.1a Definitions and use of terms.
4.1b Payment of minimum compensation based on collectively bargained wage rates and fringe benefits applicable to employment under predecessor contract.
4.2 Payment of minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 under all service contracts.
4.3 Wage determinations.
4.4 Notice of intention to make a service contract.
4.5 Contract specification of determined minimum wages and fringe benefits.
4.6 Labor standards clauses for Federal service contracts exceeding $2,500.
4.7 Labor standards clause for Federal service contracts not exceeding $2,500.
4.8 Notice of awards.
4.9 [Reserved]
4.10 Substantial variance proceedings under section 4(c) of the Act.
4.11 Arm's-length proceedings.
4.12 Substantial interest proceedings.

Subpart B—Wage Determination Procedures

Sec.
4.50 Types of wage and fringe benefit determinations.
4.51 Prevailing in the locality determinations.
4.52 Collective bargaining agreement (successorship) determinations.
4.53 Locality basis of wage and fringe benefit determinations.
4.54 Issuance and revision of wage determinations.
4.55 Review and reconsideration of wage determinations.

Subpart C—Application of the McNamara-O'Hara Service Contract Act

Introductory
4.101 Official rulings and interpretations in this subpart.
4.102 Administration of the Act.
4.103 The Act.
4.104 What the Act provides, generally.
4.105 The Act as amended.
4.106 [Reserved]

Agencies Whose Contracts May Be Covered
4.107 Federal contracts.
4.108 District of Columbia contracts.
4.109 [Reserved]

Covered Contracts Generally
4.110 What contracts are covered.
4.111 Contracts "to furnish services".
4.112 Contracts to furnish services "in the United States".
4.113 Contracts to furnish services "through the use of service employees".
4.114 Subcontracts.

Specific Exclusions
4.115 Exemptions and exceptions, generally.
4.116 Contracts for construction activity.
4.117 Work subject to requirements of Walsh-Healey Act.
4.118 Contracts for carriage subject to published tariff rates.
4.119 Contracts for services of communications companies.
4.120 Contracts for public utility services.
4.121 Contracts for individual services.
4.122 Contracts for operation of postal contract stations.
4.123 Administrative limitations, variations, tolerances, and exemptions.
4.124 [Reserved]
4.125 [Reserved]
4.126 [Reserved]
4.127 [Reserved]
4.128 [Reserved]
4.128 [Reserved]
4.129 [Reserved]

Particular Application of Contract Coverage Principles
4.130 Types of covered service contracts illustrated.
4.131 Furnishing services involving more than use of labor.
4.132 Services and other items to be furnished under a single contract.
4.133 Beneficiary of contract services.
4.134 Contracts outside the Act's coverage.
4.135 [Reserved]
4.136 [Reserved]
4.137 [Reserved]
4.138 [Reserved]
4.139 [Reserved]

Determining Amount of Contract
4.140 Significance of contract amount.
4.141 General criteria for measuring amount.
4.142 Contracts in an indefinite amount.

Changes in Contract Coverage
4.143 Effects of changes or extensions of contracts, generally.
4.144 Contract modifications affecting amount.
4.145 Extended term contracts.

Period of Coverage
4.146 Contract obligations after award, generally.
4.147 [Reserved]
4.148 [Reserved]
4.149 [Reserved]

Employees Covered by the Act
4.150 Employee coverage, generally.
4.151 Employees covered by provisions of section 2(a).
4.152 Employees subject to prevailing compensation provisions of sections 2(a)(1) and (2) and 4(c).
4.153 Inapplicability of prevailing compensation provisions to some employees.
4.154 Employees covered by sections 2(a)(3) and (4).
4.155 Employee coverage does not depend on form of employment contract.
4.156 Employees in bona fide executive, administrative, or professional capacity.
4.157 [Reserved]
4.158 [Reserved]

Subpart D—Compensation Standards

4.159 General minimum wage.
4.160 Effect of section 6(e) of the Fair Labor Standards Act.
4.161 Minimum monetary wages under contracts exceeding $2,500.
4.162 Fringe benefits under contracts exceeding $2,500.
4.163 Section 4(c) of the Act.
4.164 [Reserved]

Compliance With Compensation Standards
4.165 Wage payments and fringe benefits—in general.
4.166 Wage payments—unit of payment.
4.167 Wage payments—medium of payment.
4.168 Wage payments—deductions from wages paid.
4.169 Wage payments—work subject to different rates.
4.170 Furnishing fringe benefits or equivalents.
4.171 "Bona fide" fringe benefits.
4.172 Meeting requirements for particular fringe benefits—in general.
4.173 Meeting requirements for vacation fringe benefits.
4.174 Meeting requirements for holiday fringe benefits.
4.175 Meeting requirements for health, welfare, and/or pension benefits.
4.176 Payment of fringe benefits to temporary and part-time employees.
4.177 Discharging fringe benefit obligations by equivalent means.

Sec.
4.178 Computation of hours worked.
4.179 Identification of contract work.

Overtime Pay of Covered Employees

4.180 Overtime pay—in general.
4.181 Overtime pay provisions of other Acts.
4.182 Overtime pay of service employees entitled to fringe benefits.

Notice to Employees

4.183 Employees must be notified of compensation required.
4.184 Posting of notice.

Records

4.185 Recordkeeping requirements.
4.186 [Reserved]

Subpart E—Enforcement

4.187 Recovery of underpayments.
4.188 Ineligibility for further contracts when violations occur.
4.189 Administrative proceedings relating to enforcement of labor standards.
4.190 Contract cancellation.
4.191 Complaints and compliance assistance.

Authority: 41 U.S.C. 351, et seq., 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; and 5 U.S.C. 301.

Subpart A—Service Contract Labor Standards Provisions and Procedures

§ 4.1 Purpose and scope.

This part contains the Department of Labor's rules relating to the administration of the McNamara-O'Hara Service Contract Act of 1965, as amended, referred to hereinafter as the Act. Rules of practice for administrative proceedings under the Act and for the review of wage determinations are contained in Parts 6 and 8 of this chapter. See Part 1925 of this title for the safety and health standards applicable under the Service Contract Act.

§ 4.1a Definitions and use of terms.

As used in this part, unless otherwise indicated by the context—

(a) "Act," "Service Contract Act," McNamara-O'Hara Act, or "Service Contract Act of 1965" shall mean the Service Contract Act of 1965 as amended by Public Law 92-473, 86 Stat. 789, effective October 9, 1972, Pub. L. 93-57, 87 Stat. 140, effective July 6, 1973, and Pub. L. 94-489, 90 Stat. 2358, effective October 13, 1976 and any subsequent amendments thereto.

(b) "Secretary" includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(c) "Wage and Hour Division" means the organizational unit in the Employment Standards Administration of the Department of Labor to which is assigned the performance of functions of the Secretary under the Service Contract Act of 1965, as amended.

(d) "Administrator" means the Administrator of the Wage and Hour Division, or authorized representative.

(e) "Contract" includes any contract subject wholly or in part to the provisions of the Service Contract Act of 1965 as amended, and any subcontract of any tier thereunder. (See §§ 4.107-4.134.)

(f) "Contractor" includes a subcontractor whose subcontract is subject to provisions of the Act. Also, the term "employer" means, and is used interchangeably with, the terms "contractor" and "subcontractor" in various sections in this part. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers or joint employers for purposes of compliance with the provisions of the Act.

(g) "Affiliate" or "affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with a contractor or subcontractor as a parent, subsidiary, or otherwise; and an officer or agent of such corporation. An affiliation is also deemed to exist where, directly or indirectly, one business concern or individual controls or has the power to control the other or where a third party controls or has the power to control both.

(h) "Wage determination" includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of sections 2(a) and/or 4(c) of the Act for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of $2,500 which is subject to the provisions of the Service Contract Act of 1965.

§ 4.1b Payment of minimum compensation based on collectively bargained wage rates and fringe benefits applicable to employment under predecessor contract.

(a) Section 4(c) of the Service Contract Act of 1965 as amended provides special minimum wage and fringe benefit requirements applicable to every contractor and subcontractor under a contract which succeeds a contract subject to the Act and under which substantially the same services as under the predecessor contract are furnished in the same locality. Section 4(c) provides that no such contractor or subcontractor shall pay any service employee employed on the contract work less than the wages and fringe benefits provided for in a collective bargaining agreement as a result of arms-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for in such collective bargaining agreement. If, however, the Secretary finds after a hearing in accordance with the regulations set forth in § 4.10 of this subpart and Parts 6 and 8 of this title that in any of the foregoing circumstances such wages and fringe benefits are substantially at variance with those which prevail for service of a character similar in the locality, those wages and/or fringe benefits in such collective bargaining agreement which are found to be substantially at variance shall not apply, and a new wage determination shall be issued.

If the contract has been awarded and work begun prior to a finding that the wages and/or fringe benefits in a collective bargaining agreement are substantially at variance with those prevailing in the locality, the payment obligation of such contractor or subcontractor with respect to the wages and fringe benefits contained in the new wage determination shall be applicable as of the date of the Administrative Law Judge's decision or, where the decision is reviewed by the Board of Service Contract Appeals, the date of the decision of the Board of Service Contract Appeals. (See also § 4.163(c).)

(b) Pursuant to section 4(b) of the Act, the application of section 4(c) is made subject to the following variation in the circumstances and under the conditions described: The wage rates and fringe benefits provided for in any collective bargaining agreement applicable to the performance of work under the predecessor contract which is consummated during the period of performance of such contract shall not be effective for purposes of the successor contract under the provisions of section 4(c) of the Act or under any wage determination implementing such section issued pursuant to section 2(a) of the Act, if—

(1) In the case of a successor contract for which bids have been invited by formal advertising, notice of the terms of such new or changed collective bargaining agreement is received by the contracting agency less than 10 days before the date set for opening of bids, provided that the contracting agency finds that there is not reasonable time still available to notify bidders; or

(2) Notice of the terms of a new or changed collective bargaining agreement is received by the agency after award of a successor contract to be entered into pursuant to negotiations

or as a result of the execution of a renewal option or an extension of the initial contract term, provided that the contract start of performance is within 30 days of such award or renewal option or extension. If the contract does not specify a start of performance date which is within 30 days from the award, and/or performance of such procurement does not commence within this 30-day period, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the contract will be effective for purposes of the successor contract under section 4(c); and

(3) The limitations in paragraph (b) (1) or (2) of this section shall apply only if the contracting officer has given both the incumbent (predecessor) contractor and his employees' collective bargaining representative written notification at least 30 days in advance of all applicable estimated procurement dates, including issue of bid solicitation, bid opening, date of award, commencement of negotiations, receipt of proposals, or the commencement date of a contract resulting from a negotiation, option, or extension, as the case may be.

§ 4.2 Payment of minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 under all service contracts.

Section 2(b)(1) of the Service Contract Act of 1965 provides in effect that, regardless of contract amount, no contractor or subcontractor performing work under any Federal contract the principal purpose of which is to furnish services through the use of service employees shall pay any of his employees engaged in such work less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended ($2.90 per hour beginning January 1, 1979, $3.10 per hour beginning January 1, 1980, and $3.35 per hour after December 31, 1980).

§ 4.3 Wage determinations.

(a) The minimum monetary wages and fringe benefits for service employees which the Act requires to be specified in contracts and bid solicitations subject to section 2(a) thereof will be set forth in wage determinations issued by the Administrator. Wage determinations shall be issued as soon as administratively feasible for all contracts subject to section 2(a) of the Act, and will be issued for all contracts entered into under which more than 5 service employees are to be employed.

(b) Such wage determinations will set forth for the various classes of service employees to be employed in furnishing services under such contracts in the appropriate localities, minimum monetary wage rates to be paid and minimum fringe benefits to be furnished them during the periods when they are engaged in the performance of such contracts, including, where appropriate under the Act, provisions for adjustments in such minimum rates and benefits to be placed in effect under such contracts at specified future times. The wage rates and fringe benefits set forth in such wage determinations shall be determined in accordance with the provisions of sections 2(a)(1), (2), and (5), 4(c) and 4(d) of the Act from those prevailing in the locality for such employees, with due consideration of the rates that would be paid for direct Federal employment of any classes of such employees whose wages, if federally employed, would be determined as provided in 5 U.S.C. 5341 or 5 U.S.C. 5332, or from pertinent collective bargaining agreements with respect to the implementation of section 4(c). The wage rates and fringe benefits so determined for any class of service employees to be engaged in furnishing covered contract services in a locality shall be made applicable by contract to all service employees of such class employed to perform such services in the locality under any contract subject to section 2(a) of the Act which is entered into thereafter and before such determination has been rendered obsolete by a withdrawal, modification, or supersedure.

(c) Generally, wage determinations issued for solicitations or negotiations for any contract where the place of performance is unknown will contain minimum monetary wages and fringe benefits for the various geographic localities where the work may be performed which were identified in the initial solicitation (see § 4.4(a)(2)(i)).

(d) Wage determinations will be available for public inspection during business hours at the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. and copies will be made available on request at Regional Offices of the Wage and Hour Division.

§ 4.4 Notice of intention to make a service contract.

(a)(1) For any contract exceeding $2,500 which may be subject to the Act, the contracting agency shall file with the Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract. With respect to recurring or known requirements, such notices shall be filed not less than 60 days (nor more than 120 days, except with the approval of the Wage and Hour Division) prior to (1) any invitation for bids, (2) request for proposals, (3) commencement of negotiations, (4) exercise of option or contract extension, (5) annual anniversary date of a multi-year contract subject to annual fiscal appropriations of the Congress, or (6) each biennial anniversary date of a multi-year contract not subject to such annual appropriations, if so authorized by the Wage and Hour Division. (See § 4.4(d).) Notices with regard to solicitations where such planning is not feasible shall be submitted as soon as possible, but not later than 30 days prior to the above contracting actions. Such notice shall be submitted on Standard Form 98, Notice of Intention to Make a Service Contract, and Standard Form 98–A or a statement containing the information in paragraph (b) of this section and shall be completed in accordance with the instruction provided and shall be supplemented by the information required under paragraphs (c) and (d) of this section. Supplies of Standard Forms 98 and 98–A are available in all GSA supply depots under stock numbers 7540–926–8972 and 7540–118–1008, respectively. If there exists any question or doubt as to the possible application of the Act to a particular procurement, the contracting agency shall submit such question in a timely manner to the Administrator for determination.

(2)(i) Where the place of performance of a contract for services subject to the Act is unknown at the time of solicitation, the solicitation need not initially contain a wage determination. The contracting agency shall, upon identification of firms participating in the procurement in response to an initial solicitation, file with the Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract. In addition to the requirements contained in paragraph (a)(1) of this section, such submission shall identify each location where the work may be performed as indicated by participating firms. Subsequent amendments to the solicitation setting forth the wage determinations and any necessary change in the date and time for submission of final bids shall be made upon receipt of wage determinations. An applicable wage determination must be obtained for each firm participating in the bidding for the location in which it would perform the contract. The appropriate wage determination shall be incorporated in the resultant contract

documents and shall be applicable to all work performed thereunder (regardless of whether the successful contractor subsequently changes the place(s) of contract performance).

(ii) There may be unusual situations, as determined by the Department of Labor upon consultation with a contracting agency, where the procedure in paragraph (i) above is not practicable in a particular situation, in which event the Department may authorize a modified procedure which may result in the subsequent issuance of wage determinations for one or more composite localities.

(b) The contracting agency shall file with its Notice of Intention to Make a Service Contract (SF-98) either a Standard Form 98-A or a statement in writing, containing the following information concerning the service employees expected by the agency to be employed by the contractor and any subcontractors in performing the contract:

(1) The number of such employees of all classes, or a statement indicating whether such number will or will not exceed 5, the number for which the inclusion of a wage determination in the contract is mandatory under the provisions of section 10 of the Act as set forth in § 4.3(a); and

(2) A listing of those classes of service employees expected to be employed under the contract which, if employed by the agency, would be subject to the wage provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332, together with a specification of the rates of wages and fringe benefits that would be paid by the Government to employees of each such class if such statute were applicable to them. (Under section 2(a)(5) of the Act and § 4.6 the inclusion of such a statement in the service contract is also required.)

(c) If the services to be furnished under the proposed contract will be substantially the same as services being furnished in the same locality by an incumbent contractor whose contract the proposed contract will succeed, and if such incumbent contractor is furnishing such services through the use of service employees whose wage rates and fringe benefits are the subject of one or more collective bargaining agreements, the contracting agency shall file with its Notice of Intention to Make a Service Contract (SF-98) a copy of each such collective bargaining agreement together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under such agreement. If the place of contract performance is unknown, the contracting agency will submit the collective bargaining agreement of the incumbent contractor for incorporation into a wage determination applicable to a potential bidder located in the same geographic area as the predecessor contractor (section 4.4(a)(2)). If such services are being furnished at more than one locality and the collectively bargained wage rates and fringe benefits are different at different localities or do not apply to one or more localities, the agency shall identify the localities to which such agreements have application. If the collective bargaining agreement does not apply to all service employees under the contract, the agency shall identify the employees and/or work subject to the collective bargaining agreement. In the event that the agency has reason to believe that any such collective bargaining agreement was not entered into as a result of arm's-length negotiations, a full statement of the facts so indicating shall be transmitted with the copy of such agreement. See § 4.11. If the agency has information indicating that any such collectively bargained wage rates and fringe benefits are substantially at variance with those prevailing for services of a similar character in the locality, the agency shall so advise the Wage and Hour Division and, if it believes a hearing thereon pursuant to section 4(c) of the Act is warranted, shall file its request for such hearing pursuant to § 4.10 at the time of filing the Notice of Intention to Make a Service Contract (Form SF-98).

(d) If the proposed contract is for a multi-year period subject to other than annual appropriations, the contracting agency shall file with its Standard Form 98 a statement in writing concerning the type of funding and the contemplated term of the proposed contract. Unless otherwise advised by the Wage and Hour Division that a Standard Form 98 must be filed on the annual anniversary date, a new Standard Form 98 shall be submitted on each biennial anniversary date of the proposed multi-year contract in the event its term is for a period in excess of two years.

(e) Any Standard Form 98 submitted by a contracting agency without the information required under paragraphs (b), (c), or (d) of this section will be returned to the agency for further action.

(f) If exceptional circumstances prevent the filing of the notice of intention and supplemental information required by this section on a date at least 60 days (or 30 days in the case of unplanned procurements) prior to any invitation for bids, request for proposals, or commencement of negotiations, the notice shall be submitted to the Wage and Hour Division as soon as practicable with a detailed explanation of the special circumstances which prevented timely submission. In the event the proposed contract involves performance by more than 5 service employees and an emergency situation requires an immediate award, the contracting agency shall contact the Wage and Hour Division by telephone for guidance prior to any such award. In no event may a contract subject to the act on which more than 5 service employees are contemplated to be employed be awarded without an appropriate wage determination. (Section 10 of the Act.)

(g) If any invitation for bids, request for proposals, bid opening, or commencement of negotiations for a proposed contract for which a wage determination was provided in response to a Standard Form 98 has been delayed, for whatever reason, more than 60 days from the date of such procurement action as indicated on the submitted Standard Form 98, the contracting agency shall contact the Wage and Hour Division for the purpose of determining whether the wage determination issued pursuant to the initial submission is still current. Any revision of a wage determination received by the contracting agency as a result of such communication or upon discovery by the Department of Labor of a delay, shall supersede and replace the earlier response as the wage determination applicable to such procurement, subject to the time frames set forth in § 4.5(a)(2).

§ 4.5 Contract specification of determined minimum wages and fringe benefits.

(a) Any contract in excess of $2,500 shall contain as an attachment, the applicable, currently effective wage determination specifying the minimum wages and fringe benefits for service employees to be employed thereunder, including any document referred to in paragraphs (a) (1) or (2) of this section:

(1) Any communication from the Wage and Hour Division, Employment Standards Administration, Department of Labor, responsive to the notice required by § 4.4; or

(2) Any revision of a wage determination issued prior to the award of the contract or contracts which specifies minimum wage rates or fringe benefits for classes of service employees whose wages or fringe benefits were not previously covered by wage determinations, or which changes previously determined minimum wage rates and fringe benefits for service employees employed on covered contracts in the locality. However, revisions received by the Federal

agency later than 10 days before the opening of bids, in the case of contracts entered into pursuant to competitive bidding procedures, shall not be effective if the Federal agency finds that there is not a reasonable time still available to notify bidders of the revision. In the case of procurements entered into pursuant to negotiations (or in the case of the execution of an option or an extension of the initial contract term), revisions received by the agency after award (or execution of an option or extension of term, as the case may be) of the contract shall not be effective *provided* that the contract start of performance is within 30 days of such award (or execution of an option or extension of term). If the contract does not specify a start of performance date which is within 30 days from the award, and/or if performance of such procurement does not commence within this 30-day period, the Department of Labor shall be notified and any notice of a revision received by the agency not less than 10 days before commencement of the contract shall be effective. In situations arising under section 4(c) of the Act, the provisions in § 4.1b(b) apply.

(b)(1) The following exemption from the compensation requirements of section 2(a) of the Act applies, subject to the limitations set forth in paragraphs (b) (2), (3), and (4) of this section: To avoid serious impairment of the conduct of Government business it has been found necessary and proper to provide exemption from the determined wage and fringe benefits section of the Act (section 2(a) (1), (2)) but not the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (section 2(b) of this Act), of contracts under which five or less service employees are to be employed, and for which no such wage or fringe benefit determination has been issued;

(2) The exemption provided in paragraph (b)(1) of this section, which was adopted pursuant to section 4(b) of the Act prior to its amendment by Public Law 92–473, does not extend to undetermined wages or fringe benefits in contracts for which one or more, but not all, classes of service employees are the subject of an applicable wage determination. The procedure for determination of wage rates and fringe benefits for any classes of service employees engaged in performing such contracts whose wages and fringe benefits are not specified in the applicable wage determination is set forth in § 4.6(b).

(3) The exemption provided in paragraph (b)(1) of this section does not exempt any contract from the application of the provisions of section 4(c) of the Act as amended, concerning successor contracts.

(4) The exemption provided in paragraph (b)(1) of this section does not apply to any contract for which section 10 of the Act as amended requires an applicable wage determination.

(c)(1) If the notice of intention required by § 4.4 is not filed with the required supporting documents within the time provided in such section, the contracting agency shall, through the exercise of any and all of its power and authority that may be needed (including, where necessary, its authority to negotiate, its authority to pay any necessary additional costs, and its authority under any provision of the contract authorizing changes), include in the contract any wage determinations communicated to it by the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, within 30 days of the receipt of such wage determination(s). With respect to any contract for which section 10 of the Act requires an applicable wage determination, the Administrator may require retroactive application of such wage determination.

(2) Where the Department of Labor discovers and determines, whether before or subsequent to a contract award, that a contracting agency made an erroneous determination that the Service Contract Act did not apply to a particular procurement and/or failed to include an appropriate wage determination in a covered contract, the contracting agency, within 30 days of notification by the Department of Labor, shall include in the contract the stipulations contained in § 4.6 and any applicable wage determination issued by the Administrator or his authorized representative through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination). With respect to any contract subject to Section 10 of the Act, the Administrator may require retroactive application of such wage determination. (See 53 Comp. Gen. 412, (1973); *Curtiss-Wright Corp.* v. *McLucas*, 381 F. Supp. 657 (D NJ 1974); *Marine Engineers Beneficial Assn., District 2* v. *Military Sealift Command*, 86 CCH Labor Cases ¶33,782 (D DC 1979); *Brinks, Inc.* v. *Board of Governors of the Federal Reserve System*, 466 F. Supp. 112 (D DC 1979), 466 F. Supp. 116 (D DC 1979).) (See also 32 CFR 1–403.)

(d) In cases where the contracting agency has filed its SF–98 within the time limits discussed in § 4.4(a) and has not received a response from the Department of Labor, the contracting agency shall, with respect to any contract for which section 10 of the Act and § 4.3 of this Part mandate the inclusion of an applicable wage determination, contact the Wage and Hour Division by telephone for guidance.

§ 4.6 Labor standards clauses for Federal service contracts exceeding $2,500.

The clauses set forth in the following paragraphs shall be included in full by the contracting agency in every contract entered into by the United States or the District of Columbia, in excess of $2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees:

(a) Service Contract Act of 1965, as amended: 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).

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) 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 section have been approved by the Office of Management and Budget under OMB control number 1215–0150.)

(ii) 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 determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(iii) 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.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph (b)(2)(ii) of this section need not be followed.

(C) 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.

(v) The wage rate and fringe benefits finally determined pursuant to paragraphs (b)(2) (i) and (ii) of this section 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.

(vi) Upon discovery of failure to comply with paragraphs (b)(2) (i) through (v) of this section, 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.

(3) 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.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

(d)(1) 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.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of § 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in § 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those

which prevail for services of a character similar in the locality, or determines, as provided in § 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973). In the case of a wage determnation 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.

(e) 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.)

(f) 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.

(g)(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 paragraphs (g)(1) (i) through (vi) of this section 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. (Sections 4.6(g)(1) (i) through (vi) approved by the Office of Management and Budget under OMB control number 1215–0017 and sections 4.6(g)(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 benefit 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 the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section 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 § 4.6(l)(2).

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(h) 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.

(i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(j) The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government prime contractor."

(k)(1) As used in these clauses, 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.

(2) 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
.....	
.....	
.....	

(l)(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof. (Approved by the Office of Management and Budget under OMB control number 1215–0150.)

(2) 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 (§ 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.)

(m) Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

(n)(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92–473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(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 that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(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, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(q) 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 employee 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.

(r) *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.

§ 4.7 Labor standards clause for Federal service contracts not exceeding $2,500.

Every contract with the Federal Government which is not in excess of $2,500 but has as its principal purpose the furnishing of services through the use of service employees shall contain the following clause:

Service Contract Act. Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of $2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

§ 4.8 Notice of awards.

Whenever an agency of the United States or the District of Columbia awards a contract subject to the Act which may be in excess of $10,000 and such agency does not submit Standard Form 279, FPDS Individual Contract Action Report, or its equivalent, to the Federal Procurement Data System, it shall furnish the Wage and Hour Division, ESA, an original and one copy of Standard Form 99, Notice of Award of Contract, unless it makes other arrangements with the Wage and Hour Division for notifying it of such contract awards. The form shall be completed as follows:

(a) Items 1 through 7 and 12 and 13: Self-explanatory;

(b) Item 8: Enter the notation "Service Contract Act;"

(c) Item 9: Leave blank;

(d) Item 10: (1) Enter the notation "Major Category," and indicate beside this entry the general service area into which the contract falls (e.g., food services, grounds maintenance, computer services, installation or facility support services, custodial-janitorial service, garbage collection, insect and rodent control, laundry and drycleaning services, etc.);

(e) Item 11: Enter the dollar amount of the contract, or the estimated dollar value with the notation "estimated" (if the exact amount is not known). If neither the exact nor the estimated dollar value is known, enter "indefinite," or "not to exceed $——." Supplies of Standard Form 99 are available in all GSA supply depots under stock number 7540–634–4049.

§ 4.9 [Reserved]

§ 4.10 Substantial variance proceedings under section 4(c) of the Act.

(a) *Statutory provision.* Under section 4(c) of the Act, and under corresponding wage determinations made as provided in section 2(a) (1) and (2) of the Act, contractors and subcontractors performing contracts subject to the Act generally are obliged to pay to service employees employed on the contract work wages and fringe benefits not less than those to which they would have been entitled under a collective bargaining agreement if they were employed on like work under a predecessor contract in the same locality. (See §§ 4.1b, 4.3, 4.6(d)(2).) Section 4(c) of the Act provides, however, that "such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality".

(b) *Prerequisites for hearing.* (1)(i) A request for a hearing under this section may be made by the contracting agency or other person affected or interested, including contractors or prospective contractors and associations of contractors, representatives of employees, and other interested Governmental agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, and shall include the following:

(A) The number of any wage determination at issue, the name of the contracting agency whose contract is involved, and a brief description of the services to be performed under the contract;

(B) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, commencement date of the contract or its follow-up option period;

(C) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits, attaching available data concerning wages and/or fringe benefits prevailing in the locality;

(D) Names and addresses (to the extent known) of interested parties.

(ii) If the information in paragraph (b)(1)(i) of this section is not submitted with the request, the Administrator may deny the request or request supplementary information, at his/her discretion. No particular form is prescribed for submission of a request under this section.

(2) The Administrator will respond to the party requesting a hearing within 30 days after receipt, granting or denying the request or advising that additional time is necessary for a decision. No hearing will be provided pursuant to this section and section 4(c) of the Act unless the Administrator determines from information available or submitted with a request for such a hearing that there may be a substantial variance between some or all of the wage rates and/or fringe benefits provided for in a collective bargaining agreement to which the service employees would otherwise be entitled by virtue of the provisions of section 4(c) of the Act, and those which prevail for services of a character similar in the locality.

(3) Pursuant to section 4(b) of the Act, requests for a hearing shall not be considered unless received as specified below, except in those situations where the Administrator determines that extraordinary circumstances exist:

(i) For advertised contracts, prior to ten days before the award of the contract;

(ii) For negotiated contracts and for contracts with provisions extending the initial term by option, prior to the

commencement date of the contract or the follow-up option period, as the case may be.

(c) *Referral to the Chief Administrative Law Judge.* When the Administrator determines from the information available or submitted with a request for a hearing that there may be a substantial variance, the Administrator on his/her own motion or on application of any interested person will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such a fact finding hearing as may be necessary to render a decision solely on the issue of whether the wages and/or fringe benefits contained in the collective bargaining agreement which was the basis for the wage determination at issue are substantially at variance with those which prevail for services of a character similar in the locality. However, in situations where there is also a question as to whether the collective bargaining agreement was reached as a result of "arm's-length negotiations" (see § 4.11), the referral shall include both issues for resolution in one proceeding. No authority is delegated under this section to hear and/or decide any other issues pertaining to the Service Contract Act. As provided in section 4(a) of the Act, the provisions of §§ 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceeding, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(d) The Administrator shall be an interested party and shall have the opportunity to participate in the proceeding to the degree he/she considers appropriate.

§ 4.11 Arm's length proceedings.

(a) *Statutory provision.* Under Section 4(c) of the Act, the wages and fringe benefits provided in the predecessor contractor's collective bargaining agreement must be reached "as a result of arm's-length negotiations." This provision precludes arrangements by parties to a collective bargaining agreement who, either separately or together, act with an intent to take advantage of the wage determination scheme provided for in Sections 2(a) and 4(c) of the Act. See *Trinity Services, Inc.* v. *Marshall,* 593 F.2d 1250 (D.C. Cir. 1978). A finding as to whether a collective bargaining agreement or particular wages and fringe benefits therein are reached as a result of arm's-length negotiations may be made through investigation, hearing or otherwise pursuant to the Secretary's authority under Section 4(a) of the Act.

(b) *Prerequisites for hearing.* (1) A request for a determination under this section may be made by a contracting agency or other person affected or interested, including contractors or prospective contractors and associations of contractors, representatives of employees, and interested Governmental agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. Although no particular form is prescribed for submission of a request under this section, such request shall include the following information:

(i) A statement of the applicant's case setting forth in detail the reasons why the applicant believes that the wages and fringe benefits contained in the collective bargaining agreement were not reached as a result of arm's-length negotiations;

(ii) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, commencement date of the contract or its follow-up option period;

(iii) Names and addresses (to the extent known) of interested parties.

(2) Pursuant to Section 4(b) of the Act, requests for a hearing shall not be considered unless received as specified below except in those situations where the Administrator determines that extraordinary circumstances exist:

(i) For advertised contracts, prior to ten days before the award of the contract;

(ii) For negotiated contracts and for contracts with provisions extending the term by option, prior to the commencement date of the contract or the follow-up option period, as the case may be.

(c)(1) The Administrator, on his/her own motion or after receipt of a request for a determination, may make a finding on the issue of arm's-length negotiations.

(2) If the Administrator determines that there may not have been arm's-length negotiations, but finds that there is insufficient evidence to render a final decision thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d) of this section.

(3)(i) If the Administrator finds that the collective bargaining agreement or wages and fringe benefits at issue were reached as a result of arm's-length negotiations or that arm's-length negotiations did not take place, the interested parties, including the parties to the collective bargaining agreement, will be notified of the Administrator's findings, which shall include the reasons therefor, and such parties shall be afforded an opportunity to request that a hearing be held to render a decision on the issue of arm's-length negotiations.

(ii) Such parties shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(iii) If no hearing is requested within the time mentioned in paragraph (c)(3)(ii) of this section above, the Administrator's ruling shall be final, and, in the case of a finding that arm's-length negotiations did not take place, a new wage determination will be issued for the contract. If a hearing is requested, the decision of the Administrator shall be inoperative.

(d) *Referral to the Chief Administrative Law Judge.* The Administrator on his/her own motion, under paragraph (c)(2) of this section or upon a request for a hearing under paragraph (c)(3)(ii) of this section where the Administrator determines that material facts are in dispute, shall by order refer the issue to the Chief Administrative Law Judge for designation of an Administrative Law Judge, who shall conduct such hearings as may be necessary to render a decision solely on the issue of arm's-length negotiations. However, in situations where there is also a question as to whether some or all of the collectively bargained wage rates and/or fringe benefits are substantially at variance (see § 4.10), the referral shall include both issues for resolution in one proceeding. As provided in Section 4(a) of the Act, the provisions of Sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceeding, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(e) *Referral to the Board of Service Contract Appeals.* When a party requests a hearing under paragraph (c)(3)(ii) of this section and the Administrator determines that no material facts are in dispute, the Administrator shall refer the issue and the record compiled thereon to the Board of Service Contract Appeals to render a decision solely on the issue of arm's-length negotiations. Such proceeding shall be conducted in

accordance with the procedures set forth at 29 CFR Part 8.

§ 4.12 Substantial interest proceedings.

(a) *Statutory provision.* Under Section 5(a) of the Act, no contract of the United States (or the District of Columbia) shall be awarded to the persons or firms appearing on the list distributed by the Comptroller General giving the names of persons or firms who have been found to have violated the Act until 3 years have elapsed from the date of publication of the list. Section 5(a) further states that "no contract of the United States shall be awarded * * * to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest * * *." A finding as to whether persons or firms whose names appear on the debarred bidders list have a substantial interest in any other firm, corporation, partnership, or association may be made through investigation, hearing, or otherwise pursuant to the Secretary's authority under Section 4(a) of the Act.

(b) *Ineligibility.* See § 4.188 of this part for the Secretary's rulings and interpretations with respect to substantial interest.

(c)(1) A request for a determination under this section may be made by any interested party, including contractors or prospective contractors, and associations of contractors, representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

(2) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has a substantial interest in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia. No particular form is prescribed for the submission of a request under this section.

(d)(1) The Administrator, on his/her own motion or after receipt of a request for a determination, may make a finding on the issue of substantial interest.

(2) If the Administrator determines that there may be a substantial interest, but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (e) of this section.

(3) If the Administrator finds that no substantial interest exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(4)(i) If the Administrator finds that a substantial interest exists, the person or firm affected will be notified of the Administrator's finding, which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue of substantial interest.

(ii) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(iii) If no hearing is requested within the time mentioned in paragraph (d)(4)(ii) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the decision of the Administrator shall be inoperative unless and until the Administrative Law Judge or the Board of Service Contract Appeals issues an order that there is a substantial interest.

(e) *Referral to the Chief Administrative Law Judge.* The Administrator on his/her own motion, or upon a request for a hearing where the Administrator determines that relevant facts are in dispute, shall by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of substantial interest. As provided in Section 4(a) of the Act, the provisions of Sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceedings, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(f) *Referral to the Board of Service Contract Appeals.* When the person or firm requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Board of Service Contract Appeals to render a decision solely on the issue of substantial interest. Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 8.

Subpart B—Wage Determination Procedures

§ 4.50 Types of wage and fringe benefit determinations.

The Administrator specifies the minimum monetary wages and fringe benefits to be paid as required under the Act in two types of determinations:

(a) *Prevailing in the Locality.* Determinations that set forth minimum monetary wages and fringe benefits determined to be prevailing for various classes of service employees in the locality (sections 2(a)(1) and 2(a)(2) of the Act) after giving "due consideration" to the rates applicable to such service employees if directly hired by the Federal Government (section 2(a)(5) of the Act); and

(b) *Collective Bargaining Agreement—(Successorship).* Determinations that set forth the wage rates and fringe benefits, including accrued and prospective increases, contained in a collective bargaining agreement applicable to the service employees who performed on a predecessor contract in the same locality (sections 4(c) and 2(a) (1) and (2 of the Act).

§ 4.51 Prevailing in the locality determinations.

(a) *Information considered.* The minimum monetary wages and fringe benefits set forth in determinations of the Secretary are based on all available pertinent information as to wage rates and fringe benefits being paid at the time the determination is made. Such information is most frequently derived from area surveys made by the Bureau of Labor Statistics, U.S. Department of Labor, or other Labor Department personnel. Information may also be obtained from Government contracting officers and from other available sources, including employees and their representatives and employers and their associations. The determinations may be based on the wage rates and fringe benefits contained in collective bargaining agreements where they have been determined to prevail in a locality for specified occupational class(es) of employees.

(b) *Determination of Prevailing Rates* Where a single rate is paid to a majority (50 percent or more) of the workers in a class of service employees engaged in similar work in a particular locality, that rate is determined to prevail. The wage rates and fringe benefits in a collective bargaining agreement covering 2,001 janitors in a locality, for example, prevail if it is determined that no more than 4,000 workers are engaged in such

janitorial work in that locality. In the case of information developed from surveys, statistical measurements of central tendency such as a median (a point in a distribution of wage rates where 50 percent of the surveyed workers receive that or a higher rate and an equal number receive a lesser rate) or the mean (average) are considered reliable indicators of the prevailing rate. Which of these statistical measurements will be applied in a given case will be determined after a careful analysis of the overall survey, separate classification data, patterns existing between survey periods, and the way the separate classification data interrelate. Use of the median is the general rule. However, the mean (average) rate may be used in situations where, after analysis, it is determined that the median is not a reliable indicator. Examples where the mean may be used include situations where:

(1) The number of workers studied for the job classification constitutes a relatively small sample and the computed median results in an actual rate that is paid to few of the studied workers in the class;

(2) Statistical deviation such as a skewed (bimodal or multimodal) frequency distribution biases the median rate due to large concentrations of workers toward either end of the distribution curve and the computed median results in an actual rate that is paid to few of the studied workers in the class; or

(3) The computed median rate distorts historic wage relationships between job levels within a classification family (i.e., Electronic Technician Classes A, B, and C levels within the Electronic technician classification family), between classifications of different skill levels (i.e., a maintenance electrician as compared with a maintenance carpenter), or, for example, yields a wage movement inconsistent with the pattern shown by the survey overall or with related and/or similarly skilled job classifications.

(c) *Slotting wage rates.* In some instances, a wage survey for a particular locality may result in insufficient data for one or more job classifications that are required in the performance of a contract. Establishment of a prevailing wage rate for certain such classifications may be accomplished through a "slotting" procedure, such as that used under the Federal pay system. Under this procedure, wage rates are derived for a classification based on a comparison of equivalent or similar job duty and skill characteristics between the classifications studied and those for which no survey data is available. As an example, a wage rate found prevailing for the janitorial classification may be adopted for the classification of mess attendant if the skill and duties attributed to each classification are known to be rated similarly under pay classification schemes. (Both classifications are assigned the same wage grade under the Coordinated Federal Wage System and are paid at the Wage Board grade 2 when hired directly by a Federal agency.)

(d) *Due consideration.* In making wage and fringe benefit determinations, section 2(a)(5) of the Act requires that due consideration be given to the rates that would be paid by the Federal agency to the various classes of service employees if § 5341 or § 5332 of Title 5, United States Code, were applicable to them. Section 5341 refers to the Wage Board or Coordinated Federal Wage System for "blue collar" workers and § 5332 refers to the General Schedule pay system for "white collar" workers. The term "due consideration" implies the exercise of discretion on the basis of the facts and circumstances surrounding each determination, recognizing the legislative objective of narrowing the gap between the wage rates and fringe benefits prevailing for service employees and those established for Federal employees. Each wage determination is based on a survey or other information on the wage rates and fringe benefits being paid in a particular locality and also takes into account those wage rates and fringe benefits which would be paid under Federal pay systems.

§ 4.52 Collective bargaining agreement (successorship) determinations.

Determinations based on the collective bargaining agreement of a predecessor contractor set forth by job classification each provision relating to wages (such as the established straight time hourly or salary rate, cost-of-living allowance, and any shift, hazardous, and other similar pay differentials) and to fringe benefits (such as holiday pay, vacation pay, sick leave pay, life, accidental death, disability, medical, and dental insurance plans, retirement or pension plans, severance pay, supplemental unemployment benefits, saving and thrift plans, stock-option plans, funeral leave, jury/witness leave, or military leave) contained in the predecessor's collective bargaining agreement, as well as conditions governing the payment of such wages and fringe benefits. Accrued wages and fringe benefits and prospective increases therein are also included. Each wage determination is limited in application to a specific contract succeeding a contract which had been performed in the same locality by a contractor with a collective bargaining agreement, and contains a notice to prospective bidders regarding their obligations under section 4(c) of the Act.

§ 4.53 Locality basis of wage and fringe benefit determinations.

(a) Under section 2(a) of the Act, the Secretary or his authorized representative is given the authority to determine the minimum monetary wages and fringe benefits prevailing for various classes of service employees "in the locality". Although the term "locality" has reference to a geographic area, it has an elastic and variable meaning and contemplates consideration of the existing wage structures which are pertinent to the employment of particular classes of service employees on the varied kinds of service contracts. Because wage structures are extremely varied, there can be no precise single formula which would define the geographic limits of a "locality" that would be relevant or appropriate for the determination of prevailing wage rates and prevailing fringe benefits in all situations under the Act. The locality within which a wage or fringe benefit determination is applicable is, therefore, defined in each such determination upon the basis of all the facts and circumstances pertaining to that determination. Locality is ordinarily limited geographically to a particular county or cluster of counties comprising a metropolitan area. For example, a survey by the Bureau of Labor Statistics of the Baltimore, Maryland Standard Metropolitan Statistical Area includes the counties of Baltimore, Harford, Howard, Anne Arundel, and the City of Baltimore. A wage determination based on such information would define locality as the same geographic area included within the scope of the survey. Locality may also be defined as, for example, a city, a State, or, under rare circumstances, a region, depending on the actual place or places of contract performance, the geographical scope of the data on which the determination was based, the nature of the services being contracted for, and the procurement method used. In addition, in *Southern Packaging & Storage Co.* v. *United States*, 618 F.2d 1088 (4th Cir. 1980), the court held that a nationwide wage determination normally is not permissible under the Act, but postulated that "there may be the rare and unforeseen service contract which might be performed at locations throughout the country and which would generate truly nationwide competition".

(b) Where the services are to be performed for a Federal agency at the site of the successful bidder, in contrast to services to be performed at a specific Federal facility or installation, or in the locality of such installation, the location where the work will be performed often cannot be ascertained at the time of bid advertisement or solicitation. In such instances, wage determinations will generally be issued for the various localities identified by the agency as set forth in § 4.4(a)(2)(i).

(c) Where the wage rates and fringe benefits contained in a collective bargaining agreement applicable to the predecessor contract are set forth in a determination, locality in such a determination is typically described as the geographic area in which the predecessor contract was performed. The determination applies to any successor contractor which performs the contract in the same locality. However, see § 4.163(i).

§ 4.54 Issuance and revision of wage determinations.

(a) Section 4.4 of Subpart A requires that the awarding agency file a notice of intention to make a service contract which is subject to the Act with the Wage and Hour Division, Employment Standards Administration, prior to any invitation for bids or the commencement of negotiations for any contract exceeding $2,500. Upon receipt of the notice, the Wage and Hour Division may issue a new determination of minimum monetary wages and fringe benefits for the classes of service employees who will perform work on the contract or may revise a determination which is currently in effect.

(b) Determinations will be reviewed periodically and where prevailing wage rates or fringe benefits have changed, such changes will be reflected in revised determinations. For example, in a locality where it is determined that the wage rate which prevails for a particular class of service employees is the rate specified in a collective bargaining agreement(s) applicable in that locality, and such agreement(s) specifies increases in such rates to be effective on specific dates, the determinations would be revised to reflect such changes as they become effective. Revised determinations shall be applicable to contracts in accordance with the provisions of § 4.5(a)(2) of Subpart A.

(c) Determinations issued by the Wage and Hour Division with respect to particular contracts are required to be incorporated in the invitations for bids or requests for proposals or quotations issued by the contracting agencies, and are to be incorporated in the contract specifications in accordance with § 4.5 of Subpart A. In this manner, prospective contractors and subcontractors are advised of the minimum monetary wages and fringe benefits required under the most recently applicable determination to be paid the service employees who perform the contract work. These requirements are, of course, the same for all bidders so none will be placed at a competitive disadvantage.

§ 4.55 Review and reconsideration of wage determinations.

(a) *Review by the Administrator.* (1) Any interested party affected by a wage determination issued under section 2(a) of the Act may request review and reconsideration by the Administrator. A request for review and reconsideration may be made by the contracting agency or other interested party, including contractors or prospective contractors and associations of contractors, representatives of employees, and other interested Governmental agencies. Any such request must be accompanied by supporting evidence. In no event shall the Administrator review a wage determination or its applicability after the opening of bids in the case of a competitively advertised procurement, or, later than 10 days before commencement of a contract in the case of a negotiated procurement, exercise of a contract option or extension. This limitation is necessary in order to ensure competitive equality and an orderly procurement process.

(2) The Administrator shall, upon receipt of a request for reconsideration, review the data sources relied upon as a basis for the wage determination, the evidence furnished by the party requesting review or reconsideration, and, if necessary to resolve the matter, any additional information found to be relevant to determining prevailing wage rates and fringe benefits in a particular locality. The Administrator, pursuant to a review of available information, may issue a new wage determination, may cause the wage determination to be revised, or may affirm the wage determination issued, and will notify the requesting party in writing of the action taken. The Administrator will render a decision within 30 days of receipt of the request or will notify the requesting party in writing within 30 days of receipt that additional time is necessary.

(b) *Review by the Board of Service Contract Appeals.* Any decision of the Administrator under paragraph (a) of this section may be appealed to the Board of Service Contract Appeals within 20 days of issuance of the Administrator's decision. Any such appeal shall be in accordance with the provisions of Part 8 of this title.

Subpart C—Application of the McNamara-O'Hara Service Contract Act

Introductory

§ 4.101 Official rulings and interpretations in this subpart.

(a) The purpose of this subpart is to provide, pursuant to the authority cited in § 4.102, official rulings and interpretations with respect to the application of the McNamara-O'Hara Service Contract Act for the guidance of the agencies of the United States and the District of Columbia which may enter into and administer contracts subject to its provisions, the persons desiring to enter into such contracts with these agencies, and the contractors, subcontractors, and employees who perform work under such contracts.

(b) These rulings and interpretations are intended to indicate the construction of the law and regulations which the Department of Labor believes to be correct and which will be followed in the administration of the Act unless and until directed otherwise by Act of Congress or by authoritative ruling of the courts, or if it is concluded upon reexamination of an interpretation that it is incorrect. See for example, *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944); *Roland Co.* v. *Walling*, 326 U.S. 657 (1946); *Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, 507–509 (1943); *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 128 (1940); *United States* v. *Western Pacific Railroad Co.*, 352 U.S. 59 (1956). The Department of Labor (and not the contracting agencies) has the primary and final authority and responsibility for administering and interpreting the Act, including making determinations of coverage. See *Woodside Village* v. *Secretary of Labor*, 611 F. 2d 312 (9th Cir. 1980); *Nello L. Teer Co.* v. *United States*, 348 F.2d 533, 539–540 (Ct. Cl. 1965), cert. denied, 383 U.S. 934; *North Georgia Building & Construction Trades Council* v. *U.S. Department of Transportation*, 399 F. Supp. 58, 63 (N.D. Ga. 1975) (Davis-Bacon Act); *Curtiss-Wright Corp.* v. *McLucas*, 364 F. Supp. 750, 769–72 (D.N.J. 1973); and 43 Atty. Gen. Ops. —— (March 9, 1979); 53 Comp. Gen. 647, 649–51 (1974); 57 Comp. Gen. 501, 506 (1978).

(c) Court decisions arising under the Act (as well as under related remedial labor standards laws such as the Walsh-Healey Public Contracts Act, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Fair Labor Standards Act) which support

policies and interpretations contained in this part are cited where it is believed that they may be helpful. On matters which have not been authoritatively determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (*Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944)). In order that these positions may be made known to persons who may be affected by them, official interpretations and rulings are issued by the Administrator with the advice of the Solicitor of Labor, as authorized by the Secretary (Secretary's Order No. 16–75, Nov. 21, 1975, 40 FR 55913; Employment Standards Order No. 2–76, Feb. 23, 1976, 41 FR 9016). These interpretations are a proper exercise of the Secretary's authority. *Idaho Sheet Metal Works* v. *Wirtz*, 383 U.S. 190, 208 (1966), reh. den. 383 U.S. 963 (1966). References to pertinent legislative history, decisions of the Comptroller General and of the Attorney General, and Administrative Law Judges' decisions are also made in this part where it appears they will contribute to a better understanding of the stated interpretations and policies.

(d) The interpretations of the law contained in this part are official interpretations which may be relied upon. The Supreme Court has recognized that such interpretations of the Act "provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" and "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance" (*Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944)). Interpretations of the agency charged with administering an Act are generally afforded deference by the courts. (*Griggs* v. *Duke Power Co.*, 401 U.S. 424, 433–34 (1971); *Udall* v. *Tallman*, 380 U.S. 1 (1965).) Some of the interpretations in this part relating to the application of the Act are interpretations of provisions which appeared in the original Act before its amendments in 1972 and 1976. Accordingly, the Department of Labor considers these interpretations to be correct, since there were no amendments of the statutory provisions which they interpret. (*United States* v. *Davison Fuel & Dock Co.*, 371 F.2d 705, 711–12 (C.A. 4, 1967).)

(e) The interpretations contained herein shall be in effect until they are modified, rescinded, or withdrawn. This part supersedes and replaces certain interpretations previously published in the **Federal Register** and Code of Federal Regulations as Part 4 of this chapter. Prior opinions, rulings, and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Act as amended are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part, to the extent they are inconsistent with the rules herein stated, are superseded, rescinded, and withdrawn.

(f) Principles governing the application of the Act as set forth in this subpart are clarified or amplified in particular instances by illustrations and examples based on specific fact situations. Since such illustrations and examples cannot and are not intended to be exhaustive, or to provide guidance on every problem which may arise under the Act, no inference should be drawn from the fact that a subject or illustration is omitted.

(g) It should not be assumed that the lack of discussion of a particular subject in this subpart indicates the adoption of any particular position by the Department of Labor with respect to such matter or to constitute an interpretation, practice, or enforcement policy. If doubt arises or a question exists, inquiries with respect to matters other than safety and health standards should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, or to any regional office of the Wage and Hour Division. Safety and health inquiries should be addressed to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210, or to any OSHA regional office. A full description of the facts and any relevant documents should be submitted if an official ruling is desired.

§ 4.102 Administration of the Act.

As provided by section 4 of the Act and under provisions of sections 4 and 5 of the Walsh-Healey Public Contracts Act (49 Stat. 2036, 41 U.S.C. 38, 39), which are made expressly applicable for the purpose, the Secretary of Labor is authorized and directed to administer and enforce the provisions of the McNamara-O'Hara Service Contract Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act. The Secretary is also authorized to make reasonable limitations and to make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from provisions of the Act (except section 10), but only in special circumstances where it is determined that such action is necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business and is in accord with the remedial purposes of the Act to protect prevailing labor standards. The authority and enforcement powers of the Secretary under the Act are coextensive with the authority and powers under the Walsh-Healey Act. *Curtiss Wright Corp.* v. *McLucas* 364 F. Supp. 750, 769 (D N) 1973).

§ 4.103 The Act.

The McNamara-O'Hara Service Contract Act of 1965 (Pub. L. 89–286, 79 Stat. 1034, 41 U.S.C. 351 et seq.), hereinafter referred to as the Act, was approved by the President on October 22, 1965 (1 Weekly Compilation of Presidential Documents 428). It establishes standards for minimum compensation and safety and health protection of employees performing work for contractors and subcontractors on service contracts entered into with the Federal Government and the District of Columbia. It applies to contracts entered into pursuant to negotiations concluded or invitations for bids issued on or after January 20, 1966. It has been amended by Pub. L. 92–473, 86 Stat. 798; by Pub. L. 93–57, 87 Stat. 140; and by Pub. L. 94–489, 90 Stat. 2358.

§ 4.104 What the Act provides, generally.

The provisions of the Act apply to contracts, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees. Under its provisions, every contract subject to the Act (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of $2,500 must contain stipulations as set forth in § 4.6 of this Part requiring (a) that specified minimum monetary wages and fringe benefits determined by the Secretary of Labor (based on wage rates and fringe benefits prevailing in the locality or, in specified circumstances, the wage rates and fringe benefits contained in a collective bargaining agreement applicable to employees who performed on a predecessor contract) be paid to service employees employed by the contractor or any subcontractor in performing the services contracted for; (b) that working conditions of such employees which are under the control of the contractor or subcontractor meet safety and health standards; and (c) that notice be given to such employees of the

compensation due them under the minimum wage and fringe benefits provisions of the contract. Contractors performing work subject to the Act thus enter into competition to obtain Government business on terms of which they are fairly forewarned by inclusion in the contract. (*Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, 507 (1943).) The Act's purpose is to impose obligations upon those favored with Government business by precluding the use of the purchasing power of the Federal Government in the unfair depression of wages and standards of employment. (See H.R. Rep. No. 948, 89th Cong., 1st Sess. 2–3 (1965); S. Rep. No. 798, 89th Cong., 1st Sess. 3–4 (1965).) The Act does not permit the monetary wage rates specified in such a contract to be less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act, as amended (29 U.S.C. 206(a)(1)). In addition, it is a violation of the Act for any contractor or subcontractor under a Federal contract subject to the Act, regardless of the amount of the contract, to pay any of his employees engaged in performing work on the contract less than such Fair Labor Standards Act minimum wage. Contracts of $2,500 or less are not, however, required to contain the stipulations described above. These provisions of the Service Contract Act are implemented by the regulations contained in this Part 4 and are discussed in more detail in subsequent sections of Subparts C, D, and E.

§ 4.105 The Act as amended.

(a) The provisions of the Act (see §§ 4.102–4.103) were amended, effective October 9, 1972, by Public Law 92–473, signed into law by the President on that date. By virtue of amendments made to paragraphs (1) and (2) of section 2(a) and the addition to section 4 of a new subsection (c), the compensation standards of the Act (see §§ 4.159–4.179) were revised to impose on successor contractors certain requirements (see § 4.1b) with respect to payment of wage rates and fringe benefits based on those agreed upon for substantially the same services in the same locality in collective bargaining agreements entered into by their predecessor contractors (unless such agreed compensation is substantially at variance with that locally prevailing or the agreement was not negotiated at arm's length). The Secretary of Labor is to give effect to the provisions of such collective bargaining agreements in his wage determinations under section 2 of the Act. A new paragraph (5) added to section 2(a) of the Act requires a statement in the government service contract of the rates that would be paid by the contracting agency in the event of its direct employment of those classes of service employees to be employed on the contract work who, if directly employed by the agency, would receive wages determined as provided in 5 U.S.C. 5341. The Secretary of Labor is directed to give due consideration to such rates in determining prevailing monetary wages and fringe benefits under the Act's provisions. Other provisions of the 1972 amendments include the addition of a new section 10 to the Act to insure that wage determinations are issued by the Secretary for substantially all service contracts subject to section 2(a) of the Act at the earliest administratively feasible time; an amendment to section 4(b) of the Act to provide, in addition to the conditions previously specified for issuance of administrative limitations, variations, tolerances, and exemptions (see § 4.123), that administrative action in this regard shall be taken only in special circumstances where the Secretary determines that it is in accord with the remedial purpose of the Act to protect prevailing labor standards; and a new subsection (d) added to section 4 of the Act providing for the award of service contracts for terms not more than 5 years with provision for periodic adjustment of minimum wage rates and fringe benefits payable thereunder by the issuance of wage determinations by the Secretary of Labor during the term of the contract. A further amendment to section 5(a) of the Act requires the names of contractors found to have violated the Act to be submitted for the debarment list (see § 4.188) not later than 90 days after the hearing examiner's finding of violation unless the Secretary recommends relief, and provides that such recommendations shall be made only because of unusual circumstances.

(b) The provisions of the Act were amended by Pub. L. 93–57, 87 Stat. 140, effective July 6, 1973, to extend the Act's coverage to Canton Island.

(c) The provisions of the Act were amended by Pub. L. 94–489, 90 Stat. 2358, approved October 13, 1976, to extend the Act's coverage to white collar workers. Accordingly, the minimum wage protection of the Act now extends to all workers, both blue collar and white collar, other than persons employed in a bona fide executive, administrative, or professional capacity as those terms are used in the Fair Labor Standards Act and in Part 541 of Title 29. Pub. L. 94–489 accomplished this change by adding to Section 2(a)(5) of the Act a reference to 5 U.S.C. 5332, which deals with white collar workers, and by amending the definition of service contract employee in Section 8(b) of the Act.

(d) Included in this Part 4 and in Parts 6 and 8 of this subtitle are provisions to give effect to the amendments mentioned in this section.

§ 4.106 [Reserved]

Agencies Whose Contracts May Be Covered

§ 4.107 Federal contracts.

(a) Section 2(a) of the Act covers contracts (and any bid specification therefor) "entered into by the United States" and section 2(b) applies to contracts entered into "with the Federal Government." Within the meaning of these provisions, contracts entered into by the United States and contracts with the Federal Government include generally all contracts to which any agency or instrumentality of the U.S. Government becomes a party pursuant to authority derived from the Constitution and laws of the United States. The Act does not authorize any distinction in this respect between such agencies and instrumentalities on the basis of their inclusion in or independence from the executive, legislative, or judicial branches of the Government, the fact that they may be corporate in form, or the fact that payment for the contract services is not made from appropriated funds. Thus, contracts of wholly owned Government corporations, such as the Postal Service and those of nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces, or of other Federal agencies, such as Federal Reserve Banks, are included among those subject to the general coverage of the Act. (*Brinks, Inc.* v. *Board of Governors of the Federal Reserve System*, 466 F. Supp. 116 (D DC 1979); 43 Atty. Gen. Ops. ——— (September 26, 1978).) Contracts with the Federal Government and contracts entered into "by the United States" within the meaning of the Act do not, however, include contracts for services entered into on their own behalf by agencies or instrumentalities of other Governments within the United States, such as those of the several States and their political subdivisions, or of Puerto Rico, the Virgin Islands, Guam, or American Samoa.

(b) Where a Federal agency exercises its contracting authority to procure services desired by the Government, the method of procurement utilized by the contracting agency is not controlling in determining coverage of the contract as one entered into by the United States. Such contracts may be entered into by

the United States either through a direct award by a Federal agency or through the exercise by another agency (whether governmental or private) of authority granted to it to procure services for or on behalf of a Federal agency. Thus, sometimes authority to enter into service contracts of the character described in the Act for and on behalf of the Government and on a cost-reimbursable basis may be delegated, for the convenience of the contracting agency, to a prime contractor which has the responsibility for all work to be done in connection with the operation and management of a Federal plant, installation, facility, or program, together with the legal authority to act as agency for and on behalf of the Government and to obligate Government funds in the procurement of all services and supplies necessary to carry out the entire program of operation. The contracts entered into by such a prime contractor with secondary contractors for and on behalf of the Federal agency pursuant to such delegated authority, which have such services as their principal purpose, are deemed to be contracts entered into by the United States and contracts with the Federal Government within the meaning of the Act. However, service contracts entered into by State or local public bodies with purveyors of services are not deemed to be entered into by the United States merely because such services are paid for with funds of the public body which have been received from the Federal Government as a grant under a Federal program. For example, a contract entered into by a municipal housing authority for tree trimming, tree removal, and landscaping for an urban renewal project financed by Federal funds is not a contract entered into by the United States and is not covered by the Service Contract Act. Similarly, contracts let under the Medicaid program which are financed by federally-assisted grants to the States, and contracts which provide for insurance benefits to a third party under the Medicare program are not subject to the Act.

§ 4.108 District of Columbia contracts.

Section 2(a) of the Act covers contracts (and any bid specification therefor) in excess of $2,500 which are "entered into by the * * * District of Columbia." The contracts of all agencies and instrumentalities which procure contract services for or on behalf of the District or under the authority of the District Government are contracts entered into by the District of Columbia within the meaning of this provision. Such contracts are also considered contracts entered into with the Federal Government or the United States within the meaning of section 2(b), section 5, and the other provisions of the Act. The legislative history indicates no intent to distinguish District of Columbia contracts from the other contracts made subject to the Act, and traditionally, under other statutes. District Government contracts have been made subject to the same labor standards provisions as contracts of agencies and instrumentalities of the United States.

§ 4.109 [Reserved]

Covered Contracts Generally

§ 4.110 What contracts are covered.

The Act covers service contracts of the Federal agencies described in §§ 4.107–4.108. Except as otherwise specifically provided (see §§ 4.115 et seq.), all such contracts, the principal purpose of which is to furnish services in the United States through the use of service employees, are subject to its terms. This is true of contracts entered into by such agencies with States or their political subdivisions, as well as such contracts entered into with private employers. Contracts between a Federal or District of Columbia agency and another such agency are not within the purview of the Act; however, "subcontracts" awarded under "prime contracts" between the Small Business Administration and another Federal agency pursuant to various preferential set-aside programs, such as the 8(a) program, are covered by the Act. It makes no difference in the coverage of a contract whether the contract services are procured through negotiation or through advertising for bids. Also, the mere fact that an agreement is not reduced to writing does not mean that the contract is not within the coverage of the Act. The amount of the contract is not determinative of the Act's coverage, although the requirements are different for contracts in excess of $2,500 and for contracts of a lesser amount. The Act is applicable to the contract if the principal purpose of the contract is to furnish services, if such services are to be furnished in the United States, and if service employees will be used in providing such services. These elements of coverage will be discussed separately in the following sections.

§ 4.111 Contracts "to furnish services."

(a) *"Principal purpose" as criterion.* Under its terms, the Act applies to a "contract * * * the principal purpose of which is to furnish services * * *." If the principal purpose is to provide something other than services of the character contemplated by the Act and any such services which may be performed are only incidental to the performance of a contract for another purpose, the Act does not apply. However, as will be seen by examining the illustrative examples of covered contracts in §§ 4.130 et seq., no hard and fast rule can be laid down as to the precise meaning of the term "principal purpose". This remedial Act is intended to be applied to a wide variety of contracts, and the Act does not define or limit the types of services which may be contracted for under a contract the principal purpose of which is to furnish services. Further, the nomenclature, type, or particular form of contract used by procurement agencies is not determinative of coverage. Whether the principal purpose of a particular contract is the furnishing of services through the use of service employees is largely a question to be determined on the basis of all the facts in each particular case. Even where tangible items of substantial value are important elements of the subject matter of the contract, the facts may show that they are of secondary import to the furnishing of services in the particular case. This principle is illustrated by the examples set forth in § 4.131.

(b) *Determining whether a contract is for "services", generally.* Except indirectly through the definition of "service employee" the Act does not define, or limit, the types of "services" which may be contracted for under a contract "the principal purpose of which is to furnish services". As stated in the congressional committee reports on the legislation, the types of service contracts covered by its provisions are varied. Among the examples cited are contracts for laundry and dry cleaning, for transportation of the mail, for custodial, janitorial, or guard service, for packing and crating, for food service, and for miscellaneous housekeeping services. Covered contracts for services would also include those for other types of services which may be performed through the use of the various classes of service employees included in the definition in section 8(b) of the Act (see § 4.113). Examples of some such contracts are set forth in §§ 4.130 et seq. In determining questions of contract coverage, due regard must be given to the apparent legislative intent to include generally as contracts for "services" those contracts which have as their principal purpose the procurement of something other than the construction activity described in the Davis-Bacon Act or the materials, supplies, articles, and equipment described in the Walsh-Healey Act. The Committee reports in

both the House and Senate, and statements made on the floor of the House, took note of the labor standards protections afforded by these two Acts to employees engaged in the performance of construction and supply contracts and observed: "The service contract is now the only remaining category of Federal contracts to which no labor standards protections apply" (H. Rept. 948, 89th Cong., 1st Sess., p. 1; see also S. Rept. 798, 89th Cong., 1st Sess., p. 1; daily Congressional Record, Sept. 20, 1965, p. 23497). A similar understanding of contracts principally for "services" as embracing contracts other than those for construction or supplies is reflected in the statement of President Johnson upon signing the Act (1 Weekly Compilation of Presidential Documents, p. 428).

§ 4.112 Contracts to furnish services "in the United States."

(a) The Act covers contract services furnished "in the United States," including any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll and Johnston Island. The definition expressly excludes any other territory under the jurisdiction of the United States and any United States base or possession within a foreign country.

(b)(1) A service contract to be performed in its entirety outside the geographic limits of the United States as defined is not subject to the labor standards of the Act.

(2) In addition, a contract which is performed essentially outside the United States, with only an incidental portion performed within the United States as defined is not covered by the Act. For example, a contract for services to be performed on a vessel operating exclusively or nearly so in international or foreign waters outside the geographic areas named in section 8(d) would not be for services furnished "in the United States" within the meaning of the Act and would not be covered. However, if a significant or substantial portion of a service contract is performed within the statutory geographic limits, the Act applies, and the stipulations required by § 4.6 or § 4.7, as appropriate, must be included in the invitation for bids or negotiation documents and in the contract. In such a case, the labor standards must be observed with respect to that part of the contract services which is performed within these geographic limits, but the requirements of the Act and of the contract clauses will not be applicable to the services furnished outside the United States.

(3) In close cases involving a decision as to whether a significant portion of a contract will be performed within the United States as defined, the Department of Labor should be consulted, since such situations require consideration of other factors such as the nature of the contract work, the type of work performed in the United States and how necessary such work is to contract performance, and the amount of contract work performed or time spent in the United States vis-a-vis other contract work.

§ 4.113 Contracts to furnish services "through the use of service employees".

(a) *Use of "service employees" in a contract performance.* (1) As indicated in § 4.110, the Act covers service contracts only where "service employees" will be used in performing the services which it is the purpose of the contract to procure. A contract principally for services ordinarily will meet this condition if any of the services will be furnished through the use of any service employee or employees. Where it is contemplated that the services (of the kind performed by service employees) will be performed individually by the contractor, and the contracting officer knows when advertising for bids or concluding negotiations that service employees will in no event be used by the contractor in providing the contract services, the Act will not be deemed applicable to the contract and the contract clauses required by § 4.6 or § 4.7 may be omitted. The fact that the required services will be performed by municipal employees or employees of a State would not remove the contract from the purview of the Act, as this Act does not contain any exemption for contracts performed by such employees. Also, as discussed in paragraph (a)(3) of this section, where the services the Government wants under the contract are of a type that will require the use of service employees as defined in section 8(b) of the Act, the contract is not taken out of the purview of the Act by the fact that the manner in which the services of such employees are performed will be subject to the continuing overall supervision of bona fide executive, administrative, or professional personnel to whom the Act does not apply.

(2) The coverage of the Act does not extend to contracts for services to be performed exclusively by persons who are not service employees, i.e., persons who are bona fide executive, administrative or professional personnel as defined in Part 541 of this title (see paragraph (b) of this section). A contract for medical services furnished by professional personnel is an example of such a contract.

(3) In addition, the Department does not require application of the Act to any contract for services which is performed essentially by bona fide executive, administrative, or professional employees, with the use of service employees being only a minor factor in the performance of the contract. However, the Act would apply to a contract for services which may involve the use of service employees to a significant or substantial extent even though there is some use of bona fide executive, administrative, or professional employees in the performance of the contract. For example, contracts for drafting or data processing services are often performed by drafters, computer operators, or other service employees and are subject to the Act even though the work of such employees may be performed under the direction and supervision of bona fide professional employees.

(4) In close cases involving a decision as to whether a contract will involve a significant use of service employees, the Department of Labor should be consulted, since such situations require consideration or other factors such as the nature of the contract work, the type of work performed by service employees, how necessary the work is to contract performance, the amount of contract work performed by service employees vis-a-vis professional employees, and the total number of service employees employed on the contract.

(b) *"Service employees" defined.* In determining whether or not any of the contract services will be performed by service employees, the definition of "service employee" in section 8(b) of the Act is controlling. It provides:

> The term "service employee" means any person engaged in the performance of a contract entered into by the United States and not exempted under section 7, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

It will be noted that the definition expressly excludes those employees who are employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title and as discussed further in § 4.156. Some of the specific types of service employees who may be employed on service contracts are noted in other sections which discuss the application of the Act to employees.

§ 4.114 Subcontracts.

(a) *"Contractor" as including "subcontractor."* Except where otherwise noted or where the term "Government prime contractor" is used, the term "contractor" as used in this Part 4 shall be deemed to include a subcontractor. The term "contractor" as used in the contract clauses required by Subpart A in any subcontract under a covered contract shall be deemed to refer to the subcontractor, or, if in a subcontract entered into by such a subcontractor, shall be deemed to refer to the lower level subcontractor. (See § 4.1a(f).)

(b) *Liability of Prime Contractor.* When a contractor undertakes a contract subject to the Act, the contractor agrees to assume the obligation that the Act's labor standards will be observed in furnishing the required services. This obligation may not be relieved by shifting all or part of the work to another, and the prime contractor is jointly and severally liable with any subcontractor for any underpayments on the part of a subcontractor which would constitute a violation of the prime contract. The prime contractor is required to include the prescribed contract clauses (§§ 4.6–4.7) and applicable wage determination in all subcontracts. The appropriate enforcement sanctions provided under the Act may be invoked against both the prime contractor and the subcontractor in the event of failure to comply with any of the Act's requirements where appropriate under the circumstances of the case.

Specific Exclusions

§ 4.115 Exemptions and exceptions, generally.

(a) The Act, in section 7, specifically excludes from its coverage certain contracts and work which might otherwise come within its terms as procurements the principal purpose of which is to furnish services through the use of service employees.

(b) The statutory exemptions in section 7 of the Act are as follows:

(1) Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works;

(2) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036);

(3) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect;

(4) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(5) Any contract for public utility services, including electric light and power, water, steam, and gas;

(6) Any employment contract providing for direct services to a Federal agency by an individual or individuals;

(7) Any contract with the Post Office Department, (now the U.S. Postal Service) the principal purpose of which is the operation of postal contract stations.

§ 4.116 Contracts for construction activity.

(a) *General scope of exemption.* The Act, in paragraph (1) of section 7, exempts from its provisions "any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works." This language corresponds to the language used in the Davis-Bacon Act to describe its coverage (40 U.S.C. 276a). The legislative history of the McNamara-O'Hara Service Contract Act indicates that the purpose of the provision is to avoid overlapping coverage of the two acts by excluding from the application of the McNamara-O'Hara Act those contracts to which the Davis-Bacon Act is applicable and in the performance of which the labor standards of that Act are intended to govern the compensation payable to the employees of contractors and subcontractors on the work. (See H. Rept. 798, pp. 2, 5, and H. Rept. 948, pp. 1, 5, also Hearing, Special Subcommittee on Labor, House Committee on Education and Labor, p. 9 (89th Cong., 1st sess.).) The intent of section 7(1) is simply to exclude from the provisions of the Act those construction contracts which involve the employment of persons whose wage rates and fringe benefits are determinable under the Davis-Bacon Act.

(b) *Contracts not within exemption.* Section 7(1) does not exempt contracts which, for purposes of the Davis-Bacon Act, are not considered to be of the character described by the corresponding language in that Act, and to which the provisions of the Davis-Bacon Act are therefore not applied. Such contracts are accordingly subject to the McNamara-O'Hara Act where their principal purpose is to furnish services in the United States through the use of service employees. For example, a contract for clearing timber or brush from land or for the demolition or dismantling of buildings or other structures located thereon may be a contract for construction activity subject to the Davis-Bacon Act where it appears that the clearing of the site is to be followed by the construction of a public building or public work at the same location. If, however, no further construction activity at the site is contemplated the Davis-Bacon Act is considered inapplicable to such clearing, demolition, or dismantling work. In such event, the exemption in section 7(1) of the McNamara-O'Hara Act has no application and the contract may be subject to the Act in accordance with its general coverage provisions. It should be noted that the fact that a contract may be labeled as one for the sale and removal of property, such as salvage material, does not negate coverage under the Act even though title to the removable property passes to the contractor. While the value of the property being sold in relation to the services performed under the contract is a factor to be considered in determining coverage, where the facts show that the principal purpose of removal, dismantling, and demolition contracts is to furnish services through the use of service employees, these contracts are subject to the Act. (See also § 4.131.)

(c) *Partially exempt contracts.* (1) Instances may arise in which, for the convenience of the Government, instead of awarding separate contracts for construction work subject to the Davis-Bacon Act and for services of a different type to be performed by service employees, the contracting officer may include separate specifications for each type of work in a single contract calling for the performance of both types of work. For example, a contracting agency may invite bids for the installation of a plumbing system or for the installation of a security alarm system in a public building and for the maintenance of the system for one year. In such a case, if the contract is principally for services, the exemption provided by section 7(1) will be deemed applicable only to that portion of the contract which calls for construction activity subject to the Davis-Bacon Act. The contract documents are required to contain the clauses prescribed by § 4.6 for application to the contract obligation to

furnish services through the use of service employees, and the provisions of the McNamara-O'Hara Act will apply to that portion of the contract.

(2) *Services or maintenance contracts involving construction work.* The provisions of both the Davis-Bacon Act and the Service Contract Act would generally apply to contracts involving construction and service work where such contracts are principally for services. The Davis-Bacon Act, and thus the exemption provided by section 7(1) of the Act, would be applicable to construction contract work in such hybrid contracts where:

(i) The contract contains specific requirements for substantial amounts of construction, reconstruction, alteration, or repair work (hereinafter referred to as construction) or it is ascertainable that a substantial amount of construction work will be necessary for the performance of the contract (the word "substantial" relates to the type and quantity of construction work to be performed and not merely to the total value of construction work (whether in absolute dollars or cost percentages) as compared to the total value of the contract); and

(ii) The construction work is physically or functionally separate from, and as a practical matter is capable of being performed on a segregated basis from, the other work called for by the contract.

§ 4.117 Work subject to requirements of Walsh-Healey Act.

(a) The Act, in paragraph (2) of section 7, exempts from its provisions "any work required to be done in accordance with the provision of the Walsh-Healey Public Contracts Act" (49 Stat. 2036, 41 U.S.C. 35 *et seq.*). It will be noted that like the similar provision in the Contract Work Hours and Safety Standards Act (40 U.S.C. 329(b)), this is an exemption for "work", i.e., specifications or requirements, rather than for "contracts" subject to the Walsh-Healey Act. The purpose of the exemption was to eliminate possible overlapping of the differing labor standards of the two Acts, which otherwise might be applied to employees performing work on a contract covered by the Service Contract Act if such contract and their work under it should also be deemed to be covered by the Walsh-Healey Act. The Walsh-Healey Act applies to contracts in excess of $10,000 for the manufacture or furnishing of materials, supplies, articles or equipment. Thus, there is no overlap if the principal purpose of the contract is the manufacture or furnishing of such materials etc., rather than the furnishing of services of the character referred to in the Service Contract Act, for such a contract is not within the general coverage of the Service Contract Act. In such cases the exemption in section 7(2) is not pertinent. See, for example, the discussion in §§ 4.131 and 4.132.

(b) Further, contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to the Walsh-Healey Act. Remanufacturing shall be deemed to be manufacturing when the criteria in paragraph (1) or (2) of this section are met.

(1) Major overhaul of an item, piece of equipment, or materiel which is degraded or inoperable, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down into individual components parts; and

(ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced; and

(iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment; and

(iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized; and

(v) The disassembled components, if usable (except for situations where the number of items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment; and

(vi) The items or equipment overhauled are restored to original life expectancy, or nearly so; and

(vii) Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or materiel which is wholly or partially obsolete, and under which all of the following conditions exists:

(i) The item or equipment is required to be completely or substantially torn down; and

(ii) Outmoded parts are replaced; and

(iii) The item or equipment is rebuilt or reassembled; and

(iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition; and

(v) The work is performed in a facility owned or operated by the contractor.

(3) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in paragraphs (b)(1) and (2) of this section, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for the work described in this paragraph (b)(3) is subject to the Service Contract Act. Examples of such work include:

(i) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment;

(ii) Repair of typewriters and other office equipment (see § 4.123(e));

(iii) Repair of appliances, radios television, calculators, and other electronic equipment;

(iv) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in paragraphs (b)(3) (i), (ii), and (iii) above; and

(v) Reupholstering, reconditioning, repair, and refinishing of furniture.

(4) Application of the Service Contract Act or the Walsh-Healey Act to any similar type of contract not decided above will be decided on a case-by-case basis by the Administrator.

§ 4.118 Contracts for carriage subject to published tariff rates.

The Act, in paragraph (3) of section 7, exempts from its provisions "any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect". In order for this exemption to be applicable, the contract must be for such carriage by a common carrier described by the terms used. It does not, for example, apply to contracts for taxicab or ambulance service, because taxicab and ambulance companies are not among the common carriers specified by the statute. Also, a contract for transportation service does not come within this exemption unless the service contracted for is actually governed by published tariff rates in effect pursuant to State or Federal law for such carriage. The contracts excluded from the reach of the Act by this exemption are typically those where there is on file with the Interstate Commerce Commission or an appropriate State or local regulatory body a tariff rate applicable to the transportation involved, and the transportation

contract between the Government and the carrier is evidenced by a Government bill of lading citing the published tariff rate. An administrative exemption has been provided for certain contracts where such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act and is in accordance with applicable regulations governing such rates. See § 4.123(d). However, only contracts principally for the carriage of "freight or personnel" are exempt. Thus, the exemption cannot apply where the principal purpose of the contract is packing, crating, handling, loading, and/or storage of goods prior to or following line-haul transportation. The fact that substantial local drayage to and from the contractor's establishment (such as a warehouse) may be required in such contracts does not alter the fact that their principal purpose is other than the carriage of freight. Also, this exemption does not exclude any contracts for the transportation of mail from the application of the Act, because the term "freight" does not include the mail. (For an administrative exemption of certain contracts with common carriers for carriage of mail, see § 4.123(d).)

§ 4.119 Contracts for services of communications companies.

The Act, in paragraph (4) of section 7, exempts from its provisions "any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934." This exemption is applicable to contracts with such companies for communication services regulated under the Communications Act. It does not exempt from the Act any contracts with such companies to furnish any other kinds of services through the use of service employees.

§ 4.120 Contracts for public utility services.

The Act, in paragraph (5) of section 7, exempts from its provisions "any contract for public utility services, including electric light and power, water, steam, and gas." This exemption is applicable to contracts for such services with companies whose rates therefor are regulated under State, local, or Federal law governing operations of public utility enterprises. Contracts entered into with public utility companies to furnish services through the use of service employees, other than those subject to such rate regulation, are not exempt from the Act. Among the contracts included in the exemption would be those between Federal electric power marketing agencies and investor-owned electric utilities, Rural Electrification Administration cooperatives, municipalities and State agencies engaged in the transmission and sale of electric power and energy.

(See H. Rept. No. 948, 89th Cong., 1st sess., p. 4)

§ 4.121 Contracts for individual services.

The Act, in paragraph (6) of section 7, exempts from its provisions "any employment contract providing for direct services to a Federal agency by an individual or individuals." This exemption, which applies only to an "employment contract" for "direct services," makes it clear that the Act's application to Federal contracts for services is intended to be limited to service contracts entered into with independent contractors. If a contract to furnish services (to be performed by a service employee as defined in the Act) provides that they will be furnished directly to the Federal agency by the individual under conditions or circumstances which will make him an employee of the agency in providing the contract service, the exemption applies and the contract will not be subject to the Act's provisions. The exemption does not exclude from the Act any contract for services of the kind performed by service employees which is entered into with an independent contractor whose individual services will be used in performing the contract, but as noted earlier in § 4.113, such a contract would be outside the general coverage of the Act if only the contractor's individual services would be furnished and no service employee would in any event be used in its performance.

§ 4.122 Contracts for operation of postal contract stations.

The Act, in paragraph (7) of section 7, exempts from its provisions "any contract with the Post Office Department, [now the U.S. Postal Service], the principal purpose of which is the operation of postal contract stations." The exemption is limited to postal service contracts having the operation of such stations as their principal purpose. A provision of the legislation which would also have exempted contracts with the U.S. Postal Service having as their principal purpose the transportation, handling, or delivery of the mails was eliminated from the bill during its consideration by the House Committee on Education and Labor (H. Rept. 948, 89th Cong., 1st sess., p. 1).

§ 4.123 Administrative limitations, variances, tolerances, and exemptions.

(a) *Authority of the Secretary.* Section 4(b) of the Act as amended in 1972 authorizes the Secretary to "provide such reasonable limitations" and to "make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act (other than § 10), but only in special circumstances where he determines that such limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of this Act to protect prevailing labor standards." This authority is similar to that vested in the Secretary under section 6 of the Walsh-Healey Public Contracts Act (41 U.S.C. 40) and under section 105 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 331).

(b) *Administrative action under section 4(b) of the Act.* The authority conferred on the Secretary by section 4(b) of the Act will be exercised with due regard to the remedial purpose of the statute to protect prevailing labor standards and to avoid the undercutting of such standards which could result from the award of Government work to contractors who will not observe such standards, and whose saving in labor cost therefrom enables them to offer a lower price to the Government than can be offered by the fair employers who maintain the prevailing standards. Administrative action consistent with this statutory purpose may be taken under section 4(b) with or without a request therefor, when found necessary and proper in accordance with the statutory standards. No formal procedures have been prescribed for requesting such action. However, a request for exemption from the Act's provisions will be granted only upon a strong and affirmative showing that it is necessary and proper in the public interest or to avoid serious impairment of Government business, and is in accord with the remedial purpose of the Act to protect prevailing labor standards. If the request for administrative action under section 4(b) is not made by the headquarters office of the contracting agency to which the contract services are to be provided, the views of such office on the matter should be obtained and submitted with the request or the contracting officer may forward such a request through channels to the agency headquarters for submission with the latter's views to the Administrator of the Wage and Hour

Division, Department of Labor, whenever any wage payment issues are involved. Any request relating to an occupational safety or health issue shall be submitted to the Assistant Secretary for Occupational Safety and Health, Department of Labor.

(c) *Documentation of official action under section 4(b).* All papers and documents made a part of the official record of administrative action pursuant to section 4(b) of the Act are available for public inspection in accordance with the regulations in 29 CFR Part 70. Limitations, variations, tolerances and exemptions of general applicability and legal effect promulgated pursuant to such authority are published in the **Federal Register** and made a part of the rules incorporated in this Part 4. For convenience in use of the rules, they are generally set forth in the sections of this part covering the subject matter to which they relate. (See, for example, §§ 4.5(b), 4.6(o), 4.112 and 4.113.) Any rules that are promulgated under section 4(b) of the Act relating to subject matter not dealt with elsewhere in this Part 4 will be set forth immediately following this paragraph.

(d) In addition to the statutory exemptions in § 7 of the Act (see § 4.115(b)), the following types of contracts have been exempted from all the provisions of the Service Contract Act of 1965, pursuant to section 4(b) of the Act, prior to its amendment by Public Law 92-473, which exemptions the Secretary of Labor found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom;

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness, or accident; and

(3) Contracts for the carriage of freight or personnel where such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(e) The following types of contracts have been exempted from all the provisions of the Service Contract Act of 1965, pursuant to section 4(b) of the Act, which exemptions the Secretary of Labor found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business and are in accord with the remedial purpose of the Act to protect prevailing labor standards:

(1)(i) Contracts principally for the maintenance, calibration and/or repair of:

(A) Automated data processing equipment and office information/word processing systems:

(B) Scientific equipment and medical apparatus or equipment where the application of microelectronic circuitry or other technology of at least similar sophistication is an essential element (for example, Federal Supply Classification (FSC) Group 65, Class 6515, "Medical Diagnostic Equipment"; Class 6525, "X-Ray Equipment"; FSC Group 66, Class 6630, "Chemical Analysis Instruments"; Class 6665, "Geographical and Astronomical Instruments"; are largely composed of the types of equipment exempted hereunder);

(C) Office/business machines not otherwise exempt pursuant to paragraph (A) above, where such services are performed by the manufacturer or supplier of the equipment.

(ii) The exemptions set forth in this paragraph (1) shall apply only under the following circumstances:

(A) The items of equipment are commercial items which are used regularly for other than Government purposes, and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations;

(B) The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of such commerical items. An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor; and

(C) The contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for equivalent employees servicing the same equipment of commercial customers;

(D) The contractor certifies in the contract to the provisions in this subparagraph (ii).

(iii) Determinations of the applicability of this exemption shall be made in the first instance by the contracting officer prior to contract award. In making a judgment that the exemption applies, the contracting officer shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(iv) If the Department of Labor determines after contract award that any of the above requirements for exemption has not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination. In such case, the corrective procedures in section 4.5(c)(2) of this part shall be followed.

§§ 4.124—4.129 [Reserved]

Particular Application of Contract Coverage Principles

§ 4.130 Types of covered service contracts illustrated.

(a) The types of contracts, the principal purpose of which is to furnish services through the use of service employees, are too numerous and varied to permit an exhaustive listing. The following list is illustrative, however, of the types of services called for by such contracts that have been found to come within the coverage of the Act. Other examples of covered contracts are discussed in other sections of this subpart.

(1) Aerial spraying

(2) Aerial reconnaissance for fire detection

(3) Ambulance service

(4) Barber and beauty shop services

(5) Cafeteria and food service

(6) Carpet laying (other than part of construction) and cleaning

(7) Cataloging services

(8) Chemical testing and analysis

(9) Clothing alteration and repair

(10) Computer services

(11) Concessionaire services

(12) Custodial, janitorial, and housekeeping services

(13) Data collection, processing, and/or analysis services

(14) Drafting and illustrating

(15) Electronic equipment maintenance and operation and engineering support services

(16) Exploratory drilling (other than part of construction)
(17) Film processing
(18) Fire fighting and protection
(19) Fueling services
(20) Furniture repair and rehabilitation
(21) Geological field surveys and testing
(22) Grounds maintenance
(23) Guard and watchman security service
(24) Inventory services
(25) Keypunching and keyverifying contracts
(26) Laboratory analysis services
(27) Landscaping (other than part of construction)
(28) Laundry and dry cleaning
(29) Linen supply services
(30) Lodging and/or meals
(31) Mail hauling
(32) Mailing and addressing services
(33) Maintenance and repair of all types of equipment, e.g., aircraft, engines, electrical motors, vehicles, and electronic. Telecommunications, office and related business, and construction equipment (See § 4.123(e).)
(34) Mess attendant services
(35) Mortuary services
(36) Motor pool operation
(37) Nursing home services
(38) Operation, maintenance, or logistic support of a Federal facility
(39) Packing and crating
(40) Parking services
(41) Pest control
(42) Property management
(43) Snow removal
(44) Stenographic reporting
(45) Support services at military installations
(46) Surveying and mapping services not directly related to construction)
(47) Taxicab services
(48) Telephone and field interview services
(49) Tire and tube repairs
(50) Transporting property or personnel (except as explained in § 4.118)
(51) Trash and garbage removal
(52) Tree planting and thining, clearing timber or brush, etc. (See also §§ 4.116 (b) and 4.131(f).)
(53) Vending machine services
(54) Visual and graphic arts
(55) Warehousing or storage

§ 4.131 Furnishing services involving more than use of labor.

(a) If the principal purpose of a contract is to furnish services in the performance of which service employees will be used, the Act will apply to the contract, in the absence of an exemption, even though the use or furnishing of nonlabor items may be an important element in the furnishing of the services called for by its terms. The Act is concerned with protecting the labor standards of workers engaged in performing such contracts, and is applicable if the statutory coverage test is met, regardless of the form in which the contract is drafted. The proportion of the labor cost to the total cost of the contract and the necessity of furnishing or receiving tangible nonlabor items in performing the contract obligations will be considered but are not necessarily determinative. A procurement that requires tangible items to be supplied to the Government or the contractor as a part of the service furnished is covered by the Act so long as the facts show that the contract is chiefly for services, and that the furnishing of tangible items is of secondary importance.

(b) Some examples of covered contracts illustrating these principles may be helpful. One such example is a contract for the maintenance and repair of typewriters. Such a contract may require the contractor to furnish typewriter parts, as the need arises, in performing the contract services. Since this does not change the principal purpose of the contract, which is to furnish the maintenance and repair services through the use of service employees, the contract remains subject to the Act.

(c) Another example of the application of the above principle is a contract for the recurrent supply to a Government agency of freshly laundered items on a rental basis. It is plain from the legislative history that such a contract is typical of those intended to be covered by the Act. S. Rept. 798, 89th Cong., 1st Sess., p. 2; H. Rept. 948, 89th Cong., 1st Sess., p. 2. Although tangible items owned by the contractor are provided on a rental basis for the use of the Government, the service furnished by the contractor in making them available for such use when and where they are needed, through the use of service employees who launder and deliver them, is the principal purpose of the contract.

(d) Similarly, a contract in the form of rental of equipment with operators for the plowing and reseeding of a park area is a service contract. The Act applies to it because its principal purpose is the service of plowing and reseeding, which will be performed by service employees, although as a necessary incident the contractor is required to furnish equipment. For like reasons the contracts for aerial spraying and aerial reconnaissance listed in § 4.130 are covered, even though the use of airplanes, an expensive item of equipment, is essential in performing such services. In general, contracts under which the contractor agrees to provide the Government with vehicles or equipment on a rental basis with drivers or operators for the purpose of furnishing services are covered by the Act. Such contracts are not considered contracts for furnishing equipment within the meaning of the Walsh-Healey Public Contracts Act. On the other hand, contracts under which the contractor provides equipment with operators for the purpose of construction of a public building or public work, such as road resurfacing or dike repair, even where the work is performed under the supervision of Government employees, would be within the exemption in section 7(1) of the Act as contracts for construction subject to the Davis-Bacon Act. (See § 4.116.)

(e) Contracts for data collection, surveys, computer services, and the like are within the general coverage of the Act even though the contractor may be required to furnish such tangible items as written reports or computer printouts, since items of this nature are considered to be of secondary importance to the services which it is the principal purpose of the contract to procure.

(f) Contracts under which the contractor receives tangible items from the Government in return for furnishing services (which items are in lieu of or in addition to monetary consideration granted by either party) are covered by the Act where the facts show that the furnishing of such services is the principal purpose of the contracts. For example, property removal or disposal contracts which involve demolition of buildings or other structures are subject to the Act when their principal purpose is dismantling and removal (and no further construction activity at the site is contemplated). However, removal or dismantling contracts whose principal purpose is sales are not covered. So-called "timber sales" contracts generally are not subject to the Act because normally the services provided under such contracts are incidental to the principal purpose of the contracts. (See also §§ 4.111(a) and 4.116(b).)

§ 4.132 Services and other items to be furnished under a single contract.

If the principal purpose of a contract is to furnish services through the use of service employees within the meaning of the Act, the contract to furnish such services is not removed from the Act's coverage merely because, as a matter of convenience in procurement, the service specifications are combined in a single contract document with specifications for the procurement of different or unrelated items. In such case, the Act

would apply to service specifications but would not apply to any specifications subject to the Walsh-Healey Act or to the Davis-Bacon Act. With respect to contracts which contain separate specifications for the furnishing of services and construction activity, see § 4.116(c).

§ 4.133 Beneficiary of contract services.

(a) The Act does not say to whom the services under a covered contract must be furnished. So far as its language is concerned, it is enough if the contract is "entered into" by and with the Government and if its principal purpose is "to furnish services in the United States through the use of service employees". It is clear that Congress intended to cover at least contracts for services of direct benefit to the Government, its property, or its civilian or military personnel for whose needs it is necessary or desirable for the Government to make provision for such services. For example, the legislative history makes specific reference to such contracts as those for furnishing food service and laundry and dry cleaning service for personnel at military installations. Furthermore, there is no limitation in the Act regarding the beneficiary of the services, nor is there any indication that only contracts for services of direct benefit to the Government, as distinguished from the general public, are subject to the Act. Therefore, where the principal purpose of the Government contract is to provide services through the use of service employees, the contract is covered by the Act, regardless of the direct beneficiary of the services or the source of the funds from which the contractor is paid for the service, and irrespective of whether the contractor performs the work in its own establishment, on a Government installation, or elsewhere. The fact that the contract requires or permits the contractor to provide the services directly to individual personnel as a concessionaire, rather than through the contracting agency, does not negate coverage by the Act.

(b) The Department of Labor, pursuant to Section 4(b) of the Act, exempts from the provisions of the Act certain kinds of concession contracts providing services to the general public, as provided herein. Specifically, concession contracts (such as those entered into by the National Park Service) principally for the furnishing of food, lodging, automobile fuel, souvenirs, newspaper stands, and recreational equipment to the general public, as distinguished from the United States Government or its personnel, are exempt. This exemption is necessary and proper in the public interest and is in accord with the remedial purpose of the Act. Where concession contracts, however, include substantial requirements for services other than those stated, those services are not exempt. The exemption provided does not affect a concession contractor's obligation to comply with the labor standards provisions of any other statutes such as the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*), the Davis-Bacon Act (40 U.S.C. 276a *et seq.*; see Part 5 of this title) and the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*).

§ 4.134 Contracts outside the Act's coverage.

(a) Contracts entered into by agencies other than those of the Federal Government or the District of Columbia as described in §§ 4.107–4.108 are not within the purview of the Act. Thus, the Act does not cover service contracts entered into with any agencies of Puerto Rico, the Virgin Islands, American Samoa, or Guam acting in behalf of their respective local governments. Similarly, it does not cover service contracts entered into by agencies of States or local public bodies, not acting as agents for or on behalf of the United States or the District of Columbia, even though Federal financial assistance may be provided for such contracts under Federal law or the terms and conditions specified in Federal law may govern the award and operation of the contract.

(b) Further, as already noted in §§ 4.111–4.113, the Act does not apply to Government contracts which do not have as their principal purpose the furnishing of services, or which call for no services to be furnished within the United States or through the use of service employees as those terms are defined in the Act. Clearly outside the Act's coverage for these reasons are such contracts as those for the purchase of tangible products which the Government needs (e.g. vehicles, office equipment, and supplies), for the logistic support of an air base in a foreign country, or for the services of a lawyer to examine the title to land. Similarly, where the Government contracts for a lease of building space for Government occupancy and the building owner furnishes general janitorial and other building services on an incidental basis through the use of service employees, the leasing of the space rather than the furnishing of the building services is the principal purpose of the contract, and the Act does not apply. Another type of contract which is outside the coverage of the Act because it is not for the principal purpose of furnishing services may be illustrated by a contract for the rental of parking space under which the Government agency is simply given a lease or license to use the contractor's real property. Such a contract is to be distinguished from contracts for the storage of vehicles which are delivered into the possession or custody of the contractor, who will provide the required services including the parking or retrieval of the vehicles.

(c) There are a number of types of contracts which, while outside the Act's coverage in the usual case, may be subject to its provisions under the conditions and circumstances of a particular procurement, because these may be such as to require a different view of the principal purpose of the contract. Thus, the ordinary contract for the recapping of tires would have as its principal purpose the manufacture and furnishing of rebuilt tires for the Government rather than the furnishing of services through the use of service employees, and thus would be outside the Act's coverage. Similarly, contracts calling for printing, reproduction, and duplicating ordinarily would appear to have as their principal purpose the furnishing in quantity of printed, reproduced or duplicated written materials rather than the furnishing of reproduction services through the use of service employees. However, in a particular case, the terms, conditions, and circumstances of the procurement may be such that the facts would show its purpose to be chiefly the furnishing of services (e.g. repair services, typesetting, photocopying, editing, etc.), and where such services require the use of service employees the contract would be subject to the Act unless excluded therefrom for some other reason.

§§ 4.135–4.139 [Reserved]

Determining Amount of Contract

§ 4.140 Significance of contract amount.

As set forth in § 4.104 and in the requirements of §§ 4.6–4.7, the obligations of a contractor with respect to labor standards differ in the case of a covered and nonexempt contract, depending on whether the contract is or is not in excess of $2,500. Rules for resolving questions that may arise as to whether a contract is or is not in excess of this figure are set forth in the following sections.

§ 4.141 General criteria for measuring amount.

(a) In general, the contract amount is measured by the consideration agreed to be paid, whether in money or other valuable consideration, in return for the obligations assumed under the contract.

Thus, even though a contractor, such as a wrecker entering into a contract with the Government to raze a building on a site which will remain vacant, may not be entitled to receive any money from the Government for such work under his contract or may even agree to pay the Government in return for the right to dispose of the salvaged materials, the contract will be deemed one in excess of $2,500 if the value of the property obtained by the contractor, less anything he might pay the Government, is in excess of such amount. In addition, concession contracts are considered to be contracts in excess of $2,500 if the contractor's gross receipts under the contract may exceed $2,500.

(b) All bids from the same person on the same invitation for bids will constitute a single offer, and the total award to such person will determine the amount involved for purposes of the Act. Where the procurement is made without formal advertising, in arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Therefore, if an agency procures continuing services through the issuance of monthly purchase orders, the amount of the contract for purposes of application of the Act is not measured by the amount of an individual purchase order. In such cases, if the continuing services were procured through formal advertising, the contract term would typically be for one year, and the monthly purchase orders must be grouped together to determine whether the yearly amount may exceed $2,500. However, a purchase order for services which are not continuing but are performed on a one-time or sporadic basis and which are not performed under a requirements contract or under the terms of a basic ordering agreement or similar agreement need not be equated to a yearly amount. (See § 4.142(b).) In addition, where an invitation is for services in an amount in excess of $2,500 and bidders are permitted to bid on a portion of the services not amounting to more than $2,500, the amounts of the contracts awarded separately to individual and unrelated bidders will be measured by the portions of the services covered by their respective contracts.

(c) Where a contract is issued in an amount in excess of $2,500 this amount will govern for purposes of application of the Act even though penalty deductions, deductions for prompt payment, and similar deductions may reduce the amount actually expended by the Government to $2,500 or less.

§ 4.142 Contracts in an indefinite amount.

(a) Every contract subject to this Act which is indefinite in amount is required to contain the clauses prescribed in § 4.6 for contracts in excess of $2,500, unless the contracting officer has definite knowledge in advance that the contract will not exceed $2,500 in any event.

(b) Where contracts or agreements between a Government agency and prospective purveyors of services are negotiated which provide terms and conditions under which services will be furnished through the use of service employees in response to individual purchase orders or calls, if any, which may be issued by the agency during the life of the agreement, these agreements would ordinarily constitute contracts within the intendment of the Act under principles judicially established in United Biscuit Co. v. Wirtz, 17 WH Cases 146 (C.A.D.C.), a case arising under the Walsh-Healey Public Contracts Act. Such a contract, which may be in the nature of a bilateral option contract or basic ordering agreement and not obligate the Government to order any services or the contractor to furnish any, nevertheless governs any procurement of services that may be made through purchase orders or calls issued under its terms. Since the amount of the contract is indefinite, it is subject to the rule stated in paragraph (a) of this section. The amount of the contract is not determined by the amount of any individual call or purchase order.

Changes in Contract Coverage

§ 4.143 Effects of changes or extensions of contracts, generally.

(a) Sometimes an existing service contract is modified, amended, or extended in such a manner that the changed contract is considered to be a new contract for purposes of the application of the Act's provisions. The general rule with respect to such contracts is that, whenever changes affecting the labor requirements are made in the terms of the contract, the provisions of the Act and the regulations thereunder will apply to the changed contract in the same manner and to the same extent as they would to a wholly new contract. However, contract modifications or amendments (other than contract extensions) that are unrelated to the labor requirements of a contract will not be deemed to create a new contract for purposes of the Act. In addition, only significant changes related to labor requirements will be considered as creating new contracts. This limitation on the application of the Act has been found to be in accordance with the provisions of section 4(b) of the Act.

(b) Also, whenever the term of an existing contract is extended, pursuant to an option clause or otherwise, so that the contractor furnishes services over an extended period of time, rather than being granted extra time to fulfill his original commitment, the contract extension is considered to be a new contract for purposes of the application of the Act's provisions. All such "new" contracts as discussed above require the insertion of a new or revised wage determination in the contract as provided in § 4.5.

§ 4.144 Contract modifications affecting amount.

Where a contract which was originally issued in an amount not in excess of $2,500 is later modified so that its amount may exceed that figure, all the provisions of section 2(a) of the Act, and the regulations thereunder are applicable from the date of modification to the date of contract completion. In the event of such modification, the contracting officer will immediately request a wage determination from the Department of Labor and insert the required contract clauses and any wage determination issued into the contract. In the event that a contract for services subject to the Act in excess of $2,500 is modified so that it cannot exceed $2,500, compliance with the provisions of section 2(a) of the Act and the contract clauses required thereunder ceases to be an obligation of the contractor when such modification becomes effective.

§ 4.145 Extended term contracts.

(a) Sometimes service contracts are entered into for an extended term exceeding one year; however, their continuation in effect is subject to the appropriation by Congress of funds for each new fiscal year. In such event, for purposes of this Act, a contract shall be deemed entered into upon the contract anniversary date which occurs in each new fiscal year during which the terms of the original contract are made effective by an appropriation for that purpose. In other cases a service contract, entered into for a specified term by a Government agency, may contain a provision such as an option clause under which the agency may unilaterally extend the contract for a period of the same length or other stipulated period. Since the exercise of the option results in the rendition of

services for a new or different period not included in the term for which the contractor is obligated to furnish services or for which the Government is obligated to pay under the original contract in the absence of such action to extend it, the contract for the additional period is a wholly new contract with respect to application of the Act's provisions and the regulations thereunder (see section 4.143(b)).

(b) With respect to multi-year service contracts which are not subject to annual appropriations (for example, concession contracts which are funded through the concessionaire's sales, certain operations and maintenance contracts which are funded with so-called "no year money" or contracts awarded by instrumentalities of the United States, such as the Federal Reserve Banks, which do not receive appropriated funds), section 4(d) of the Act allows such contracts to be awarded for a period of up to five years on the condition that the multi-year contracts will be amended no less often than once every two years to incorporate any new Service Contract Act wage determination which may be applicable. Accordingly, unless the contracting agency is notified to the contrary (see § 4.4(d)), such contracts are treated as wholly new contracts for purposes of the application of the Act's provisions and regulations thereunder at the end of the second year and again at the end of the fourth year, etc. The two-year period is considered to begin on the date that the contractor commences performance on the contract (i.e., anniversary date) rather than on the date of contract award.

Period of Coverage

§ 4.146 Contract obligations after award, generally.

A contractor's obligation to observe the provisions of the Act arises on the date the contractor is informed that award of the contract has been made, and not necessarily on the date of formal execution. However, the contractor is required to comply with the provisions of the Act and regulations thereunder only while the employees are performing on the contract, provided the contractor's records make clear the period of such performance. (See also § 4.179.) If employees of the contractor are required by the contract to complete certain preliminary training or testing prior to the commencement of the contract services, or if there is a phase-in period which allows the new contractor's employees to familiarize themselves with the contract work so as to provide a smooth transition between contractors, the time spent by employees undertaking such training or phase-in work is considered to be hours worked on the contract and must be compensated for even though the principal contract services may not commence until a later date.

§§ 4.147–4.149 [Reserved]

Employees Covered by the Act

§ 4.150 Employee coverage, generally.

The Act, in section 2(b), makes it clear that its provisions apply generally to all service employees engaged in performing work on a covered contract entered into by the contractor with the Federal Government, regardless of whether they are the contractor's employees or those of any subcontractor under such contract. All service employees who, on or after the date of award, are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, are thus subject to the Act unless a specific exemption (see §§ 4.115 et seq.) is applicable. All such employees must be paid wages at a rate not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)), as amended. Payment of a higher minimum monetary wage and the furnishing of fringe benefits may be required under the contract, pursuant to the provisions of sections 2 (a)(1), (2), and 4(c) of the Act.

§ 4.151 Employees covered by provisions of section 2(a).

The provisions of sections 2(a) and 4(c) of the Act prescribe labor standards requirements applicable, except as otherwise specifically provided, to every contract in excess of $2,500 which is entered into by the United States or the District of Columbia for the principal purpose of furnishing services in the United States through the use of service employees. These provisions apply to all service employees engaged in the performance of such a contract or any subcontract thereunder. The Act, in section 8(b) defines the term "service employee". The general scope of the definition is considered in § 4.113(b) of this subpart.

§ 4.152 Employees subject to prevailing compensation provisions of sections 2(a) (1) and (2) and 4(c).

(a) Under sections 2(a) (1) and (2) and 4(c) of the Act, minimum monetary wages and fringe benefits to be paid or furnished the various classes of service employees performing such contract work are determined by the Secretary of Labor or his authorized representative in accordance with prevailing rates and fringe benefits for such employees in the locality or in accordance with the rates contained in a predecessor contractor's collective bargaining agreement, as appropriate, and are required to be specified in such contracts and subcontracts thereunder. All service employees of the classes who actually perform the specific services called for by the contract (e.g., janitors performing on a contract for office cleaning; stenographers performing on a contract for stenographic reporting) are covered by the provisions specifying such minimum monetary wages and fringe benefits for such classes of service employees and must be paid not less than the applicable rate established for the classification(s) of work performed. Pursuant to section 4.6(b)(2), conforming procedures are required to be observed for all such classes of service employees not listed in the wage determination incorporated in the contract.

(b) The duties which an employee actually performs govern the classification and the rate of pay to which the employee is entitled under the applicable wage determination. Some job classifications listed in an applicable wage determination are descriptive by title and have commonly understood meanings (e.g., janitors, security guards, pilots, etc.). In such situations, detailed position descriptions may not be included in the wage determination. However, in cases where additional descriptive information is needed to inform users of the scope of duties included in the classification, the wage determination will generally contain detailed position descriptions based on the data source relied upon for the issuance of the wage determination.

(c) (1) Some wage determinations will list a series of classes within a job classification family, e.g., Computer Operators, Class A, B, and C, or Electronic Technicians, Class A, B, and C, or Clerk Typist, Class A and B. Generally, the lowest level listed for a job classification family is considered to be the entry level and establishment of a lower level through conformance (§ 4.6(b)(2)) is not permissible. Further, trainee classifications cannot be conformed. Helpers in skilled maintenance trades (e.g., electricians, machinists, automobile mechanics, etc.) whose duties constitute, in fact, separate and distinct jobs, may also be used if listed on the wage determination, but cannot be conformed. Conformance may not be used to artificially split or subdivide classifications listed in the

wage determination. However, conforming procedures may be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title.

(2) Subminimum rates for apprentices, student learners, and handicapped workers are permissible under the conditions discussed in § 4.6 (o) and (p).

§ 4.153 Inapplicability of prevailing compensation provisions to some employees.

There may be employees used by a contractor or subcontractor in performing a service contract in excess of $2,500 which is subject to the Act, whose services, although necessary to the performance of the contract, are not subject to minimum monetary wage or fringe benefit provisions contained in the contract pursuant to section 2(a) because such employees are not directly engaged in performing the specified contract services. An example might be a laundry contractor's billing clerk performing billing work with respect to the items laundered. In all such situations, the employees who are necessary to the performance of the contract but not directly engaged in the performance of the specified contract services, are nevertheless subject to the minimum wage provision of section 2(b) (see § 4.150) requiring payment of not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act to all employees working on a covered contract, unless specifically exempt. However, in situations where minimum monetary wages and fringe benefits for a particular class or classes of service employees actually performing the services called for by the contract have not been specified in the contract because the wage and fringe benefit determination applicable to the contract has been made only for other classes of service employees who will perform the contract work, the employer will be required to pay the monetary wages and fringe benefits which may be specified for such classes of employees pursuant to the conformance procedures provided in § 4.6(b).

§ 4.154 Employees covered by sections 2(a) (3) and (4).

The safety and health standards of section 2(a)(3) and the notice requirements of section 2(a)(4) of the Act (see § 4.183) are applicable, in the absence of a specific exemption, to every service employee engaged by a contractor or subcontractor to furnish services under a contract subject to section 2(a) of the Act.

§ 4.155 Employee coverage does not depend on form of employment contract.

The Act, in section 8(b), makes it plain that the coverage of service employees depends on whether their work for the contractor or subcontractor on a covered contract is that of a service employee as defined in section 8(b) and not on any contractual relationship that may be alleged to exist between the contractor or subcontractor and such persons. In other words, any person, except those discussed in § 4.156 below, who performs work called for by a contract or that portion of a contract subject to the Act is, per se, a service employee. Thus, for example, a person's status as an "owner-operator" or an "independent contractor" is immaterial in determining coverage under the Act and all such persons performing the work of service employees must be compensated in accordance with the Act's requirements.

§ 4.156 Employees in bona fide executive, administrative, or professional capacity.

The term "service employee" as defined in Section 8(b) of the Act does not include persons employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR Part 541. Employees within the definition of service employee who are employed in an executive, administrative, or professional capacity are not excluded from coverage, however, even though they are highly paid, if they fail to meet the tests set forth in 29 CFR Part 541. Thus, such employees as laboratory technicians, draftsmen, and air ambulance pilots, though they require a high level of skill to perform their duties and may meet the salary requirements of the regulations in Part 541 of this title, are ordinarily covered by the Act's provisions because they do not typically meet the other requirements of those regulations.

§§ 4.157-4.158 (Reserved)

Subpart D—Compensation Standards

§ 4.159 General minimum wage.

The Act, in section 2(b)(1), provides generally that no contractor or subcontractor under any Federal contract subject to the Act shall pay any employee engaged in performing work on such a contract less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act. Section 2(a)(1) provides that the minimum monetary wage specified in any such contract exceeding $2,500 shall in no case be lower than this Fair Labor Standards Act minimum wage. Section 2(b)(1) is a statutory provision which applies to the contractor or subcontractor without regard to whether it is incorporated in the contract; however, §§ 4.6–4.7 provide for inclusion of its requirements in covered contracts and subcontracts. Because this statutory requirement specifies no fixed monetary wage rate and refers only to the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act, and because its application does not depend on provisions of the contract, any increase in such Fair Labor Standards Act minimum wage during the life of the contract is, on its effective date, also effective to increase the minimum wage payable under section 2(b)(1) to employees engaged in performing work on the contract. The minimum wage rate under section 6(a)(1) of the Fair Labor Standards Act is $3.10 per hour beginning January 1, 1980, and $3.35 per hour after December 31, 1980.

§ 4.160 Effect of section 6(e) of the Fair Labor Standards Act.

Contractors and subcontractors performing work on contracts subject to the Service Contract Act are required to pay all employees, including those employees who are not performing work on or in connection with such contracts, not less than the general minimum wage standard provided in section 6(a)(1) of the Fair Labor Standards Act, as amended (Pub. L. 95–151).

§ 4.161 Minimum monetary wages under contracts exceeding $2,500.

The standards established pursuant to the Act for minimum monetary wages to be paid by contractors and subcontractors under service contracts in excess of $2,500 to service employees engaged in performance of the contract or subcontract are required to be specified in the contract and in all subcontracts (see § 4.6). Pursuant to the statutory scheme provided by sections 2(a)(1) and 4(c) of the Act, every covered contract (and any bid specification therefor) which is in excess of $2,500 shall contain a provision specifying the minimum monetary wages to be paid the various classes of service employees engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative in accordance with prevailing rates for such employees in the locality, or, where a collective bargaining agreement applied to the employees of a predecessor contractor in the same locality, in accordance with

the rates for such employees provided for in such agreement, including prospective wage increases as provided in such agreement as a result of arm's-length negotiations. In no case may such wages be lower than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. (For a detailed discussion of the application of section 4(c) of the Act, see § 4.163.) If some or all of the determined wages in a contract fall below the level of the Fair Labor Standards Act minimum by reason of a change in that rate by amendment of the law, these rates become obsolete and the employer is obligated under section 2(b)(1) of the Service Contract Act to pay the minimum wage rate established by the amendment as of the date it becomes effective. A change in the Fair Labor Standards Act minimum by operation of law would also have the same effect on advertised specifications or negotiations for covered service contracts, i.e., it would make ineffective and would supplant any lower rate or rates included in such specifications or negotiations whether or not determined. However, unless affected by such a change in the Fair Labor Standards Act minimum wage, by contract changes necessitating the insertion of new wage provisions (see §§ 4.5(c) and 4.143–4.145) or by the requirements of section 4(c) of the Act (see § 4.163), the minimum monetary wage rate specified in the contract for each of the classes of service employees for which wage determinations have been made under section 2(a)(1) will continue to apply throughout the period of contract performance. No change in the obligation of the contractor or subcontractor with respect to minimum monetary wages will result from the mere fact that higher or lower wage rates may be determined to be prevailing for such employees in the locality after the award and before completion of the contract. Such wage determinations are effective for contracts not yet awarded, as provided in § 4.5(a).

§ 4.162 Fringe benefits under contracts exceeding $2,500.

(a) Pursuant to the statutory scheme provided by sections 2(a)(2) and 4(c) of the Act, every covered contract in excess of $2,500 shall contain a provision specifying the fringe benefits to be furnished the various classes of service employees, engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative to be prevailing for such employees in the locality or, where a collective bargaining agreement applied to the employees of a predecessor contractor in the same locality, the various classes of service employees engaged in the performance of the contract or any subcontract must be provided the fringe benefits, including prospective or accrued fringe benefit increases, provided for in such agreement as a result of arm's-length negotiations. (For a detailed discussion of section 4(c) of the Act, see § 4.163.) As provided by section 2(a)(2) of the Act, fringe benefits include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor.

(b) Under this provision, the fringe benefits, if any, which the contractor or subcontractor is required to furnish the service employees engaged in the performance of the contract are specified in the contract documents (see § 4.6). How the contractor may satisfy this obligation is dealt with in §§ 4.170–4.177 of this part. A change in the fringe benefits required by the contract provision will not result from the mere fact that other or additional fringe benefits are determined to be prevailing for such employees in the locality at a time subsequent to the award but before completion of the contract. Such fringe benefit determinations are effective for contracts not yet awarded (see § 4.5(a)), or in the event that changes in an existing contract requiring their insertion for prospective application have occurred (see §§ 4.143–4.145). However, none of the provisions of this paragraph may be construed as altering a successor contractor's obligations under section 4(c) of the Act. (See § 4.163.)

§ 4.163 Section 4(c) of the Act.

(a) Section 4(c) of the Act provides that no "contractor or subcontractor under a contract, which succeeds a contract subject to this Act and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract: *Provided,* That in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality." Under this provision, the successor contractor's sole obligation is to insure that all service employees are paid no less than the wages and fringe benefits to which such employees would have been entitled if employed under the predecessor's collective bargaining agreement (i.e., irrespective of whether the successor's employees were or were not employed by the predecessor contractor). The obligation of the successor contractor is limited to the wage and fringe benefit requirements of the predecessor's collective bargaining agreement and does not extend to other items such as seniority, grievance procedures, work rules, overtime, etc.

(b) Section 4(c) is self-executing. Under section 4(c), a successor contractor in the same locality as the predecessor contractor is statutorily obligated to pay no less than the wage rates and fringe benefits which were contained in the predecessor contractor's collective bargaining agreement. This is a direct statutory obligation and requirement placed on the successor contractor by section 4(c) and is not contingent or dependent upon the issuance or incorporation in the contract of a wage determination based on the predecessor contractor's collective bargaining agreement. Pursuant to section 4(b) of the Act, a variation has been granted which limits the self-executing application of section 4(c) in the circumstances and under the conditions described in § 4.1b(b) of this part. It must be emphasized, however, that the variation in § 4.1b(b) is applicable only if the contracting officer has given both the incumbent (predecessor) contractor and the employees' collective bargaining representative notification at least 30 days in advance of any estimated procurement date.

(c) *Variance hearings.* The regulations and procedures for hearings pursuant to section 4(c) of the Act are contained in § 4.10 of Subpart A and Parts 6 and 8 of this title. If, as the result of such hearing, some or all of the wage rate and/or fringe benefit provisions of a predecessor contractor's collective bargaining agreement are found to be

substantially at variance with the wage rates and/or fringe benefits prevailing in the locality, the Administrator will cause a new wage determination to be issued in accordance with the decision of the Administrative Law Judge or the Board of Service Contract Appeals, as appropriate. Since "it was the clear intent of Congress that any revised wage determinations resulting from a section 4(c) proceeding were to have validity with respect to the procurement involved" (53 Comp. Gen. 401, 402, 1973), the solicitation, or the contract if already awarded, must be amended to incorporate the newly issued wage determination. Such new wage determination shall be made applicable to the contract as of the date of the Administrative Law Judge's decision or, where the decision is reviewed by the Board of Service Contract Appeals, the date of that decision. The legislative history of the 1972 Amendments makes clear that the collectively bargained "wages and fringe benefits shall continue to be honored * * * unless and until the Secretary finds, after a hearing, that such wages and fringe benefits are substantially at variance with those prevailing in the locality for like services" (S. Rept. 92-1131, 92nd Cong., 2d Sess. 5). Thus, variance decisions do not have application retroactive to the commencement of the contract.

(d) *Sections 2(a) and 4(c) must be read in conjunction.* The Senate report accompanying the bill which amended the Act in 1972 states that "Sections 2(a)(1), 2(a)(2), and 4(c) must be read in harmony to reflect the statutory scheme." (S. Rept. 92-1131, 92nd Cong., 2nd Sess. 4.) Therefore, since section 4(c) refers only to the predecessor contractor's collective bargaining agreement, the reference to collective bargaining agreements in sections 2(a)(1) and 2(a)(2) can only be read to mean a predecessor contractor's collective bargaining agreement. The fact that a successor contractor may have its own collective bargaining agreement does not negate the clear mandate of the statute that the wages and fringe benefits called for by the predecessor contractor's collective bargaining agreement shall be the minimum payable under a new (successor) contract nor does it negate the application of a prevailing wage determination issued pursuant to section 2(a) where there was no applicable predecessor collective bargaining agreement. 48 Comp. Gen. 22, 23-24 (1968). In addition, because section 2(a) only applies to covered contracts in excess of $2,500, the requirements of section 4(c) likewise apply only to successor contracts which may be in excess of $2,500. However, if the successor contract is in excess of $2,500, section 4(c) applies regardless of the amount of the predecessor contract. (See §§ 4.141-4.142 for determining contract amount.)

(e) *The operative words of section 4(c) refer to "contract" not "contractor".* Section 4(c) begins with the language, "[n]o contractor or subcontractor under a *contract, which succeeds a contract* subject to this Act" (emphasis supplied). Thus, the statute is applicable by its terms to a successor contract without regard to whether the successor contractor was also the predecessor contractor. A contractor may become its own successor because it was the successful bidder on a recompetition of an existing contract, or because the contracting agency exercises an option or otherwise extends the term of the existing contract, etc. (See §§ 4.143-4.145.) Further, since sections 2(a) and 4(c) must be read in harmony to reflect the statutory scheme, it is clear that the provisions of section 4(c) apply whenever the Act or the regulations require that a new wage determination be incorporated into the contract (53 Comp. Gen. 401, 404-6 (1973)).

(f) *Collective bargaining agreement must be applicable to work performed on the predecessor contract.* Section 4(c) will be operative only if the employees who worked on the predecessor contract were actually paid in accordance with the wage and fringe benefit provisions of a predecessor contractor's collective bargaining agreement. Thus, for example, section 4(c) would not apply if the predecessor contractor entered into a collective bargaining agreement for the first time, which did not become effective until after the expiration of the predecessor contract. Likewise, the requirements of section 4(c) would not apply if the predecessor contractor's collective bargaining agreement applied only to other employees of the firm and not to the employees working on the contract.

(g) *Contract reconfigurations.* As a result of changing priorities, mission requirements, or other considerations, contracting agencies may decide to restructure their support contracts. Thus, specific contract requirements from one contract may be broken out and placed in a new contract or combined with requirements from other contracts into a consolidated contract. The protections afforded service employees under section 4(c) are not lost or negated because of such contract reconfigurations, and the predecessor contractor's collectively bargained rates follow identifiable contract work requirements into new or consolidated contracts, provided that the new or consolidated contract is for services which were furnished in the same locality under a predecessor contract. See § 4.163(i). However, where there is more than one predecessor contract to the new or consolidated contract, and where the predecessor contracts involve the same or similar function(s) of work, using substantially the same job classifications, the predecessor contract which covers the greater portion of the work in such function(s) shall be deemed to be the predecessor contract for purposes of section 4(c), and the collectively bargained wages and fringe benefits under that contract, if any, shall be applicable to such function(s). This limitation on the application of section 4(c) is necessary and proper in the public interest and is in accord with the remedial purpose of the Act to protect prevailing labor standards.

(h) *Interruption of contract services.* Other than the requirement that substantially the same services be furnished, the requirement for arm's-length negotiations and the provision for variance hearings, the Act does not impose any other restrictions on the application of section 4(c). Thus, the application of section 4(c) is not negated because the contracting authority may change and the successor contract is awarded by a different contracting agency. Also, there is no requirement that the successor contract commence immediately after the completion or termination of the predecessor contract, and an interruption of contract services does not negate the application of section 4(c). Contract services may be interrupted because the Government facility is temporarily closed for renovation, or because a predecessor defaulted on the contract or because a bid protest has halted a contract award requiring the Government to perform the services with its own employees. In all such cases, the requirements of section 4(c) would apply to any successor contract which may be awarded after the temporary interruption or hiatus. The basic principle in all of the preceding examples is that successorship provisions of section 4(c) apply to the full term successor contract. Therefore, temporary interim contracts, which allow a contracting agency sufficient time to solicit bids for a full term contract, also do not negate the application of section 4(c) to a full term successor contract.

(i) *Place of performance.* The successorship requirements of section

4(c) apply to all contracts for substantially the same services as were furnished under a predecessor contract in the same locality. As stated in § 4.4(a)(2), a wage determination incorporated in the contract shall be applicable thereto regardless of whether the successful contractor subsequently changes the place(s) of contract performance. Similarly, the application of section 4(c) (and any wage determination issued pursuant to section 4(c) and included in the contract) is not negated by the fact that a successor prime contractor subsequently changes the place(s) of contract performance or subcontracts any part of the contract work to a firm which performs the work in a different locality.

(j) *Interpretation of wage and fringe benefit provisions of wage determinations issued pursuant to sections 2(a) and 4(c).* Wage determinations which are issued for successor contracts subject to section 4(c) are intended to accurately reflect the rates and fringe benefits set forth in the predecessor's collective bargaining agreement. However, failure to include in the wage determination any job classification, wage rate, or fringe benefit encompassed in the collective bargaining agreement does not relieve the successor contractor of the statutory requirement to comply at a minimum with the terms of the collective bargaining agreement insofar as wages and fringe benefits are concerned. Since the successor's obligations are governed by the terms of the collective bargaining agreement, any interpretation of the wage and fringe benefit provisions of the collective bargaining agreement where its provisions are unclear must be based on the intent of the parties to the collective bargaining agreement, provided that such interpretation is not violative of law. Therefore, some of the principles discussed in §§ 4.170–4.177 regarding specific interpretations of the fringe benefit provisions of prevailing wage determinations may not be applicable to wage determinations issued pursuant to section 4(c). As provided in section 2(a)(2), a contractor may satisfy its fringe benefit obligations under any wage determination "by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash" in accordance with the rules and regulations set forth in § 4.177 of this Subpart.

(k) No provision of this section shall be construed as permitting a successor contractor to pay its employees less than the wages and fringe benefits to which such employees would have been entitled under the predecessor contractor's collective bargaining agreement. Thus, some of the principles discussed in § 4.167 may not be applicable in section 4(c) successorship situations. For example, unless the predecessor contractor's collective bargaining agreement allowed the deduction from employees' wages of the reasonable cost or fair value for providing board, lodging, or other facilities, the successor may not include such costs as part of the applicable minimum wage specified in the wage determination. Likewise, unless the predecessor contractor's agreement allowed a tip credit (§ 4.6(q)), the successor contractor may not take a tip credit toward satisfying the minimum wage requirements under sections 2(a)(1) and 4(c).

§ 4.164 [Reserved]

Compliance with Compensation Standards

§ 4.165 Wage payments and fringe benefits—in general.

(a)(1) Monetary wages specified under the Act shall be paid to the employees, to whom they are due promptly and in no event later than one pay period following the end of the pay period in which they are earned. No deduction, rebate, or refund is permitted, except as hereinafter stated. The same rules apply to cash payments authorized to be paid with the statutory monetary wages as equivalents of determined fringe benefits (see § 4.177).

(2) The Act makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees, and the wage and fringe benefit determinations apply, in the absence of an express limitation, equally to all such service employees engaged in work subject to the Act's provisions. (See § 4.176 regarding fringe benefit payments to temporary and part-time employees.)

(b) The Act does not prescribe the length of the pay period. However, for purposes of administration of the Act, and to conform with practices required under other statutes that may be applicable to the employment, wages and hours worked must be calculated on the basis of a fixed and regularly recurring workweek of seven consecutive 24-hour workday periods, and the records must be kept on this basis. It is appropriate to use this workweek for the pay period. A bi-weekly or semimonthly, pay period may, however, be used if advance notification is given to the affected employees. A pay period longer than semimonthly is not recognized as appropriate for service employees and wage payments at greater intervals will not be considered as constituting proper payments in compliance with the Act.

(c) The prevailing rate established by a wage determination under the Act is a minimum rate. A contractor is not precluded from paying wage rates in excess of those determined to be prevailing in the particular locality. Nor does the Act affect or require the changing of any provisions of union contracts specifying higher monetary wages or fringe benefits than those contained in an applicable determination. However, if an applicable wage determination contains a wage or fringe benefit provision for a class of service employees which is higher than that specified in an existing union agreement, the determination's provision must be observed for any work performed on a contract subject to that determination.

§ 4.166 Wage payments—unit of payment.

The standard by which monetary wage payments are measured under the Act is the wage rate per hour. An hourly wage rate is not, however, the only unit for payment of wages that may be used for employees subject to the Act. Employees may be paid on a daily, weekly, or other time basis, or by piece or task rates, so long as the measure of work and compensation used, when translated or reduced by computation to an hourly basis each workweek, will provide a rate per hour that will fulfill the statutory requirement. Whatever system of payment is used, however, must ensure that each hour of work in performance of the contract is compensated at not less than the required minimum rate. Failure to pay for certain hours at the required rate cannot be transformed into compliance with the Act by reallocating portions of payments made for other hours which are in excess of the specified minimum.

§ 4.167 Wage payments—medium of payment.

The wage payment requirements under the Act for monetary wages specified under its provisions will be satisfied by the timely payment of such wages to the employee either in cash or negotiable instrument payable at par. Such payment must be made finally and unconditionally and "free and clear." Scrip, tokens, credit cards, "dope checks", coupons, salvage material, and similar devices which permit the employer to retain and prevent the employee from acquiring control of money due for the work until some time after the pay day for the period in which

it was earned, are not proper mediums of payment under the Act. If, as is permissible, they are used as a convenient device for measuring earnings or allowable deductions during a single pay period, the employee cannot be charged with the loss or destruction of any of them and the employer may not, because the employee has not actually redeemed them, credit itself with any which remain outstanding on the pay day in determining whether it has met the requirements of the Act. The employer may not include the cost of fringe benefits or equivalents furnished as required under section 2(a)(2) of the Act, as a credit toward the monetary wages it is required to pay under section 2(a)(1) or 2(b) of the Act (see § 4.170). However, the employer may generally include, as a part of the applicable minimum wage which it is required to pay under the Act, the reasonable cost or fair value, as determined by the Administrator, of furnishing an employee with "board, lodging, or other facilities," as defined in Part 531 of this title, in situations where such facilities are customarily furnished to employees, for the convenience of the employees, not primarily for the benefit of the employer, and the employees' acceptance of them is voluntary and uncoerced. (See also § 4.163(k).) The determination of reasonable cost or fair value will be in accordance with the Administrator's regulations under the Fair Labor Standards Act, contained in such Part 531 of this title. While employment on contracts subject to the Act would not ordinarily involve situations in which service employees would receive tips from third persons, the treatment of tips for wage purposes in the situations where this may occur should be understood. For purposes of this Act, tips may generally be included in wages in accordance with the regulations under the Fair Labor Standards Act, contained in Part 531. (See also § 4.6(q) and § 4.163(k).) The general rule under that Act is that the amount paid a tipped employee by his employer is deemed to be increased on account of tips by an amount determined by the employer, not in excess of 40 percent of the minimum wage applicable under section 6 of that Act, effective January 1, 1980. Thus, the tip credit taken by an employer subject to the Service Contract Act may not exceed $1.34 per hour after December 31, 1980. (See § 4.163(k) for exceptions in section 4(c) situations.) In no event shall the sum credited be in excess of the value of tips actually received by the employee

§ 4.168 Wage payments—deductions from wages paid.

(a) The wage requirements of the Act will not be met where unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under the provisions of the Act and the regulations thereunder, or where the employee fails to receive such amounts free and clear because he "kicks back" directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to him. Authorized deductions are limited to those required by law, such as taxes payable by employees required to be withheld by the employer and amounts due employees which the employer is required by court order to pay to another; deductions allowable for the reasonable cost or fair value of board, lodging, and facilities furnished as set forth in § 4.167; and deductions of amounts which are authorized to be paid to third persons for the employee's account and benefit pursuant to his voluntary assignment or order or a collective bargaining agreement with bona fide representatives of employees which is applicable to the employer. Deductions for amounts paid to third persons on the employee's account which are not so authorized or are contrary to law or from which the contractor, subcontractor or any affiliated person derives any payment, rebate, commission, profit, or benefit directly or indirectly, may not be made if they cut into the wage required to be paid under the Act. The principles applied in determining the permissibility of deductions for payments made to third persons are explained in more detail in §§ 531.38–531.40 of this title.

(b) *Cost of maintaining and furnishing uniforms.* (1) If the employees are required to wear uniforms either by the employer, the nature of the job, or the Government contract, then the cost of furnishing and maintaining the uniforms is deemed to be a business expense of the employer and such cost may not be borne by the employees to the extent that to do so would reduce the employees' compensation below that required by the Act. Since it may be administratively difficult and burdensome for employers to determine the actual cost incurred by all employees for maintaining their own uniforms, payment in accordance with the following standards is considered sufficient for the contractor to satisfy its wage obligations under the Act:

(i) The contractor furnishes all employees with an adequate number of uniforms without cost to the employees or reimburses employees for the actual cost of the uniforms. (ii) Where uniform cleaning and maintenance is made the responsibility of the employee, the contractor reimburses all employees for such cleaning and maintenance at the rate of $3.35 a week (or 67 cents a day). Since employees are generally required to wear a clean uniform each day regardless of the number of hours the employee may work that day, the preceding weekly amount generally may be reduced to the stated daily equivalent but not to an hourly equivalent. A contractor may reimburse employees at a different rate if the contractor furnishes affirmative proof as to the actual cost to the employees of maintaining their uniforms or if a different rate is provided for in a bona fide collective bargaining agreement covering the employees working on the contract.

(2) However, there generally is no requirement that employees be reimbursed for uniform maintenance costs in those instances where the uniforms furnished are made of "wash and wear" materials which may be routinely washed and dried with other personal garments, and do not generally require daily washing, dry cleaning, commercial laundering, or any other special treatment because of heavy soiling in work usage or in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work. This limitation does not apply where a different provision has been set forth on the applicable wage determination. In the case of wage determinations issued under section 4(c) of the Act for successor contracts, the amount established by the parties to the predecessor collective bargaining agreement is deemed to be the cost of laundering wash and wear uniforms.

(c) Stipends, allowances or other payments made directly to an employee by a party other than the employer (such as a stipend for training paid by the Veterans Administration) are not part of "wages" and the employer may not claim credit for such payments toward its monetary obligations under the Act.

§ 4.169 Wage payments—work subject to different rates.

If an employee during a workweek works in different capacities in the performance of the contract and two or more rates of compensation under section 2 of the Act are applicable to the classes of work which he or she performs, the employee must be paid the

highest of such rates for all hours worked in the workweek unless it appears from the employer's records or other affirmative proof which of such hours were included in the periods spent in each class of work. The rule is the same where such an employee is employed for a portion of the workweek in work not subject to the Act, for which compensation at a lower rate would be proper if the employer by his records or other affirmative proof, segregated the worktime thus spent.

§ 4.170 Furnishing fringe benefits or equivalents.

(a) *General.* Fringe benefits required under the Act shall be furnished, separate from and in addition to the specified monetary wages, by the contractor or subcontractor to the employees engaged in performance of the contract, as specified in the determination of the Secretary or his authorized representative and prescribed in the contract documents. Section 2(a)(2) of the Act provides that the obligation to furnish the specified benefits "may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Secretary." The governing rules and regulations for furnishing such equivalents are set forth in § 4.177 of this Subpart. An employer cannot offset an amount of monetary wages paid in excess of the wages required under the determination in order to satisfy his fringe benefit obligations under the Act, and must keep appropriate records separately showing amounts paid for wages and amounts paid for fringe benefits.

(b) *Meeting the requirement, in general.* The various fringe benefits listed in the Act and in § 4.162(a) are illustrative of those which may be found to be prevailing for service employees in a particular locality. The benefits which an employer will be required to furnish employees performing on a particular contract will be specified in the contract documents. A contractor may dispose of certain of the fringe benefit obligations which may be required by an applicable fringe benefit determination, such as pension, retirement, or health insurance, by irrevocably paying the specified contributions for fringe benefits to an independent trustee or other third person pursuant to an existing "bona fide" fund, plan, or program on behalf of employees engaged in work subject to the Act's provisions. Where such a plan or fund does not exist, a contractor must discharge his obligation relating to fringe benefits by furnishing either an equivalent combination of "bona fide" fringe benefits or by making equivalent payments in cash to the employee, in accordance with the regulations in § 4.177.

§ 4.171 "Bona fide" fringe benefits.

(a) To be considered a "bona fide" fringe benefit for purposes of the Act, a fringe benefit plan, fund, or program must constitute a legally enforceable obligation which meets the following criteria:

(1) The provisions of a plan, fund, or program adopted by the contractor, or by contract as a result of collective bargaining, must be specified in writing, and must be communicated in writing to the affected employees. Contributions must be made pursuant to the terms of such plan, fund, or program. The plan may be either contractor-financed or a joint contractor-employee contributory plan. For example, employer contributions to Individual Retirement Accounts (IRAs) approved by IRS are permissible. However, any contributions made by employees must be voluntary, and if such contributions are made through payroll deductions, such deductions must be made in accordance with § 4.168. No contribution toward fringe benefits made by the employees themselves, or fringe benefits provided from monies deducted from the employee's wages may be included or used by an employer in satisfying any part of any fringe benefit obligation under the Act.

(2) The primary purpose of the plan must be to provide systematically for the payment of benefits to employees on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, supplemental unemployment benefits, and the like.

(3) The plan must contain a definite formula for determining the amount to be contributed by the contractor and a definite formula for determining the benefits for each of the employees participating in the plan.

(4) Except as provided in paragraph (b), the contractor's contributions must be paid irrevocably to a trustee or third person pursuant to an insurance agreement, trust or other funded arrangement. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that the contractor will not be able to recapture any of the contributions paid in nor in any way divert the funds to its own use or benefit.

(5) Benefit plans or trusts of the types listed in 26 U.S.C. 401(a) which are disapproved by the Internal Revenue Service as not satisfying the requirements of section 401(a) of the Internal Revenue Code or which do not meet the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq. and regulations thereunder, are not deemed to be "bona fide" plans for purposes of the Service Contract Act.

(6) It should also be noted that such plans must meet certain other criteria as set forth in § 778.215 of 29 CFR 778 in order for any contributions to be excluded from computation of the regular rate of pay for overtime purposes under the Fair Labor Standards Act (§§ 4.180–4.182).

(b)(1) Unfunded self-insured fringe benefit plans (other than fringe benefits such as vacations and holidays which by their nature are normally unfunded) under which contractors allegedly make "out of pocket" payments to provide benefits as expenses may arise, rather than making irrevocable contributions to a trust or other funded arrangement as required under § 4.171(a)(4), are not normally considered "bona fide" plans or equivalent benefits for purposes of the Act.

(2) A contractor may request approval by the Administrator of an unfunded self-insured plan in order to allow credit for payments under the plan to meet the fringe benefit requirements of the Act. In considering whether such a plan is bona fide, the Administrator will consider such factors as whether it could be reasonably anticipated to provide the prescribed benefits, whether it represents a legally enforceable commitment to provide such benefits, whether it is carried out under a financially responsible program, and whether the plan has been communicated to the employees in writing. The Administrator in his/her discretion may direct that assets be set aside and preserved in an escrow account or that other protections be afforded to meet the plan's future obligation.

(c) No benefit required by any other Federal law or by any State or local law, such as unemployment compensation, workers' compensation, or social security, is a fringe benefit for purposes of the Act.

(d) The furnishing to an employee of board, lodging, or other facilities under the circumstances described in § 4.167, the cost or value of which is creditable toward the monetary wages specified under the Act, may not be used to offset any fringe benefit obligations, as such items and facilities are not fringe benefits or equivalent benefits for purposes of the Act.

(e) The furnishing of facilities which are primarily for the benefit or convenience of the contractor or the cost of which is properly a business expense of the contractor is not the furnishing of a "bona fide" fringe benefit or equivalent benefit or the payment of wages. This would be true of such items, for example, as relocation expenses, travel and transportation expenses incident to employment, incentive or suggestion awards, and recruitment bonuses, as well as tools and other materials and services incidental to the employer's performance of the contract and the carrying on of his business, and the cost of furnishing, laundering, and maintaining uniforms and/or related apparel or equipment where employees are required by the contractor, by the contractor's Government contract, by law, or by the nature of the work to wear such items. See also § 4.168.

(f) Contributions by contractors for such items as social functions or parties for employees, flowers, cards, or gifts on employee birthdays, anniversaries, etc. (sunshine funds), employee rest or recreation rooms, paid coffee breaks, magazine subscriptions, and professional association or club dues, may not be used to offset any wages or fringe benefits specified in the contract, as such items are not "bona fide" wages or fringe benefits or equivalent benefits for purposes of the Act.

§ 4.172 Meeting requirements for particular fringe benefits—in general.

Where a fringe benefit determination specifies the amount of the employer's contribution to provide the benefit, the amount specified is the actual minimum cash amount that must be provided by the employer for the employee. No deduction from the specified amount may be made to cover any administrative costs which may be incurred by the contractor in providing the benefits, as such costs are properly a business expense of the employer. If prevailing fringe benefits for insurance or retirement are determined in a stated amount, and the employer provides such benefits through contribution in a lesser amount, he will be required to furnish the employee with the difference between the amount stated in the determination and the actual cost of the benefits which he provides. Unless otherwise specified in the particular wage determination, such as one reflecting collectively bargained fringe benefit requirements, issued pursuant to Section 4(c) of the Act, every employee performing on a covered contract must be furnished the fringe benefits required by that determination for all hours spent working on that contract up to a maximum of 40 hours per week and 2,080 (i.e., 52 weeks of 40 hours each) per year, as these are the typical number of nonovertime hours of work in a week, and in a year, respectively. Since the Act's fringe benefit requirements are applicable on a contract-by-contract basis, employees performing on more than one contract subject to the Act must be furnished the full amount of fringe benefits to which they are entitled under each contract and applicable wage determination. Where a fringe benefit determination has been made requiring employer contributions for a specified fringe benefit in a stated amount per hour, a contractor employing employees part of the time on contract work and part of the time on other work, may only credit against the hourly amount required for the hours spent on the contract work, the corresponding proportionate part of a weekly, monthly, or other amount contributed by him for such fringe benefits or equivalent benefits for such employees. If, for example, the determination requires health and welfare benefits in the amount of 30 cents an hour and the employer provides hospitalization insurance for such employees at a cost of $10.00 a week, the employer may credit 25 cents an hour ($10.00 ÷ 40) toward his fringe benefit obligation for such employees. If an employee works 25 hours on the contract work and 15 hours on other work, the employer cannot allocate the entire $10.00 to the 25 hours spent on contract work and take credit for 30 cents per hour in that manner, but must spread the cost over the full forty hours.

§ 4.173 Meeting requirements for vacation fringe benefits.

(a) *Determining length of service for vacation eligibility.* It has been found that for many types of service contracts performed at Federal facilities a successor contractor will utilize the employees of the previous contractor in the performance of the contract. The employees typically work at the same location providing the same services to the same clientele over a period of years, with periodic, often annual, changes of employer. The incumbent contractor, when bidding on a contract, must consider his liability for vacation benefits for those workers in his employ. If prospective contractors who plan to employ the same personnel were not required to furnish these employees with the same prevailing vacation benefits, it would place the incumbent contractor at a distinct competitive disadvantage as well as denying such employees entitlement to prevailing vacation benefits.

(1) Accordingly, most vacation fringe benefit determinations issued under the Act require an employer to furnish to employees working on the contract a specified amount of paid vacation upon completion of a specified length of service with a contractor or successor. This requirement may be stated in the determination, for example, as "one week paid vacation after one year of service with a contractor or successor" or by a determination which calls for "one week's paid vacation after one year of service". Unless specified otherwise in an applicable fringe benefit determination, an employer must take the following two factors into consideration in determining when an employee has completed the required length of service to be eligible for vacation benefits:

(i) The total length of time spent by an employee in any capacity in the continuous service of the present (successor) contractor, including both the time spent in performing on regular commercial work and the time spent in performing on the Government contract itself, and

(ii) Where applicable, the total length of time spent in any capacity as an employee in the continuous service of any predecessor contractor(s) who carried out similar contract functions at the same Federal facility.

(2) The application of these principles may be illustrated by the example given above of a fringe benefit determination calling for "one week paid vacation after one year of service with a contractor or successor". In that example, if a contractor has an employee who has worked for him for 18 months on regular commercial work and only for 6 months on a Government service contract, that employee would be eligible for the one week vacation since his total service with the employer adds up to more than 1 year. Similarly, if a contractor has an employee who worked for 16 months under a janitorial service contract at a particular Federal base for two different predecessor contractors, and only 8 months with the present employer, that employee would also be considered as meeting the "after one year of service" test and would thus be eligible for the specified vacation.

(3) The "contractor or successor" requirement set forth in paragraph (a)(1) of this section is not affected by the fact that a different contracting agency may have contracted for the services previously or by the agency's dividing and/or combining the contract services. However, prior service as a Federal employee is not counted toward an employee's eligibility for vacation

benefits under fringe benefit determinations issued pursuant to the Act.

(4) Some fringe benefit determinations may require an employer to furnish a specified amount of paid vacation upon completion of a specified length of service *with the employer*, for example, "one week paid vacation after one year of service with an employer". Under such determinations, only the time spent in performing on commercial work and on Government contract work in the employment of the present contractor need be considered in computing the length of service for purposes of determining vacation eligibility.

(5) Whether or not the predecessor contract(s) was covered by a fringe benefit determination is immaterial in determining whether the one year of service test has been met. This qualification refers to work performed before, as well as after, an applicable fringe benefit determination is incorporated into a contract. Also, the fact that the labor standards in predecessor service contract(s) were only those required under the Fair Labor Standards Act has no effect on the applicable fringe benefit determination contained in a current contract.

(b) *Eligibility requirement—continuous service.* Under the principles set forth above, if an employee's total length of service adds up to at least one year, the employee is eligible for vacation with pay. However, such service must have been rendered continuously for a period of not less than one year for vacation eligibility. The term "continuous service" does not require the combination of two entirely separate periods of employment. Whether or not there is a break in the continuity of service so as to make an employee ineligible for a vacation benefit is dependent upon all the facts in the particular case. No fixed time period has been established for determining whether an employee has a break in service. Rather, as illustrated below, the reason(s) for an employee's absence from work is the primary factor in determining whether a break in service occurred.

(1) In cases where employees have been granted leave with or without pay by their employer, or are otherwise absent with permission for such reasons as sickness or injury, or otherwise perform no work on the contract because of reasons beyond their control, there would not be a break in service. Likewise, the absence from work for a few days, with or without notice, does not constitute a break in service, without a formal termination of employment. The following specific examples are illustrative situations where it has been determined that a break in service did not occur:

(i) An employee absent for five months due to illness but employed continuously for three years.

(ii) A strike after which employees returned to work.

(iii) An interim period of three months between contracts caused by delays in the procurement process during which time personnel hired directly by the Government performed the necessary services. However, the successor contractor in this case was not held liable for vacation benefits for those employees who had anniversary dates of employment during the interim period because no employment relationship existed during such period.

(iv) A mess hall closed three months for renovation. Contractor employees were considered to be on temporary layoff during the renovation period and did not have a break in service.

(2) Where an employee quits, is fired for cause, or is otherwise terminated (except for temporary layoffs), there would be a break in service even if the employee were rehired at a later date. However, an employee may not be discharged and rehired as a subterfuge to evade the vacation requirement.

(c) *Vesting and payment of vacation benefits.*

(1) In the example given in paragraph (a)(1) of this section of a fringe benefit determination calling for "one week paid vacation after 1 year of service with a contractor or successor", an employee who renders the "one year of service" continuously becomes eligible for the "one week paid vacation" (i.e., 40 hours of paid vacation, unless otherwise specified in an applicable wage determination) upon his anniversary date of employment and upon each succeeding anniversary date thereafter. However, there is no accrual or vesting of vacation eligibility before the employee's anniversary date of employment, and no segment of time smaller than one year need be considered in computing the employer's vacation liability, unless specifically provided for in a particular fringe benefit determination. For example, an employee who has worked 13 months for an employer subject to such stipulations and is separated without receiving any vacation benefit is entitled only to one full week's (40 hours) paid vacation. He would not be entitled to the additional fraction of one-twelfth of one week's paid vacation for the month he worked in the second year unless otherwise stated in the applicable wage determination. An employee who has not met the "one year of service" requirement would not be entitled to any portion of the "one week paid vacation".

(2) Eligibility for vacation benefits specified in a particular wage determination is based on completion of the stated period of past service. The individual employee's anniversary date (and each annual anniversary date of employment thereafter) is the reference point for vesting of vacation eligibility, but does not necessarily mean that the employee must be given the vacation or paid for it on the date on which it is vested. The vacation may be scheduled according to a reasonable plan mutually agreed to and communicated to the employees. A "reasonable" plan may be interpreted to be a plan which allows the employer to maintain uninterrupted contract services but allows the employee some choice, by seniority or similar factor, in the scheduling of vacations. However, the required vacation must be given or payment made in lieu thereof before the next anniversary date, before completion of the current contract, or before the employee terminates employment, whichever occurs first.

(d) *Contractor liability for vacation benefits.*

(1) The liability for an employee's vacation is not prorated among contractors unless specifically provided for under a particular fringe benefit determination. The contractor by whom a person is employed at the time the vacation right vests, i.e., on the employee's anniversary date of employment, must provide the full benefit required by the determination which is applicable on that date. For example, an employee, who had not previously performed similar contract work at the same facility, was first hired by a predecessor contractor on July 1, 1978. July 1 is the employee's anniversary date. The predecessor's contract ended June 30, 1979, but the employee continued working on the contract for the successor. Since the employee did not have an anniversary date of employment during the predecessor's contract, the predecessor would not have any vacation liability with respect to this employee. However, on July 1, 1979 the employee's entitlement to the full vacation benefit vested and the successor contractor would be liable for the full amount of the employee's vacation benefit.

(2) The requirements for furnishing data relative to employee hiring dates in situations where such employees worked for "predecessor" contractors are set forth in § 4.6. However, a contractor is not relieved from any

obligation to provide vacation benefits because of any difficulty in obtaining such data.

(e) *Rate applicable to computation of vacation benefits.*

(1) If an applicable wage determination requires that the hourly wage rate be increased during the period of the contract, the rate applicable to the computation of any required vacation benefits is the hourly rate in effect in the workweek in which the actual paid vacation is provided or the equivalent is paid, as the case may be, and would not be the average of the two hourly rates. This rule would not apply to situations where a wage determination specified the method of computation and the rate to be used.

(2) As set forth in § 4.172, unless specified otherwise in an applicable fringe benefit determination, service employees must be furnished the required amount of fringe benefits for all hours paid for up to a maximum of 40 hours per week and 2,080 hours per year. Thus, an employee on paid vacation leave would accrue and must be compensated for any other applicable fringe benefits specified in the fringe benefit determination, and if any of the other benefits are furnished in the form of cash equivalents, such equivalents must be included with the applicable hourly wage rate in computing vacation benefits or a cash equivalent therefor. The rules and regulations for computing cash equivalents are set forth in § 4.177.

§ 4.174 Meeting requirements for holiday fringe benefits.

(a) *Determining eligibility for holiday benefits—in general.*

(1) Most fringe benefit determinations list a specific number of named holidays for which payment is required. Unless specified otherwise in an applicable determination, an employee who performs any work during the workweek in which a named holiday occurs is entitled to the holiday benefit, regardless of whether the named holiday falls on a Sunday, another day during the workweek on which the employee is not normally scheduled to work, or on the employee's day off. In addition, holiday benefits cannot be denied because the employee has not been employed by the contractor for a designated period prior to the named holiday or because the employee did not work the day before or the day after the holiday, unless such qualifications are specifically included in the determination.

(2) An employee who performs no work during the workweek in which a named holiday occurs is generally not entitled to the holiday benefit. However, an employee who performs no work during the workweek because he is on paid vacation or sick leave in accordance with the terms of the applicable fringe benefit determination is entitled to holiday pay or another day off with pay to substitute for the named holiday. In addition, an employee who performs no work during the workweek because of a layoff does not forfeit his entitlement to holiday benefits if the layoff is merely a subterfuge by the contractor to avoid the payment of such benefits.

(3) The obligation to furnish holiday pay for the named holiday may be discharged if the contractor furnishes another day off with pay in accordance with a plan communicated to the employees involved. However, in such instances the holidays named in the fringe benefit determination are the reference points for determining whether an employee is eligible to receive holiday benefits. In other words, if an employee worked in a workweek in which a listed holiday occurred, the employee is entitled to pay for that holiday. Some determinations may provide for a specific number of holidays without naming them. In such instances the contractor is free to select the holidays to be taken in accordance with a plan communicated to the employees involved, and the agreed-upon holidays are the reference points for determining whether an employee is eligible to receive holiday benefits.

(b) *Determining eligibility for holiday benefits—newly hired employees.* The contractor generally is not required to compensate a newly hired employee for the holiday occurring prior to the hiring of the employee. However, in the one situation where a named holiday falls in the first week of a contract, all employees who work during the first week would be entitled to holiday pay for that day. For example, if a contract to provide services for the period January 1 through December 31 contained a fringe benefit determination listing New Year's Day as a named holiday, and if New Year's Day were officially celebrated on January 2 in the year in question because January 1 fell on a Sunday, employees hired to begin work on January 3 would be entitled to holiday pay for New Year's Day.

(c) *Payment of holiday benefits.*

(1) A full-time employee who is eligible to receive payment for a named holiday must receive a full day's pay up to 8 hours unless a different standard is used in the fringe benefit determination, such as one reflecting collectively bargained holiday benefit requirements issued pursuant to Section 4(c) of the Act or a different historic practice in an industry or locality. Thus, for example, a contractor must furnish 7 hours of holiday pay to a full-time employee whose scheduled workday consists of 7 hours. An employee whose scheduled workday is 10 hours would be entitled to a holiday payment of 8 hours unless a different standard is used in the determination. As discussed in § 4.172, such holiday pay must include the full amount of other fringe benefits to which the employee is entitled.

(2) Unless a different standard is used in the wage determination, a full-time employee who works on the day designated as a holiday must be paid, in addition to the amount he ordinarily would be entitled to for that day's work, the cash equivalent of a full-day's pay up to 8 hours or be furnished another day off with pay.

(3) If the fringe benefit determination lists the employee's birthday as a paid holiday and that day coincides with another listed holiday, the contractor may discharge his obligation to furnish payment for the second holiday by either substituting another day off with pay with the consent of the employee, furnishing holiday benefits of an extra day's pay, or if the employee works on the holiday in question, furnish holiday benefits of two extra days' pay.

(4) As stated in paragraph (a)(1) of this section, an employee's entitlement to holiday pay fully vests by working in the workweek in which the named holiday occurs. Accordingly, any employee who is terminated before receiving the full amount of holiday benefits due him must be paid the holiday benefits as a final cash payment.

(5) The rules and regulations for furnishing holiday pay to temporary and part-time employees are discussed in § 4.176.

(6) The rules and regulations for furnishing equivalent fringe benefits or cash equivalents in lieu of holiday pay are discussed in § 4.177.

§ 4.175 Meeting requirements for health, welfare, and/or pension benefits.

(a) *Determining the required amount of benefits.*

(1) Most fringe benefit determinations containing health and welfare and/or pension requirements specify a fixed payment per hour on behalf of each service employee. These payments are usually also stated as weekly or monthly amounts. As set forth in § 4.172, unless specified otherwise in the applicable determination such payments are due for all hours paid for, including paid vacation, sick leave, and holiday hours, up to a maximum of 40 hours per

week and 2,080 hours per year on each contract. The application of this rule can be illustrated by the following examples:

(i) An employee who works 4 days a week, 10 hours a day is entitled to 40 hours of health and welfare and/or pension fringe benefits. If an employee works 3 days a week, 12 hours a day, then such employee is entitled to 36 hours of these benefits.

(ii) An employee who works 32 hours in a workweek and also receives 8 hours of holiday pay is entitled to the maximum of 40 hours of health and welfare and/or pension payments in that workweek. If the employee works more than 32 hours and also received 8 hours of holiday pay, the employee is still only entitled to the maximum of 40 hours of health and welfare and/or pension payments.

(iii) If an employee is off work for two weeks on vacation and received 80 hours of vacation pay, the employee must also receive payment for the 80 hours of health and welfare and/or pension benefits which accrue during the vacation period.

(iv) An employee entitled to two weeks paid vacation who instead works the full 52 weeks in the year, receiving the full 2,080 hours worth of health and welfare and/or pension benefits, would be due an extra 80 hours of vacation pay in lieu of actually taking the vacation; however, such an employee would not be entitled to have an additional 80 hours of health and welfare and/or pension benefits included in his vacation pay.

(2) A fringe benefit determination calling for a specified benefit such as health insurance contemplates a fixed and definite contribution to a "bona fide" plan (as that term is defined in § 4.171) by an employer on behalf of each employee, based on the monetary cost to the employer rather than on the level of benefits provided. Therefore, in determining compliance with an applicable fringe benefit determination, the amount of the employer's contribution on behalf of each individual employee governs. Thus, as set forth in § 4.172, if a determination should require a contribution to a plan providing a specified fringe benefit and that benefit can be obtained for less than the required contribution, it would be necessary for the employer to make up the difference in cash to the employee, or furnish equivalent benefits, or a combination thereof. The following illustrates the application of this principle: A fringe benefit determination requires a rate of $36.40 per month per employee for a health insurance plan. The employer obtains the health insurance coverage specified at a rate of $20.45 per month for a single employee, $30.60 for an employee with spouse, and $40.90 for an employee with a family. The employer is required to make up the difference in cash or equivalent benefits to the first two classes of employees in order to satisfy the determination, notwithstanding that coverage for an employee would be automatically changed by the employer if the employee's status should change (e.g., single to married) and notwithstanding that the employer's average contribution per employee may be equal to or in excess of $36.40 per month.

(3) In determining eligibility for benefits under certain wage determinations containing hours or length of service requirements (such as having to work 40 hours in the preceding month), the contractor must take into account time spent by employees on commercial work as well as time spent on the Government contract.

(b) Some fringe benefit determinations specifically provide for health and welfare and/or pension benefits in terms of average cost. Under this concept, a contractor's contributions per employee to a "bona fide" fringe benefit plan are permitted to vary depending upon the individual employee's marital or employment status. However, the firm's total contributions for all service employees enrolled in the plan must average at least the fringe benefit determination requirement per hour per service employee. If the contractor's contributions average less than the amount required by the determination, then the firm must make up the deficiency by making cash equivalent payments or equivalent fringe benefit payments to all service employees in the plan who worked on the contract during the payment period. Where such deficiencies are made up by means of cash equivalent payments, the payments must be made promptly on the following payday. The following illustrates the application of this principle: The determination requires an average contribution of $0.84 an hour. The contractor makes payments to bona fide fringe benefit plans on a monthly basis. During a month the firm contributes $15,000 for the service employees employed on the contract who are enrolled in the plan, and a total of 20,000 man-hours had been worked by all service employees during the month. Accordingly, the firm's average cost would have been $15,000÷20,000 hours or $0.75 per hour, resulting in a deficiency of $0.09 per hour. Therefore, the contractor owes the service employees in the plan who worked on the contract during the month an additional $0.09 an hour for each hour worked on the contract, payable on the next regular payday for wages. Unless otherwise provided in the applicable wage determination, contributions made by the employer for non-service employees may not be credited toward meeting Service Contract Act fringe benefit obligations.

(c) *Employees not enrolled in or excluded from participating in fringe benefit plans.*

(1) Some health and welfare and pension plans contain eligibility exclusions for certain employees. For example, temporary and part-time employees may be excluded from participating in such plans. Also, employees receiving benefits through participation in plans of an employer other than the Government contractor or by a spouse's employer may be prevented from receiving benefits from the contractor's plan because of prohibitions against "double coverage". While such exclusions do not invalidate an otherwise bona fide insurance plan, employer contributions to such a plan cannot be considered to be made on behalf of the excluded employees. Accordingly, under fringe benefit determination requirements as described in paragraph (a)(2) of this section, the employees excluded from participation in the health insurance plan must be furnished equivalent bona fide fringe benefits or be paid a cash equivalent payment during the period that they are not eligible to participate in the plan.

(2) It is not required that all employees participating in a fringe benefit plan be entitled to receive benefits from that plan at all times. For example, under some plans, newly hired employees who are eligible to participate in an insurance plan from their first day of employment may be prohibited from receiving benefits from the plan during a specified "waiting period". Contributions made on behalf of such employees would serve to discharge the contractor's obligation to furnish the fringe benefit. However, if no contributions are made for such employees, no credit may be taken toward the contractor's fringe benefit obligations.

(d) *Payment of health and welfare and pension benefits.*

(1) Health and welfare and/or pension payments to a "bona fide" insurance plan or trust program may be made on a periodic payment basis which is not less often than quarterly. However, where fringe benefit determinations contemplate a fixed contribution on behalf of each employee, and a contractor exercises his option to make

hourly cash equivalent or differential payments, such payments must be made promptly on the regular payday for wages. (See § 4.165.)

(2) The rules and regulations for furnishing health and welfare and pension benefits to temporary and part-time employees are discussed in § 4.176.

(3) The rules and regulations for furnishing equivalent fringe benefits or cash equivalents in lieu of health and welfare and pension benefits are discussed in § 4.177.

§ 4.176 Payment of fringe benefits to temporary and part-time employees.

(a) As set forth in § 4.165(a)(2), the Act makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees. Accordingly, in the absence of express limitations, the provisions of an applicable fringe benefit determination apply to all temporary and part-time service employees engaged in covered work. However, in general, such temporary and part-time employees are only entitled to an amount of the fringe benefits specified in an applicable determination which is proportionate to the amount of time spent in covered work. The application of these principles may be illustrated by the following examples:

(1) Assuming the paid vacation for full-time employees is one week of 40 hours, a part-time employee working a regularly scheduled workweek of 16 hours is entitled to 16 hours of paid vacation time or its equivalent each year, if all other qualifications are met.

(2) In the case of holidays, a part-time employee working a regularly scheduled workweek of 16 hours would be entitled to two-fifths of the holiday pay due full-time employees. It is immaterial whether or not the holiday falls on a normal workday of the part-time employee. Except as provided in § 4.174(b), a temporary or casual employee hired during a holiday week, but after the holiday, would be due no holiday benefits for that week.

(3) Holiday or vacation pay obligations to temporary and part-time employees working an irregular schedule of hours may be discharged by paying such employees a proportion of the holiday or vacation benefits due full-time employees based on the number of hours each such employee worked in the workweek prior to the workweek in which the holiday occurs or, with respect to vacations, the number of hours which the employee worked in the year preceding the employee's anniversary date of employment. For example:

(i) An employee works 10 hours during the week preceding July 4, a designated holiday. The employee is entitled to 10/40 of the holiday pay to which a full-time employee is entitled (i.e., 10/40 times 8=2 hours holiday pay).

(ii) A part-time employee works 520 hours during the 12 months preceding the employee's anniversary date. Since the typical number of nonovertime hours in a year of work is 2,080, if a full-time employee would be entitled to one week (40 hours) paid vacation under the applicable fringe benefit determination, then the part-time employee would be entitled to 520/2,080 times 40=10 hours paid vacation.

(4) A part-time employee working a regularly scheduled workweek of 20 hours would be entitled to one-half of the health and welfare and/or pension benefits specified in the applicable fringe benefit determination. Thus, if the determination requires $36.40 per month for health insurance, the contractor could discharge his obligation towards the employee in question by providing a health insurance policy costing $18.20 per month.

(b) A contractor's obligation to furnish the specified fringe benefits to temporary and part-time employees may be discharged by furnishing equivalent benefits, cash equivalents, or a combination thereof in accordance with the rules and regulations set forth in § 4.177.

§ 4.177 Discharging fringe benefit obligations by equivalent means.

(a) *In general.*

(1) Section 2(a)(2) of the Act, which provides for fringe benefits that are separate from and in addition to the monetary compensation required under section 2(a)(1), permits an employer to discharge his obligation to furnish the fringe benefits specified in an applicable fringe benefit determination by furnishing any equivalent combinations of "bona fide" fringe benefits or by making equivalent or differential payments in cash. However, credit for such payments is limited to the employer's fringe benefit obligations under section 2(a)(2), since the Act does not authorize any part of the monetary wage required by section 2(a)(1) and specified in the wage determination and the contract, to be offset by the fringe benefit payments or equivalents which are furnished or paid pursuant to section 2(a)(2).

(2) When a contractor substitutes fringe benefits not specified in the fringe benefit determination contained in the contract for fringe benefits which are so specified, the substituted fringe benefits, like those for which the contract provisions are prescribed, must be "bona fide" fringe benefits, as that term is defined in § 4.171.

(3) When a contractor discharges his fringe benefit obligation by furnishing, in lieu of those benefits specified in the applicable fringe benefit determination, other "bona fide" fringe benefits, cash payments, or a combination thereof, the substituted fringe benefits and/or cash payments must be "equivalent" to the benefits specified in the determination. As used in this subpart, the terms "equivalent fringe benefit" and "cash equivalent" mean equal in terms of monetary cost to the contractor. Thus, as set forth in § 4.172, if an applicable fringe benefit determination calls for a particular fringe benefit in a stated amount and the contractor furnished this benefit through contributions in a lesser amount, the contractor must furnish the employee with the difference between the amount stated in the determination and the actual cost of the benefit which the contractor provides. This principle may be illustrated by the example given in § 4.175(a)(2).

(b) *Furnishing equivalent fringe benefits.*

(1) A contractor's obligation to furnish fringe benefits which are stated in a specified cash amount may be discharged by furnishing any combination of "bona fide" fringe benefits costing an equal amount. Thus, if an applicable determination specifies that 20 cents per hour is to be paid into a pension fund, this fringe benefit obligation will be deemed to be met if, instead, hospitalization benefits costing not less than 20 cents per hour are provided. The same obligation will be met if hospitalization benefits costing 10 cents an hour and life insurance benefits costing 10 cents an hour are provided. As set forth in § 4.171(c), no benefit required to be furnished the employee by any other law, such as workers' compensation, may be credited toward satisfying the fringe benefit requirements of the Act.

(2) A contractor who wishes to furnish equivalent fringe benefits in lieu of those benefits which are not stated in a specified cash amount, such as "one week paid vacation", must first determine the equivalent cash value of such benefits in accordance with the rules set forth in paragraph (c) of this section.

(c) *Furnishing cash equivalents.*

(1) Fringe benefit obligations may be discharged by paying to the employee on his regular payday, in addition to the monetary wage required, a cash amount per hour in lieu of the specified fringe

benefits, provided such amount is equivalent to the cost of the fringe benefits required. If, for example, an employee's monetary rate under an applicable determination is $4.50 an hour, and the fringe benefits to be furnished are hospitalization benefits costing 20 cents an hour and retirement benefits costing 20 cents an hour, the fringe benefit obligation is discharged if instead of furnishing the required fringe benefits, the employer pays the employee, in cash, 40 cents per hour as the cash equivalent of the fringe benefits in addition to the $4.50 per hour wage rate required under the applicable wage determination.

(2) The hourly cash equivalent of those fringe benefits which are not stated in the applicable determination in terms of hourly cash amounts may be obtained by mathematical computation through the use of pertinent factors such as the monetary wages paid the employee and the hours of work attributable to the period, if any, by which fringe benefits are measured in the determination. If the employee's regular rate of pay is greater than the minimum monetary wage specified in the wage determination and the contract, the former must be used for this computation, and if the fringe benefit determination does not specify any daily or weekly hours of work by which benefits are to be measured, a standard 8-hour day and 40-hour week will be considered applicable. The application of these rules in typical situations is illustrated in paragraphs (c)(3) through (7) of this section.

(3) Where fringe benefits are stated as a percentage of the monetary rate, the hourly cash equivalent is determined by multiplying the stated percentage by the employees' regular or basic (i.e., wage determination) rate of pay, whichever is greater. For example, if the determination calls for a 5 percent pension fund payment and the employee is paid a monetary rate of $4.50 an hour, or if the employee earns $4.50 an hour on a piece-work basis in a particular workweek, the cash equivalent of that payment would be 22½ cents an hour.

(4) If the determination lists a particular fringe benefit in such terms as $8 a week, the hourly cash equivalent is determined by dividing the amount stated in the determination by the number of working hours to which the amount is attributable. For example, if a determination lists a fringe benefit as "pension—$8 a week", and does not specify weekly hours, the hourly cash equivalent is 20 cents per hour, i.e., $8 divided by 40, the standard number of non-overtime working hours in a week.

(5) In determining the hourly cash equivalent of those fringe benefits which are not stated in the determination in terms of a cash amount, but are stated, for example, as "nine paid holidays per year" or "1 week paid vacation after one year of service", the employee's hourly monetary rate of pay is multiplied by the number of hours making up the paid holidays or vacation. Unless the hours contemplated in the fringe benefit are specified in the determination, a standard 8-hour day and 40-hour week is considered applicable. The total annual cost so determined is divided by 2,080, the standard number of non-overtime hours in a year of work, to arrive at the hourly cash equivalent. This principle may be illustrated by the following examples:

(i) If a particular determination lists as a fringe benefit "nine holidays per year" and the employee's hourly rate of pay is $4.50, the $4.50 is multiplied by 72 (9 days of 8 hours each) and the result, $324, is then divided by 2,080 to arrive at the hourly cash equivalent, $0.1557 an hour. See § 4.174(c)(4).

(ii) If the determination requires "one week paid vacation after one year of service", and the employee's hourly rate of pay is $4.50, the $4.50 is multiplied by 40 and the result, $180.00, is then divided by 2,080 to arrive at the hourly cash equivalent, $0.0865 an hour.

(6) Where an employer elects to pay an hourly cash equivalent in lieu of a paid vacation, which is computed in accordance with paragraph (c)(5) of this section, such payments need commence only after the employee has satisfied the "after one year of service" requirement. However, should the employee terminate employment for any reason before receiving the full amount of vested vacation benefits due, the employee must be paid the full amount of any difference remaining as the final cash payment. For example, an employee becomes eligible for a week's vacation pay on March 1. The employer elects to pay this employee an hourly cash equivalent beginning that date; the employee terminates employment on March 31. Accordingly, as this employee has received only 1/12 of the vacation pay to which he/she is entitled, the employee is due the remaining 11/12 upon termination. As set forth in § 4.173(e), the rate applicable to the computation of cash equivalents for vacation benefits is the hourly wage rate in effect at the time such equivalent payments are actually made.

(d) *Furnishing a combination of equivalent fringe benefits and cash payments.* Fringe benefit obligations may be discharged by furnishing any combination of cash or fringe benefits as illustrated in the preceding paragraphs of this section, in monetary amounts the total of which is equivalent, under the rules therein stated, to the determined fringe benefits specified in the contract. For example, if an applicable determination specifies that 20 cents per hour is to be paid into a pension fund, this fringe benefit obligation will be deemed to be met if instead, hospitalization benefits costing 15 cents an hour and a cash equivalent payment of 5 cents an hour are provided.

(e) *Effect of equivalents in computing overtime pay.* Section 6 of the Act excludes from the regular or basic hourly rate of an employee, for purposes of determining the overtime pay to which the employee is entitled under any other Federal law, those fringe benefit payments computed under the Act which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(e) (formerly designated as section 7(d)) of that Act (29 U.S.C. 207(e)). Fringe benefit payments which qualify for such exclusion are described in Subpart C of Regulations, 29 CFR Part 778. When such fringe benefits are required to be furnished to service employees engaged in contract performance, the right to compute overtime pay in accordance with the above rule is not lost to a contractor or subcontractor because it discharges its obligation under this Act to furnish such fringe benefits through alternative equivalents as provided in this section. If it furnishes equivalent benefits or makes cash payments, or both, to such an employee as authorized herein, the amounts thereof, which discharge the employer's obligation to furnish such specified fringe benefits, may be excluded pursuant to this Act from the employee's regular or basic rate of pay in computing any overtime pay due the employee under any other Federal law. No such exclusion can operate, however, to reduce an employee's regular or basic rate of pay below the monetary wage rate specified as the applicable minimum wage rates under sections 2(a)(1), 2(b), or 4(c) of this Act or under other law or an employment contract.

§ 4.178 Computation of hours worked.

Since employees subject to the Act are entitled to the minimum compensation specified under its provisions for each hour worked in performance of a covered contract, a computation of their hours worked in each workweek when such work under the contract is performed is essential. Determinations of hours worked will be

made in accordance with the principles applied under the Fair Labor Standards Act as set forth in Part 785 of this title which is incorporated herein by reference. In general, the hours worked by an employee include all periods in which the employee is suffered or permitted to work whether or not required to do so, and all time during which the employee is required to be on duty or to be on the employer's premises or to be at a prescribed workplace. The hours worked which are subject to the compensation provisions of the Act are those in which the employee is engaged in performing work on contracts subject to the Act. However, unless such hours are adequately segregated, as indicated in § 4.179, compensation in accordance with the Act will be required for all hours of work in any workweek in which the employee performs any work in connection with the contract, in the absence of affirmative proof to the contrary that such work did not continue throughout the workweek.

§ 4.179 Identification of contract work.

Contractors and subcontractors under contracts subject to the Act are required to comply with its compensation requirements throughout the period of performance on the contract and to do so with respect to all employees who in any workweek are engaged in performing work on such contracts. If such a contractor during any workweek is not exclusively engaged in performing such contracts, or if while so engaged it has employees who spend a portion but not all of their worktime in the workweek in performing work on such contracts, it is necessary for the contractor to identify accurately in its records, or by other means, those periods in each such workweek when the contractor and each such employee performed work on such contracts. In cases where contractors are not exclusively engaged in Government contract work, and there are adequate records segregating the periods in which work was performed on contracts subject to the Act from periods in which other work was performed, the compensation specified under the Act need not be paid for hours spent on non-contract work. However, in the absence of records adequately segregating non-covered work from the work performed on or in connection with the contract, all employees working in the establishment or department where such covered work is performed shall be presumed to have worked on or in connection with the contract during the period of its performance, unless affirmative proof establishing the contrary is presented. Similarly, in the absence of such records, an employee performing any work on or in connection with the contract in a workweek shall be presumed to have continued to perform such work throughout the workweek, unless affirmative proof establishing the contrary is presented. Even where a contractor can segregate Government from non-Government work, it is necessary that the contractor comply with the requirements of section 6(e) of the FLSA discussed in § 4.160.

Overtime Pay of Covered Employees

§ 4.180 Overtime pay—in general.

The Act does not provide for compensation of covered employees at premium rates for overtime hours of work. Section 6 recognizes, however, that other Federal laws may require such compensation to be paid to employees working on or in connection with contracts subject to the Act (see § 4.181) and prescribes, for purposes of such laws, the manner in which fringe benefits furnished pursuant to the Act shall be treated in computing such overtime compensation as follows: "In determining any overtime pay to which such service employees are entitled under any Federal law, the regular or basic hourly rate of such an employee shall not include any fringe benefit payments computed hereunder which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(d) [now section 7(e)] thereof." Fringe benefit payments which qualify for such exclusion are described in Part 778, Subpart C of this title. The interpretations there set forth will be applied in determining the overtime pay to which covered service employees are entitled under other Federal statutes. The effect of section 6 of the Act in situations where equivalent fringe benefits or cash payments are provided in lieu of the specified fringe benefits is stated in § 4.177(e) of this part, and illustrated in § 4.182.

§ 4.181 Overtime pay provisions of other Acts.

(a) *Fair Labor Standards Act.* Although provision has not been made for insertion in Government contracts of stipulations requiring compliance with the overtime provisions of the Fair Labor Standards Act, contractors and subcontractors performing contracts subject to the McNamara-O'Hara Service Contract Act may be required to compensate their employees working on or in connection with such contracts for overtime work pursuant to the overtime pay standards of the Fair Labor Standards Act. This is true with respect to employees engaged in interstate or foreign commerce or in the production of goods for such commerce (including occupations and processes closely related and directly essential to such production) and employees employed in enterprises which are so engaged, subject to the definitions and exceptions provided in such Act. Such employees, except as otherwise specifically provided in such Act, must receive overtime compensation at a rate of not less than 1½ times their regular rate of pay for all hours worked in excess of the applicable standard in a workweek. See Part 778 of this title. However, the Fair Labor Standards Act provides no overtime pay requirements for employees, not within such interstate commerce coverage of the Act, who are subject to its minimum wage provisions only by virtue of the provisions of section 6(e), as explained in § 4.180.

(b) *Contract Work Hours and Safety Standards Act.* (1) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332) applies generally to Government contracts, including service contracts in excess of $2,500, which may require or involve the employment of laborers and mechanics. Guards, watchmen, and many other classes of service employees are laborers or mechanics within the meaning of such Act. However, employees rendering only professional services, seamen, and as a general rule those whose work is only clerical or supervisory or nonmanual in nature, are not deemed laborers or mechanics for purposes of the Act. The wages of every laborer or mechanic for performance of work on such contracts must include compensation at a rate not less than 1½ times the employee's basic rate of pay for all hours worked in any workweek in excess of 40 or in excess of eight on any calendar days therein, whichever is the greater number of overtime hours. Exemptions are provided for certain transportation and communications contracts, contracts for the purchase of supplies ordinarily available in the open market, and work required to be done in accordance with the provisions of the Walsh-Healey Act.

(2) Regulations concerning this Act are contained in 29 CFR Part 5 which permit overtime pay to be computed in the same manner as under the Fair Labor Standards Act, subject of course to the differences in computations required by reason of the daily overtime provision of the Contract Work Hours and Safety Standards Act, which has no counterpart in the Fair Labor Standards Act.

(3) Although the application of the Contract Work Hours and Safety Standards Act does not depend on

inclusion of its requirements in provisions physically made part of the contract, the Act and the regulations of the Secretary require such provisions to be set forth in contract clauses. (See § 5.5(b) of this subtitle.)

(c) *Walsh-Healey Public Contracts Act.* As pointed out in § 4.117, while some Government contracts may be subject both to the McNamara-O'Hara Service Contract Act and to the Walsh-Healey Public Contracts Act, the employees performing work on the contract which is subject to the latter Act are, when so engaged, exempt from the provisions of the former. They are, however, subject to the overtime provisions of the Walsh-Healey Act if, in any workweek, any of the work performed for the employer is subject to such Act and if, in such workweek, the total hours worked by the employee for the employer (whether wholly or only partly on such work) exceed 40 hours in the workweek or 8 hours in any day therein. In any such workweek the Walsh-Healey Act requires payment of overtime compensation at a rate not less than 1½ times the employee's basic rate for such weekly or daily overtime hours, whichever are greater in number. The overtime pay provisions of the Walsh-Healey Act are discussed in greater detail in 41 CFR Part 50–201.

§ 4.182 Overtime pay of service employees entitled to fringe benefits.

Reference is made in § 4.180 to the rules prescribed by section 6 of the Act which permit exclusion of certain fringe benefits and equivalents provided pursuant to section 2(a)(2) of the Act from the regular or basic rate of pay when computing overtime compensation of a service employee under the provisions of any other Federal law. As provided in § 4.177, not only those fringe benefits excludable under section 6 as benefits determined and specified under section 2(a)(2), but also equivalent fringe benefits and cash payments furnished in lieu of the specified benefits may be excluded from the regular or basic rate of such an employee. The application of this rule may be illustrated by the following examples:

(a) The A company pays a service employee $4.50 an hour in cash under a wage determination which requires a monetary rate of not less than $4 and a fringe benefit contribution of 50 cents which would qualify for exclusion from the regular rate under section 7(e) of the Fair Labor Standards Act. The contractor pays the 50 cents in cash because he made no contributions for fringe benefits specified in the determination and the contract. Overtime compensation in this case would be computed on a regular or basic rate of $4 an hour.

(b) The B company has for some time been paying $4.25 an hour to a service employee as his basic cash wage plus 25 cents an hour as a contribution to a welfare and pension plan, which contribution qualifies for exclusion from the regular rate under the Fair Labor Standards Act. For performance of work under a contract subject to the Act a monetary rate of $4 and a fringe benefit contribution of 50 cents (also qualifying for such exclusion) are specified because they are found to be prevailing for such employees in the locality. The contractor may credit the 25 cent welfare and pension contribution toward the discharge of his fringe benefit obligation under the contract but must also make an additional contribution of 25 cents for the specified or equivalent fringe benefits or pay the employee an additional 25 cents in cash. These contributions or equivalent payments may be excluded from the employee's regular rate which remains $4.25, the rate agreed upon as the basic cash wage.

(c) The C company has been paying $4 an hour as its basic cash wage on which the firm has been computing overtime compensation. For performance of work on a contract subject to the Act the same rate of monetary wages and a fringe benefit contribution of 50 cents an hour (qualifying for exclusion from the regular rate under the Fair Labor Standards Act) are specified in accordance with a determination that these are the monetary wages and fringe benefits prevailing for such employees in the locality. The contractor is required to continue to pay at least $4 an hour in monetary wages and at least this amount must be included in the employee's regular or basic rate for overtime purposes under applicable Federal law. The fringe benefit obligation under the contract would be discharged if 50 cents of the contributions for fringe benefits were for the fringe benefits specified in the contract or equivalent benefits as defined in § 4.177. The company may exclude such fringe benefit contributions from the regular or basic rate of pay of the service employee in computing overtime pay due.

Notice to Employees

§ 4.183 Employees must be notified of compensation required.

The Act, in section 2(a)(4), and the regulations thereunder in § 4.6(e), require all contracts subject to the Act which are in excess of $2,500 to contain a clause requiring the contractor or subcontractor to notify each employee commencing work on a contract to which the Act applies of the compensation required to be paid such employee under section 2(a)(1) and the fringe benefits required to be furnished under section 2(a)(2). A notice form (WH Publication 1313 and any applicable wage determination) provided by the Wage and Hour Division is to be used for this purpose. I may be delivered to the employee or posted as stated in § 4.184.

§ 4.184 Posting of notice.

Posting of the notice provided by the Wage and Hour Division shall be in a prominent and accessible place at the worksite, as required by § 4.6(e). The display of the notice in a place where it may be seen by employees performing on the contract will satisfy the requirement that it be in a "prominent and accessible place". Should display b necessary at more than one site, in orde to assure that it is seen by such employees, additional copies of the poster may be obtained without cost from the Division. The contractor or subcontractor is required to notify each employee of the compensation due or attach to the poster any applicable wag determination specified in the contract listing all minimum monetary wages an fringe benefits to be paid or furnished t the classes of service employees performing on the contract.

Records

§ 4.185 Recordkeeping requirements.

The records which a contractor or subcontractor is required to keep concerning employment of employees subject to the Act are specified in § 4.6(g) of Subpart A of this part. They are required to be maintained for 3 years from the completion of the work, and must be made available for inspection and transcription by authorized representatives of the Administrator. Such records must be kept for each service employee performing work under the contract, for each workweek during the performance of the contract. If the required records are not separately kept for the service employees performing on the contract, i will be presumed, in the absence of affirmative proof to the contrary, that a service employees in the department or establishment where the contract was performed were engaged in covered work during the period of performance. (See § 4.179.)

§ 4.186 [Reserved]

Subpart E—Enforcement

§ 4.187 Recovery of underpayments.

(a) The Act, in section 3(a), provides that any violations of any of the contract stipulations required by sections 2(a)(1), 2(a)(2), or 2(b) of the Act, shall render the party responsible liable for the amount of any deductions, rebates, refunds, or underpayments (which includes non-payment) of compensation due to any employee engaged in the performance of the contract. So much of the accrued payments due either on the contract or on any other contract (whether subject to the Service Contract Act or not) between the same contractor and the Government may be withheld in a deposit fund as is necessary to pay the employees. In the case of requirements-type contracts, it is the contracting agency, and not the using agencies, which has the responsibility for complying with a withholding request by the Secretary or authorized representative. The Act further provides that on order of the Secretary (or authorized representatives), any compensation which the head of the Federal agency or the Secretary has found to be due shall be paid directly to the underpaid employees from any accrued payments withheld. In order to effectuate the efficient administration of this provision of the Act, such withheld funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary or his or her authorized representatives, an Administrative Law Judge, or the Board of Service Contract Appeals, and are not paid directly to such employees by the contracting agency without the express prior consent of the Department of Labor. (See Decision of the Comptroller General, B-170784, February 17, 1971.) It is mandatory for a contracting officer to adhere to a request from the Department of Labor to withhold funds where such funds are available. (See Decision of the Comptroller General, B-109257, October 14, 1952, arising under the Walsh-Healey Act.) Contract funds which are or may become due a contractor under any contract with the United States may be withheld prior to the institution of administrative proceedings by the Secretary. (*McCasland* v. *U.S. Postal Service*, 82 CCH Labor Cases ¶ 33,607 (N.D. N.Y. 1977); *G & H Machinery Co.* v. *Donovan*, 96 CCH Labor Cases ¶34,354 (S.D. Ill. 1982).)

(b) *Priority to withheld funds.*

The Comptroller General has afforded employee wage claims priority over an Internal Revenue Service levy for unpaid taxes. (See Decisions of the Comptroller General, B-170784, February 17, 1971; B-189137, August 1, 1977; 56 Comp. Gen. 499 (1977); 55 Comp. Gen. 744 (1976), arising under the Davis-Bacon Act; B-178198, August 30, 1973; B-161460, May 25, 1967.)

(1) As the Comptroller General has stated, "[t]he legislative histories of these labor statutes [Service Contract Act and Contract Work Hours and Safety Standards Act, 41 U.S.C. 327, *et seq.*] disclose a progressive tendency to extend a more liberal interpretation and construction in successive enactments with regard to worker's benefits, recovery and repayment of wage underpayments. Further, as remedial legislation, it is axiomatic that they are to be liberally construed". (Decision of the Comptroller General, B-170784, February 17, 1971.)

(2) Since section 3(a) of the Act provides that accrued contract funds withheld to pay employees wages must be held in a deposit fund, it is the position of the Department of Labor that monies so held may not be used or set aside for agency reprocurement costs. To hold otherwise would be inequitable and contrary to public policy, since the employees have performed work from which the Government has received the benefit (see *National Surety Corporation* v. *U.S.*, 132 Ct. Cl. 724, 728, 135 F. Supp. 381 (1955), cert. denied, 350 U.S. 902), and to give contracting agency reprocurement claims priority would be to require employees to pay for the breach of contract between the employer and the agency. The Comptroller General has sanctioned priority being afforded wage underpayments over the reprocurement costs of the contracting agency following a contractor's default or termination for cause. Decision of the Comptroller General, B-167000, June 26, 1969; B-178198, August 30, 1973; and B-189137, August 1, 1977.

(3) Wage claims have priority over reprocurement costs and tax liens without regard to when the competing claims were raised. See Decisions of the Comptroller General, B-161460, May 25, 1967; B-189137, August 1, 1977.

(4) Wages due workers underpaid on the contract have priority over any assignee of the contractor, including assignments made under the Assignment of Claims Act, 31 U.S.C. 203, 41 U.S.C. 15, to funds withheld under the contract, since an assignee can acquire no greater rights to withheld funds than the assignor has in the absence of an assignment. See *Modern Industrial Bank* v. *U.S.*, 101 Ct. Cl. 808 (1944); *Royal Indemnity Co.* v. *United States*, 178 Ct. Cl. 46, 371 F. 2d 462 (1967), cert. denied, 389 U.S. 833; *Newark Insurance Co.* v. *U.S.*, 149 Ct. Cl. 170, 181 F. Supp. 246 (1960); *Henningsen* v. *United States Fidelity and Guaranty Company*, 208 U.S. 404 (1908). Where employees have been underpaid, the assignor has no right to assign funds since the assignor has no property rights to amounts withheld from the contract to cover underpayments of workers which constitute a violation of the law and the terms, conditions, and obligations under the contract. (Decision of the Comptroller General, B-164881, August 14, 1968; B-178198, August 30, 1973; 56 Comp. Gen. 499 (1977); 55 Comp. Gen. 744 (1976); *The National City Bank of Evansville* v. *United States*, 143 Ct. Cl. 154, 163 F. Supp. 846 (1958); *National Surety Corporation* v. *United States*, 132 Ct. Cl. 724, 135 F. Supp. 381 (1955), cert. denied, 350 U.S. 902.)

(5) The Comptroller General, recognizing that unpaid laborers have an equitable right to be paid from contract retainages, has also held that wage underpayments under the Act have priority over any claim by the trustee in bankruptcy. 56 Comp. Gen. 499 (1977), citing *Pearlman* v. *Reliance Insurance Company*, 371 U.S. 132 (1962); *Hadden* v. *United States*, 132 Ct. Cl. 529 (1955), in which the courts gave priority to sureties who had paid unpaid laborers over the trustee in bankruptcy.

(c) Section 5(b) of the Act provides that if the accrued payments withheld under the terms of the contract are insufficient to reimburse all service employees with respect to whom there has been a failure to pay the compensation required pursuant to the Act, the United States may bring action against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of underpayments. The Service Contract Act is not subject to the statute of limitations in the Portal to Portal Act, 29 U.S.C. 255, and contains no prescribed period within which such an action must be instituted; it has therefore been held that the general period of six years prescribed by 28 U.S.C. 2415 applies to such actions, *United States of America* v. *Deluxe Cleaners and Laundry, Inc.*, 511 F. 2d 929 (C.A. 4, 1975). Any sums thus recovered by the United States shall be held in the deposit fund and shall be paid, on the order of the Secretary, directly to the underpaid employees. Any sum not paid to an employee because of inability to do so within 3 years shall be covered into the Treasury of the United States as miscellaneous receipts.

(d) Releases or waivers executed by employees for unpaid wages and fringe benefits due them are without legal effect. As stated by the Supreme Court in *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697, 704, (1945), arising under the Fair Labor Standards Act:

"Where a private right is granted in the public interest to effectuate a legislative policy, waiver of a right so charged or colored with the public interest will not be allowed where it would thwart the legislative policy which it was designed to effectuate."

See also *Schulte, Inc.* v. *Gangi*, 328 U.S. 108 (1946); *United States* v. *Morley Construction Company*, 98 F. 2d 781 (C.A. 2, 1938), cert. denied, 305 U.S. 651.

Further, as noted above, monies not paid to employees to whom they are due because of violation are covered into the U.S. Treasury as provided by section 5(b) of the Act.

(e)(1) The term "party responsible" for violations in section 3(a) of the Act is the same term as contained in the Walsh-Healey Public Contracts Act, and therefore, the same principles are applied under both Acts. An officer of a corporation who actively directs and supervises the contract performance, including employment policies and practices and the work of the employees working on the contract, is a party responsible and liable for the violations, individually and jointly with the company (*S & G Coal Sales, Inc.*, Decision of the Hearing Examiner, PC-946, January 21, 1965, affirmed by the Administrator June 8, 1965; *Tennessee Processing Co., Inc.*, Decision of the Hearing Examiner, PC-790, September 28, 1965).

(2) The failure to perform a statutory public duty under the Service Contract Act is not only a corporate liability but also the personal liability of each officer charged by reason of his or her corporate office while performing that duty. *United States* v. *Sancolmar Industries, Inc.*, 347 F. Supp. 404, 408 (E.D. N.Y. 1972). Accordingly, it has been held by administrative decisions and by the courts that the term "party responsible", as used in section 3(a) of the Act, imposes personal liability for violations of any of the contract stipulations required by sections 2(a)(1) and (2) and 2(b) of the Act on corporate officers who control, or are responsible for control of, the corporate entity, as they, individually, have an obligation to assure compliance with the requirements of the Act, the regulations, and the contracts. See, for example, *Waite, Inc.*, Decision of the ALJ, SCA 530-566, October 19, 1976, *Spruce-Up Corp.*, Decision of the Administrator SCA 368-370, August 19, 1976, *Ventilation and Cleaning Engineers, Inc.*, Decision of the ALJ, SCA 176, August 23, 1973, Assistant Secretary, May 17, 1974, Secretary, September 27, 1974; *Fred Van Elk*, Decision of the ALJ, SCA 254-58, May 28, 1974, Administrator, November 25, 1974; *Murcole, Inc.*, Decision of the ALJ, SCA 195-198, April 11, 1974; *Emile J. Bouchet*, Decision of the ALJ, SCA 38, February 24, 1970; *Darwyn L. Grover*, Decision of the ALJ, SCA 485, August 15, 1976; *United States* v. *Islip Machine Works, Inc.*, 179 F. Supp. 585 (E.D. N.Y. 1959); *United States* v. *Sancolmar Industries, Inc.*, 347 F. Supp. 404 (E.D. N.Y. 1972).

(3) In essence, individual liability attaches to the corporate official who is responsible for, and therefore causes or permits, the violation of the contract stipulations required by the Act, i.e., corporate officers who control the day-to-day operations and management policy are personally liable for underpayments because they cause or permit violations of the Act.

(4) It has also been held that the personal responsibility and liability of individuals for violations of the Act is not limited to the officers of a contracting firm or to signatories to the Government contract who are bound by and accept responsibility for compliance with the Act and imposition of its sanctions set forth in the contract clauses in § 4.6, but includes all persons, irrespective of proprietary interest, who exercise control, supervision, or management over the performance of the contract, including the labor policy or employment conditions regarding the employees engaged in contract performance, and who, by action or inaction, cause or permit a contract to be breached. *U.S.* v. *Islip Machine Works, Inc.*, 179 F. Supp. 585 (E.D. N.Y. 1959); *U.S.* v. *Sancolmar Industries, Inc.*, 347 F. Supp. 404 (E.D. N.Y. 1972); *Oscar Hestrom Corp.*, Decision of the Administrator, PC-257, May 7, 1946, affirmed, *U.S.* v. *Hedstrom*, 8 Wage Hour Cases 302 (N.D. Ill. 1948); *Craddock-Terry Shoe Corp.*, Decision of the Administrator, PC-330, October 3, 1947; *Reynolds Research Corp.*, Decision of the Administrator, PC-381, October 24, 1951; *Etowah Garment Co., Inc.*, Decision of the Hearing Examiner, PC-632, August 9, 1957, Decision of the Administrator, April 29, 1958; *Cardinal Fuel and Supply Co.*, Decision of the Hearing Examiner, PC-890, June 17, 1963.

(5) Reliance on advice from contracting agency officials (or Department of Labor officials without the authority to issue rulings under the Act) is not a defense against a contractor's liability for back wages under the Act. *Standard Fabrication Ltd.*, Decision of the Secretary, PC-297, August 3, 1948; *Airport Machining Corp.*, Decision of the ALJ, PC-1177, June 15, 1973; *James D. West*, Decision of the ALJ, SCA 397-398, November 17, 1975; *Metropolitan Rehabilitation Corp.*, WAB Case No. 78-25, August 2, 1979; *Fry Brothers Corp.*, WAB Case No. 76-6, June 14, 1977.

(f) The procedures for a contractor or subcontractor to dispute findings regarding violations of the Act, including back wage liability or the disposition of funds withheld by the agency for such liability, are contained in Parts 6 and 8 of this Title. Appeals in such matters have not been delegated to the contracting agencies and such matters cannot be appealed under the disputes clause in the contractor's contract.

(g) While the Act provides that action may be brought against a surety to recover underpayments of compensation, there is no statutory provision requiring that contractors furnish either payment or performance bonds before an award can be made. The courts have held, however, that when such a bond has been given, including one denominated as a performance rather than payment bond, and such a bond guarantees that the principal shall fulfill "all the undertakings, covenants, terms, conditions, and agreements" of the contract, or similar words to the same effect, the surety-guarantor is jointly liable for underpayments by the contractor of the wages and fringe benefits required by the Act up to the amount of the bond. *U.S.* v. *Powers Building Maintenance Co.*, 366 F. Supp. 819 (W.D. Okla. 1972); *U.S.* v. *Gillespie*, 72 CCH Labor Cases ¶ 33,986 (C.D. Cal. 1973) *U.S.* v. *Glens Falls Insurance Co.*, 279 F. Supp. 236 (E.D. Tenn. 1967); *United States* v. *Hudgins-Dize Co.*, 83 F. Supp. 593 (E.D. Va. 1949); *U.S.* v. *Continental Casualty Company*, 85 F. Supp. 573 (E.D. Pa. 1949), affirmed per curiam, 182 F.2d 941 (3rd Cir. 1950).

§ 4.188 Ineligibility for further contracts when violations occur.

(a) Section 5 of the Act provides that any person or firm found by the Secretary or the Federal agencies to have violated the Act shall be declared ineligible to receive further Federal contracts unless the Secretary recommends otherwise because of unusual circumstances. It also directs the Comptroller General to distribute a list to all agencies of the Government giving the names of persons or firms that have been declared ineligible. No contract of the United States or the

District of Columbia (whether or not subject to the Act) shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until 3 years have elapsed from the date of publication of the list containing the names of such persons or firms. This prohibition against the award of a contract to an ineligible contractor applies to the contractor in its capacity as either a prime contractor or a subcontractor. Because the Act contains no provision authorizing removal from the list of the names of such persons or firms prior to the expiration of the three-year statutory period, the Secretary is without authority to accomplish such removal (other than in situations involving mistake or legal error). On the other hand, there may be situations in which persons or firms already on the list are found in a subsequent administrative proceeding to have again violated the Act and their debarment ordered. In such circumstances, a new, three-year debarment term will commence with the republication of such names on the list.

(b)(1) The term "unusual circumstances" is not defined in the Act. Accordingly, the determination must be made on a case-by-case basis in accordance with the particular facts present. It is clear, however, that the effect of the 1972 Amendments is to limit the Secretary's discretion to relieve violators from the debarred list (H. Rept. 92-1251, 92d Cong., 2d Sess. 5; S. Rept. 92-1131, 92d Cong., 2d Sess. 3-4) and that the violator of the Act has the burden of establishing the existence of unusual circumstances to warrant relief from the debarment sanction, *Ventilation and Cleaning Engineers, Inc.*, SCA-176, Administrative Law Judge, August 23, 1973, Assistant Secretary, May 22, 1974, Secretary, October 2, 1974. It is also clear that unusual circumstances do not include any circumstances which would have been insufficient to relieve a contractor from the ineligible list prior to the 1972 amendments, or those circumstances which commonly exist in cases where violations are found, such as negligent or willful disregard of the contract requirements and of the Act and regulations, including a contractor's plea of ignorance of the Act's requirements where the obligation to comply with the Act is plain from the contract, failure to keep necessary records and the like. *Emerald Maintenance Inc.*, Supplemental Decision of the ALJ, SCA-153, April 5, 1973.

(2) The Subcommittee report following the oversight hearings conducted just prior to the 1972 amendments makes it plain that the limitation of the Secretary's discretion through the unusual circumstances language was designed in part to prevent the Secretary from relieving a contractor from the ineligible list provisions merely because the contractor paid what he was required by his contract to pay in the first place and promised to comply with the Act in the future. See, House Committee on Education and Labor, Special Subcommittee on Labor, The Plight of Service Workers under Government Contracts 12-13 (Comm. Print 1971). As Congressman O'Hara stated: "Restoration * * * [of wages and benefits] is not in and of itself a penalty. The penalty for violation is the suspension from the right to bid on Government contracts * * *. The authority [to relieve from blacklisting] was intended to be used in situations where the violation was a minor one, or an inadvertent one, or one in which disbarment * * * would have been wholly disproportionate to the offense." House Committee on Education and Labor, Special Subcommittee on Labor, Hearings on H.R. 6244 and H.R. 6245, 92d Cong., 1st Sess. 3 (1971).

(3)(i) The Department of Labor has developed criteria for determining when there are unusual circumstances within the meaning of the Act. See, e.g., *Washington Moving & Storage Co.*, Decision of the Assistant Secretary, SCA 68, August 16, 1973, Secretary, March 12, 1974; *Quality Maintenance Co.*, Decision of the Assistant Secretary, SCA 119, January 11, 1974. Thus, where the respondent's conduct in causing or permitting violations of the Service Contract Act provisions of the contract is willful, deliberate or of an aggravated nature or where the violations are a result of culpable conduct such as culpable neglect to ascertain whether practices are in violation, culpable disregard of whether they were in violation or not, or culpable failure to comply with recordkeeping requirements (such as falsification of records), relief from the debarment sanction cannot be in order. Furthermore, relief from debarment cannot be in order where a contractor has a history of similar violations, where a contractor has repeatedly violated the provisions of the Act, or where previous violations were serious in nature.

(ii) A good compliance history, cooperation in the investigation, repayment of moneys due, and sufficient assurances of future compliance are generally prerequisites to relief. Where these prerequisites are present and none of the aggravated circumstances in the preceding paragraph exist, a variety of factors must still be considered, including whether the contractor has previously been investigated for violations of the Act, whether the contractor has committed recordkeeping violations which impeded the investigation, whether liability was dependent upon resolution of a bona fide legal issue of doubtful certainty, the contractor's efforts to ensure compliance, the nature, extent, and seriousness of any past or present violations, including the impact of violations on unpaid employees, and whether the sums due were promptly paid.

(4) A contractor has an affirmative obligation to ensure that its pay practices are in compliance with the Act, and cannot itself resolve questions which arise, but rather must seek advice from the Department of Labor. *Murcole, Inc.*, Decision of the ALJ, SCA 195-198, April 10, 1974; *McLaughlin Storage, Inc.*, Decision of the ALJ, SCA 362-365, November 5, 1975, Administrator, March 25, 1976; *Able Building & Maintenance & Service Co.*, Decision of the ALJ, SCA 389-390, May 29, 1975, Assistant Secretary, January 13, 1976; *Aarid Van Lines, Inc.*, Decision of the Administrator, SCA 423-425, May 13, 1977.

(5) Furthermore, a contractor cannot be relieved from debarment by attempting to shift his/her responsibility to subordinate employees. *Security Systems, Inc.*, Decision of the ALJ, SCA 774-775, April 10, 1978; *Ventilation & Cleaning Engineers, Inc.*, Decision of the Secretary, SCA 176, September 27, 1974; *Ernest Roman*, Decision of the Secretary, SCA 275, May 6, 1977. As the Comptroller General has stated in considering debarment under the Davis-Bacon Act, "[n]egligence of the employer to instruct his employees as to the proper method of performing his work or to see that the employee obeys his instructions renders the employer liable for injuries to third parties resulting therefrom. * * * The employer will be liable for acts of his employee within the scope of the employment regardless of whether the acts were expressly or impliedly authorized. * * * Willful and malicious acts of the employee are imputable to the employer under the doctrine of respondeat superior although they might not have been consented to or expressly authorized or ratified by the employer." (Decision of the Comptroller General, B-145608, August 1, 1961.)

(6) Negligence per se does not constitute unusual circumstances. Relief on no basis other than negligence would render the effect of section 5(a) a nullity, since it was intended that only responsible bidders be awarded Government contracts. *Greenwood's Transfer & Storage, Inc.*, Decision of the Secretary, SCA 321–326, June 1, 1976; *Ventilation & Cleaning Engineers, Inc.*, Decision of the Secretary, SCA 176, September 27, 1974.

(c) Similarly, the term "substantial interest" is not defined in the Act. Accordingly, this determination, too, must be made on a case-by-case basis in light of the particular facts, and cognizant of the legislative intent "to provide to service employees safeguards similar to those given to employees covered by the Walsh-Healey Public Contracts Act". *Federal Food Services, Inc.*, Decision of the ALJ, SCA 585–592, November 22, 1977. Thus, guidance can be obtained from cases arising under the Walsh-Healey Act, which uses the concept "controlling interest". See *Regal Mfg. Co.*, Decision of the Administrator, PC–245, March 1, 1946; *Acme Sportswear Co.*, Decision of the Hearing Examiner, PC–275, May 8, 1946; *Gearcraft, Inc.*, Decision of the ALJ, PCX–1, May 3, 1972. In a supplemental decision of February 23, 1979, in *Federal Food Services, Inc.* the Judge ruled as a matter of law that the term "does not preclude every employment or financial relationship between a party under sanction and another * * * [and that] it is necessary to look behind titles, payments, and arrangements and examine the existing circumstances before reaching a conclusion in this matter."

(1) Where a person or firm has a direct or beneficial ownership or control of more than 5 percent of any firm, corporation, partnership, or association, a "substantial interest" will be deemed to exist. Similarly, where a person is an officer or director in a firm or the debarred firm shares common management with another firm, a "substantial interest" will be deemed to exist. Furthermore, wherever a firm is an affiliate as defined in § 4.1a(g) of Subpart A, a "substantial interest" will be deemed to exist, or where a debarred person forms or participates in another firm in which he/she has comparable authority, he/she will be deemed to have a "substantial interest" in the new firm and such new firm would also be debarred (*Etowah Garment Co., Inc.*, Decision of the Hearing Examiner, PC–632, August 9, 1957).

(2) Nor is interest determined by ownership alone. A debarred person will also be deemed to have a "substantial interest" in a firm if such person has participated in contract negotiations, is a signatory to a contract, or has the authority to establish, control, or manage the contract performance and/or the labor policies of a firm. A "substantial interest" may also be deemed to exist, in other circumstances, after consideration of the facts of the individual case. Factors to be examined include, among others, sharing of common premises or facilities, occupying any position such as manager, supervisor, or consultant to, any such entity, whether compensated on a salary, bonus, fee, dividend, profit-sharing, or other basis of remuneration, including indirect compensation by virtue of family relationships or otherwise. A firm will be particularly closely examined where there has been an attempt to sever an association with a debarred firm or where the firm was formed by a person previously affiliated with the debarred firm or a relative of the debarred person.

(3) Firms with such identity of interest with a debarred person or firm will be placed on the debarred bidders list after the determination is made pursuant to procedures in § 4.12 and Parts 6 and 8 of this title. Where a determination of such "substantial interest" is made after the initiation of the debarment period, contracting agencies are to terminate any contract with such firm entered into after the initiation of the original debarment period since all persons or firms in which the debarred person or firm has a substantial interest were also ineligible to receive Government contracts from the date of publication of the violating person's or firm's name on the debarred bidders list.

§ 4.189 Administrative proceedings relating to enforcement of labor standards.

The Secretary is authorized pursuant to the provisions of section 4(a) of the Act to hold hearings and make decisions based upon findings of fact as are deemed to be necessary to enforce the provisions of the Act. Pursuant to section 4(a) of the Act, the Secretary's findings of fact after notice and hearing are conclusive upon all agencies of the United States and, if supported by the preponderance of the evidence, conclusive in any court of the United States, without a trial de novo. *United States* v. *Powers Building Maintenance Co.*, 336 F. Supp. 819 (W.D. Okla. 1972). Rules of practice for administrative proceedings are set forth in Parts 6 and 8 of this Title.

§ 4.190 Contract cancellation.

(a) As provided in section 3 of the Ac where a violation is found of any contract stipulation, the contract is subject upon written notice to cancellation by the contracting agency, whereupon the United States may ente into other contracts or arrangements fo the completion of the original contract, charging any additional cost to the original contractor.

(b) Every contractor shall certify pursuant to § 4.6(n) of Subpart A that it is not disqualified for the award of a contract by virtue of its name appearin on the debarred bidders list or because any such currently listed person or firm has a substantial interest in said contractor, as described in § 4.188. Upo discovery of such false certification or determination of substantial interest in firm performing on a Government contract, as the case may be, the contract is similarly subject upon written notice to immediate cancellatio by the contracting agency and any additional cost for the completion of th contract charged to the original contractor as specified in paragraph (a) Such contract is without warrant of law and has no force and effect and is void ab initio, 33 Comp Gen. 63; Decision of the Comptroller General, B–115051, August 6, 1953. Furthermore, any profit derived from said illegal contract is forfeited (*Paisner* v. *U.S.*, 138 Ct. Cl. 42 150 F. Supp. 835 (1957), cert. denied, 35 U.S. 941).

§ 4.191 Complaints and compliance assistance.

(a) Any employer, employee, labor o trade organization, contracting agency, or other interested person or organization may report to any office o the Wage and Hour Division (or to any office of the Occupational Safety and Health Administration, in instances involving the safety and health provisions), a violation, or apparent violation, of the Act, or of any of the rules or regulations prescribed thereunder. Such offices are also available to assist or provide information to contractors or subcontractors desiring to insure that their practices are in compliance with the Act. Information furnished is treate confidentially. It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a confidential written or oral statement a complaint or in the course of an investigation, as well as portions of the statement which would reveal his

identity, will not be disclosed without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) A report of breach or violation relating solely to safety and health requirements may be in writing and addressed to the Regional Administrator of an Occupational Safety and Health Administration Regional Office, U.S. Department of Labor, or to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(c) Any other report of breach or violation may be in writing and addressed to the Assistant Regional Administrator of a Wage and Hour Division's regional office, U.S. Department of Labor, or to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210.

(d) In the event that an Assistant Regional Administrator for the Wage and Hour Division, Employment Standards Administration, is notified of a breach or violation which also involves safety and health standards, the Regional Administrator of the Employment Standards Administration shall notify the appropriate Regional Administrator of the Occupational Safety and Health Administration who shall with respect to the safety and health violation take action commensurate with his responsibilities pertaining to safety and health standards.

(e) Any report should contain the following:

(1) The full name and address of the person or organization reporting the breach or violations.

(2) The full name and address of the person against whom the report is made.

(3) A clear and concise statement of the facts constituting the alleged breach or violation of any of the provisions of the McNamara-O'Hara Service Contract Act, or of any of the rules or regulations prescribed thereunder.

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Part III

Environmental Protection Agency

Pharmaceutical Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Final Rule

Pharmaceutical Manufacturing Point Source Category New Source Performance Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 439

[WH-FRL 2443-2]

Pharmaceutical Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final regulation.

SUMMARY: This regulation establishes effluent limitations guidelines and standards limiting the discharge of pollutants into navigable waters by existing and new sources that conduct pharmaceutical manufacturing operations. These regulations are issued under the Clean Water Act and the Settlement Agreement in *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.C.C. 1979), modified by Orders dated October 26, 1982, and August 2, 1983.

The purpose of this regulation is to specify for certain pollutants "best practicable control technology currently available" (BPT) effluent limitations guidelines, "best available technology economically achievable" (BAT) effluent limitations guidelines, "new source performance standards" (NSPS), and pretreatment standards for existing and new sources (PSES and PSNS, respectively) for the pharmaceutical manufacturing industry.

DATES: In accordance with 40 CFR 100.01 (45 FR 26048), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on November 10, 1983. This regulation shall become effective December 12, 1983, except for provisions in the following sections which allow facilities not using or generating cyanide to certify to that effect instead of monitoring for cyanide. These certification provisions are contained in the following sections: §§ 439.14–439.17, 439.24–439.27, 439.34–439.37, and 439.44–439.47. These certification provisions have been submitted to the Office Management and Budget (OMB) and are not effective until OMB has approved them under the Paperwork Reduction Act.

The compliance date for the BAT regulations is as soon as possible, but in any event, no later then July 1, 1984. The compliance date for new source performance standards (NSPS) and pretreatment standards for new sources (PSNS) is the date the new source begins operations. The compliance date for pretreatment standards for existing sources (PSES) is October 27, 1986.

Under Section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under Section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: The basis for this regulation is detailed in four major documents. See **SUPPLEMENTARY INFORMATION** (under "XIV. Availability of Technical Information") for a description of each document. Copies of the technical and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (Phone: (703) 487–4600). For additional technical information, contact Dr. Frank H. Hund, Effluent Guidelines Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (Phone (202) 382–7182). For additional economic information, contact Mr. Joseph Yance, Office of Analysis and Evaluation (WH-586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (Phone (202) 382–5379).

On January 3, 1984, the complete public record for this rulemaking including the Agency's responses to comments on the proposed regulation, will be available for review in EPA's Public Reference Unit, Room 2404 (Rear) (EPA Library), 401 M Street, SW., Washington, D.C. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Hund at the address listed above or by calling (202) 382–7182.

SUPPLEMENTARY INFORMATION:

Organization of this Notice

I. Legal authority
II. Scope of this rulemaking and prior regulations
III. Summary of legal background
IV. Summary of methodology and data gathering efforts
V. Summary of promulgated regulations and changes from proposal
VI. Costs, economic impacts, Executive Order 12291, Regulatory Flexibility Analysis, and Small Business Administration (SBA) loans
VII. Pollutants and subcategories not regulated
VIII. Non-water quality environmental impacts
IX. Best management practices
X. Upset and bypass provisions
XI. Variances and modifications
XII. Implentation of limitations and standar
XIII. Public participation—responses to maj comments
XIV. Availability of technical information
XV. Office of Management and Budget (OM review
XVI. List of subjects in 40 CFR Part 439

Appendices

A. Abbreviations, Acronyms and Other Terms Used in this Notice
B. Toxic Pollutants Not Detected in the Treated Effluents of Direct Dischargers
C. Toxic Pollutants Detected in Treated Effluents of Direct Dischargers: (1) Fron a Small Number of Sources, (2) Detecte in Only Trace Amounts or (3) Sufficien Controlled by Existing Technologies
D. Toxic Pollutants Not Detected in the Effluent of Indirect Dischargers
E. Toxic Pollutants Detected in the Effluent Indirect Dischargers Whose Toxicity a Amount (Taken Together) Is So Insignificant as Not To Justify Developing Pretreatment Regulations

I. Legal Authority

This regulation is being promulgated under the authority of Sections 301, 30 306, 307, 308, and 501 of the Clean Wat Act (the Federal Water Pollution Cont Act Amendments of 1972, 33 U.S.C. 12 *et seq.*, as amended by the Clean Wat Act of 1977, Pub. L. 95–217), also calle "the Act." It is also being promulgated in response to the Settlement Agreeme in *Natural Resources Defense Council Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979), modified by Orders dated October 26, 1982, and August 2, 1983.

II. Scope of This Rulemaking and Prio Regulations

A. Prior Regulations

EPA promulgated interim final BPT regulations for the pharmaceutical manufacturing point source category o November 17, 1976 (41 FR 50676; 40 CF Part 439, Subparts A–E). The five subcategories of the pharmaceutical industry (40 CFR Part 439) are:

- Subpart A—Fermentation Products Subcategory
- Subpart B—Extraction Products Subcategory
- Subpart C—Chemical Synthesis Products Subcategory
- Subpart D—Mixing/Compounding a Formulation Subcategory
- Subpart E—Research Subcategory

The 1976 BPT regulations set month limitations for five-day biochemical oxygen demand (BOD5) and chemical oxygen demand (COD) based on perc removals for all subcategories. No dai maximum effluent limitations were

established for these two parameters. The pH was set within the range of 6.0 to 9.0 standard units. The regulation also set maximum 30 day average total suspended solids (TSS) limitations for subcategories B, D, and E only. No TSS values were established for subcategories A and C. Subpart A (applicable to the fermentation operations subcategory) was amended (42 FR 6814) on February 4, 1977, to improve the language referring to separable mycelia and solvent recovery. In addition, the amendment allowed the inclusion of spent beers (broths) in the calculation of raw waste loads for Subpart A in those instances where the spent beer is actually treated in the wastewater treatment system. These regulations were never challenged and are presently in effect.

On November, 26, 1982, EPA proposed regulations applicable to the pharmaceutical manufacturing point source category (47 FR 53584). At that time, EPA: (a) Proposed to modify the existing BPT TSS effluent limitations for Subparts B, D, and E; (b) proposed BPT TSS effluent limitations for Subparts A and C; (c) proposed to modify the existing BPT COD effluent limitations for Subparts A, B, C, D, and E; (d) proposed BPT cyanide effluent limitations for Subparts A, B, C, and D; and (e) proposed BAT and BCT effluent limitations, NSPS, PSES, and PSNS to apply uniformly to subcategories A, B, C, and D. EPA did not propose to establish regulations controlling other toxic pollutant discharges from pharmaceutical research for the reasons discussed in Section VII of this preamble (Pollutants and Subcategories Not Regulated).

With the few exceptions discussed below, the Agency is not modifying the previously promulgated BPT limitations for Subparts A through E. However, in order to publish a complete set of all applicable requirements, the BPT limitations already in effect are reprinted in today's rule. Existing BPT limitations not modified in today's rulemaking are not subject to legal challenge.

B. Scope of this Rulemaking

This final regulation, which was proposed on November 26, 1982 (47 FR 53584), establishes effluent limitations guidelines and standards for existing and new pharmaceutical manufacturing facilities. Pharmaceutical manufacturers use many different methods and raw materials to create a wide range of products. These products include medicinal and feed grades of all organic chemicals having therapeutic value, whether obtained by chemical synthesis, by fermentation, by extraction from naturally occurring plant or animal substances, or by refining a technical grade product.

The pharmaceutical products, processes, and activities covered by this proposal include:

a. Biological products covered by the U.S. Department of Commerce, Bureau of the Census Standard Industrial Classifications (SIC) Code No. 2831.

b. Medicinal chemicals and botanical products covered by SIC Code No. 2833.

c. Pharmaceutical products covered by SIC Code No. 2834.

d. All fermentation, biological, and natural extraction, chemical synthesis, and formulation products which are considered as pharmaceutically active ingredients by the Food and Drug Administration, but are not covered by SIC Code Nos. 2831, 2833, or 2834. (Also, products of these types such as citric acid which are not regarded as pharmaceutical active ingredients will be included if they are manufactured by a pharmaceutically manufacturer by processes, and result in wastewaters, which closely correspond to those of a pharmaceutical product.)

e. Cosmetic preparation covered by SIC Code No. 2844 which function as a skin treatment. (This group of preparations does not include products such as lipsticks or perfumes which serve to enhance appearance or to provide a pleasing odor, but do not provide skin care. In general, this also excludes deodorants, manicure preparations, and shaving preparations which do not primarily function as a skin treatment.)

f. Products with multiple end uses which are attributable to pharmaceutical manufacturing as a final pharmaceutical product, component of a pharmaceutical formulation, or pharmaceutical intermediate. Products which have non-pharmaceutical uses may also be covered entirely by this point source category provided that the product(s) was (were) primarily intended for use as a pharmaceutical.

g. Pharmaceutical research which includes biological, microbiological, and chemical research, product development, clinical and pilot plant activities. (This does not include farms which breed, raise, and/or hold animals for research at another site. This also does not include ordinary feedlot or farm operations utilizing feed which contains pharmaceutically active ingredients.)

A number of products and/or activities such as surgical and medical instruments and medical laboratory activity are not part of the pharmaceutical manufacturing category. A descriptive listing of the products and/or activities which are specifically excluded from the pharmaceutical manufacturing category may be found in Section II of the *Development Document for Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Pharmaceutical Manufacturing Point Source Category.*

EPA is promulgating BPT and BAT effluent limitations, NSPS, and pretreatment standards for existing and new sources (PSES and PSNS, respectively) for the pharmaceutical manufacturing point source category. Concurrent with this regulation, EPA is proposing NSPS to control the discharge of two conventional pollutants (BOD5 and TSS) from the pharmaceutical plants. As explained below, EPA will not establish BCT limitations for the pharmaceutical industry until promulgation of the general methodology for determining appropriate levels of conventional pollutant control under BCT. We are also postponing a final decision on BAT limitations and NSPS for the nonconventional pollutant COD.

III. Summary of Legal Background

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," Section 101(a). To implement the Act, EPA was to issue effluent limitations guidelines, pretreatment standards, and new source performance standards for industrial dischargers.

The Act included a timetable for issuing these standards. However, EPA was unable to meet many of the deadlines and, as a result, in 1976, it was sued by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement" which was approved by the court. This agreement required EPA to develop a program and adhere to a schedule for controlling 65 "priority" pollutants and classes of pollutants. In carrying out this program, EPA must promulgate BAT effluent limitations guidelines, pretreatment standards, and new source performance standards for 21 major industries. See *Natural Resources Defense Council, Inc.* v *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979), modified by Orders dated October 26, 1982, and August 2, 1983. The 65 toxic pollutants and classes of pollutants potentially include thousands of specific pollutants. EPA selected 129 specific

toxic pollutants for study in this rulemaking and other industry rulemakings. Since initiation of this rulemaking effort, three toxic pollutants have been removed from the list of 129 toxic pollutants: Dichlorodifluoromethane, trichlorofuloromethane, and bis-chloromethyl ether (46 FR 2266 and 46 FR 10723).

Many of the basic elements of the Settlement Agreement were incorporated into the Clean Water Act of 1977. Like the Agreement, the Act stressed control of toxic pollutants, including the 65 "priority" pollutants. In addition, to strengthen the toxic control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMPs) to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

Under the Act, the EPA is to set a number of different kinds of effluent limitations. These are discussed in detail in the preamble to the proposed regulation and in the Development Document. They are summarized briefly below:

1. *Best Practicable Control Technology (BPT).* BPT limitations are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the industry or subcategory for control of familiar (i.e., classical) pollutants.

In establishing BPT limitations, we consider the total cost of applying the technology in relation to the effluent reduction derived, the age of equipment and facilities involved, the processes employed, process changes required, engineering aspects of the control technologies, and nonwater quality environmental impacts (including energy requirements). We balance the total cost of applying the technology against the effluent reduction.

2. *Best Available Technology (BAT).* BAT limitations, in general, represent the best existing performance in the industrial subcategory or category. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic and nonconventional pollutants to waters of the United States.

In arriving at BAT, the Agency considers the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the cost of achieving such effluent reduction, and nonwater quality environmental impacts. The Agency retains considerable discretion in assigning the weight to be accorded these factors.

3. *Best Conventional Pollutant Control Technology (BCT).* The 1977 Amendments to the Clean Water Act added Section 301(b)(2)(E), establishing "best conventional pollutant control technology" (BCT) for discharge of conventional pollutants from existing industrial point sources. Section 304(a)(4) designated the following as conventional pollutants: BOD, TSS, fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as "conventional" on July 30, 1979 (44 FR 4450).

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in Section 304(b)(4)(B), the Act requires that BCT limitations be assessed in light of a two part "cost-reasonableness" test. *American Paper Institute* v. *EPA*, 660 F. 2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50732). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required.)

A revised methodology for the general development of BCT limitations was proposed on October 29, 1982 (47 FR 49176). BCT limits for this industry are accordingly deferred until promulgation of the final methodology for BCT development.

4. *New Source Performance Standards (NSPS).* NSPS are based on the best available demonstrated technology (BDT). New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies.

5. *Pretreatment Standards for Existing Sources (PSES).* PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTW). They must be achieved within three years of promulgation. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology for removal of toxic pollutants. EPA has generally determined that there is pass through of pollutants if the nationwide average percentage of pollutants removed by a well operated POTW achieving secondary treatment is less than the percent removed by the BAT model treatment system. The General Pretreatment Regulation, which serves as the framework for categorical pretreatment regulations, is found at 40 CFR Part 403.

6. *Pretreatment Standards for New Sources (PSNS).* Like PSES, PSNS are designed to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of a POTW. PSNS are to be issued at the same time as NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate in their plant the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating PSES.

IV. Methodology and Data Gathering Efforts

The methodology and data gathering efforts used in developing the proposed regulations were summarized in the preamble to the proposed pharmaceutical manufacturing industry regulations (47 FR 53584, November 26, 1982). In summary, before publishing the proposed regulation, the Agency conducted a data collection, analytical screening, and analytical verification program for the pharmaceutical industry. This program stressed the acquisition of data on the presence and treatability of the 129 toxic pollutants and classes of toxic pollutants discussed previously.

Based on the results of that program, comments on the proposed regulations, and additional data gathered or submitted since proposal, EPA identifie several distinct control and treatment technologies that are in use or are capable of being used to treat pharmaceutical wastewaters. For each of these technologies, the Agency: (i) Compiled and analyzed historical and newly-generated data on effluent quality; (ii) identified the reliability and constraints; (iii) considered the non-water quality environmental impacts (including impacts on air quality, solid

waste generation, and energy requirements); and (iv) estimated the costs and economic impacts of applying the technology as a treatment and control system. Costs and economic impacts of the technology options considered are discussed in detail in *Economic Analysis of Effluent Standards and Limitations for the Pharmaceutical Industry* (U.S. EPA, September 1983). A more complete description of the Agency's study methodology, data gathering efforts, and analytical procedures supporting the regulation can be found in the *Development Document for Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Pharmaceutical Manufacturing Point Source Category* (U.S. EPA, September 1983).

To allow the Agency to respond fully to comments on the proposed rules, the Agency engaged in additional data gathering activities after November of 1982. A major effort involved gathering information on the presence and variability of toxic volatile organics (TVOs) in pharmaceutical raw wastes and treated effluents. In this regard, EPA obtained additonal data on the percentages of process wastewater discharges that are contaminated with TVOs and on the levels of TVOs contained in the contaminated waste streams. To broaden our data base on pass through of TVOs, we also sampled a publicly owned treatment works (POTW) receiving pharmaceutical discharges. The Agency also identified pharmaceutical plants where steam stripping or related technologies are employed and sampled a steam stripper and flash tank used to remove TVOs. EPA incorporated this additonal information into our existing data base and used the expanded data base to reach decisions on regulation of TVO discharges from the pharmaceutical industry.

In some cases, industry comments on our proposed regulations included effluent data on the discharge of toxic, nonconventional, and conventional pollutants. However, these data were often provided in a format that did not allow for proper analysis by the Agency. In those instances, we requested additional information in a format that would allow us to include the data when developing the final regulations.

Detailed discussions of the results of these additional data gathering efforts can be found below and in the final Development Document.

V. Summary of Promulgated Regulations and Changes From Proposal

The final regulations issued today differ from the proposed regulations. The changes are the result of the Agency's review of comments on the proposal and our analysis of additional information obtained to respond to comments. The following includes a review of the proposed regulation, a summary of the changes from proposal to promulgation, and an explanation of the changes.

In brief, EPA is promulgating BPT effluent limitations controlling the discharge of TSS from plants covered under regulations for subcategories A and C and is modifying existing BPT BOD5, COD, and TSS effluent limitations for subcategories B, D, and E. We are also establishing BPT and BAT effluent limitations guidelines, NSPS, PSES, and PSNS controlling cyanide discharges from pharmaceutical plants.

Concurrent with this regulation, EPA is proposing NSPS to control the discharge of two conventional pollutants (BOD5, and TSS) from new pharmaceutical plants.

A. Subcategorization

On November 26, 1982, we proposed to exclude the research-only subcategory (E) from all but BPT regulations. We also collapsed the remaining four subcategories (fermentation—subcategory A, extraction—subcategory B, chemical synthesis—subcategory C, and formulation—subcategory D) into one subcategory for which one set of BAT limitations, NSPS, PSNS, and PSES were proposed.

We received no comments on the exclusion of the research only subcategory from further regulation under BAT, NSPS, PSES, and PSNS. Therefore, for the reasons discussed later in this preamble (see Section VII Pollutants and Subcategories Not Regulated), we have excluded the research only subcategory from development of further regulations beyond BPT.

A number of commenters objected to the proposed establishment of one pharmaceutical subcategory consisting of fermentation, chemical synthesis, extraction, and formulation plants. They explained that there was no need to change the 1976 BPT subcategorization scheme. They maintained that high raw waste generating facilities (fermentation and chemical synthesis plants) should be regulated on a different basis than low raw waste generating facilities (extraction and formulation plants). We received no comments supporting the proposed change in the subcategorization scheme.

In comments on the proposal, the Agency received new plant data which was added to the existing data base. We analyzed data on influent and effluent characteristics of all direct dischargers to determine if the proposed change in subcategorization was appropriate. Our analysis of the most recent data indicate that the subcategorization scheme for this industry should separate fermentation and chemical synthesis plants (subcategory A and C plants) from extraction and formulation plants (subcategory B and D plants). Specifically, our analyses show that usually the influent and effluent conventional pollutant and COD concentrations and discharge flows of subcategory A and C plants are similar; we also found that these characteristics for subcategory B and D plants are similar. However, we found that the characteristics of the subcategory A and C plant group are not similar to the corresponding characteristics of the subcategory B and D plant group. Our analyses indicate that toxic pollutant loads are similar for all four subcategories.

We are also aware that permitting authorities and the regulated industry are familiar with the original subcategorization scheme and the format of the Code of Federal Regulations. Therefore, the Agency has decided to maintain the existing BPT subcategorization scheme. However, because conventional pollutant raw waste characteristics are similar for subcategory A and C plants, conventional pollutant limitations and standards for those plants should be identical. For the same reason, conventional pollutant limitations and standard for subcategory B plants should be identical to those for subcategory D plants. A more detailed discussion of the industry subcategorization scheme can be found in Section IV of the Development Document.

B. BPT for BOD5, TSS, and COD

The Agency proposed a BPT TSS limitation for all subcategories of plants based on a long-term average concentration of 75 mg/l. This limitation was intended to replace the overly stringent BPT TSS limitations for subcategory B, D, and E plants and to establish BPT TSS limitations for A and C subcategory plants. The original overly stringent BPT TSS limitations were based on data from two plants whose operations were not characteristic of the entire range of

operations employed at plants in the B, D, and E subcategories.

One commenter stated that a single number concentration limit for TSS is not appropriate for high raw waste load plants but may be appropriate for low raw waste load plants.

The existing BPT regulations, which are based on the application of biological treatment, require that each pharmaceutical plant, regardless of subcategory, achieve a 90 percent reduction in BOD5. A single number concentration limit for TSS is not consistent with our BPT percent reduction BOD5 limitations, which when converted to long-term average BOD5 effluent concentrations, vary from plant to plant over a wide range (e.g., from about 15 mg/l to almost 400 mg/l). A single number TSS limitation would require some plants to install more advanced treatment than that technology identified as BPT. It would also mean that low raw waste load plants would be able to operate their treatment systems inefficiently and still comply with the proposed single number limitation. After analyzing all available data, the Agency found that effluent TSS concentrations from biological treatment systems usually are greater than corresponding effluent BOD5 concentrations. We found that the median ratio of effluent TSS concentrations to effluent BOD5 concentrations after biological treatment is 1.7 for both the subcategory A and C and the subcategory B and D plant groups. Consequently, the Agency is finalizing BPT TSS limitations for all five subcategories which are equal to a multiple of 1.7 times the existing BPT BOD5 limitations.

The Agency also proposed alternative concentration-based BOD5 and COD BPT limitations for all subcategories. These proposed revisions to BPT were necessitated by the Agency's decision not to change the existing percent reduction-based BPT limitations even though the proposed BCT and BAT limitations were concentration based. Without the proposed modification in BPT BOD5 and COD limitations, some plants would have had concentration-based BCT and BAT limitations that were less stringent than the percent reduction-based BPT limitations. This condition would have been inconsistent with the requirements of the Clean Water Act. No comments were received on these alternative limitations.

The Agency has reviewed the available influent and effluent BOD5 and COD data in the light of our decision to use the original BPT subcategorization scheme. As a result, the Agency is finalizing alternative BOD5 and COD concentration-based limitations for subcategories B, D, and E. Although we are not yet promulgating final BCT limitations for BOD5 or BAT limitations for COD, available data indicate that the alternative BOD5 and COD limitations are appropriate for these subcategories for another reason. These alternative limitations establish minimum concentration levels consistent with EPA's assessment of a realistic estimate of the lowest attainable long-term average BOD5 and COD concentrations representative of the capability of the best practicable control technology currently available in treating pharmaceutical industry wastewaters. Such alternative limitations are not necessary for subcategory A or C because available data indicate that raw waste loads are sufficiently high at chemical synthesis and fermentation plants that limitations as low as the alternative limitations established for subcategories B, D, and E would not be required under BPT.

C. BPT and BAT Effluent Limitations, NSPS, PSES and PSNS for Cyanide

The Agency proposed BPT and BAT effluent limitations guidelines, NSPS, PSES, and PSNS based on in-plant cyanide destruction and biological treatment. These proposed limitations and standards assumed that monitoring would occur at the end-of-pipe. Proposed PSES would have required compliance by July 1, 1984. At proposal, the Agency requested additional data on the performance of cyanide destruction technology in the pharmaceutical industry.

One commenter stated that the proposed cyanide limitations and standards were not sufficiently representative of the production cycle of the industry because the data which were used to derive the limits were obtained during a period of less than normal production. The commenter, at a later date, submitted three additional sets of data to cover periods of normal production. Another commenter complained that a PSES compliance date of July 1, 1984, would be prohibitively difficult to achieve and suggested that the Agency establish a compliance date of three years after promulgation as authorized by the Clean Water Act.

The new data measured both the performance of in-plant cyanide destruction systems directly and the combination of in-plant and biological treatment. EPA is finalizing BPT and BAT effluent limitations guidelines, NSPS, PSES, and PSNS for cyanide based on these new submissions. The regulations include provisions for monitoring either in-plant after cyanide destruction or end-of-pipe.

Section 307(b)(1) provides that PSES shall specify a time for compliance, not to exceed three years from the date of promulgation. This does not create a presumption that three years will necessarily be allowed. However, the Agency has reviewed information on the installation of cyanide destruction technology at pharmaceutical plants. The readjustment of internal processing conditions to segregate contaminated waste streams may require more time than for only the installation of end-of-pipe treatment equipment. Additionally, plants in this and other industries will be installing the treatment equipment suggested as the model technology for this regulation; this may result in delays in engineering, ordering, installing, and operating this equipment. For the above reasons, EPA decided to specify the date for compliance with pharmaceutical industry PSES as three years from the promulgation date of final PSES for cyanide.

D. BAT Effluent Limitations, NSPS, PSES, and PSNS for Toxic Volatile Organics (TVOs)

Toxic volatile organics (TVOs) are those priority pollutants that are readily purged from water because of their high volatility. Many of these compounds are used as industrial solvents. Methylene chloride, benzene, toluene, and chloroform are four toxic volatile organics that are used as solvents in the manufacture of pharmaceutical products.

1. *Direct Dischargers: BAT/NSPS.* At proposal, methylene chloride and all other toxic volatile organics were recommended for exclusion from direct discharger regulations (BAT and NSPS) under the provisions of paragraph 8 of the Settlement Agreement. With the exception of methylene chloride, three has been no change in our rationale for not establishing effluent limitations guidelines and standards for the TVOs. In the case of methylene chloride, we stated that dischargers were controlled by effluent limitations reflecting the best practicable control technology currently available. We received no comments on our proposed exclusion of this toxic pollutant. However, a reexamination of the existing information on the use and discharge of methylene chloride by direct discharging pharmaceutical plants indicates that, in fact, treatable levels of methylene chloride may remain even after the implementation of BPT (i.e., biological treatment).

Available data show that in cases where the concentrations of methylene

chloride discharged to biological treatment systems are greater than 5 mg/l, treatable concentrations of methylene chloride remain in the effluent. Methylene chloride is used in about 15 percent of all fermentation, chemical synthesis, and extraction processes and to a lesser extent in formulation operations. Our data show that 15 of the 51 direct discharging pharmaceutical plants use methylene chloride in their manufacturing processes. For these reasons, we reconsidered our original paragraph 8 determination.

We considered establishing more stringent BAT effluent limitations guidelines for methylene chloride based on in-plant steam stripping technology in addition to biological treatment. This treatment technology would insure that only low effluent concentrations of methylene chloride would be discharged. However, we found that the costs of installing and operating steam strippers to control methylene chloride are not insignificant. We estimate that nine direct discharging plants would incur average capital and average total annual costs of $0.736 million and $0.712 million (1982 dollars), respectively, per plant. We estimate that the installation of steam stripping technology would reduce current discharge levels of methylene chloride by 60,700 pounds per year at these plants. This compares to the 651,000 pounds per year of methylene chloride that are now removed by biological treatment, the best practicable control technology currently available for this industry. We also determined that steam stripping technology is extremely energy intensive and would increase energy use at these nine direct dischargers by the equivalent of 94,300 barrels of oil per year. We project that the average methylene chloride removal cost resulting from the application of steam stripping technology would be $103 per pound, when assuming full value of the recovered solvent.

After considering the relative toxicity of this pollutant in light of these costs, and all the other factors, we have decided not to issue categorical regulations limiting methylene chloride discharges from the pharmaceutical industry based on the addition of treatment technology beyond biological treatment. We have also decided not to establish limitations based on biological treatment because they would not effect a further removal of methylene chloride. Another factor, while not directly a basis for these decisions, confirmed the reasonableness of the weight we accorded to cost and energy factors. We determined that much of the methylene chloride which would be removed by steam stripping will otherwise volatilize during biological treatment. Our data indicate that the volatilized methylene chloride will not be at levels which create a health risk.

Data on the capabilities of steam stripping and biological treatment technologies to reduce the discharge of methylene chloride and on the cost of installing and operating steam strippers to control toxic volatile organics is presented in Section VII of the Development Document. This information may be used by permit writers in developing permit limitations for methylene chloride on a case-by-case basis where necessary.

2. *Indirect Dischargers: PSES, PSNS.* At proposal, we stated that we were considering establishing pretreatment standards to control TVO discharges because available data indicated that pass through of TVOs occurs at POTWs. A standard of 1.2 mg/l for total toxic volatile organics was suggested in the preamble to the proposed rules, pending the availability of adequate supporting data on the performance of steam stripping technology.

One POTW and one State Agency commented that pretreatment standards contolling TVOs should be promulgated. Industry commenters questioned the need for TVO pretreatment standards in view of the low concentrations of toxic volatile organics in POTW effluents. They also questioned the achievability of a 1.2 mg/l discharge level with steam stripping technology.

In the proposed regulation, 17 TVOs were listed as possible candidates for regulation by pretreatment standards. After reexamining all of the available data, we have concluded that, with the exception of methylene chloride and chloroform, these pollutants should be excluded from regulation by the provisions of paragraph 8 of the Settlement Agreement. Thirteen of these pollutants have been excluded because their amount and toxicity, taken together, are so insignificant as not to justify developing uniformly applicable pretreatment regulations (see Appendix E). Of the remaining, there are two (benzene and toluene) which, while not as insignificant, nonetheless are unlikely to pass through POTWs.

To address the issue of pass through, EPA studied 50 well-operated POTWs that use biological treatment to determine the extent to which priority pollutants are reduced by such POTWs. In the case of benzene and toluene, the data indicate that direct discharger median percent reductions exceed POTW median percent reductions by less than 5 percent (100 percent for direct dischargers versus 99 percent for benzene and 97 percent for toluene at POTWs). In light of the fact that EPA had less data in the POTW studies on benzene and toluene than it had for some other pollutants and in light of the variability in analyzing samples for organic priority pollutants at the concentrations typically found in end-of-pipe biological systems at POTWs and pharmaceutical plants, EPA believes that differences of 5 percent or less between the direct discharger and POTW data for benzene and toluene are unlikely to reflect real differences in treatment efficiency. Therefore, EPA has determined that benzene and toluene do not pass through POTWs.

However, a potential interference problem could exist for these two toxic volatile organics because of a potential fire/explosion hazard. Benzene and toluene water mixtures have low flash points. Relatively small concentrations of these solvents in water mixtures (about 180 mg/l) can cause spontaneous combustion in the vapor space above the water mixture under certain conditions. Our latest information indicates that fire/explosions, while not impossible, are unlikely. Benzene and toluene levels above the minimum concentrations required to cause combustion have not been reported in discharges from plants in the pharmaceutical industry. Because pass through does not occur and interference is unlikely, there is no basis for establishing nationally applicable categorical pretreatment standards for benzene or toluene. However, under the general pretreatment regulation, 40 CFR 403.5, an individual POTW may establish pretreatment standards if benzene and toluene discharges from pharmaceutical users result in interference. Section VII of the Development Document contains suggested pretreatment standards for benzene and toluene, based on steam stripping, for consideration by POTWs establishing standards under § 403.5.

At direct discharging pharmaceutical manufacturing plants, chloroform is reduced to levels that are below its treatability through volatilization in biological treatment systems. Therefore, we have excluded chloroform from BAT regulations under the provisions of paragraph 8(a)(iii) of the Settlement Agreement. As for indirect dischargers, we have found that POTWs to which high concentrations of chloroform are discharged achieve high chloroform removal (greater than 95 percent). Therefore, POTWs receiving high

concentrations of chloroform as a result of pharmaceutical discharges are unlikely to experience pass through. For the above reasons, we have decided not to establish pretreatment standards controlling choloroform from indirect discharging pharmaceutical plants.

Through this process, the Agency determined that only methylene chloride was a candidate for national PSES and PSNS regulations. We found that the installation and operation of steam strippers to reduce methylene chloride discharges to POTWs by pharmaceutical plants would result in costs that are not insignificant. We estimate that 25 indirect discharging plants would incur capital and total annual costs of $0.748 million and $0.768 million (1982 dollars), respectively, per plant. We project that one indirect discharging pharmaceutical plant would close if required to install steam stripping technology. Steam strippers are also equally energy intensive at indirect discharging plants as at direct dischargers. We estimate that the operation of steam strippers at the 25 plants would increase energy usage by the equivalent of 315,000 barrels of oil per year. For these reasons and because we concluded that regulation of methylene chloride at direct dischargers is inappropriate, we decided not to establish categorical PSES and PSNS for methylene chloride.

Data on the capabilities of steam stripping technology to reduce the discharge of methylene chloride and on the cost of installing and operating steam strippers to control toxic volatile organics is presented in Section VII of the Development Document. This information may be used by municipalities in developing pretreatment standards for methylene chloride on a case-by-case basis where necessary.

E. New Source Performance Standards for Conventional Pollutants

On November 26, 1982, EPA proposed conventional pollutant new source performance standards that applied uniformly to subcategories A, B, C, and D. Proposed NSPS were based on advanced biological treatment (i.e., biological treatment systems with longer detention times than those considered as the basis of BPT). As discussed previously, we have determined that separate conventional pollutant limitations are appropriate for the subcategory A and C and the subcategory B and D plant groups. We have also identified four pharmaceutical plants where effluent filtration in addition to advance biological treatment is employed. Conventional pollutant discharges from these plants are significantly lower than from plants where only advanced biological treatment is employed. Consequently, the Agency is proposing NSPS based on effluent filtration in combination with advanced biological treatment. For a more detailed explanation of the basis of this decision, see the preamble to the proposed regulation that appears elsewhere in today's **Federal Register**.

F. BAT Limitations and NSPS for COD

The Agency proposed BAT COD concentration limitations that applied uniformly to subcategories A, B, C, and D based on the same technology identified as the best conventional pollutant control technology (BCT) (i.e., add-on biological treatment). NSPS to control COD were proposed based on advanced biological treatment.

One commenter suggested that limitations and standards should be written for specific compounds, if justifiable, rather than regulating additional pollutants through control of COD. Two industry commenters maintained that there are some chemical synthesis plants which have better than the proposed BCT treatment in-place that cannot meet the proposed limitations. Another commenter stated that it was inappropriate to propose COD limitations based on advanced biological treatment for substances which biodegrade slowly or not at all.

The concentrations of many materials that are measured as or contribute to COD are reduced in biological systems by biodegradation or by air stripping and sorption mechanisms; therefore, increased biological treatment system capacity can afford greater removal of these materials. There are some materials, however, that contribute to COD, such as dissolved inorganic salts and some organics, which pass through biological treatment systems without being biodegraded, air stripped, or absorbed. Available data indicate that even after biological treatment system expansion, many subcategory A and C plants would not meet the proposed COD limitations. Additional information on the identity of the pollutants that contribute to COD and on applicable COD removal technologies is required before we can evaluate COD control options. Therefore, the Agency is postponing a final decision on appropriate BAT limitations and NSPS for the nonconventional pollutant COD until a later date. We are continuing our investigation of appropriate COD removal technologies and their costs.

VI. Costs, Economic Impacts, Executive Order 12291, Regulatory Flexibility Analysis, and Small Business Administration (SBA) Loans

A. Cost and Economic Impact

The Agency's economic impact assessment of this regulation is presented in *Economic Analysis of Effluent Standards and Limitations for the Pharmaceutical Industry.* This report details the investment and annual costs for the industry as a whole and for plants covered by the final regulation. Plant costs are engineering estimates for the effluent control systems described in this preamble. The report assesses the impact of effluent control costs in terms of price changes, plant closures, employment effects, and balance of trade effects.

EPA has identified 466 pharmaceutical facilities that are covered by this regulation. An estimated 134 of these plants are zero dischargers and are not expected to incur costs. Of the remaining 332 discharging plants, EPA estimates that nine will incur total investment costs for BPT, BAT, and PSES of $1.47 million, with annual costs of $0.65 million, including depreciation and interest. These costs are expressed in 1982 dollars and are based on the determinations that plants will upgrade their existing treatment systems to comply with BPT, BAT, or PSES, as appropriate. No plant closures are projected as a result of compliance costs for this regulation and, hence, we expect no adverse employment effects on pharmaceutical manufacturing employees. The maximum price increase if all costs were passed on to consumers is less than 0.1 percent for the plants affected by the regulation. Balance of trade effects are nil.

In order to measure the potential economic impacts, a two-step analytical procedure was employed. First, the analysis determined whether a plant's compliance costs exceeded one percent of sales. If the costs did exceed one percent, then the analysis considered information on the firm's financial position, its size, the relative importance of its pharmaceutical line of business, patent protection, and other economic information relevant to assessing the likely impact of the regulation on a firm. If the firm is in a position to pass the costs on to the consumer, due to patent protection, for example, then it is assumed that prices would increase and the plant would remain in operation. If costs cannot be passed on, then based on the above information, a determination was made as to whether a plant might close, a production line

might shut down, or production might be shifted from one plant to another. For the reasons discussed below and after applying this economic impact methodology, the Administrator has determined that the costs of this regulation are justified.

1. *BPT.* BPT regulations for cyanide and TSS are expected to require expenditures at eight plants (cyanide destruction at four plants, TSS control at five plants, with one of these plants requiring both). Total investment and annual costs are estimated to be $1.05 million and $0.39 million, respectively (1982 dollars). The estimated change in price for the affected plants is less than 0.1 percent. No significant economic impacts are projected as a result of BPT.

2. *BAT.* Only cyanide is limited under BAT. Cyanide limits are the same as under BPT. Therefore, no incremental impacts are expected from implementation of BAT.

3. *PSES.* The standard is for the control of cyanide. Only one out of the 277 indirect discharging plants is expected to incur costs; the estimated capital and annual costs are $0.42 million and $0.26 million, respectively (1982 dollars). The expected price change is nil. No significant economic impacts are expected from the PSES cyanide regulation.

4. *NSPS and PSNS.* Only pH and cyanide are limited under NSPS. Since the pH and cyanide limits are the same as under BPT, no incremental impacts will result from implementation of final NSPS. NSPS controlling BOD5 and TSS are being proposed today in a companion notice.

Regulations for indirect discharging new sources (PSNS) are the same as those for existing sources. Therefore, no incremental impacts are expected from implementation of PSNS.

B. Cost Effectiveness

EPA has conducted an analysis of the incremental removal cost per pound equivalent for each toxic pollutant control option. A pound equivalent is calculated by multiplying the number of pounds of pollutant discharged by a weighting factor for that pollutant. The weighting factor is equal to the aquatic life water-quality criterion for a standard pollutant (copper), divided by the aquatic life water-quality criterion for the pollutant being evaluated. The use of "pound equivalent" gives relatively more weight to removal of more highly toxic pollutants. Thus for a given expenditure, the cost per pound equivalent removal would be lower when a highly toxic pollutant is removed than if a less toxic pollutant is removed. This analysis is included in the record of this rulemaking in a document titled "Cost Effectiveness Analysis of Effluent Standards and Limitations for the Pharmaceutical Industry."

C. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules are those which impose an annual cost on the economy of $100 million or more or have certain other economic impacts. This regulation is not a major rule because its annualized cost is less than $100 million and it meets none of the other criteria specified in Section I, paragraph (b) of the Executive Order. The economic impact analysis prepared for this rulemaking satisfies the requirement of the Executive Order for a non-major rule.

D. Regulatory Flexibility Analysis

Pub. L. 96-354 requires EPA to prepare an *Initial Regulatory Flexibility Analysis* for all regulations that have a significant impact on a substantial number of small entities. This analysis may be conducted in conjunction with or as part of other Agency analyses.

Since no firms in the data base are projected to experience significant economic impacts, there is no disproportionate burden on small businesses; therefore, a formal Regulatory Flexibility Analysis is not required.

E. SBA Loans

The Agency is continuing to encourage small pharmaceutical manufacturers to use Small Business Administration (SBA) financing as needed for pollution control equipment. The three basic programs are: (1) The Section 503 Program; (2) the Regular Guarantee Program; and (3) the Guaranteed Pollution Control Bond Program. All the SBA loan programs are open only to businesses that have: (a) Net assets less than $6 million; (b) an average annual after-tax income of less than $2 million; and (c) fewer than 250 employees. The estimated economic impacts for this point source category do not include consideration of financing available through these programs.

The Section 503 Program, as amended in July 1980, allows long-term loans to small and medium sized businesses. These loans are made by SBA approved local development companies. For the first time these companies are authorized to issue Government-backed debentures that are bought by the Federal Financing Bank, an arm of the U.S. Treasury.

Through SBA's Regular Guarantee Program, loans are made available by commercial banks and are guaranteed by the SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Guarantee and Section 503 Programs, contact your district or local SBA Office. The coordinator at EPA headquarters is Ms. Frances Desselle who may by reached at (202) 382-5373.

For further information and specifics on the Guaranteed Pollution Control Bond Program contact: U.S. Small Business Administration, Office of Pollution Control Financing, 4040 North Fairfax Drive, Rosslyn, Virginia 22203; (703) 235-2902.

VII. Pollutants and Subcategories Not Regulated

Paragraph 8 of the modified Settlement Agreement, approved by the District Court for the District of Columbia on March 9, 1979 (12 ERC 1833), contains provisions authorizing the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories.

A. Pollutants Excluded

Paragraph 8(a)(iii) of the modified Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detected by Section 304(h) analytical methods or other state-of-the-art methods. The toxic pollutants not detected in the effluents of direct discharging pharmaceutical plants and, therefore, excluded from regulation in this industry, are listed in Appendix B of this notice.

Paragraph 8(a)(iii) also allows exclusion of pollutants that are: (1) Detected in the effluent from a small number of sources and uniquely related to those sources; (2) detected in only trace amounts not likely to cause toxic effects; (3) sufficiently controlled by existing technologies; or (4) detected in amounts too small to be effectively controlled by technologies known to the Administrator. Thirty-four different toxic pollutants were found in the effluent of direct discharging pharmaceutical plants during the screening and verification program. Twenty-four of these pollutants (toxic metals and volatile organics) were found at treatable levels only in a small number of instances. In those instances, these levels were attributable to manufacturing activities that are uniquely related to the plants sampled. Another eight toxic pollutants (some phenols and phthalates) were found at or below the treatability limit concentrations determined for existing physical-chemical treatment methods by studies conducted on wastewater from

several industry categories. The 32 pollutants are listed in Appendix C to this notice along with the particular reason for excluding them from regulation. The two remaining toxic pollutants detected in the effluent of direct discharging pharmaceutical plants are cyanide and methylene chloride. EPA is establishing BPT and BAT limitations and NSPS controlling the discharge of cyanide. For the reasons discussed above, EPA is not regulating the discharge of methylene chloride from direct discharging pharmaceutical plants.

Paragraph 8(b)(ii) of the Settlement Agreement authorizes the Administrator to exclude from nationally applicable pretreatment standards a subcategory or category if the toxicity and amount of incompatible pollutants (taken together) introduced by such point sources into POTWs is so insignificant as not to justify developing a national pretreatment regulation. EPA has reviewed available data from indirect dischargers and is excluding the 123 toxic pollutants listed in Appendices D and E from nationally applicable pretreatment standards. Appendix D lists those toxic pollutants not detected in the effluents of indirect dischargers. Appendix E lists those toxic pollutants which, although detected, were not significant enough, in terms of toxicity and amount of incompatible pollutants (taken together), to justify nationally applicable pretreatment standards. EPA is establishing PSES and PSNS controlling the discharge of cyanide. For the reasons discussed previously, EPA is not establishing nationally applicable pretreatment standards for methylene chloride or chloroform.

B. Subcategories Excluded

The Settlement Agreement did not require EPA to regulate the entire pharmaceutical industry. Subcategory E, Pharmaceutical Research, is not mentioned in the Settlement Agreement. Since pharmaceutical research does not involve production and wastewater generation in appreciable quantities on a regular basis, EPA now considers this subcategory outside the province of ordinary industrial guidelines development. Therefore, facilities which conduct pharmaceutical research only are specifically excluded from all limitations and standards in this regulation other than the BPT limitations. Research activities conducted at mixed and single subcategory plants (A, B, C, and D only) will be covered by this regulation because the wastewaters from these activities were studied as part of the technical development of this regulation. However, these activities contribute a very small portion of wastewater to the final effluent of the average production facility.

VIII. Non-Water Quality Aspects of Pollution Control

Eliminating or reducing one form of pollution may cause other environmental problems. Sections 304(b) and 306 of the Act require EPA to consider the non-water quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption. This regulation was reviewed by EPA personnel responsible for non-water quality programs. While it is difficult to balance pollution problems against each other and against energy use, EPA believes that this regulation will best serve often competing national goals.

The following non-water quality environmental impacts (including energy requirements) are associated with the final regulations. The Administrator has determined that the impacts identified below are justified by the benefits associated with compliance with the limitations and standards.

A. Solid Waste

EPA estimates that the total solid waste generated to attain the new BPT TSS limitations will be approximately 138,000 additional pounds per year of wastewater treatment sludge. This is equal to an incremental increase of about 0.3 percent over that currently generated by the pharmaceutical industry to meet existing BPT BOD5 limitations. The solid wastes generated through wastewater treatment at pharmaceutical plants have not been listed as hazardous in regulations promulgated by the Agency under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (see 45 FR 33066; May 19, 1980). Accordingly, it does not appear likely that the wastewater sludges generated by pharmaceutical plants under the new BPT TSS limitations will be subject to the comprehensive RCRA program establishing requirements for persons handling, transporting, treating, storing, and disposing of hazardous wastes. The Agency's estimates of the costs of this regulation include the cost of handling these sludges as a non-hazardous waste.

No sludge will be generated as a result of complying with the final pretreatment standards, NSPS, or the BPT and BAT effluent limitations for cyanide.

B. Air Pollution

EPA does not believe that cyanide removal mechanisms will cause the generation of air pollutants; additionally, we do not anticipate that compliance with the modified and new BPT TSS limitations will result in the generation of additional air pollution from pharmaceutical plants.

C. Energy Requirements

EPA estimates that the achievement of the cyanide and the new modified TSS BPT effluent limitations will increase energy consumption by approximately 0.01 percent of present facility use for all plants. We estimate that compliance with PSES to control cyanide discharges to POTWs will increase over-all energy use by 0.07 percent at the affected indirect discharging pharmaceutical plant. Because BAT limitations and NSPS for cyanide are identical to BPT cyanide limitations and because PSNS are identical to PSES, there will be no incremental increase in energy usage resulting from compliance with BAT effluent limitations, NSPS, or PSNS.

IX. Best Management Practices

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe what have been termed "best management practices" (BMPs). The Agency is not promulgating BMPs for the pharmaceutical industry at this time. However, the existing BPT regulation requires that separable mycelia and solvents not be included in the raw waste load calculations that form the basis of determinations of BPT effluent limitations for BOD5 and COD. (*See* 40 CFR Part 439; 41 FR 50676, November 17, 1976). This rulemaking does not change this requirement.

X. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is an unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision is necessary in EPA's effluent limitations because such upsets will inevitably occur even in properly operated control equipment. Because technology-based limitations are to require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have disagreed on whether an explicit upset

or excursion exemption is necessary or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Company* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle, supra*, and *Corn Refiners Association, et al.* v. *Costle*, No. 78-1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International Inc.* v. *Train*, 540 F.2d 1320 (8th Cir. 1976); *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir. 1976).

An upset is an unintentional episode during which effluent limits are exceeded; however, a bypass is an act of intentional noncompliance during which wastewater treatment facilities are circumvented in emergency situations. We have, in the past, included bypass provisions in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits and has promulgated NPDES regulations which include upset and bypass permit provisions. (*See* 40 CFR 122.41, 45 FR 14166 (April 1, 1983).) The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, although permittees in the pharmaceutical manufacturing industry will be entitled to the upset and bypass provisions incorporated into NPDES permits, this regulation does not address these issues.

XI. Variances and Modifications

The BPT and BAT effluent limitations and NSPS contained in this regulation must be applied in all Federal and State NPDES permits issued to direct dischargers in the pharmaceutical industry. In addition, the pretreatment standards are directly applicable to any indirect dischargers.

For the BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. (*See E. I. duPont de Nemours and Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle, supra.*) This variance recognizes factors concerning a particular discharger which are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973 to 1976 regulations for specific industries, it is now included in the general NPDES regulations and will not be included in the specific pharmaceutical industry regulations. (*See* the NPDES regulations at 40 CFR Part 125, Subpart D.) The BAT limitations in this regulation are also subject to EPA's "fundamentally different factors" variance.

Indirect discharges subject to PSES and PSNS are eligible for credits for toxic pollutants removed by POTWs. See 40 CFR 403.7; 48 FR 9404 (January 28, 1981). New sources are not eligible for any other statutory or regulatory modification. See *E. I. duPont de Nemours & Co.* v. *Train, supra.*

Indirect dischargers subject to PSES have, in the past, been eligible for the "fundamentally different factors" (FDF) variance. See 40 CFR 403.13. However, on September 20, 1983, the U.S. Court of Appeals for the Third Circuit held that "FDF variances for toxic pollutants are forbidden by the Act," and remanded § 403.13 to EPA. *National Association of Metal Finishers, et al.* v. *EPA*, Nos. 79-2256 *et al.* (3d Circuit, September 20, 1983). EPA is considering the effect of that decision.

In a few cases, information which would affect these PSES may not have been available to EPA or affected parties in the course of this rulemaking. As a result, it may be appropriate to issue specific categorical standards for such facilities, treating them as a separate subcategory with more, or less, stringent standards as appropriate. This will only be done if a different standard is appropriate because of unique aspects of the factors listed in Section 304(b)(2)(B) of the Act: the age of equipment and facilities involved, the process employed, the engineering aspects of applying control techniques, non-water quality environmental impacts (including energy requirements), or the cost of required effluent reductions (but not of ability to pay that cost).

Indirect dischargers and other affected parties may petition the Administrator to examine those factors and determine whether these PSES are properly applicable in specific cases or should be revised. Such petitions *must* contain specific and detailed support data, documentation, and evidence indicating why the relevant factors justify a more, or less, stringent standard, and must also indicate why those factors could not have been brought to the attention of the Agency in the course of this rulemaking. The Administrator will consider such rulemaking petitions and determine whether a rulemaking should be initiated.

XII. Implementation of Limitations and Standards

A. Relationship to NPDES Permits

The BPT and BAT limitations and NSPS in this regulation will be applied to individual pharmaceutical plants through NPDES permits issued by EPA or approved state agencies, under Section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits except to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. The promulgation of this regulation does not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit such pollutant on a case-by-case basis when limitations are necessary to carry out the purposes of the Act. In addition, to the extent that state water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit issuing authority.

A second topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which were considered in developing this regulation. We emphasize that although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. We have exercised and intend to exercise that discretion in a manner that recognizes and promotes good-faith compliance efforts.

B. Indirect Dischargers

For indirect dischargers, PSES and PSNS are implemented under National Pretreatment Program procedures outlined in 40 CFR 403. The table below may be of assistance in resolving questions about the operation of that program. A brief explanation of some of the submissions indicated on the table follows.

A "request for category determination" is a written request, submitted by an indirect discharger or its POTW, for a determination of which categorical pretreatment standard

applies to the indirect discharger. This assists the indirect discharger in knowing which PSES or PSNS limits it will be required to meet. See 40 CFR 403.6(a).

A "baseline monitoring report" is the first report an indirect discharger must file following promulgation of an applicable standard. The baseline report includes an identification of the indirect discharger, a description of its operations, a report on the flows of regulated streams and the results of sampling analyses to determine levels of regulated pollutants in those streams, a statement of the discharger's compliance or noncompliance with the standard, and a description of any additional steps required to achieve compliance. See 40 CFR 403.12(b).

A "report on compliance" is required of each indirect discharger within 90 days following the date for compliance with an applicable categorical pretreatment standard. The report must indicate the concentration of all regulated pollutants in the facility's regulated process wastestreams; the average and maximum daily flows of the regulated streams; and a statement of whether compliance is consistently being achieved, and if not, what additional operation and maintenance and/or pretreatment is necessary to achieve compliance. See 40 CFR 403.12(d).

A "periodic compliance report" is a report on continuing compliance with all applicable categorical pretreatment standards. It is submitted twice per year (June and December) by indirect dischargers subject to the standards. The report shall provide the concentrations of the regulated pollutants in its discharge to the POTW, the average and maximum daily flow rates of the facility, the methods used by the indirect discharger to sample and analyze the data, and a certification that these methods conform to the methods outlined in the regulations. See 40 CFR 403.12(e).

INDIRECT DISCHARGES SCHEDULE FOR SUBMITTAL AND COMPLIANCE

Item event	Applicable sources	Date or time period	Measured	Item submitted to
Request for category determination.	Existing	60 days	From effective of standard, or from Development document availability.	Director.[1]
	New	([2])		
Baseline monitoring report	All	180 days	From effective date of standard or Final decision on category determination.	Control authority.[3]
Report on compliance	Existing	90 days	From date for final compliance	Control authority.[3]
	New	90 days	From commencement discharge to POTW.	
Periodic compliance reports	All	June and December.		Control authority.[3]

[1] Director = (a) Chief Administrative Officer of a State water pollution control agency with an approved pretreatment program; or (b) EPA Regional Water Division Director, if State does not have an approved pretreatment program.
[2] Prior to commencement of discharge to POTW.
[3] Control Authority = (a) POTW if its pretreatment program has been approved; or (b) Director of State water pollution control agency with an approved pretreatment program or (c) EPA Regional Administrator, if State does not have an approved pretreatment program.

XIII. Public Participation—Responses to Major Comments

Numerous agencies and groups have participated in this study of the pharmaceutical industry. The Agency solicited comments on the proposed rules and on the Development Document and the economic analysis supporting the proposal.

The comment period ended on January 25, 1983. Comments were submitted by one trade association, 11 individual companies, one state agency, two municipalities, and one engineering consultant representing industrial clients.

The Agency held a public hearing on the proposal on January 17, 1983, in Washington D.C. A Technical Workshop was held on January 18, 1983, in Washington, D.C.

Individual public comments received on the proposed regulation and our responses are presented in a report, "Summary of Comments and Responses on the November 1982 Proposed Regulations for the Pharmaceutical Industry," September 1982, which is part of the public record of this rulemaking. A summary of the major comments that are not discussed elsewhere in this preamble and the Agency's responses follow.

1. *Comment:* Effluent limitations should be in the form of treatment removal efficiencies or mass limits of pollutants with concentration limitations being required only in specific cases at the discretion of the local permit writer where the receiving water quality may be a limiting factor.

Response: Effluent limitations guidelines can be in the form of percent reduction, concentration, or production-based mass limitations. Limitations can be based solely on the performance of applicable treatment technologies. However, when the available production data for an industrial category or subcategory can be correlated with pollutant discharges, EPA can develop mass limitations based on both treatment technology performance and production. This latter approach, however, is not appropriate for the pharmaceutical manufacturing point source category because of the large number of different products involved, the constantly changing nature of the product mix, and the lack of an established correlation between pollutant discharge and production. The development of percent reduction limitations requires that influent as well as effluent data descriptive of treatment technology performance be available whereas concentration limitations require only that effluent data be available. Oftentimes, influent data relating to treatment system performance is either not available or is considerably less extensive and descriptive than the effluent data. Both of these considerations influenced the Agency's decision to propose concentration-based limitations for the pharmaceutical industry.

Effluent limitations guidelines whether in the form of percent reduction, concentration, or production-based mass limits are to be used by NPDES permit writers in developing minimum permit requirements. Generally, effluent limitations are converted into mass limitations by permit writers. Permit writers may incorporate more stringent limits such as those required by water quality considerations, but in no case may the permit limits be less stringent (i.e., allow a greater pollutant discharge) than those that are indicated by an applicable technology-based effluent limitations guideline.

2. *Comment:* On June 8, 1982, EPA issued a final rulemaking which modified effluent limitations guidelines for pH for all industrial dischargers. The final rule required compliance 99 percent of the time and limited individual excursions to 60 minutes. We believe that EPA has inadvertently failed to include this change in the proposed pharmaceutical guidelines and therefore request EPA to incorporate this change into the guidelines.

Response: The applicability of the final rule cited by the commenter (see 47 FR 34534–34537, June 4, 1982) is contingent on whether a permittee is required, or has the option, to monitor

continuously the pH of its wastewater as specified by the conditions of the permittee's National Pollutant Discharge Elimination System (NPDES) permit. If the industrial discharger's NPDES permit does not contain a requirement or an option for the permittee to monitor pH continuously, then the monthly and individual excursion limitations of that rule are not applicable. Thus, the rule applies only to those industrial dischargers with an NPDES permit requirement or option to monitor continuously the pH of their wastewater. The modified pH rule for continuous monitoring is currently applicable to permittees having this requirement or option (see 40 CFR 401.17). It is not necessary that this modified rule be explicitly stated in all categorical regulations.

3. *Comment:* Several commenters requested additional time to comment on the grounds that EPA, in these proposed rules and accompanying documents, has for the first time released substantial portions of the information on which certain of the proposed rules are based, and has materially revised other portions of the information on which other portions of the proposed rules are based.

Response: After consideration of the amount and complexity of the new information released in the proposed rulemaking and the fact that all of the information supporting the proposed regulations was available to the public at the time that the proposed regulations were published in the **Federal Register**, we concluded that a 60-day comment period was an adequate time period for commenting on the proposed regulations. The Agency has allowed extensions of comment periods on some proposal regulations due to certain special circumstances surrounding those rulemakings. However, no such circumstances were present in the pharmaceutical rulemaking. Therefore, the Agency concluded that an extension of the comment period for this rulemaking was not appropriate.

EPA received several comments after the close of the official comment period. The Agency has evaluated and responded to these comments.

4. *Comment:* One commenter stated that TSS limits are inappropriate for plants discharging to rivers, such as the Mississippi, presumably because they are naturally turbid. The commenter recommended that permit writers be allowed to disregard or modify TSS limitations.

Response: We have not made any changes in response to this comment. Section 304 of the Act requires that effluent limitations guidelines be based on the application of control and treatment technology. EPA may not consider receiving water quality in developing such guidelines. Accordingly, BPT TSS limitations are based on the application of currently available technology, not on water quality considerations. Since receiving water quality is not a factor which is considered in establishing categorical limitations, it follows that it cannot be considered by the permit writer as a basis for a fundamentally different factors (FDF) variance.

5. *Comment:* One commenter objected to the fact that "new sources" were defined in terms of plants whose construction commences after proposal of a new source performance standard, rather than after final promulgation. The commenter noted that there may be changes in the standard between proposal and final promulgation.

Response: The definition of "new source" in Appendix A to the proposal is a shortened version of the definition of new source established in EPA's NPDES permit regulations (40 CFR 122.2, April 1, 1983, 48 FR 14146). To avoid confusion, we have revised the definition in Appendix A.

6. *Comment:* Since regulations controlling the discharge of BOD5 are included in the proposed regulation, we question the need for COD limitations. What additional pollutants is EPA trying to control with COD limitations? We consider these limitations to be duplicative in nature and unwarranted.

Response: Many materials that are measured as or contribute to COD biodegrade slowly or not at all, while those materials which contribute to BOD5 are, by definition, biodegradable. Removal of COD in a biological treatment system is accomplished to some extent by biodegradation but also by incidental removal mechanisms such as air stripping and sorption. Since the extent to which any of these mechanisms operates to remove COD depends in part on the size of the biological treatment system, any increase in the capacity of a biological treatment system should result in greater removal of these materials. The Agency recognizes that there are also some pollutants measured by COD, such as salts and some solvents, which do not biodegrade.

The 1976 BPT regulation requires all subcategories to achieve a 74 percent reduction of COD from raw waste levels and, in addition, specifies that separable solvents be removed by in-plant control methods prior to measurement of raw waste COD levels. The purpose of the existing BPT COD limitations is to limit the discharge of those materials which biodegrade slowly or not at all by first prohibiting the inclusion of certain non-biodegradable materials (e.g., some solvents) in raw waste streams and by accounting for the incidental removal of COD that occurs in biological treatment systems. More stringent BAT limitations and NSPS for COD based on add-on biological treatment were included in the proposed regulation of November 26, 1982. We intend to issue final BAT limitations and NSPS for COD for all subcategories after reviewing additional data on the pollutants which constitute COD in pharmaceutical plants and on the cost of their removal. The Agency continues to believe that limitations controlling the discharge of COD are appropriate and not duplicative in nature.

7. *Comment:* EPA has proposed to apply broad categorical limits for an individual pollutant, cyanide, that may be present in only a few operations. By proposing a limit for cyanide, EPA will require all pharmaceutical plants to expend resources to monitor for cyanide whether or not cyanide is used or generated in the manufacturing process. At a minimum, EPA's action will force certain dischargers to request a fundamentally different factors (FDF) variance at the time of permit re-issuance to avoid unnecessary monitoring requirements.

Response: EPA agrees with the commenter that if cyanide is not used or generated in the manufacturing process, dischargers should not be required to monitor for cyanide. Therefore, the final regulations allow facilities not using or generating cyanide to certify to that effect instead of monitoring for cyanide. Permit issuing authorities may find it necessary to require that specific monitoring programs be instituted at individual plants if cyanide contamination is suspected.

XIV. Availability of Technical Information

The basis for this regulation is detailed in four major documents. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants* (U.S. EPA, April 1977). EPA's technical conclusions are detailed in *Development Document for Effluent Guidelines, New Source Performance Standards, and Pretreatment Standards for the Pharmaceutical Manufacturing Point Source Category* (USEPA, September 1983). The Agency's economic analysis is presented in *Economic Analysis of Effluent Standards and Limitations for the Pharmaceutical Industry* (USEPA,

September 1983). A summary of the public comments received on the proposed regulation is presented in a report "Summary of Responses to Comment on the Proposed Pharmaceutical Manufacturing Industry Regulations," which is a part of the public record for this regulation. On November 28, 1983, copies of the technical development document and the economic analysis will be available for public review in EPA's Public Information Reference Unit, Room 2404 (Rear) in the EPA Library, 401 M Street, SW., Washington, D.C. Copies of the technical and economic documents may also be obtained from the National Technical Information Service (NTIS), Springfield, Virginia 22161, (703) 487-4600. A notice will be published in the **Federal Register** announcing the availability of these documents from NTIS. (This should occur on or before December 27, 1983).

Additional information concerning the economic impact analysis may be obtained from Mr. Joseph Yance, Economic Analysis Staff (WH-586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 or by calling (202) 382-5397. Technical information may be obtained by writing to Dr. Frank Hund, Effluent Guidelines Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 or by calling (202) 382-7182.

XV. Office of Management and Budget (OMB) Review

This notice was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any commments from OMB to EPA and any EPA response to those comments are available for public inspection through contacting Dr. Frank Hund at the address listed at the beginning of this notice.

This regulation contains provisions in §§ 439.14-439.17, 439.24-439.27, 439.34-439.37, and 439.44-439.47 which allow facilities not using or generating cyanide to certify to that effect instead of monitoring for cyanide. The information collection requirements in ths rule have been submitted to OMB under provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* They are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register.**

XVI. List of Subjects in 40 CFR Part 439

Drugs, Waste treatment and disposal, Water pollution control.

Dated: September 30, 1983.

William D. Ruckelshaus,

Administrator.

Appendix A—Abbreviations, Acronyms, and Other Terms Used in this Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable, under Section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology, under Section 304(b)(4) of the Act.

BMP—Best management practices, under Section 304(e) of the Act.

BPT—The best practicable control technology currently available, under Section 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amentments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Pub. L. 95-217).

Direct Discharger—A facility where wastewaters are discharged or may be discharged into waters of the United States.

Indirect Discharger—A facility where wastewaters are discharged or may be discharged into a publicly owned treatment works.

New Sources—Industrial facilities which are "new sources" under the definition in Section 306 of the Act.

NPDES Permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act.

NSPS—New source performance standards, under Section 306 of the Act.

POTW or POTWs—Publicly owned treatment works.

PSES—Pretreatment standards for existing sources of indirect discharges, under Section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of indirect discharges, under Section 307 (b) and (c) of the Act.

RCRA—Resource Conservation and Recovery Act (Pub. L. 94-580) of 1976, as amended, 42 U.S.C. 6901 *et seq.*

Appendix B—Toxic Pollutants Not Detected in the Effluent of Direct Dischargers

acenaphthene
acrylonitrile
benzidine
1,1-dichloroethane
1,2,4-trichlorobenzene
hexachlorobenzene
hexachloroethane
1,1,2-trichloroethane
1,1,2,2-tetrachloroethane
chloroethane
bis(2-chloroethyl) ether
2-chloroethyl vinyl ether
2-chloronapthalene
2,4,6-trichlorophenol
parachlorometa cresol
2-chlorophenol
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3'-dichlorobenzidine
1,1-dichloroethylene
1,2-trans-dichloroethylene
2,4-dichlorophenol
1,2-dichloropropane
1,3-dichloropropylene
2,4-dinitrotoluene
2,4-dimethyl phenol
2,6-dinitrotoluene
1,2-diphenlhydrazine
fluoranthene
4-chlorophenyl phenyl ether
4-bromophenyl phenyl ether
bis(2-chloroethoxy) methane
methyl bromide
dichlorobromomethane
chlorodibromethane
hexachlorobutadiene
hexachlorocyclopentadiene
isophorone
naphthalene
nitrobenzene
2-nitrophenol
4,6-dinitro-o-cresol
N-nitrosodimethylamine
N-nitrosodiphenylamine
N-nitrosodi-n-propylamine
pentachlorophenol
butyl benzyl phthalate
di-n-octyl phthalate
dimethyl phthalate
benzo(a)anthracene
benzo(a)pyrene
3,4-benzofluoranthene
benzo(k)fluoranthane
chrysene
acenaphthylene
anthracene
benzo(ghi)perylene
fluorene
phenanthrene
dibenzo(a,h)anthracene
indeno(1,2,3-c,d)pyrene
pyrene
aldrin
dieldrin
chlordane
4,4'-DDT
4,4'-DDE
4,4'-DDD
alpha-endosulfan
beta-endosulfan
endosulfan sulfate
endrin
endrin aldehyde
heptachlor
heptachlor epoxide
alpha-BHC
beta-BHC
gamma-BHC (lindane)
delta-BHC
PCB-1242
PBC-1254

PCB–1221
PCB–1232
PCB–1248
PCB–1260
PCB–1016
toxaphene
asbestos (fibrous)
beryllium (total)
2,3,7,8-tetrachloro-dibenzo-p-dioxin (TCDD)

Appendix C—Toxic Pollutants Detected in Treated Effluents of Direct Dischargers: (1) From a Small Number of Sources, (2) Detected in Only Trace Amounts, (3) Sufficiently Controlled by Existing Technologies, or (4) Detected in Amounts Too Small to be Effectively Controlled by Technologies Known to the Administrator

Pollutant and basis for exclusion

Acrolein	1
Benzene	3
Bromoform	1
Carbon tetrachloride	2
1,2-dichloroethane	3
1,1,1-trichloroethane	3
Chloroform	3
Ethylbenzene	3
Bis(2-chloroisopropyl) ether	1
Methyl chloride	3
4-nitrophenol	3
2,4-dinitrophenol	3
Phenol	3
Bis(2-ethylhexyl) phthalate	4
Di-n-butyl phthalate	4
Diethyl phthalate	4
Tetrachloroethylene	2
Toluene	3
Trichloroethylene	3
Vinyl chloride	2
Antimony	4
Arsenic	4
Cadmium	4
Chromium	4
Copper	4
Lead	4
Mercury	4
Nickel	4
Selenium	4
Silver	4
Thallium	4
Zinc	4

Appendix D—Toxic Pollutants Not Detected in the Effluent of Indirect Dischargers

acenaphthene
benzidine
1,2,4-trichlorobenzene
hexachlorobenzene
hexachloroethane
1,1,2-trichloroethane
1,1,2,2-tetrachloroethane
chloroethane
bis(2-chloroethyl) ether
2-chloroethyl ether
2-chloronapthalene
2,4,6-trichlorophenol
parachlorometa cresol
2-chlorophenol
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3'-dichlorobenzidine
2,4-dichlorophenol
1,2-dichloropropane
1,3-dichloropropylene
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenlhydrazine
fluoranthene
4-Chlorophenyl phenyl ether
4-bromophenyl phenyl ether
bis(2-chloroethoxy) methane
methyl bromide
dichlorobromomethane
chlorodibromethane
hexachlorobutadiene
hexachlorocyclopentadiene
isophorone
naphthalene
nitrobenzene
4-nitrophenol
2,4-dinitro phenol
4,6-dinitro-o-cresol
N-nitrosodi-n-propylamine
pentachlorophenol
butyl benzyl phthalate
di-n-octyl phthalate
dimethyl phthalate
benzo(a)anthracene
benzo(a)pyrene
3,4-benzofluoranthene
benzo(k)fluoranthane
chrysene
acenaphthylene
anthracene
benzo(ghi)perylene
phenanthrene
dibenzo(a,h)anthracene
indeno (1,2,3-c,d)pyrene
pyrene
aldrin
dieldrin
chlordance
4,4'-DDT
4,4'-DDE
4,4'-DDD
alpha-endosulfan
beta-endsulfan
endosulfan sulfate
endrin
endrin aldehyde
heptachlor
heptachlor epoxide
alpha-BHC
beta-BHC
gamma-BHC (lindane)
delta-BHC
PCB–1242
PCB–1254
PCB–1221
PCB–1232
PCB–1248
PCB–1260
PCB–1016
toxaphene
asbestos (fibrous)
beryllium
2,3,7,8-tetrachloro-dibenzo-p-dioxin (TCDD)

Appendix E—Toxic Pollutants Detected in the Effluent of Indirect Dischargers Whose Toxicity and Amount (Taken Together) Are So Insignificant As Not To Justify Developing Pretreatment Regulations

*acrolein
*acrylonitrile
benzene
*carbon tetrachloride
*chlorobenzene
methyl chloride
1,2-dichlorobenzene
*1,2-dichloroethane
*1,1, 1-trichloroethane
*1,1-dichloroethane
*1,1-dichloroethylene
*1,2-trans-dichloroethylene
*ethylbenzene
*bromoform
*tetrachloroethylene
toluene
*trichloroethylene
2,4-dimethylphenol
2-nitrophenol
N-nitrosodiphenylamine
phenol
bis(2-ethyl hexyl) phthalate
diethyl phthalate
fluorene
antimony
arsenic
cadmium
chromium
copper
lead
mercury
nickel
selenium
silver
thallium
zinc

*Volatile organics identified at proposal as potential candidates for categorical pretreatment standards (47 FR 53584).

Part 439 of Title 40 is revised to read as follows:

PART 439—PHARMACEUTICAL MANUFACTURING POINT SOURCE CATEGORY

General Provisions

Sec.
439 Applicability.
439.1 General definitions.
439.2 Monitoring requirements.

Subpart A—Fermentation Products Subcategory

439.10 Applicability; description of the fermentation products subcategory.
439.11 Specialized definitions.
439.12 Effluent limitations representing the degree of effluent reduction attainable by

Sec.
the application of the best practicable control technology currently available (BPT).
439.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
439.14 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
439.15 New source performance standards (NSPS).
439.16 Pretreatment standards for existing sources (PSES):
439.17 Pretreatment standards for new sources (PSNS).

Subpart B—Extraction Products Subcategory

439.20 Applicability; description of the extraction products subcategory.
439.21 Specialized definitions.
439.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
439.23 Effluent limitations representing the degree of effluent reducton attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
439.24 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
439.25 New source performance standards (NSPS).
439.26 Pretreatment standards for existing sources (PSES).
439.27 Pretreatment standards for new sources (PSNS).

Subpart C—Chemical Synthesis Products Subcategory

439.30 Applicability; description of the chemical synthesis products subcategory.
439.31 Specialized definitions.
439.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
439.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
439.34 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
439.35 New source performance standards (NSPS).
439.36 Pretreatment standards for existing sources (PSES).
439.37 Pretreatment standards for new sources (PSNS).

Subpart D—Mixing/Compounding and Formulation Subcategory

Sec.
439.40 Applicability; description of the mixing/compounding and formulation subcategory.
439.41 Specialized definitions.
439.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
439.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
439.44 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
439.45 New source performance standards (NSPS).
439.46 Pretreatment standards for existing sources (PSES).
439.47 Pretreatment standards for new sources (PSNS).

Subpart E—Research Subcategory

439.50 Applicability; description of the research subcategory.
439.51 Specialized definitions.
439.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
439.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
439.54 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]
439.55 New source performance standards (NSPS). [Reserved]
439.56 Pretreatment standards for existing sources (PSES). [Reserved]
439.57 Pretreatment standards for new sources (PSNS). [Reserved]

Authority: Sec. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

General Provisions

§ 439 Applicability.

This part applies to any pharmaceutical manufacturing facility which discharges or may discharge process wastewater pollutants to the waters of the United States, or which introduces or may introduce process wastewater pollutants into a publicly owned treatment works.

§ 439.1 General definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) The term "maximum 30 day average" shall mean the maximum average of daily values for 30 consecutive days.

(b) The term "cyanide destruction unit" shall mean a treatment system designed specifically to remove cyanide.

§ 439.2 Monitoring requirements.

Unless otherwise noted, self-monitoring will be conducted at the final effluent discharge point.

Subpart A—Fermentation Products Subcategory

§ 439.10 Applicability; description of the fermentation products subcategory.

The provisions of this subpart are applicable to discharges resulting from the manufacture of pharmaceuticals by fermentation.

§ 439.11 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 and 439.01 shall apply to this subpart.

(b) The term "product" shall mean pharmaceutical products derived from fermentation processes.

§ 439.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a fermentation products plant from a point source subject to the provisions of this paragraph after application of the best practicable control technology currently available:

(1) The allowable effluent discharge limitation for the daily average mass of BOD5 in any calendar month shall be expressed in mass per unit time and shall specifically reflect not less than 90% reduction in the long term daily average raw waste content of BOD5 multiplied by a variability factor of 3.0.

(2) The allowable effluent discharge limitation for the daily average mass of COD in any calendar month shall be expressed in mass per unit time and shall specifically reflect not less than 74 percent reduction in the long term daily average raw waste content of COD multiplied by a variability factor of 2.2.

(3) The long term daily average raw waste load for the pollutants BOD5 and COD is defined as the average daily mass of each pollutant discharged in the influent to the wastewater treatment system over a 12 consecutive month period within the most recent 36 months, which shall include the greatest production effort.

(4) To assure equity in regulating discharges from the point sources covered by this subpart of the point source category, calculation of raw waste loans of BOD5 and COD for the purpose of determining NPDES permit limitations (i.e., the base numbers to which the percent reductions are applied) shall exclude any waste load associated with separable mycelia and solvents in those raw waste loads, except that residual amounts of mycelia and solvents remaining after the practice of recovery and/or separate disposal or reuse may be included in the calculation of the raw waste loads. These practices of removal, disposal, or reuse include physical separation and removal of separable mycelia, recovery of solvents from waste streams, incineration of concentrated solvent waste streams (including tar still bottoms), and broth concentration for disposal other than to the treatment system. This regulation does not prohibit inclusion of such waste in the raw waste loads in fact, nor does it mandate any specific practice, but rather describes the rationale for determining the permit conditions. These limits may be achieved by any of several or a combination thereof of programs and practices.

(5) The pH shall be within the range of 6.0–9.0 standard units.

(6) The allowable effluent discharge limitation for the daily average mass of TSS in any calendar month shall be 1.7 times the BOD5 limitation determined in paragraph (a)(1) of this section.

(7) For those plants using or generating cyanide in the manufacturing process, the allowable effluent discharge for cyanide is shown below.

(i)

Pollutant or pollutant property	BPT Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4

(ii) If all cyanide-containing waste streams are diverted to a cyanide destruction unit and the effluent from the cyanide destruction unit is discharged to a biological treatment system, self-monitoring must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the daily maximum cyanide limitation is multiplied by 0.18, the maximum 30 day average cyanide limitation is multiplied by 0.35, and both limitations are adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated in a cyanide destruction unit or if the effluent from the cyanide destruction unit is not discharged to a biological treatment system, self-monitoring must be conducted at the final effluent discharge point and the daily maximum cyanide limitation must be multiplied by 0.18, the maximum 30 day average cyanide limitation must be multiplied by 0.35, and both limitations must be adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. Permittees not using or generating cyanide must certify to the permit-issuing authority that they are not using or generating this compound.

(b) Dilution to meet the above effluent limitations may not be practiced.

§ 439.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 439.14 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart where cyanide is used or generated in the manufacturing process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(1)

Pollutant or pollutant property	BAT Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4
COD	(1)	(1)

[1] Reserved.

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit and the effluent from the cyanide destruction unit is discharged to a biological treatment system, self-monitoring must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the daily maximum cyanide limitation is multiplied by 0.18, the maximum 30 day average cyanide limitation is multiplied by 0.35, and both limitations are adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated in a cyanide destruction unit or if the effluent from the cyanide destruction unit is not discharged to a biological treatment system, self-monitoring must be conducted at the final effluent discharge point and the daily maximum cyanide limitation must be multiplied by 0.18, the maximum 30 day average cyanide limitation must be multiplied by 0.35, and both limitations must be adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. Permittees not using or generating cyanide must certify to the permit-issuing authority that they are not using or generating this compound.

(b) Dilution in order to meet the above effluent limitations may not be practiced.

§ 439.15 New source performance standards (NSPS).

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart.

(1)

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4
BOD5	(1)	(1)
TSS	(1)	(1)
COD	(1)	(1)
pH	(2)	(2)

[1] Reserved.
[2] Within the range of 6.0 to 9.0 at all times.

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit and the effluent from the cyanide destruction unit is discharged to a biological treatment system, self-monitoring must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the daily maximum cyanide standard is multiplied by 0.18, the maximum 30 day average cyanide standard is multiplied by 0.35, and both standards are adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated in a cyanide destruction unit or if the effluent from the cyanide destruction unit is not discharged to a biological treatment system, self-monitoring must be conducted at the final effluent discharge point and the daily maximum cyanide standard must be multiplied by 0.18, the maximum 30 day average cyanide standard must be multiplied by 0.35, and both standards must be adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. Only facilities where cyanide is used or generated in the manufacturing process are subject to cyanide standards. Permittees not using or generating cyanide must certify to the permit-issuing authority that they are not using or generating this compound.

(b) Dilution in order to meet the above standards may not be practiced.

§ 439.16 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by October 27, 1986, where cyanide is used or generated in the manufacturing process, must achieve the following pretreatment standards for existing sources (PSES).

(1)

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit, self-monitoring for cyanide must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the cyanide standard is adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated, self-monitoring must be conducted at the final effluent discharge point and the cyanide standard must be adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. Indirect dischargers not using or generating cyanide must certify to the publicly owned treatment works that they are not using or generating this compound.

(b) Dilution in order to meet the above standards may not be practiced.

§ 439.17 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and where cyanide is used or generated in the manufacturing process, must achieve the following pretreatment standards for new sources (PSNS).

(1)

Pollutant or pollutant property	PSNS	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total Cyanide	33.5	9.4

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit, self-monitoring for cyanide must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the cyanide standard is adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated, self-monitoring must be conducted at the final effluent discharge point and the cyanide standard must be adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. Indirect dischargers not using or generating cyanide must certify to the publicly owned treatment works that they are not using or generating this compound.

(b) Dilution in order to meet the above standards may not be practiced.

Subpart B—Extraction Products Subcategory

§ 439.20 Applicability; description of the extraction products subcategory.

The provisions of this subpart are applicable to discharges resulting from the manufacture of pharmaceuticals by extraction.

§ 439.21 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 and 439.01 shall apply to this subpart.

(b) The term "product" shall mean biological and natural extraction products. This subcategory shall include blood fractions, vaccines, serums, animal bile derivatives, endocrine products, and isolation of medicinal products, such as alkaloids, from botanical drugs and herbs.

§ 439.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by an extraction products plant from a point source subject to the provisions of this paragraph after application of the best practicable control technology currently available:

(1) The allowable discharge for the pollutant parameters BOD5 and COD shall be expressed in mass per unit time and shall represent the specified wastewater treatment efficiency in

terms of a residual discharge associated with an influent to the wastewater treatment plant corresponding to the maximum production period for a given pharmaceutical plant as defined in paragraph (a)(4) of this section.

(2) The allowable effluent discharge limitation for the daily average mass of BOD5 in any calendar month shall specifically reflect not less than 90 percent reduction in the long term daily average raw waste content of BOD5 multiplied by a variability factor of 3.0. However, a plant shall not be required to attain a maximum 30 day average BOD5 effluent limitation of less than the equivalent of 45 mg/l.

(3) The allowable effluent discharge limitation for the daily average mass of COD in any calendar month shall specifically reflect not less than 74 percent reduction in the long term daily average raw waste content of COD multiplied by a variability factor of 2.2. However, a plant shall not be required to attain a maximum 30 day average COD effluent limitation of less than the equivalent of 220 mg/l.

(4) The long term daily average raw waste load for the pollutants BOD5 and COD is defined as the average daily mass of each pollutant discharged in the influent to the wastewater treatment system over a 12 consecutive month period within the most recent 36 months, which shall include the greatest production effort.

(5) To assure equity in regulating discharges from the point sources covered by this subpart of the point source category, calculation of raw waste loads of BOD5 and COD for the purpose of determining NPDES permit limitations (i.e., the base numbers to which the percent reductions are applied) shall exclude any waste load associated with solvents in those raw waste loads, except that residual amounts of solvents remaining after the practice of recovery and/or separate disposal or reuse may be included in the calculation of the raw waste loads. Those practices of removal, disposal, or reuse include recovery of solvents from waste streams and incineration of concentrated solvent waste streams (including tar still bottoms). This regulation does not prohibit inclusion of such wastes in the raw waste loads in fact, nor does it mandate any specific practice, but rather describes the rationale for determining the permit conditions. These limits may be achieved by any one of several or a combination thereof of programs and practices.

(6) The allowable effluent discharge limitation for the daily mass of TSS in any calendar month shall be 1.7 times the BOD5 limitation determined in paragraph (a)(2) of this section.

(7) The pH shall be within the range of 6.0–9.0 standard units.

(8) For those plants using or generating cyanide in the manufacturing process, the allowable effluent discharge for cyanide is shown below.

(i)

Pollutant of pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4

(ii) If all cyanide-containing waste streams are diverted to a cyanide destruction unit and the effluent from the cyanide destruction unit is discharged to a biological treatment system, self-monitoring must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the daily maximum cyanide limitation is multiplied by 0.18, the maximum 30 day average cyanide limitation is multiplied by 0.35, and both limitations are adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated in a cyanide destruction unit or if the effluent from the cyanide destruction unit is not discharged to a biological treatment system, self-monitoring must be conducted at the final effluent discharge point and the daily maximum cyanide limitation must be multiplied by 0.18, the maximum 30 day average cyanide limitation must be multiplied by 0.35, and both limitations must be adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. Permittees not using or generating cyanide must certify to the permit-issuing authority that they are not using or generating this compound.

(b) Dilution to meet the above effluent limitations may not be practiced.

§ 439.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 439.24 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart where cyanide is used or generated in the manufacturing process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(1)

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total Cyanide	33.5	9.4
COD	(1)	(1)

[1] Reserved.

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit and the effluent from the cyanide destruction unit is discharged to a biological treatment system, self-monitoring must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the daily maximum cyanide limitation is multiplied by 0.18, the maximum 30 day average cyanide limitation is multiplied by 0.35, and both limitations are adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated in a cyanide destruction unit or if the effluent from the cyanide destruction unit is not discharged to a biological treatment system, self-monitoring must be conducted at the final effluent discharge point and the daily maximum cyanide limitation must be multiplied by 0.18, the maximum 30 day average cyanide limitations must be multiplied by 0.35, and both limitations must be adjusted based on the dilution ratio of the cyanide-contaminated waste stream

flow to the total process wastewater discharge flow. Permittees not using or generating cyanide must certify to the permit-issuing authority that they are not using or generating this compound.

(b) Dilution in order to meet the above effluent limitations may not be practiced.

§ 439.25 New source performance standards (NSPS).

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart.

(1)

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4
BOD5	(1)	(1)
TSS	(1)	(1)
COD	(1)	(1)
pH	(2)	(2)

[1] Reserved.
[2] Within the range of 6.0 to 9.0 at all times.

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit and the effluent from the cyanide destruction unit is discharged to a biological treatment system, self-monitoring must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the daily maximum cyanide standard is multiplied by 0.18, the maximum 30 day average cyanide standard is multiplied by 0.35, and both standards are adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated in a cyanide destruction unit or if the effluent from the cyanide destruction unit is not discharged to a biological treatment system, self-monitoring must be conducted at the final effluent discharge point and the daily maximum cyanide standard must be multiplied by 0.18, the maximum 30 day average cyanide standard must be multiplied by 0.35, and both standards must be adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. Only facilities where cyanide is used or generated in the manufacturing process are subject to cyanide standards. Permittees not using or generating cyanide must certify to the permit-issuing authority that they are not using or generating this compound.

(b) Dilution in order to meet the above standards may not be practiced.

§ 439.26 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by October 27, 1986, where cyanide is used or generated in the manufacturing process, must achieve the following pretreatment standards for existing sources (PSES).

(1)

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total Cyanide	33.5	9.4

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit, self-monitoring for cyanide must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the cyanide standard is adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated, self-monitoring must be conducted at the final effluent discharge point and the cyanide standard must be adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. Indirect dischargers not using or generating cyanide must certify to the publicly owned treatment works that they are not using or generating this compound.

(b) Dilution in order to meet the above standards may not be practiced.

§ 439.27 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and where cyanide is used or generated in the manufacturing process, must achieve the following pretreatment standards for new sources (PSNS).

(1)

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total Cyanide	33.5	9.4

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit, self-monitoring for cyanide must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the cyanide standard is adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated, self-monitoring must be conducted at the final effluent discharge point and the cyanide standard must be adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. Indirect dischargers not using or generating cyanide must certify to the publicly owned treatment works that they are not using or generating this compound.

(b) Dilution in order to meet the above standards may not be practiced.

Subpart C—Chemical Synthesis Products Subcategory

§ 439.30 Applicability; description of the chemical synthesis products subcategory.

The provisions of this subpart are applicable to discharges resulting from the manufacture of pharmaceuticals by chemical synthesis.

§ 439.31 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 and 439.01 of this chapter shall apply to this subpart.

(b) The term "product" shall mean pharmaceutical products derived from chemical synthesis processes.

§ 439.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application

of the best practicable control technology currently available (BPT).

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a chemical synthesis plant from a point source subject to the provisions of this paragraph after application of the best practicable control technology currently available:

(1) The allowable discharge for the pollutant parameters BOD5 and COD shall be expressed in mass per unit time and shall represent the specified wastewater treatment efficiency in terms of a residual discharge associated with an influent to the wastewater treatment plant corresponding to the maximum production period for a given pharmaceutical plant as defined in paragraph (a)(4) of this section.

(2) The allowable effluent discharge limitation for the daily average mass of BOD5 in any calendar month shall specifically reflect not less than 90 percent reduction in the long term daily average raw waste content of BOD5 multiplied by a variability factor of 3.0.

(3) The allowable effluent discharge limitation for the daily average mass of COD in any calendar month shall specifically reflect not less than 74 percent reduction in the long term daily average raw waste content of COD multiplied by a variability factor of 2.2.

(4) The long term daily average raw waste load for the pollutant parameters BOD5 and COD is defined as the average daily mass of each pollutant discharged in the influent to the wastewater treatment system over a 12 consecutive month period within the most recent 36 months, which shall include the greatest production effort.

(5) To assure equity in regulating discharges from the point sources covered by this subpart of the point source category, calculation of raw waste loads of BOD5 and COD for the purpose of determining NPDES permit limitations (i.e., the base numbers to which the percent reductions are applied) shall exclude any waste load associated with solvents in those raw waste loads, except that residual amounts of solvents remaining after the practice of recovery and/or separate disposal or reuse may be included in the calculation of the raw waste loads. These practices of removal, disposal, or reuse include recovery of solvents from waste streams and incineration of concentrated solvent waste streams (including tar still bottoms). This regulation does not prohibit inclusion of such wastes in the raw waste loads in fact, nor does it mandate any specific practice, but rather describes the rationale for determining the permit conditions. These limits may be achieved by any one of several or a combination thereof of programs and practices.

(6) The pH shall be within the range of 6.0 to 9.0 standard units.

(7) The allowable effluent discharge limitation for the daily average mass of TSS in any calendar month shall be 1.7 times the BOD5 limitation determined in paragraph (a)(2) of this section.

(8) For those plants using or generating cyanide in the manufacturing process, the allowable effluent discharge for cyanide is shown below.

(i)

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4

(ii) If all cyanide-containing waste streams are diverted to a cyanide destruction unit and the effluent from the cyanide destruction unit is discharged to a biological treatment system, self-monitoring must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the daily maximum cyanide limitation is multiplied by 0.18, the maximum 30 day average cyanide limitation is multiplied by 0.35, and both limitations are adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated in a cyanide destruction unit or if the effluent from the cyanide destruction unit is not discharged to a biological treatment system, self-monitoring must be conducted at the final effluent discharge point and the daily maximum cyanide limitation must be multiplied by 0.18, the maximum 30 day average cyanide limitation must be multiplied by 0.35, and both limitations must be adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. Permittees not using or generating cyanide must certify to the permit-issuing authority that they are not using or generating this compound.

(b) Dilution to meet the above effluent limitations may not be practiced.

§ 439.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 439.34 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart where cyanide is used or generated in the manufacturing process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(1)

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4
COD	(1)	(1)

[1] Reserved.

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit and the effluent from the cyanide destruction unit is discharged to a biological treatment system, self-monitoring must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the daily maximum cyanide limitation is multiplied by 0.18, the maximum 30 day average cyanide limitation is multiplied by 0.35, and both limitations are adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated in a cyanide destruction unit is not discharged to a biological treatment system, self-monitoring must be conducted at the final effluent discharge point and the daily maximum cyanide limitation must be multiplied by 0.18, the maximum 30 day average cyanide limitation must be multiplied by 0.35, and both limitations must be adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. Permittees not using or generating cyanide must certify to the permit-issuing authority that they are not using or generating this compound

(b) Dilution in order to meet the above effluent limitations may not be practiced.

§ 439.35 New source performance standards (NSPS).

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart.

(1)

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4
BOD[5]	(1)	(1)
TSS	(1)	(1)
COD	(1)	(1)
pH	(2)	(2)

[1] Reserved.
[2] Within the range of 6.0 to 9.0 at all times.

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit and the effluent from the cyanide destruction unit is discharged to a biological treatment system, self-monitoring must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the daily maximum cyanide standard is multiplied by 0.18, the maximum 30 day average cyanide standard is multiplied by 0.35, and both standards are adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated in a cyanide destruction unit or if the effluent from the cyanide destruction unit is not discharged to a biological treatment system, self-monitoring must be conducted at the final effluent discharge point and the daily maximum cyanide standard must be multiplied by 0.18, the maximum 30 day average cyanide standard must be multiplied by 0.35, and both standards must be adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. Only facilities where cyanide is used or generated in the manufacturing process are subject to cyanide standards. Permittees not using or generating cyanide must certify to the permit-issuing authority that they are not using or generating this compound.

(b) Dilution in order to meet the above standards may not be practiced.

§ 439.36 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by October 27, 1986, where cyanide is used or generated in the manufacturing process, must achieve the following pretreatment standards for existing sources (PSES).

(1)

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total Cyanide	33.5	9.4

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit, self-monitoring for cyanide must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the cyanide standard is adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing streams are not treated, self-monitoring must be conducted at the final effluent discharge point and the cyanide standard must be adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. Indirect dischargers not using or generating cyanide must certify to the publicly owned treatment works that they are not using or generating this compound.

(b) Dilution in order to meet the above standards may not be practiced.

§ 439.37 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and where cyanide is used or generated in the manufacturing process, must achieve the following pretreatment standards for new sources (PSNS).

(1)

Pollutant or pollutant property	PSNS	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total Cyanide	33.5	9.4

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit, self-monitoring for cyanide must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the cyanide standard is adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing streams are not treated, self-monitoring must be conducted at the final effluent discharge point and the cyanide standard must be adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. Indirect dischargers not using or generating cyanide must certify to the publicly owned treatment works that they are not using or generating this compound.

(b) Dilution in order to meet the above standards may not be practiced.

Subpart D—Mixing/Compounding and Formulation Subcategory

§ 439.40 Applicability; description of the mixing/compounding and formulation subcategory.

The provisions of this subpart are applicable to discharges resulting from mixing/compounding and formulaton operations of pharmaceutical products.

§ 439.41 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 and 439.01 of this chapter shall apply to this subpart.

(b) The term "product" shall mean products from plants which blend, mix, compound, and formulate pharmaceutical ingredients. Pharmaceutical preparations for human and veterinary use such as ampules, tablets, capsules, vials, ointments, medicinal powders, solutions, and suspensions are included.

§ 439.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a mixing/compounding and formulation plant from a point source subject to the provisions of this paragraph after application of the best practicable control technology currently available:

(1) The allowable discharge for the pollutant parameters BOD5 and COD shall be expressed in mass per unit time and shall represent the specified wastewater treatment efficiency in terms of a residual discharge associated with an influent to the wastewater treatment plant corresponding to the maximum production period for a given pharmaceutical plant as defined in paragraph (a)(4) of this section.

(2) The allowable effluent discharge limitation for the daily average mass of BOD5 in any calendar month shall specifically reflect not less than 90 percent reduction in the long term daily average raw waste content of BOD5 multiplied by a variability factor 3.0. However, a plant shall not be required to attain a maximum 30 day average BOD5 effluent limitation of less than the equivalent of 45 mg/l.

(3) The allowable effluent discharge limitation for the daily average mass of COD in any calendar month shall specifically reflect not less than 74 percent reduction in the long term daily average raw waste content of COD multiplied by a variability factor of 2.2. However, a plant shall not be required to attain a maximum 30 day average COD effluent limitation of less than the equivalent of 220 mg/l.

(4) The long term daily average raw waste load for the pollutant parameters BOD5 and COD is defined as the average daily mass of each pollutant discharged in the influent to the wastewater treatment system over a 12 consecutive month period within the most recent 36 months, which shall include the greatest production effort.

(5) To assure equity in regulating discharges from the point sources covered by this subpart of the point source category, calculation of raw waste loads of BOD5 and COD for the purpose of determining NPDES per limitations (i.e., the base numbers to which the percent reductions are applied) shall exclude any waste load associated with solvents in those raw waste loads except that residual amounts of solvents remaining after the practice of recovery and/or separate disposal or reuse may be included in the calculation of the raw waste loads. These practices of removal, disposal, or reuse include recovery of solvents from waste streams and incineration of concentrated solvent waste streams (including tar still bottoms). This regulation does not prohibit inclusion of such wastes in the raw waste loads in fact, nor does it mandate any specific practice, but rather describes the rationale for determining the permit conditions. These limits may be achieved by any one of several or a combination thereof of programs and practices.

(6) The allowable effluent discharge limitation for the daily average mass of TSS in any calendar month shall be 1.7 times the BOD5 limitation determined in (2) above.

(7) The pH shall be within the range of 6.0–9.0 standard units.

(8) For those plants using or generating cyanide in the manufacturing process, the allowable effluent discharge for cyanide is shown below.

(i) See table below:

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4

(ii) If all cyanide-containing waste streams are diverted to a cyanide destruction unit and the effluent from the cyanide destruction unit is discharged to a biological treatment system, self-monitoring must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the daily maximum cyanide limitation is multiplied by 0.18, the maximum 30 day average cyanide limitation is multiplied by 0.35, and both limitations are adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated in a cyanide destruction unit or if the effluent from the cyanide destruction unit is not discharged to a biological treatment system, self-monitoring must be conducted at the final effluent discharge point and the daily maximum cyanide limitation must be multiplied by 0.18, the maximum 30 day average cyanide limitation must be multiplied by 0.35, and both limitations must be adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. Permittees not using or generating cyanide must certify to the permit-issuing authority that they are not using or generating this compound.

(b) Dilution to meet the above effluent limitations may not be practiced.

§ 439.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 439.44 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart where cyanide is used or generated in the manufacturing process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(1)

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4
COD	(1)	(1)

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit and the effluent from the cyanide destruction unit is discharged to a biological treatment system, self-monitoring must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the daily maximum cyanide limitation is multiplied by 0.18, the maximum 30 day average cyanide limitation is multiplied by 0.35, and both limitations are adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated in a

cyanide destruction unit or if the effluent from the cyanide destruction unit is not discharged to a biological treatment system, self-monitoring must be conducted at the final effluent discharge point and the daily maximum cyanide limitation must be multiplied by 0.18, the maximum 30 day average cyanide limitation must be multiplied by 0.35, and both limitations must be adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. Permittees not using or generating cyanide must certify to the permit-issuing authority that they are not using or generating this compound.

(b) Dilution in order to meet the above effluent limitations may not be practiced.

§ 439.45 New source performance standards (NSPS).

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart.

(1)

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4
BOD5	(1)	(1)
TSS	(1)	(1)
COD	(1)	(1)
pH	(2)	(2)

[1] Reserved.
[2] Within the range of 6.0 to 9.0 at all times.

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit and the effluent from the cyanide destruction unit is discharged to a biological treatment system, self-monitoring must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the daily maximum cyanide standard is multiplied by 0.18, the maximum 30 day average cyanide standard is multiplied by 0.35, and both standards are adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated in a cyanide destruction unit or if the effluent from the cyanide destruction unit is not discharged to a biological treatment system, self-monitoring must be conducted at the final effluent discharge point and the daily maximum cyanide standard must be multiplied by 0.18, the maximum 30 day average cyanide standard must be multiplied by 0.35, and both standards must be adjusted based on the dilution ratio of the cyanide-contaminated waste stream flow to the total process wastewater discharge flow. Only facilities where cyanide is used or generated in the manufacturing process are subject to cyanide standards. Permittees not using or generating cyanide must certify to the permit-issuing authority that they are not using or generating this compound.

(b) Dilution in order to meet the above standards may not be practiced.

§ 439.46 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by October 27, 1986, where cyanide is used or generated in the manufacturing process, must achieve the following pretreatment standards for existing sources (PSES).

(1)

Pollutant or pollutant property	PSES	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit, self-monitoring for cyanide must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the cyanide standard is adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated, self-monitoring must be conducted at the final effluent discharge point and the cyanide standard must be adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. Indirect dischargers not using or generating cyanide must certify to the publicly owned treatment works that they are not using or generating this compound.

(b) Dilution in order to meet the above standards may not be practiced.

§ 439.47 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7 any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and where cyanide is used or generated in the manufacturing process, must achieve the following pretreatment standards for new sources (PSNS).

(1)

Pollutant or pollutant property	PSNS	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4

(2) If all cyanide-containing waste streams are diverted to a cyanide destruction unit, self-monitoring for cyanide must be conducted after cyanide treatment and before dilution with other streams. Alternatively, self-monitoring may be conducted at the final effluent discharge point, if the cyanide standard is adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. However, if all cyanide-containing waste streams are not treated, self-monitoring must be conducted at the final effluent discharge point and the cyanide standard must be adjusted based on the dilution ratio of contaminated waste stream flow to the total process wastewater discharge flow. Indirect dischargers not using or generating cyanide must certify to the publicly owned treatment works that they are not using or generating this compound.

(b) Dilution in order to meet the above standards may not be practiced.

Subpart E—Research Subcategory

§ 439.50 Applicability; description of the research subcategory.

The provisions of this subpart are applicable to discharges resulting from pharmaceutical research.

§ 439.51 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in in 40 CFR Part 401 and 439.01 shall apply to this subpart.

(b) The term "product" shall mean products or services resulting from pharmaceutical research, which includes

microbiological, biological, and chemical operations.

§ 439.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a pharmaceutical research operation from a point source subject to the provisions of this paragraph after application of the best practicable control technology currently available:

(1) The allowable discharge for the pollutant parameters BOD5 and COD shall be expressed in mass per unit time and shall represent the specified wastewater treatment efficiency in terms of a residual discharge associated with an influent to the wastewater treatment plant corresponding to the maximum production period for a given pharmaceutical plant as defined in paragraph (a)(4) of this section.

(2) The allowable effluent discharge limitation for the daily average mass of BOD5 in any calendar month shall specifically reflect not less than 90 percent reduction in the long term daily average raw waste content of BOD5 multiplied by a variability factor of 3.0. However, a plant shall not be required to attain a maximum 30 day average BOD5 effluent limitation of less than the equivalent of 45 mg/l.

(3) The allowable effluent discharge limitation for the daily average mass of COD in any calendar month shall specifically reflect not less than 74 percent reduction in the long term daily average raw waste content of COD multiplied by a variability factor of 2.2. However, a plant shall not be required to attain a maximum 30 day average COD effluent limitation of less than the equivalent of 220 mg/l.

(4) The long term daily average raw waste load for the pollutant parameters BOD5 and COD is defined as the average daily mass of each pollutant influent to the wastewater treatment system over a 12 consecutive month period within the most recent 36 months, which shall include the greatest production effort.

(5) To assure equity in regulation discharges from the point sources covered by this subpart of the point source category, calculation of raw waste loads of BOD5 and COD for the purpose of determining NPDES permit limitations (i.e., the base numbers to which the percent reductions are applied) shall exclude any waste load associated with solvents in those raw waste loads, except that residual amounts of solvents remaining after the practice of recovery and/or separate disposal or reuse may be included in the calculation of the raw waste loads. These practices of removal, disposal, or reuse include recovery of solvents from waste streams and incineration of concentrated solvent waste streams (including tar still bottoms). This regulation does not prohibit inclusion of such wastes in the raw waste loads in fact, nor does it mandate any specific practice, but rather describes the rationale for determining the permit conditions. These limits may be achieved by any one of several or a combination thereof of programs and practices.

(6) The allowable effluent discharge limitation for the daily average mass of TSS in any calendar month shall be 1.7 times the BOD5 limitation determined in paragraph (a)(2) of this section.

(7) The pH shall be within the range of 6.0–9.0 standard units.

(b) Dilution to meet the above effluent limitations may not be practiced.

§ 439.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 439.54 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 439.55 New source performance standards (NSPS). [Reserved]

§ 439.56 Pretreatment standards for existing sources (PSES). [Reserved]

§ 439.57 Pretreatment standards for new sources (PSNS). [Reserved]

[FR Doc. 83-28778 Filed 10-26-83; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 439

[WH-FRL-2443-2]

Pharmaceutical Manufacturing Point; Source Category; New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Regulation.

SUMMARY: EPA is proposing "new source performance standards" (NSPS) as required by the Clean Water Act. This proposed regulation would limit the discharge of five-day biochemical oxygen demand (BOD5) and total suspended solids (TSS) into waters of the United States by new sources that conduct pharmaceutical manufacturing operations. The intended effect of this action is to reduce the discharge of two conventional pollutants, BOD5 and TSS, from new pharmaceutical manufacturing plants.

DATE: Comments on this proposal must be submitted no later than December 27, 1983.

ADDRESSES: Send comments in triplicate to: Dr. Frank H. Hund, Effluent Guidelines Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attention: Pharmaceutical Industry Rules. The entire record for this rulemaking, including copies of the technical development document and the economic analysis will be available for public review in EPA's Public Information Reference Unit, Room 2404 (Rear) in the EPA Library, 401 M Street, SW., Washington, D.C. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

Technical information and the technical document may be obtained by writing to Dr. Frank H. Hund, Effluent Guidelines Division (WH-586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, or by calling (202) 382-7182. Economic information and the economic impact analysis may be obtained by writing to Mr. Joseph Yance, Office of Analysis and Evaluation (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, or by calling (202) 382-5379.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Hund, (202) 382-7182, U.S. EPA, WH-552.

SUPPLEMENTARY INFORMATION:

Organization of this Notice

I. Legal authority.
II. Background.
III. New source performance standards.
IV. Economic considerations.
V. Non-water quality environmental impacts.
VI. Upset and bypass provisions.
VII. Variances and modifications.
VIII. Implementation of limitations and standards.
IX. Solicitation of comments.
X. Availability of technical information.
XI. Office of Management and Budget (OMB) review.
XII. List of subjects in 40 CFR Part 439.

I. Legal Authority

EPA is proposing this regulation under the authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Public Law 95-217), also called the "Act."

II. Background

On November 26, 1982, EPA proposed regulations applicable to the pharmaceutical manufacturing point source category (47 FR 53584). In a separate section of today's **Federal Register**, EPA is promulgating final regulations covering most aspects of that proposal. The only issue involved in today's proposal is new source performance standards (NSPS) for conventional pollutants. The reader should consult the preamble to the November 1982 proposed regulation and today's final regulation for an in-depth discussion of the characteristics of the pharmaceutical industry, Agency subcategorization schemes, other applicable effluent limitations and standards, and their rationale.

The November 1982 proposed regulations included proposed concentration-based new source performance standards (NSPS) for two conventional pollutants, five-day biochemical oxygen demand (BOD5) and total suspended solids (TSS). These standards applied uniformly to subcategories A, B, C, and D. EPA based the proposed NSPS on the application of advanced biological treatment (i.e., biological treatment systems with longer detention times than those considered as the basis of effluent limitations reflecting the best practicable control technology currently available (BPT)).

The industry commented that new sources in subcategories A and C could not meet the proposed NSPS because the Agency's proposed subcategorization scheme was incorrect and because the data based used to develop proposed NSPS contained too many low raw waste load (subcategory D) facilities. They also contended that percent reduction-based standards rather than concentration-based standards are more appropriate because of the wide variation in the raw waste characteristics of pharmaceutical plant discharges.

Our review of the data used to develop the November 1982 proposed NSPS indicates that subcategory D plants did indeed dominate the data base. We analyzed all available data, including new data submitted with comments, and found that fermentation (subcategory A) and chemical synthesis (subcategory C) plants have higher conventional pollutant raw waste loads than extraction (subcategory B) and formulation (subcategory D) plants. For the reasons discussed in the preamble to the final regulation that also appears in today's **Federal Register**, EPA has decided to maintain the original BPT subcategorization scheme. We also determined that, because conventional pollutant raw waste characteristics are similar for subcategories A and C, conventional pollutant NSPS for those plants should be identical. For the same reason, conventional pollutant NSPS for subcategory B plants should be identical to those for subcategory D.

Since proposal, we have identified four pharmaceutical plants which have added filtration systems to advanced biological treatment systems to control further the discharge of conventional pollutants. Conventional pollutant discharges from these plants are significantly lower than from plants where only advanced biological treatment is employed. Consequently, the Agency believes that the addition of filtration to advanced biological treatment is a technology option which must be considered in establishing NSPS for conventional pollutants in this industry.

The public has not yet had an opportunity to provide comments on Agency estimates of the cost of the addition of filtration or on the additional effluent reduction benefits of filtration technology when applied at new source pharmaceutical plants. Therefore, EPA has determined that it would be appropriate to propose rather than promulgate NSPS for conventional pollutants based on this model treatment technology. For the reasons discussed below, EPA has determined that effluent filtration is the appropriate technology basis for NSPS and is proposing NSPS based on the combination of advanced biological treatment and effluent filtration.

We continue to believe that concentration-based standards are

appropriate as the basis for NSPS in the pharmaceutical industry. Available data on the application of advanced biological treatment and effluent filtration indicate that industry is capable of designing and operating end-of-pipe systems that will achieve the concentration-based standards specified in today's proposal.

III. New Source Performance Standards

New source performance standards (NSPS) are established under Section 306 of the Act and are based on the best available demonstrated technology. New plants have the opportunity to design the best and most efficient pharmaceutical manufacturing and wastewater treatment technologies. Therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-process treatment technologies that reduce pollution to the maximum extent feasible. As a result, limitations for NSPS should represent the most stringent numerical values attainable through the application of demonstrated control technology for all pollutants (conventional, nonconventional, and toxic).

In today's **Federal Register**, EPA is promulgating NSPS for cyanide and pH. Standards for cyanide and pH are shown in today's proposed rule for the convenience of the reader only; they are not being reproposed. The other pollutants of concern in the pharmaceutical industry are methylene chloride, BOD5, TSS, and COD. As explained in the preamble to the final regulation, categorical NSPS controlling methylene chloride are not being established, and the Agency is postponing a final decision on appropriate NSPS for COD. The only remaining issue for this proposal is how best to control BOD5 and TSS.

EPA considered two options to control BOD5 and TSS discharges from new source pharmaceutical plants. Analyses of these options follow. (For a more detailed description, see Sections V, VI, and VII of the Proposed Development Document).

Option A. Promulgate NSPS controlling BOD5 and TSS based on the performance of the best plants employing advanced biological treatment. This option is identical to the November 1982 proposal. These final standards would require that specific concentration-based limits be met. Standards for extraction (subcategory B) and formulation (subcategory D) plants would be identical. Standards for fermentation plants (subcategory A) would be the same as those for synthesis plants (subcategory C).

EPA estimated the costs and conventional pollutant removals for model plants having conventional pollutant raw waste concentrations equal to the average for pharmaceutical plants employing advanced biological treatment and/or effluent filtration. We estimate that a model new source subcategory A or C plant discharging 1.2 million gallons of wastewater per day (MGD), in complying with NSPS based on Option A, would remove 1.47 million pounds per year of BOD5 and TSS beyond BPT. The incremental capital and total annual costs beyond BPT would be $1.27 and $0.36 million, respectively (1982 dollars). We estimate that a model new source subcategory B or D plant discharging 0.050 MGD, in complying with NSPS based on Option A, would remove about 16,000 pounds per year of BOD5 and TSS beyond BPT. The incremental capital and total annual costs beyond BPT would be $43,000 and $12,000, respectively (1982 dollars).

Option B. Propose NSPS controlling BOD5 and TSS based on the performance of the best plants with advanced biological treatment and effluent filtration (i.e., Option A plus effluent filtration). These proposed standards would require that specific concentration-based limits be met. Standards for extraction (subcategory B) and formulation (subcategory D) plants would be identical. Standards for fermentation plants (subcategory A) would be the same as those for synthesis plants (subcategory C).

EPA estimated the costs and conventional pollutant removals for model plants have conventional pollutant raw waste concentrations equal to the average for pharmaceutical plants employing advanced biological treatment and/or effluent filtration. We estimate that a model new source subcategory A or C plant discharging 1.2 (MGD), in complying with NSPS based on Option B, would remove 1.63 million pounds per year of BOD5 and TSS beyond BPT. The incremental capital and total annual costs beyond BPT would be $2.30 and $0.64 million, respectively (1982 dollars). We estimate that a model new source subcategory B or D plant discharging 0.050 MGD, in complying with NSPS based on Option B, would remove about 17,000 pounds per year of BOD5 and TSS beyond BPT. The incremental capital and total annual costs beyond BPT would be $271,000 and $70,000, respectively (1982 dollars).

NSPS Selection and Decision Criteria. EPA selected Option B as the technology basis and is proposing conventional pollutant NSPS based on advanced biological treatment and effluent filtration as the model treatment technology. Filtration is an available, demonstrated technology in this industry that results in additional conventional pollutant removal beyond that attained by the application of advanced biological treatment only. As explained below, EPA does not expect the costs incurred at new sources resulting from compliance with proposed NSPS to cause a barrier to entry.

IV. Economic Considerations

A. Costs and Economic Impact

The economic impact of proposed NSPS is analyzed in a report entitled *Economic Impact Analysis of Effluent Standards and Limitations for the Pharmaceutical Industry* (USEPA, September 1983). EPA assessed the economic impact of the proposed NSPS by determining for model treatment systems designed to treat different wastewater discharge flows whether the incremental costs for new sources, over the requirements for existing sources, would be sufficiently high, in relation to the sales revenues of the manufacturing facility as a whole, to constitute a barrier to entry or construction. As part of this assessment, EPA also considered data on the proportion of plants that are direct dischargers versus indirect or zero dischargers.

Because subcategory B and D plants discharge low wastewater volumes, the incremental cost of new source treatment relative to sales would be very small. A larger impact occurs for subcategory A and C plants. For example, a large plant discharging 1.2 MGD would experience an increase in treatment costs over those incurred in complying with BPT effluent limitations of $0.64 million per year (1982 dollars). We project that this flow rate corresponds to a plant with employment of approximately 350 workers and 1982 sales on the order of $80 million. Hence, the incremental annual cost of treatment beyond BPT is about 0.8 percent of sales. If a new source were built that discharged 0.5 MGD, the median flow rate for existing subcategory A and C plants, EPA estimates that incremental costs would be 0.9 percent of sales revenues. For a new plant discharging 0.1 MGD, the lower quartile flow rate for existing plants, the ratio would be 0.6 percent of sales. Hence, the Agency estimates that the incremental costs of NSPS for subcategory A and C plants would not be large—in the range of 0.6 to 0.9 percent. For a plant in subcategories B or D, with a median flow of 0.05 MGD, we estimate that the incremental NSPS cost to sales ratio

would be considerably less—0.15 percent.

An additional factor that tends to reduce the potential impact of this proposal is that it pertains only to direct dischargers, while the discharge mode commonly chosen by pharmaceutical plants is indirect discharge. Also, many plants are zero dischargers. Eighty-nine percent of existing pharmaceutical plants are zero or indirect dischargers; this figure varies with size, with more of the smaller plants being zero or indirect dischargers.

Given the fact that the incremental costs are estimated to be in the range of one percent for the plants most seriously affected, and that in most cases indirect discharge is apparently an option, the Agency believes that the proposed regulation would not constitute a barrier to entry or construction.

For proposed regulations controlling toxic pollutants, the Agency carries out cost-effectiveness analyses based on the incremental pollutant removal and incremental costs attributable to the proposed regulation. However, in this case, since the purpose of the proposed regulation is to effect a reduction in BOD_5 and TSS, conventional pollutants, a cost-effectiveness analysis was not carried out.

B. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules are those which impose an annual cost on the economy of $100 million or more or have certain other economic impacts. This regulation is not a major rule because its annualized cost is less than $100 million and it meets none of the other criteria specified in Section I, paragraph (b) of the Executive Order. The economic impact analysis prepared for this rulemaking satisfies the requirement of the Executive Order for a non-major rule.

C. Regulatory Flexibility Analysis

Public Law 96–354 requires EPA to prepare an *Initial Regulatory Flexibility Analysis* for all regulations that have a significant impact on a substantial number of small entries. This analysis may be conducted in conjunction with or as part of other Agency analyses.

The Agency's analysis of the economic impact of the proposed regulation, described above, indicates that the ratios of the incremental costs beyond BPT to sales are not substantially different for small plants compared to large and medium-sized plants. In addition, the fraction of small plants likely to be affected by the proposed regulation is smaller, because more small plants are indirect or zero dischargers. Hence, EPA does not believe that proposed NSPS would cause a disproportionate economic burden on small new sources. Therefore, a formal Regulatory Flexibility Analysis is not required.

D. SBA Loans

The Agency is continuing to encourage small pharmaceutical manufacturers to use Small Business Administration (SBA) financing as needed for pollution control equipment. The three basic programs are: (1) The Section 503 Program, (2) the Regular Guarantee Program, and (3) the Guaranteed Pollution Control Bond Program. All the SBA loan programs are open only to businesses that have: (a) Net assets less than $6 million, and (b) an average annual after-tax income of less than $2 million, and (c) fewer than 250 employees. The estimated economic impacts for this point source category do not include consideration of financing available through these programs.

The Section 503 Program, as amended in July 1980, allows long-term loans to small and medium sized businesses. These loans are made by SBA approved local development companies. For the first time, these companies are authorized to issue Government-backed debentures that are bought by the Federal Financing Bank, an arm of the U.S. Treasury.

Through SBA's Regular Guarantee Program, loans are made available by commercial banks and are guaranteed by the SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Guarantee and Section 503 Programs, contact your district or local SBA Office. The coordinator at EPA headquarters is Ms. Frances Desselle who may be reached at (202) 382–5373.

For further information and specifics on the Guaranteed Pollution Control Bond Program contact: U.S. Small Business Administration, Office of Pollution Control Financing, 4040 North Fairfax Drive, Rosslyn, Virginia 22203 (703) 235–2902.

V. Non-Water Quality Environmental Impacts

Eliminating or reducing one form of pollution may cause other environmental problems. Sections 304(b) and 306 of the Act require EPA to consider the non-water quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption. This proposed regulation was reviewed by EPA personnel responsible for non-water quality programs. While it is difficult to balance pollution problems against each other and against energy use, EPA believes that, if finalized, this proposed regulation will best serve often competing national goals.

The following non-water quality environmental impacts (including energy requirements) are associated with this proposed regulation. The Administrator has determined that the impacts identified below are justified by the benefits associated with compliance with the proposed new source performance standards.

Implementation of this proposed regulation would not substantially increase air pollution, energy use, or solid waste generation. The proposed regulations are not expected to cause any significant air pollution problems. EPA estimates that compliance with proposed NSPS for conventional pollutants will increase energy use by less than one percent at subcategory A or C and subcategory B or D plants.

EPA estimates that, to comply with proposed NSPS, the incremental solid waste generated at a model new source fermentation (subcategory A) or chemical synthesis (subcategory C) plant discharging 1.2 MGD of wastewater and a model extraction (subcategory B) or formulation (subcategory D) plant discharging 0.050 MGD of wastewater will be approximately 200,000 and 2,100 additional pounds per year of wastewater treatment sludge, respectively, beyond that generated in meeting BPT effluent limitations. This is equal to an incremental increase of about 3.9 percent for subcategory A or C plants and about 3.0 percent for subcategory B or D plants over that generated to meet BPT effluent limitations. The solid wastes generated through wastewater treatment at pharmaceutical plants have not been listed as hazardous in regulations promulgated by the Agency under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (see 45 FR 33066; May 19 1980). Accordingly, it does not appear likely that the wastewater sludges generated by new source pharmaceutical plants under the proposed NSPS will be subject to the comprehensive RCRA program establishing requirements for persons handling, transporting, treating, storing, and disposing of hazardous wastes. The Agency's estimates of the costs of this regulation include the cost of handling these sludges as a non-hazardous waste.

VI. Upset and Bypass Provisions.

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is an unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision is necessary in EPA's effluent limitations because such upsets will inevitably occur even in properly operated control equipment. Because technology-based limitations are to require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have disagreed on whether an explicity upset or excursion exemption is necessary or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Company* v. *EPA*, 564 F. 2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle, supra,* and *Corn Refiners Association, et al.* v. *Costle*, No. 78-1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute* v. *EPA*, 540 F. 2d 1023 (10th Cir. 1976); *CPC International Inc.* v. *Train*, 540 F. 2d 1320 (8th Cir. 1976); *FMC Corp.* v. *Train*, 539 F. 2d 973 (4th Cir. 1976).

An upset is an unintentional episode during which effluent limits are exceeded; however, a bypass is an act of intentional noncompliance during which wastewater treatment facilities are circumvented in emergency situations. We have, in the past, included bypass provisions in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits and has promulgated NPDES regulations which include upset and bypass permit provisions. (See 40 CFR 122.41, 45 FR 14166) (April 1, 1983). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes by passing to prevent loss of life, personal injury, or severe property damage. Consequently, although permittees in the pharmacuetical manufacturing industry will be entitled to upset and bypass provisions incorporated into NPDES permits, this proposed regulation does not address these issues.

VII. Variances and Modifications.

These new source performance standards will be applied in all Federal and State NPDES permits issued to direct dischargers in the pharmaceutical industry.

For new source performance standards, there are no exceptions to the binding limitations. New source performance standards are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. (See *E. I. duPont de Numours and Co.* v. *Train*, 430 U.S. 112 (1977).)

VIII. Implementation of Limitations and Standards.

A. Relationship to NPDES Permits

NSPS are applied to individual pharmaceutical plants through NPDES permits issued by EPA or approved state agencies, under Section 402 of the Act. As discussed in the preceding section of this preamble, these standards must be applied in all Federal and State NPDES permits. Other aspects of the interaction between these standards and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. This regulation will not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit such pollutant on a case-by-case basis when limitations are necessary to carry out the purposes of the Act. In addition, to the extent that state water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit issuing authority.

A second topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which were considered in developing this regulation. We emphasize that although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. We have exercised and intend to exercise that discretion in a manner that recognizes and promotes good-faith compliance efforts.

IX. Solicitation of Comments

EPA invites and encourages public participation in this rulemaking. The Agency asks that comments address specific deficiencies in the record of this proposal and that suggested revisions or corrections be supported by data. EPA is specifically interested in receiving additional comments and information in connection with the following;

(1) EPA requests that plant representatives review all data used by the Agency, including data on flow and on raw waste and final effluent BOD5 and TSS concentrations, to ensure their accuracy.

(2) EPA solicits long-term data on biological treatment technology, including BOD5 and TSS raw waste and final effluent concentrations, daily discharge flow rates, and complete descriptions of the biological treatment system.

(3) EPA solicits long-term data on the application of effluent filtration in conjunction with biological treatment, including BOD5 and TSS raw waste, biological treatment system effluent, and filtration effluent concentrations, daily flow rates, and complete descriptions of the biological treatment and effluent filtration systems.

(4) EPA also solicits data related to COD discharges from the pharmaceutical industry. As explained in the preamble to the final regulation published elsewhere in today's **Federal Register**, EPA is postponing a final decision on approprate NSPS and best available technology economically achievable effluent limitations for COD. EPA is specifically interested in receiving information on the specific compounds that contribute to COD in both raw waste and final effluents, technologies capable of removing COD, and the costs associated with these technologies.

X. Availability of Technical Information

The proposed regulation is explained in two major documents. Technical information is contained in *Development Document for Proposed New Source Performance Standards for Control of Conventional Pollutants in the Pharmaceutical Manufacturing Point Source Category* (USEPA, September 1983). The Agency's economic analysis is presented in *Economic Analysis of Effluent Standards and Limitations for the Pharmaceutical Industry* (USEPA, September 1983). The entire record for this rulemaking, including copies of the technical development document and the economic analysis will be available for public review in EPA's Public Information Reference Unit, Room 2404 (Rear) in the EPA Library, 401 M Street, SW., Washington, D.C. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

Additional information concerning the economic impact analysis may be obtained from Mr. Joseph Yance, Economic Analysis Staff (WH-586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 or by calling (202) 382-5379. Technical information may be obtained by writing to Dr. Frank Hund, Effluent Guidelines Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 or by calling (202) 382-7182.

XI. Office of Management and Budget (OMB) Review

This notice was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA responses to those comments are available for public inspection through contacting the person listed at the beginning of the notice.

This proposed rule does not contain any information collection requiremens subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

XII. List of Subjects in 40 CFR Part 439

Drugs, Waste treatment and disposal, Water pollution control.

Dated: September 30, 1983.

William D. Ruckelshaus,

Administrator.

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technolgy economically achievable, under Section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology, under Section 304(b)(4) of the Act.

BPT—The best practicable control technology currently available, under Section 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Public Law 95-217).

Direct Discharger—A facility where wastewaters are discharged or may be discharged into waters of the United States.

Indirect Discharger—A facility where wastewaters are discharged or may be discharged into a publicy owned treatment works.

New Sources—industrial facilities which are "new sources" under the definition in Section 306 of the Act.

NPDES Permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act.

NSPS—New source performance standards, under Section 306 of the Act.

POTW or POTWs—Publicly owned treatment works.

RCRA—Resource Conservation and Recovery Act (Public Law 94-580) of 1976, as amended, 42 U.S.C. 6901 *et seq.*

PART 439—[AMENDED]

For the reasons stated above, EPA proposed to amend Title 40, Part 439 as follows:

1. Paragraph (a)(1) of 40 CFR 439.15 is revised as follows:

§ 439.15 New source performance standards (NSPS).

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart.

(1)

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4
BOD5	115.0	76.8
TSS	491.0	193.0
COD	(1)	(1)
pH	(2)	(2)

[1] Reserved.
[2] Within the range of 6.0 to 9.0 at all times.

* * * * *

2. Paragraph (a)(1) of 40 CFR 439.25 is revised as follows:

§ 439.25 New source performance standards (NSPS).

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart.

(1)

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4
BOD5	40.7	11.2
TSS	58.9	26.5
COD	(1)	(1)
pH	(2)	(2)

[1] Reserved.
[2] Within the range of 6.0 to 9.0 at all times.

* * * * *

3. Paragraph (a)(1) of 40 CFR 439.35 is revised as follow:

§ 439.35 New source performance standards (NSPS).

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart.

(1)

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4
BOD5	115.0	76.8
TSS	491.0	193.0
COD	(1)	(1)
pH	(2)	(2)

[1] Reserved.
[2] Within the range of 6.0 to 9.0 at all times.

* * * * *

4. Paragraph (a)(1) of 40 CFR 439.45 is revised as follows:

§ 439.45 New source performance standards (NSPS).

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart.

(1)

Pollutant or pollutant property	NSPS	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total cyanide	33.5	9.4
BOD5	40.7	11.2
TSS	58.9	26.5
COD	(1)	(1)
pH	(2)	(2)

[1] Reserved.
[2] Within the range of 6.0 to 9.0 at all times.

* * * * *

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Federal Register

Vol. 48, No. 209

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INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-4534
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Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

United States Government Manual	523-5230

SERVICES

Agency services	523-5237
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

45093-45218.....3
45219-45370.....4
45371-45522.....5
45523-45752.....6
45753-46004.....7
46005-46258.....11
46259-46486.....12
46487-46730.....13
46731-46962.....14
46963-48214.....17
48215-48438.....18
48439-48642.....19
48643-48792.....20
48793-48996.....21
48997-49204.....24
49205-49498.....25
49499-49650.....26
49651-49836.....27

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
Ch. III.....45266, 46795
Ch. IV.....47976
305.....45266

3 CFR

Executive Orders:
July 15, 1875 (Revoked in part by PLO 6479).....45559
11459 (Superseded by EO 12445).....48441
12002 (See EO 12444).....48215
12214 (See EO 12444).....48215
12444.....48215
12445.....48441
12446.....48443

Proclamations:
5110.....45219
5111.....45221
5112.....45371
5113.....45523
5114.....45753
5115.....46259
5116.....46963
5117.....46965
5118.....48217
5119.....48439
5120.....49205
5121.....49207

5 CFR

Ch. XIV.....45373
213.....46261
300.....49472
335.....49472
351.....49462
430.....49472
431.....49472
451.....49472
531.....49472
532.....49472
540.....49472
551.....49494
771.....49472
752.....45525
1255.....45373

Proposed Rules:
Ch. I.....47990
Ch. III.....47982
293.....49492
550.....49023

7 CFR

Ch. IV.....48449
27.....49209
2.....46261, 48449
28.....48997
51.....46487
247.....46731
301.....46262, 48449
319.....46732
752.....45526
906.....45374
908.....45526, 46488, 48643
910.....45374, 45755, 46961, 48793
919.....45374
929.....45374
981.....45374
989.....49214
991.....45374, 48219
1065.....48793
1093.....48998
1205.....48451
1435.....45374
1901.....45532
1945.....48999
1951.....46967
1955.....46967
1962.....46967
1965.....46967

Proposed Rules:
Subtitle A.....47236
Ch. I.....47236
Ch. II.....47236
Ch. III.....47236
Ch. VI.....47236
Ch. VII.....47236
Ch. XI.....47236
Ch. XIV.....47236
Ch. XVII.....47236
Ch. XVIII.....47236
226.....45779
402.....46062
411.....48675
421.....49250
441.....45782
781.....46065
904.....45786
910.....45565
966.....46544
981.....49254
983.....49025
1065.....45117
1093.....49512
1125.....49255
1131.....46343
1133.....49255
1139.....46797
1207.....49026
1446.....48471
1700.....48830
1701.....48472

8 CFR

100.....48794
103.....45093, 49499, 49651
214.....45093, 48452, 48999
238.....45093, 48796
248.....45093

Proposed Rules:
Ch. 1 47530
103 48242

9 CFR

92 49499
166 48643
Proposed Rules:
Ch. I 47236
Ch. II 47236
Ch. III 47236
92 ..... 46355, 49000
101 48679
113 48679
317 45118
318 48242
319 45118
325 46996
350 45755
362 45755
381 ..... 45118, 46996, 48224

10 CFR

2 46489
50 46489
55 45223
71 45381
95 48644
458 49622
761 45746
710 46499
Proposed Rules:
Ch. I 48156
Ch. II 47324
Ch. III 47324
Ch. X 47324
50 45787
60 48473
140 48474

11 CFR

114 48650
9001 49653
9002 49653
9003 49653
9004 49653
9005 49653
9006 49653
9007 49653
9012 49653

12 CFR

5 48452
7 ..... 46502, 48452
29 45532
34 49216
204 ..... 46005, 46262
207 ..... 45533, 48219, 48796
217 ..... 45756, 46262, 49654
220 ..... 45533, 48219
221 ..... 45533, 48219, 48797
224 45533
226 48219
561 45382
563 ..... 45382, 48455
760 46006
Proposed Rules:
Ch. I 47716
Ch. II 46996
Ch. V 48110
Ch. VI 48074
Ch. VII 48150
5 49291
29 47001
215 49293
224 49295
304 49517
349 49517
701 48830

13 CFR

101 45224
123 45225
133 46008
Proposed Rules:
Ch. I 48020
Ch. III 47254

14 CFR

21 ..... 48798, 49216
39 ..... 45093, 45535, 46008, 46009, 46503, 46969, 48220, 48222, 48801–48804
71 ..... 45094, 45095, 45536, 45537, 46010, 46503, 48805, 49500, 49501
95 46504
97 ..... 45096, 49001
205 46264
248 46265
294 46265
320 45236
380 46265
389 45758
Proposed Rules:
Ch. I 46358, 47582, 48681, 49659
Ch. II 47003, 48038
Ch. V 47972
21 ..... 45214, 45565
25 ..... 46218, 46250
29 46250
39 ..... 46070, 49296, 49297
43 48364
61 45214
65 45214
71 ..... 45118, 45566, 48244, 48831
91 48364
107 45214
109 45214
121 ..... 45214, 46218, 46250, 48364
127 48364
135 ..... 45214, 48364
145 45214
320 48832

15 CFR

Proposed Rules:
Subtitle A 47254
Ch. I 47254
Ch. III 47254, 49659
Ch. IV 47254
Ch. VIII 47254
Ch. IX 47254
Ch. XXIII 47254

16 CFR

13 ..... 48651, 49217, 49225
305 49654
453 45537
Proposed Rules:
Ch. I 48120
Ch. II 48064
13 49299
300 48682
301 48682
303 48683
305 49660
1212 45405
1500 45567
1513 45567

17 CFR

1 ..... 49003, 49501
145 ..... 46010, 48223
146 ..... 46010, 48223
147 ..... 46010, 48223
229 46012
230 ..... 46012, 46736
231 ..... 46012, 46969
239 ..... 45386, 46012
240 ..... 46012, 46736
241 46012
270 46012
274 46012
Proposed Rules:
Ch. I 48056
Ch. II 48190
33 46797
230 46801
240 ..... 45119, 48245
249 48245

18 CFR

2 46012
4 49010
6 49010
35 ..... 46012, 46970
154 49655
157 46021
270 48223
271 ..... 45097, 46266–46268, 48223, 49010, 49503, 49505
274 ..... 45097, 49505
282 45758
301 46970
375 49010
385 45388
Proposed Rules:
Ch. I 48104
2 49028
4 ..... 49028, 49520
11 49520
32 49028
101 46361
104 46361
141 46361
154 ..... 46361, 47003, 49028
157 47003
159 46361
201 46361
204 46361
260 46361
270 49028
271 ..... 46071, 49032, 49033
273 49028
274 49033
275 47003
282 45787
292 49028
300 49301
410 45568

19 CFR

4 ..... 46510, 46978, 48653
7 46740
10 ..... 46510, 46740
18 ..... 48655, 49655
22 46740
101 45538
103 45538
113 46740
134 48657
145 ..... 4674[illegible]
148 ..... 4697[illegible]
158 ..... 4674[illegible]
191 ..... 4674[illegible]
210 45544
Proposed Rules:
Ch. I 46805, 47724
4 ..... 46808, 4681[illegible]
18 ..... 4681[illegible]
101 ..... 4540[illegible]
123 ..... 4681[illegible]
144 ..... 4681[illegible]

20 CFR

404 ..... 4614[illegible]
626 ..... 4874[illegible]
632 ..... 4874[illegible]
633 ..... 4874[illegible]
634 ..... 4874[illegible]
635 ..... 4919[illegible]
636 ..... 4874[illegible]
684 ..... 4874[illegible]
Proposed Rules:
Ch. I ..... 4753[illegible]
Ch. II ..... 4801[illegible]
Ch. III ..... 4734[illegible]
Ch. IV ..... 4753[illegible]
Ch. V ..... 4753[illegible]
Ch. VI ..... 4753[illegible]
10 ..... 4824[illegible]
416 ..... 4868[illegible]
422 ..... 46072, 4700[illegible]

21 CFR

81 ..... 45237, 45760, 46022, 4923[illegible]
109 ..... 4554[illegible]
131 ..... 4554[illegible]
133 ..... 4901[illegible]
175 ..... 4822[illegible]
178 ..... 46773, 4677[illegible]
179 ..... 4602[illegible]
182 ..... 4880[illegible]
184 ..... 48456, 48457, 4880[illegible]
186 ..... 48456, 4845[illegible]
193 ..... 4554[illegible]
211 ..... 4697[illegible]
430 ..... 4627[illegible]
436 ..... 46270, 4965[illegible]
442 ..... 46270, 4965[illegible]
520 ..... 46979, 4822[illegible]
522 ..... 46023, 48229, 48659, 49233, 4965[illegible]
540 ..... 4576[illegible]
558 ..... 45102, 46023, 46024, 46514, 46515, 4865[illegible]
700 ..... 4697[illegible]
800 ..... 4697[illegible]
1308 ..... 4651[illegible]
Proposed Rules:
Ch. I ..... 4734[illegible]
122 ..... 4883[illegible]
155 ..... 4883[illegible]
182 4512
184 4512
211 ..... 4700[illegible]
341 ..... 4857[illegible]
351 ..... 4669[illegible]
355 ..... 4930[illegible]
610 ..... 46815, 47009, 4966[illegible]
620 ..... 4700[illegible]
630 ..... 4700[illegible]
640 ..... 4700[illegible]
650 ..... 4700[illegible]
660 ..... 4700[illegible]

680 ... 47009
700 ... 47008
800 ... 47008
1040 ... 48837

22 CFR

41 ... 48660
201 ... 49233

Proposed Rules:

Ch. I ... 47578
Ch. II ... 47970

23 CFR

655 ... 46775

Proposed Rules:

Ch. I ... 47582
Ch. II ... 47582
658 ... 46545

24 CFR

26 ... 46980
201 ... 46980
215 ... 46980
221 ... 46980
236 ... 46980
570 ... 45760, 46778, 46980
841 ... 46980
882 ... 46980
888 ... 45547, 46980
890 ... 46980

Proposed Rules:

Subtitle A ... 47418
24 ... 46072, 46817
3280 ... 49520

25 CFR

71 ... 45103
114 ... 48806

Proposed Rules:

Ch. I ... 47472
140 ... 45789
216 ... 49174

26 CFR

1 ... 45761, 46272, 46296
4 ... 46272
31 ... 46296
35a ... 45362

Proposed Rules:

Ch. I ... 47730
1 ... 47010, 48255, 49304
5c ... 49304
5f ... 48255
20 ... 48837
25 ... 48837
31 ... 47010
52 ... 48837

27 CFR

4 ... 45549
5 ... 45549, 46518
7 ... 45549
9 ... 45238, 45239, 46518–46524, 48810–48820
170 ... 46526
240 ... 46526

Proposed Rules:

Ch. I ... 47708
9 ... 46387, 48685

28 CFR

2 ... 48230
50 ... 49509
500 ... 48968
527 ... 48968
552 ... 48968
571 ... 48970
572 ... 48972

Proposed Rules:

Ch. I ... 47530

29 CFR

4 ... 49736
1601 ... 46298
1952 ... 48822

Proposed Rules:

Subtitle A ... 47538
Ch. II ... 47538
Ch. IV ... 47538
Ch. V ... 47538
Ch. XII ... 47946
Ch. XIV ... 47928
Ch. XVII ... 47538
Ch. XXV ... 47538
Ch. XXVI ... 48004
1908 ... 45411
1910 ... 45956, 49521
1926 ... 45872

30 CFR

223 ... 48661
251 ... 46025
913 ... 46528
917 ... 46299
935 ... 46027, 46301, 46530
938 ... 45389
946 ... 46028

Proposed Rules:

Ch. I ... 47538
Ch. II ... 47472
Ch. VII ... 47472
55 ... 45336
56 ... 45336
57 ... 45336
58 ... 45336
700 ... 49174
701 ... 49174
750 ... 49174
755 ... 49174
917 ... 48255
935 ... 45420
938 ... 46817

31 CFR

1 ... 48460
51 ... 46982
240 ... 49014

Proposed Rules:

Subtitle A ... 47702
Ch. I ... 47702
Ch. II ... 47702
390 ... 48688

32 CFR

235 ... 48824
251 ... 45242
706 ... 49233

Proposed Rules:

Ch. I ... 47302
Ch. V ... 47302
Ch. VI ... 47302
Ch. VII ... 47302
Ch. XVI ... 48018
199 ... 45791

33 CFR

100 ... 45244, 46531
117 ... 45245, 46532, 48662, 49656
130 ... 46178
131 ... 46178
132 ... 46178
151 ... 45704
155 ... 45704
157 ... 45718, 46985
163 ... 48230
165 ... 46533, 46534, 46779, 48663, 48664, 49657
166 ... 49018

Proposed Rules:

Ch. I ... 47582
Ch. II ... 47302
Ch. IV ... 47582
117 ... 48690
146 ... 48475
150 ... 48475
162 ... 45798
164 ... 46819
165 ... 49660

34 CFR

668 ... 45670
690 ... 45670

Proposed Rules:

Subtitle A ... 47308
Ch. I ... 47308
Ch. II ... 47308
Ch. III ... 47308
Ch. IV ... 47308
Ch. V ... 47308
Ch. VI ... 47308
Ch. VII ... 47308
350 ... 45568
351 ... 45568
352 ... 45568
353 ... 45568
354 ... 45568
355 ... 45568
357 ... 45568

35 CFR

Proposed Rules:

Ch. I ... 47998

36 CFR

7 ... 46779, 46780
60 ... 46306

Proposed Rules:

Ch. I ... 47472
Ch. II ... 47236
Ch. III ... 47302
Ch. VIII ... 47858
Ch. IX ... 48002
7 ... 48257
216 ... 45421
1190 ... 47860

37 CFR

Proposed Rules:

Ch. I ... 47254
1 ... 45424
2 ... 45424

38 CFR

1 ... 46985

Proposed Rules:

Ch. I ... 48024
21 ... 45123, 45268, 45572, 47011

39 CFR

111 ... 45761, 46031
447 ... 48230, 48231
601 ... 49019

Proposed Rules:

111 ... 45269, 48850
3001 ... 46545

40 CFR

51 ... 48978
52 ... 45245, 45246, 46046, 46047, 46309, 46986, 48664, 48665, 48978, 49020
60 ... 46535, 46536, 48328, 48368, 48669, 49458
61 ... 46535
81 ... 46537, 46782, 49235
86 ... 48598
87 ... 46481
123 ... 48826
180 ... 46310, 49509
192 ... 45926
256 ... 46787
271 ... 48826
420 ... 46942
433 ... 45105
439 ... 49808
467 ... 49126
469 ... 45249
717 ... 45765

Proposed Rules:

Ch. I ... 47864
51 ... 45269, 46152
52 ... 46081, 46391–46393, 46548, 46823, 48981, 48982, 49305, 49521, 49522
60 ... 45701, 46224, 46472, 48932, 48960
81 ... 46082, 46085, 46393, 46549–46553
141 ... 45502
162 ... 46397
180 ... 45573, 46395, 46396, 48476, 48477, 49524
228 ... 45798
261 ... 45210
271 ... 46824, 48690, 49525
403 ... 46944
415 ... 49408
420 ... 46944
439 ... 49832
464 ... 45573
465 ... 45573
1502 ... 46554, 47862
1508 ... 46554

41 CFR

Ch 1 ... 45392, 45557, 48462
Ch. 101 ... 45105
1–4 ... 48827
9–1 ... 46987
9–7 ... 46987
9–4 ... 45766
9–51 ... 45766
101–11 ... 46310, 49236
101–25 ... 48231
101–35 ... 49236
101–36 ... 49236, 49240
101–37 ... 49240
101–37 ... 48827
101–41 ... 46788
105–61 ... 45392

Proposed Rules:

Ch. 1 ... 47948
Ch. 4 ... 47236
Ch. 5 ... 49305
Ch. 9 ... 47324
Ch. 12 ... 47582

Ch. 13 ... 47254
Ch. 14 ... 47472
Ch. 25 ... 47980
Ch. 29 ... 47538
Ch. 60 ... 47538
Ch. 101 ... 47948
Ch. 105 ... 47948
101-41 ... 46554

42 CFR

51c ... 45558
52b ... 45558
55a ... 45558
56 ... 45558
57 ... 45112
110 ... 45250
122 ... 45558
405 ... 45766, 48467
409 ... 48467
489 ... 48467

Proposed Rules:

Ch. I ... 47340
Ch. III ... 47340
Ch. IV ... 47340

43 CFR

Subtitle A ... 45664
3160 ... 48916

Public Land Orders:

44 (Revoked by PLO 6478) ... 45401
98 (Revoked by PLO 6478) ... 45401
399 (Revoked in part by PLO 6477) ... 45395
698 (Revoked by PLO 6473) ... 45393
780 (Revoked by PLO 6478) ... 45401
3645 (Revoked by PLO 6472) ... 45393
5170 (Revoked in part by PLO 6477) ... 45395
5179 (Revoked in part by PLO 6477) ... 45395
5180 (Revoked in part by PLO 6477) ... 45395
5184 (Revoked in part by PLO 6477) ... 45395
5515 (Corrected by PLO 6483) ... 49022
6467 (Corrected) ... 49242
6472 ... 45393
6473 ... 45393
6474 ... 45394
6475 ... 45394
6476 ... 45395
6477 ... 45395
6478 ... 45401
6479 ... 45559
6480 ... 46049
6481 ... 46049
6482 ... 46050
6483 ... 49022
6484 ... 49022

Proposed Rules:

Subtitle A ... 47472
Ch. I ... 47472
Ch. II ... 47472
20 ... 49662
2620 ... 48400
2880 ... 48478

44 CFR

61 ... 46789
62 ... 46789
64 ... 46988, 46989, 49242
65 ... 46990, 48233
67 ... 46050, 46312, 46992

Proposed Rules:

Ch. I ... 46934
65 ... 48258
67 ... 45425, 46085, 47014-47020, 48259, 49306-49308

45 CFR

13 ... 45251

Proposed Rules:

Subtitle A ... 47340
Ch. II ... 47340
Ch. III ... 47340
Ch. VI ... 47980
Ch. XI ... 47978
Ch. XII ... 47856
Ch. XIII ... 47340

46 CFR

160 ... 45113
162 ... 45727
380 ... 45559
530 ... 48469
542 ... 46175
543 ... 46175
544 ... 46175

Proposed Rules:

Ch. I ... 47582
Ch. IV ... 45269, 48114
7 ... 45574
10 ... 46556
24 ... 45425
25 ... 45425
26 ... 45425
30 ... 45425
31 ... 45425
32 ... 45425
35 ... 45425
70 ... 45425
71 ... 45425
75 ... 45425
77 ... 45425
78 ... 45425
90 ... 45425
91 ... 45425
94 ... 45425
96 ... 45425
97 ... 45425
107 ... 45425
108 ... 45425
109 ... 45425
157 ... 46556
163 ... 45425
188 ... 45425
189 ... 45425
192 ... 45425
195 ... 45425
196 ... 45425
298 ... 46825
508 ... 45800
524 ... 45270
531 ... 45270, 49308
536 ... 45270
538 ... 45272
540 ... 49664

47 CFR

0 ... 45652
1 ... 45652, 48234
2 ... 45560
25 ... 49242
61 ... 46791
63 ... 46791
69 ... 48234
73 ... 45401-45403, 46994, 48234
81 ... 45114, 45560
83 ... 45114, 45560
87 ... 45114
97 ... 45652, 49244

Proposed Rules:

Ch. I ... 47020, 48080
1 ... 49033, 49069, 49309
21 ... 49309
61 ... 49033
67 ... 46556, 47021
73 ... 45428-45438, 47023-47031, 48264, 49069, 49438
83 ... 45439
95 ... 49314

48 CFR

Ch. I ... 46541

Proposed Rules:

Ch. 9 ... 47324, 49315

49 CFR

192 ... 48669
195 ... 48669
350 ... 48469
567 ... 46994
571 ... 46053, 46793, 48235
1033 ... 45257
1043 ... 45775
1162 ... 46542
1307 ... 46542, 46794

Proposed Rules:

Subtitle A ... 47582
Ch. I ... 47582
Ch. II ... 47582
Ch. III ... 47582
Ch. V ... 47582
Ch. VI ... 47582
Ch. X ... 46399, 48134
27 ... 46399
171 ... 48483
172 ... 48483
173 ... 48483
192 ... 49665
195 ... 46589
218 ... 45272
231 ... 49666
450 ... 49074
451 ... 49074
452 ... 49074
453 ... 49074
571 ... 47032, 48483, 48622, 49076
1039 ... 45137
1155 ... 45440
1056 ... 49526

50 CFR

17 ... 46053, 46328-46337, 49244, 49245
23 ... 45259, 45775
258 ... 48619
285 ... 46995
611 ... 45403, 46542
646 ... 45404
654 ... 46057
655 ... 45403, 45404
656 ... 45403
657 ... 45403
658 ... 46057
661 ... 45263
663 ... 48241
672 ... 46542
681 ... 46342

Proposed Rules:

Ch. I ... 47472
Ch. II ... 47254
Ch. III ... 47254
Ch. IV ... 47254, 47472
Ch. V ... 47254
17 ... 45574, 46086, 46590, 49316
23 ... 45575, 49667
611 ... 45804, 45806, 49668, 49669
641 ... 49527
655 ... 49077
663 ... 45274, 48265
681 ... 48853

LIST OF PUBLIC LAWS

Last Listing October 21, 1983

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

H.R. 3929/Pub. L. 98-135 Federal Supplemental Compensation Amendments of 1983. (Oct. 24, 1983; 97 Stat. 857) Price: $1.75

H.R. 3321/Pub. L. 98-136 To provide for the striking of medals to commemorate the Louisiana World Exposition. (Oct. 24, 1983; 97 Stat. 863) Price: $1.50