

Issued in Los Angeles, California, on August 16, 1976.

LYNN L. HINK,
Acting Director, Western Region.

In consideration of the foregoing, the FAA proposes the following airspace action.

§ 71.181 [Amended]

In § 71.181 (41 FR 440) the following transition area is added:

LÓMPOC, CALIFORNIA

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Lompoc Airport (latitude 34°39'58" N., longitude 120°27'56" W.) and within 5 miles each side of the Gaviota VORTAC 293° radial, extending from the 5-mile radius area to 16 miles west of the Gaviota VORTAC. That airspace within R-2516 is excluded.

This amendment is proposed under the authority of Sec. 307(a) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)), and of Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Los Angeles, California, on June 18, 1976.

LYNN L. HINK,
Acting Director, Western Region.

[FR Doc. 76-24813 Filed 8-25-76; 8:45 am]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Reg. No. 16]

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart T—State Supplementation Provisions; Agreements; Payments

EFFECTS OF FEDERAL FINANCING OF STATE SUPPLEMENTARY PAYMENTS TO INDOCHINESE REFUGEES—FEDERAL ADMINISTRATION OF STATE SUPPLEMENTATION FINAL REGULATIONS

The amendments to regulations set forth below set out the effects of implementation of certain portions of the Indochina Migration and Refugee Assistance Act of 1975 (Pub. L. 94-23), as amended by Pub. L. 94-313, as they relate to Federal administration of State supplementation for beneficiaries under the supplemental security income program (title XVI of the Social Security Act). The Indochina Migration and Refugee Assistance Act authorizes Federal funds for a range of purposes. Under this Act, States will be provided 100 percent reimbursement for financial assistance to these refugees in accordance with the current policy of the Social and Rehabilitation Service; this policy is expected to be in effect through September 30, 1977, when the authorizing legislation expires, but is conditioned on availability of funds until that date. The Social and Rehabilitation Service, in general, will deal directly with the States in effectuating reimbursement for payments to refugees pursuant to such law. However, to provide

for situations where State supplementation is administered by the Social Security Administration under the terms of a Federal/State agreement pursuant to § 416.2005 of Subpart T, Regulations No. 16, the Social and Rehabilitation Service and the Social Security Administration have entered into an interagency agreement to implement the Federal financing (by the Social and Rehabilitation Service) of the federally-administered supplement for fiscal year 1976, and it is anticipated that this agreement will be extended through September 30, 1977. The amendments to the regulations make it clear that Federal funding of State supplements pursuant to Pub. L. 94-23 does not affect the supplementation character of such payments (i.e., they are excluded from countable income under the supplemental security income program and do not affect the State's obligation to include all supplemental security income recipients under its supplementation agreement). The amendments further provide, however, that a State shall not be liable to the Secretary for federally-administered supplementation payment amounts which are reimbursable by the Social and Rehabilitation Service directly to the Social Security Administration under the terms of the interagency agreement described above and pursuant to Pub. L. 94-23, as amended. Further, such amounts shall not be considered State supplementary payments for purposes of the State fiscal relief provisions of § 416.2080.

Thus, these amounts which are reimbursed by the Social and Rehabilitation Service rather than the State will not be counted towards determining when the State has spent an amount equal to its base calendar year 1972 expenditures and neither debits nor credits will be generated by the payments. They will have no bearing in any way upon the computation of State fiscal relief.

The notice of proposed rulemaking is being waived in spite of the Secretary's new policy against so doing because these amendments have no effect upon the amount of supplementation which individuals will receive; but in recognition of the fact that the State supplementation of SSI for eligible Indochinese refugees is considered a Federal responsibility, under SRS policy implementing Pub. L. 94-23, as amended, they merely make provision for the Federal Government to assume what could otherwise be the State's cost of supplementing these cases. Therefore, the Secretary finds that it is appropriate to make these regulations effective August 26, 1976, and that notice of proposed rulemaking, as well as publication at least 45 days prior to the effective date, is unnecessary.

Although the notice of proposed rulemaking is being dispensed with, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments received in response to these amendments will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue S.W., Washington, D.C. 20201, on or before October 12, 1976.

(Secs. 1102, 1616, Social Security Act, as amended; 49 Stat. 647 as amended; 86 Stat. 1474; (42 U.S.C. 1302, 1382e); sec. 401 of Pub. L. 92-603, Pub. L. 94-23, and Pub. L. 94-24.) (Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

Dated: June 7, 1976.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: August 13, 1976.

MARJORIE LYNCH,
Acting Secretary of Health,
Education, and Welfare.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 416.2001 is amended by revising the language in paragraph (a) preceding paragraph (a)(1) to read as follows:

§ 416.2001 State supplementary payments; general.

(a) State supplementary payments; defined. State supplementary payments which shall be excluded from income pursuant to § 416.1151, are any payments made by a State or one of its political subdivisions (including any such payments for which reimbursement is available from the Social and Rehabilitation Service pursuant to Pub. L. 94-23 (89 Stat. 87), as amended by Pub. L. 94-313, to a recipient of supplemental security income benefits (or to an individual who would be eligible for such benefits except for income), if the payments are made:

2. Section 416.2080 is amended by adding thereto a new paragraph (g) to read as follows:

§ 416.2080 Limitation of fiscal liability of States.

(g) Refugee assistance. The State shall not be liable under this subpart to the Secretary for the amount of any State supplementary payment for which reimbursement is available from the Social and Rehabilitation Service pursuant to the Indochina Migration and Refugee Assistance Act of 1975 (Pub. L. 94-23), as amended. Further, such amount shall not be considered or included as a State supplementary payment for any purpose under this section, e.g., it shall not be included for determining when a State has exceeded the total amount described in paragraph (a) of this section, it does not give rise to debits or credits under paragraph (e) of this section, etc.

3. Section 416.2090 is amended by adding thereto a new paragraph (d) to read as follows:

§ 416.2090 State funds advanced for supplementary payments.

(d) *Advance payment and adjustment not applicable.* The provisions of paragraphs (a) and (b) of this section shall not apply with respect to any State supplementary payment for which reimbursement is available from the Social and Rehabilitation Service pursuant to the Indochina Migration and Refugee Assistance Act of 1975 (Pub. L. 94-23; 89 Stat. 87), as amended, since such amounts are not considered to be State supplementary payments for purposes of § 416.2080.

[FR Doc. 76-25048 Filed 8-25-76; 8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

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

Sterile Prednisone Suspension

The Food and Drug Administration approves new animal drug application (92-233) filed by Syntex Laboratories, Inc., 3401 Hillview Dr., Palo Alto, CA 94304, proposing safe and effective intramuscular use of sterile prednisone suspension in horses and dogs for the treatment of inflammatory conditions involving joints and accessory structures. The approval is effective August 26, 1976.

The Commissioner of Food and Drugs is amending Part 522 (21 CFR Part 522) to reflect this approval.

In accordance with § 514.11(e) (2) (ii) (21 CFR 514.11(e) (2) (ii)) of the animal drug regulations, a summary of the safety and effectiveness data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, Monday through Friday from 9 a.m. to 4 p.m., except on Federal legal holidays.

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 (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 522 is amended by adding new § 522.1890 to read as follows:

§ 522.1890 Sterile prednisone suspension.

(a) *Specifications.* Each milliliter of sterile aqueous suspension contains 10 or 40 milligrams of prednisone.

(b) *Sponsor.* See No. 000033 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) The drug is used in horses and dogs for the treatment of inflammatory conditions involving joints and accessory structures.

(2) It is administered by intramuscular injection as follows:

(i) Horses—100 to 500 milligrams, repeating if necessary. If no response is observed after 3 to 4 days of therapy, re-evaluate diagnosis.

(ii) Canine—0.25 to 1.0 milligram per pound of body weight for 3 to 5 days or until a response is noted. Treatment may be continued with an orally administered maintenance dose.

(3) Clinical and experimental data have demonstrated that corticosteroids administered orally or parenterally to animals may induce the first stage of parturition when administered during the last trimester of pregnancy and may precipitate premature parturition followed by dystocia, fetal death, retained placenta, and metritis.

(4) Not for use in horses intended for food.

(5) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

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

Effective date: This regulation shall be effective on August 26, 1976.

Dated: August 19, 1976.

PHILIP D. CAZIER,

Acting Director,

Bureau of Veterinary Medicine.

[FR Doc. 76-24990 Filed 8-25-76; 8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 74-194]

PART 109—GENERAL

PART 110—ANCHORAGE REGULATIONS

Anchorage Grounds—Port of New York

On March 1, 1976, there was published in the FEDERAL REGISTER (41 FR 8794), a notice of proposed rulemaking to amend the anchorage regulations for New York Harbor by increasing the area of some New York anchorages, establishing safety requirements, and opening for general use certain previously restricted anchorages. The notice also contained a proposal to add the Ports and Waterways Safety Act of 1972 (PWSA) as the authority for regulating the anchorages established under the Anchorage Grounds Act in New York Harbor.

Interested persons were given the opportunity to comment on this proposal. All comments received before April 15, 1976 were considered by the Coast Guard before the promulgation of the final rule. Certain sections of the notice of proposed rulemaking are changed as a result of the comments received. There are also some minor organizational changes from the notice of proposed rulemaking in the final rule.

Several commenters stated that the

increase in the maximum penalty for violation of the anchorage regulations is excessive. These regulations are issued under the Ports and Waterways Safety Act of 1972 (PWSA). Under PWSA, whoever commits a nonwillful violation of a regulation issued under it, in this instance the New York Anchorage Regulations, could be assessed a penalty of up to \$10,000. As noted in the preamble to the notice of proposed rulemaking the casualties and near casualties in the New York Anchorages are a serious enough problem for the Coast Guard to use the PWSA as authority for regulating the New York anchorages. The anchorage regulations will not be the only method of handling operating problems. The Coast Guard will continue to cooperate with industry on vessel operations in New York Harbor; however, it is necessary for the Coast Guard as an enforcement agency to have the authority to assess penalties when unsafe vessel operations occur.

One commenter noted the elimination of the channel through Anchorage No. 21. He had no objection to the deletion of the channel, but pointed out that discussions are being conducted to establish a carfloat service that would require a channel through Anchorage No. 21. The Coast Guard would be able to reestablish the channel when it would be needed for the carfloat service.

Another commenter stated that occasionally a vessel at anchor near the edge of a channel would, during the tidal cycle, and with an offshore wind, swing into the channel for as much as an hour. This is an unsafe condition, and will not be allowed. The New York anchorage regulations are intended to make the Port as safe as possible. To allow a vessel at anchor to swing into the channel particularly during periods of reduced visibility would create an especially hazardous situation.

This commenter also recommended that an anchorage officer be right on scene to solve anchoring problems, pointing out that the Coast Guard had an anchorage officer during World War II. The Captain of the Port of New York maintains an anchorage plot in the Operations Duty Office, which is manned 24 hours a day. Since vessels must notify the Captain of the Port before anchoring, the anchorage plot in the Ship Movement Office should provide information for the Captain of the Port to deal with problems of anchorage overcrowding without the need for an anchorage officer on scene.

Another commenter recommended that vessels with a draft of 12 feet or less be allowed to use Anchorage No. 21-B when Anchorage No. 21-A cannot be used. This comment is not being adopted by the Coast Guard; however, the Captain of the Port under § 110.155(1)(13) can grant permission to vessels to anchor in other anchorages. After study on the use of Anchorage No. 21-B the Coast Guard is amending the draft restriction to allow vessels with a draft of over 10 feet instead of 12 feet.

Another comment recommended that Anchorage No. 23-A and 23-B be combined into one anchorage. Anchorage No. 23 was divided into two anchorages and made length restrictive to require vessels of similar length to be anchored in the same area. This increases the likelihood of anchored vessels swinging "in step" on the changes of the tide, and thus increases the number of vessels that can safely use these anchorages. The division of Anchorage No. 23 has been in effect for some time and the divided anchorages have been able to accommodate additional vessels, therefore the division of Anchorage No. 23-A and 23-B is retained.

Another commenter questioned why the requirement to anchor only within 5 hours of ebb tide applied only to tank vessels with drafts of 40 feet or over. This requirement is being changed to apply to all vessels with drafts of 40 feet or over to make the requirement consistent for all deep draft vessels.

Two commenters opposed requiring deep draft vessels to anchor on the ebb tide only in the Stapleton anchorages. One of these commenters noted that the number of vessels in the anchorage and whether the vessel is assisted by a tug are conditions that might mitigate the anchoring restriction. The Coast Guard is partially adopting this comment. The requirement of when a deep draft vessel may anchor is being retained; however, upon request, the Captain of the Port, after considering the conditions of the anchorage, might permit a vessel to anchor at a time otherwise prohibited by this regulation.

One comment opposed the section requiring vessels over 800 feet in length or 40 feet in draft to report 48 hours in advance of arrival at New York. The commenter pointed out the vessels reporting under the Automated Merchant Vessel Report (AMVER) system already report their intended arrival 48 hours in advance. While this is true, the report does not contain the vessel's draft or whether the vessel intends to anchor which is critical in controlling the proper distribution of vessels in the anchorages.

In consideration of the foregoing Part 109 and Part 110 of Title 33 of the Code of Federal Regulations are amended as follows:

Effective date: This amendment is effective on October 1, 1976.

Signed August 19, 1976.

O. W. SILER,
Admiral, U.S. Coast Guard
Commandant.

In consideration of the foregoing Part 109 and Part 110 of Title 33 of the Code of Federal Regulations are amended as follows:

1. By amending the authority citation for Part 109 by adding; unless otherwise noted.

2. By amending Part 109 by adding a new § 109.07 to read as follows:

§ 109.07 Anchorages under Ports and Waterways Safety Act of 1972.

The provisions of section 101 (3) and (4) of the Ports and Waterways Safety Act of 1972 as delegated to the Commandant of the U.S. Coast Guard in 49 CFR 1.46(n) (4) authorize the Commandant to specify times of movement within ports and harbors, restrict vessel operations in hazardous areas and under hazardous conditions, and direct the anchoring of vessels. The sections listed in § 110.1a of this Subchapter are regulated under Title I of the Ports and Waterways Safety Act of 1972.

(Pub. L. 92-340, Title I, 86 Stat. 424 (33 U.S.C. 1221 et seq.); 49 CFR 1.46(n)).

3. By amending the general authority citation for Part 110 by adding: Unless otherwise noted.

4. By amending Part 110 by adding a new § 110.1a to read as follows:

§ 110.1a Anchorages under Ports and Waterways Safety Act of 1972.

(a) The anchorages listed in this section are regulated under Title I, Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221 et seq.):

(1) Section 110.155 Port of New York.
(b) Whoever violates any regulation under Title I Ports and Waterways Safety Act of 1972—

(1) Is liable to a civil penalty of not more than \$10,000;

(2) If the violation is willful is fined not less than \$5,000 or more than \$50,000 or imprisoned for not more than 5 years or both.

(Pub. L. 92-340, Title I, 86 Stat. 424 (33 U.S.C. 1221 et seq.); 49 CFR 1.46(n)).

5. By revising § 110.155(c) (1) (i), (c) (2) (i), (c) (3) (i), (c) (4) (i), and (c) (5) to read as follows:

§ 110.155 Port of New York.

(c) Hudson River. * * *

(1) * * *

(i) When the use of Anchorage No. 16 is required by naval vessels, the vessels anchored therein shall move when the Captain of the Port directs them.

(2) * * *

(i) When the use of Anchorage No. 17 is required by naval vessels, the vessels anchored therein shall move when the Captain of the Port directs them.

(3) * * *

(i) When the use of Anchorage No. 18-A is required by naval vessels, the vessels anchored therein shall move when the Captain of the Port directs them.

(4) * * *

(i) When the use of Anchorage 18-B is required by naval vessels, the vessels anchored therein shall move when the Captain of the Port directs them.

(5) Anchorage No. 19. An area located east of the Weehawken-Edgewater Channel beginning at a point on the Manhattan shoreline at latitude 40°46'47.8" N., longitude 73°59'22.3" W.; thence to latitude 40°46'59.8" N., longitude

73°59'52.8" W.; thence to latitude 40°47'42.5" N., longitude 73°59'13" W.; thence to latitude 40°48'27" N., longitude 73°58'45.5" W.; thence to latitude 40°49'28" N., longitude 73°58'06.2" W.; thence to latitude 40°50'15.5" N., longitude 73°57'18" W.; thence to latitude 40°51'02.3" N., longitude 73°56'59" W.; thence to a point on the Manhattan shoreline at latitude 40°51'00.8" N., longitude 73°56'51" W.; thence following the shoreline to the point of beginning.

(i) No vessel may anchor in Anchorage No. 19 without permission from the Captain of the Port.

(ii) Each vessel shall report its position within Anchorage No. 19 to the Captain of the Port immediately after anchoring.

(iii) No vessel may conduct lightering operations in Anchorage No. 19 without permission from the Captain of the Port.

(iv) When the use of Anchorage No. 19 is required by naval vessels, the vessels anchored therein shall move when the Captain of the Port directs them.

(v) No vessel over 800 feet, in length overall, or 40 feet in draft may anchor in Anchorage No. 19 unless it notifies the Captain of the Port at least 48 hours before it arrives in New York Harbor.

§ 110.155 [Amended]

6. By revising § 110.155(d) (2) (i) by deleting the footnote following subparagraph (d) (2) (i).

7. By revising § 110.155(d) (5), (d) (6), and (d) (7) to read as follows:

(d) Upper Bay.

(5) Anchorage No. 21. (Bay Ridge Anchorage). An area located at the junction of Bay Ridge and Anchorage Channels, beginning at a point of latitude 40°38'03" N., longitude 74°02'49.5" W.; thence to latitude 40°38'03" N., longitude 74°03'02" W.; thence to latitude 40°38'57" N., longitude 74°03'10" W.; thence to latitude 40°40'22.5" N., longitude 74°02'14.5" W.; thence to latitude 40°40'19.5" N., longitude 74°01'28" W.; thence to latitude 40°39'49" N., longitude 74°01'23" W.; thence to latitude 40°38'42" N., longitude 74°02'32.5" W.; thence to the point of beginning. Anchorage No. 21 is divided into Anchorage No. 21-A, Anchorage No. 21-B, and Anchorage No. 21-C.

(5-A) Anchorage No. 21-A. That portion on Anchorage No. 21, north of a line of latitude 40°39'09" N., and east of a line connecting a point at latitude 40°39'09" N., longitude 74°02'22" W., and latitude 40°40'20" N., longitude 74°01'35" W. Any vessel anchored in or intending to anchor in Anchorage 21-A shall comply with the following requirements.

(i) No vessel may anchor unless it notifies the Captain of the Port when it anchors of the vessel's name, length, and draft and its position in the anchorage.

(ii) Each vessel anchored shall notify the Captain of the Port when it weighs anchor.

(iii) No vessel may conduct lightering operations unless it notifies the Captain of the Port before it begins its lightering operations.

(iv) Each vessel lightering shall notify the Captain of the Port when it ends its lightering.

(v) No vessel may anchor unless it maintains a bridge watch, guards and answers channel 16 FM, and maintains an accurate position plot.

(vi) If any vessel is so close to another that a collision is probable, each vessel shall communicate with the other vessel and the Captain of the Port on channel 16 FM, and shall act to eliminate the close proximity situation.

(vii) No vessel may anchor unless it maintains the capability to get under way within 30 minutes, without permission from the Captain of the Port.

(viii) No vessel may anchor in a "dead ship" status (propulsion or control unavailable for normal control) without permission from the Captain of the Port.

(ix) Each vessel in a "dead ship" status while lightering shall engage a tug alongside during tide changes. The tug alongside may assume the channel 16 FM radio guard for the vessel after it notifies the Captain of the Port.

(x) No vessel over 800 feet in length overall or 40 feet in draft may anchor unless it notifies the Captain of the Port at least 48 hours before it arrives in New York Harbor.

(5-B) *Anchorage No. 21-B.* That portion of Anchorage No. 21 north of a line drawn from latitude 40°39'14.3" N., longitude 74°02'59" W. to latitude 40°38'43.9" N., longitude 74°02'30.5" W. and exclusive of the above designated Anchorage No. 21-A area.

(i) No vessel with a draft 3.048m (10 feet) or less may anchor in Anchorage No. 21-B.

(ii) Any vessel anchored in or intending to anchor in Anchorage 21-B must comply with the regulations for Anchorage No. 21-A (§ 110.155(d) (5-A) (i)-(x)).

(5-C) *Anchorage No. 21-C.* That portion of Anchorage No. 21 south of a line drawn from latitude 40°39'14.3" N., longitude 74°02'59" W. to latitude 40°38'43.9" N., longitude 74°02'30.5" W.

(i) No vessel with a draft of 10.058m (33 feet) or less may anchor in Anchorage No. 21-C.

(ii) Any vessel anchored in or intending to anchor in Anchorage 21-C must comply with the regulations for Anchorage No. 21-A (§ 110.155(d) (5-A) (i)-(x)).

(6) *Anchorage No. 23 (Stapleton Anchorage).* An area located west of the Anchorage Channel beginning at a point of latitude 40°38'36.5" N., longitude 74°04'13.3" W.; thence to latitude 40°38'37" N., longitude 74°03'49" W.; thence to latitude 40°38'22" N., longitude 74°03'36" W.; thence to latitude 40°37'26.8" N., longitude 74°03'18" W.; thence to latitude 40°37'23.2" N., longitude 74°03'59" W.; thence to latitude

40°37'30.7" N., longitude 74°04'04.5" W.; thence to the point of beginning. Anchorage No. 23 is divided into Anchorage No. 23-A and Anchorage No. 23-B.

(6-A) *Anchorage No. 23-A.* That portion of Anchorage No. 23, north of a line bearing 090° T from the northernmost corner of Pier 12, Staten Island at latitude 40°37'49.5" N., longitude 74°04'10.4" W.

(i) No vessel may anchor in Anchorage No. 23-A for a period longer than 48 hours without permission from the Captain of the Port.

(ii) No vessel with a length overall of more than 670 feet may anchor in Anchorage No. 23-A unless otherwise authorized by the Captain of the Port.

(iii) No vessel with a draft of 40 feet or over may anchor in Anchorage No. 23-A without permission from the Captain of the Port unless it anchors within 5 hours after ebb current begins at the Narrows. Daily predicted times of ebb current are found in the Department of Commerce Tidal Current Tables, Atlantic Coast of North America, utilizing the Narrows as the reference station.

(iv) Any vessel anchored in or intending to anchor in Anchorage 23-A shall comply with the regulations for Anchorage No. 21-A (§ 110.155(d) (5-A) (i)-(x)).

(6-B) *Anchorage No. 23-B.* That portion of Anchorage No. 23, south of a line bearing 090° T from the northernmost corner of Pier 12, Staten Island at latitude 40°37'49.5" N., longitude 74°04'10.4" W.

(i) No vessel may anchor in Anchorage No. 23-B for a period longer than 48 hours without permission from the Captain of the Port.

(ii) No vessel with a length overall of 670 feet or less may anchor in Anchorage No. 23-B, unless otherwise authorized by the Captain of the Port.

(iii) No vessel with a draft of 40 feet or over may anchor in Anchorage No. 23-B without permission from the Captain of the Port unless it anchors within 5 hours after ebb current begins at the Narrows. Daily predicted times of ebb current are found in the Department of Commerce Tidal Current Tables, Atlantic Coast of North America, utilizing the Narrows as the reference station.

(iv) Any vessel anchored in or intending to anchor in Anchorage 23-B shall comply with the regulations for Anchorage No. 21-A (§ 110.155(d) (5-A) (i)-(x)).

(7) *Anchorage No. 24 (Stapleton Anchorage South).* An area located west of the Anchorage Channel beginning at a point of latitude 40°37'23.2" N., longitude 74°03'59" W.; thence to latitude 40°37'26.8" N., longitude 74°03'18" W.; thence to latitude 40°36'25" N., longitude 74°02'58" W. thence to a point on the Staten Island shoreline at latitude 40°36'20" N., longitude 70°03'14" W.; thence to the point of beginning.

(i) No vessel may anchor in Anchorage No. 24 for a period longer than 48 hours without permission from the Captain of the Port.

(ii) No vessel with a length overall of less than 800 feet (243.840 meters) or with a draft of less than 40 feet (12.192 meters) may anchor in Anchorage No. 24.

(iii) No vessel with a draft of 40 feet or over may anchor in Anchorage No. 24 without permission from the Captain of the Port unless it anchors within 5 hours after ebb current begins at the Narrows. Daily predicted times of ebb current are found in the Department of Commerce Tidal Current Tables, Atlantic Coast of North America, utilizing the Narrows as the reference station.

(iv) Any vessel anchored in or intending to anchor in Anchorage No. 24 shall comply with the regulations for Anchorage No. 21-A (§ 110.155(d) (5-A) (i)-(x)).

8. By revising § 110.155(e) to read as follows:

§ 110.155 Port of New York.

(e) *Anchorage No. 25 Gravesend Bay.* An area located east of Ambrose Channel beginning at a point on the Coney Island shoreline at latitude 40°34'36" N., longitude 74°00'47" W.; thence to latitude 40°34'53" N., longitude 74°01'56.5" W.; thence to latitude 40°35'24" N., longitude 74°02'05" W.; thence to latitude 40°35'58" N., longitude 74°02'18.5" W.; thence to a point on the Brooklyn shoreline at latitude 40°36'12.9" N., longitude 74°01'24.2" W.; thence following the shoreline to latitude 40°36'06.8" N., longitude 74°00'54.5" W.; thence to latitude 40°34'53.8" N., longitude 74°00'23.5" W.; thence following the shoreline to the point of beginning.

(i) When the use of Anchorage No. 25 is required by naval vessels, the vessels anchored therein shall move when the Captain of the Port directs them.

(ii) Any vessel anchored in or intending to anchor in Anchorage No. 25 must comply with the regulations for Anchorage No. 21-A (§ 110.155(d) (5-A) (i)-(x)).

9. By revising § 110.155(1) by adding a new paragraph (13) to read as follows:

§ 110.155 Port of New York.

(13) Any vessel prohibited by these rules from anchoring in a specific anchorage because of the vessel's length or draft may anchor in the anchorage with permission from the Captain of the Port.

10. By adding the following note and authority citation of the end of § 110.155:

§ 110.155 Port of New York.

NOTE: The anchorage in this section are regulated under Title I, Ports and Waterways Safety Act of 1972 as stated in § 110.1a(a) of this Part. The penalties for violating regulations under this Act are stated in § 110.1a(b) of this Part.

(Pub. L. 92-340, Title I, 86 Stat. 424 (33 U.S.C. 1221 et seq.); 49 CFR 1.46(n))

[FR Doc.76-25037 Filed 8-25-76; 8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 9—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

[ERDA-PR Temporary Reg. No. 22]

PART 9-3—PROCUREMENT BY NEGOTIATION

Cost-Plus-Award-Fee Contracts

AUGUST 20, 1976.

1. *Purpose.* This regulation establishes ERDA cost-plus-award-fee contracting policy.

2. *Effective date.* This regulation is effective on August 26, 1976.

3. *Expiration date.* This regulation will remain in effect until it is canceled or until its provisions are incorporated into the ERDA-PR.

4. *Explanation of changes.* In Subpart 9-3.4, *Types of Contracts*, § 9-3.405-50, *Cost-plus-award-fee (CPAF) contract*, is added as follows:

Subpart 9-3.4 Types of Contracts

§ 9-3.405-50 Cost - plus - award - fee (CPAF) contract.

(a) *Description.* The CPAF contract is a cost-reimbursement type contract with special fee provisions. It provides a means of applying incentives in contracts which are not susceptible to finite measurements of performance essential to structured incentive contracts. The fee established in a CPAF contract consists of two parts: (1) A fixed amount (base fee) which does not vary with performance and which could be zero, and (2) an award amount (award fee), in addition to the fixed amount, sufficient to encourage attainment of excellent contract performance in stated areas such as quality, timeliness, ingenuity, and cost effectiveness. Award fee may be earned by the contractor in whole or in part. The amount of award fee to be paid is determined after a subjective evaluation by the Government of the contractor's performance, judged against performance criteria established by the Government and furnished in writing to the contractor. The number and kinds of performance goals and performance evaluation criteria used will differ widely from one contract to another. Therefore, when determining performance goals, criteria and rating plans, the contracting activity should select the plan which will motivate the contractor in a positive way to improve performance in specific areas. Evaluation reports will be prepared by the Government and results should be furnished to the contractor for comment on the evaluation findings. Additionally, the contractor may be asked to provide an assessment of its performance in relation to each performance evaluation criterion. The decision that all or part of the award fee has been earned is a unilateral determination made by a fee determination official not subject to the Disputes clause of the contract.

(b) *Application.* The cost-plus-award-fee contract is suitable for use when:

(1) A cost-reimbursement type contract is found necessary;

(2) The work to be performed is such that specific quantitative or objective measurement is not feasible;

(3) The achievement of procurement objectives will be enhanced by the use of a contract that effectively motivates the contractor toward exceptional performance, and permits ERDA the flexibility to evaluate both actual performance levels and the conditions under which such levels were achieved; and

(4) Any additional administrative effort and cost required to monitor and evaluate performance, as well as added fees available for award, are justified by the benefits expected.

(c) *Consideration of concept.* (1) The opportunity to earn increased fees, the clear statement of goals, objectives, and performance evaluation criteria and the improved communication between and among ERDA personnel and the contractor, are designed to encourage the contractor to perform the required work effectively, to control costs, and to improve the timeliness and quality of performance. Base fees generally are negotiated commensurate with minimum acceptable performance, taking into consideration the various profit evaluation factors under § 9-3.808-2. The base fee should be set at a minimum in order to provide a large award fee pool, thereby providing the contractor maximum incentive to improve performance. The award fee potential should be large enough to reward the contractor at any level of performance above minimum acceptable. In this regard, the award of additional fee for performance exceeding minimum acceptable performance in evaluated areas should be contingent upon the maintenance of at least minimum acceptable levels in all other areas of contract performance.

(2) Although award fee determinations are unilateral ones based upon judgmental evaluations, quantifying devices such as adjective ratings, point systems, or percentages of achievements may be used. Where used, these devices are for the sole purpose of quantifying the facts considered, and the amount of award fee earned shall not be merely the result of the application of summing, averaging, or a mathematical formula.

(3) For operating, onsite service, architect-engineer and construction contracts which are subject to the maximum allowable CPFF fees set forth in the Interim ERDA Procurement Handbook, "Establishing and Negotiating Fee and Profit," dated March 1976, the base fee should normally not exceed 50 percent of the maximum allowable CPFF fee. The base fee plus the award fee should normally not exceed the maximum allowable CPFF fee by more than 50 percent.

(4) For contracts performed in commercial facilities, where the Weighted Guidelines (WGL) of § 9-3.808-50 can be used to establish a reasonable fee for acceptable performance level, the base fee should normally not exceed 50 percent of the fee developed using the WGL. The base fee plus the award fee should

normally not exceed the WGL developed fee by more than 50 percent.

(5) Prior approval of the Director of Procurement is required for total fees exceeding: The guidelines in paragraphs (3) and (4) of this paragraph; 15 percent of estimated costs, exclusive of fees, in contracts for experimental, developmental, or research work; or 10 percent of estimated costs, exclusive of fees, in other contracts.

(d) *Payment of fees.* Base fees may be paid periodically as provided for in the contract. Award fees will be paid only after the amount of the award fee earned has been established. Payments of award fees earned will be made promptly after the award decision has been made in each evaluation period.

(e) *Limitations.* (1) The cost-plus-award-fee contract shall not be used (i) in procurements in which all factors to be considered in the award fee arrangement (e.g., cost, delivery, performance) can be measured objectively in terms of predetermined incentive targets, or (ii) where the contract amount, term of performance, or the benefits expected from use of the award fee arrangement are insufficient to warrant any additional administrative effort or cost that may be required.

(2) Cost-reimbursement type contracts having award fee arrangements limited to technical performance considerations are prohibited because they may increase cost disproportionately to any benefits gained. Instead, the award fee arrangement shall include both technical performance and business management considerations tailored to the needs of the particular situation. The only exception is a situation where cost estimating reliability and other factors are such that the negotiation of a separate, predetermined incentive sharing arrangement applicable to cost performance is determined both feasible and advantageous. The resulting contract would then be identified as a Cost-Plus-Incentive-Fee/Award-Fee combination type. The goals and evaluation criteria should be results-oriented. The award fee should be concentrated on the end product of the contract, that is, output, be it hardware, research, development, demonstration or services, together with business management considerations. However, input criteria such as equal employment opportunity, small business programs, functional management areas, such as safety, security, etc., cannot be disregarded and may be appropriate criteria upon which to base some part of the award fee. Specific goals or objectives should be established in relation to each performance evaluation criteria against which to measure contractor performance.

(f) *Evaluation.* (1) The contract should provide for evaluation at stated intervals during contract performance, so that the contractor will know how its performance is rated and what areas need to be improved. Partial payment of award fee earned will correspond to the evaluation periods. This will make effective

tive the incentive which the award fee was designed create by inducing the contractor to improve poor performance or to continue excellent performance.

(2) The contractor shall be furnished the performance evaluation criteria to be used to arrive at the award fee before award of the contract. The goals and objectives should be clearly set forth.

(3) As a part of contract negotiation, the Government should obtain agreement and incorporate into the contract a provision that the Government unilaterally can change the performance evaluation criteria, goals and objectives, weights and rating plan after reasonable advance notice to the contractor. The specific number of days constituting reasonable notice should be agreed to in advance by the parties.

(g) *Organization and administration.*

(1) Individuals will be designated as performance monitors. They will be responsible for evaluating, in assigned areas, the contractor's performance against the established criteria.

(2) A board will be established to evaluate the contractor's performance (based on monitors' reports, contractor's input and other information) and to recommend the amount of the award fee to the fee determination official.

(3) The fee determination official will be an individual who is organizationally above the persons who are directly involved in performance evaluation.

(4) The contractor should be given an opportunity to present matters to the board or the fee determination official on its own behalf.

(Sec. 105, Energy Reorganization Act of 1974 (Pub. L. 93-438).)

Effective date: August 26, 1976.

M. J. TASHJIAN,
Director of Procurement.

[FR Doc.76-25059 Filed 8-25-76;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2402]

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

PART 9230—TRESPASS

Mineral Leasing Regulations

On page 23206 of the FEDERAL REGISTER of Wednesday, June 9, 1976, a notice was published proposing to amend two sections of 43 CFR 3520 and one section of 43 CFR 9230 to clearly state that leasable minerals cannot be mined in commercial quantities prior to the issuance of a lease for that purpose. Comments were requested for a thirty-day period, ending July 10, 1976. Since no comments, suggestions, or objections were received, the rulemaking is adopted as proposed.

Under the authority of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181-287) and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), Title 43, Subtitle B, Chapter

II is amended as set forth below, effective September 27, 1976.

CHRIS FARRAND,
Deputy Assistant
Secretary of the Interior.

AUGUST 19, 1976.

1. Section 3520.2-2(a) is revised to read as follows:

§ 3520.2-2 Dating of Leases.

(a) Leases will be dated the first day of the month following the date signed by the lessor, except that upon receipt of a prior written request, a lease may be dated the first day of the month in which it is signed.

2. Section 3521.4-1 is revised to read as follows:

§ 3521.4-1 Preference right lease.

Mining operations carried on prior to the effective date of a lease shall constitute an act of trespass.

3. Section 9239.5-3(b) is amended to read as follows:

§ 9239.5-3 Coal.

(b) *Coal mined when there is no lease in effect.* Any mining of coal which is not pursuant to a coal lease in effect at the time of the mining shall constitute a trespass, and the coal so mined must be paid for on a trespass basis.

[FR Doc.76-25029 Filed 8-25-76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20785; RM-2597]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations; Table of Assignments

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Bryan, Texas).

1. The Commission herein considers its notice of proposed rulemaking, 41 FR 17784, in the above-captioned proceeding issued in response to a petition filed by Scott and Davis Enterprises (S&D).¹ The petition proposed the assignment of Channel 285A to Bryan, Texas, as a second FM assignment to the community. S&D is the only commenting party.

2. Bryan, Texas (pop. 33,719), seat of Brazos County (pop. 57,978),² is located adjacent to College Station, Texas, approximately 257 kilometers (160 miles) southeast of Dallas and 145 kilometers (90 miles) northwest of Houston. Bryan presently receives local aural service from AM Station KTAM and FM Station

¹ We are informed by letter dated October 6, 1975, signed by Stuart F. Pierson, counsel for Scott and Davis Enterprises, that all ownership interest in Scott and Davis Enterprises are now owned by Bob Bell.

² All population figures are taken from the 1970 U.S. Census.

KORA-FM (Channel 252A), Bryan. Service is also provided from nearby College Station by daytime-only AM Station WTAW and FM Station WTAW-FM (Channel 221A).

3. S&D sets forth in its supporting comments a level of commercial and economic activity in the Bryan area sufficient to support the assignment of a second FM channel to the community. It points out that, during the period 1960-1970, the population of Bryan increased 22.4 percent and that of College Station 55.1 percent. S&D adds that Bryan-College Station will experience a 40 percent population increase during 1970-1980, and a 232.7 percent increase during 1970-2020. S&D states it will promptly apply for a construction permit to operate on Channel 285A at Bryan if the proposed assignment is granted, and will provide the only "Good Music" format in the Bryan-College Station area, operating with maximum permissible facilities.

4. Preclusion would occur only on co-channel 285A in a very small area which is sparsely populated. The impact of the potential preclusion is insignificant. In order to meet the minimum distance separation requirements of our rules, a site 4.8 kilometers (3 miles) north of the community would be required.³

5. We have given careful consideration to the proposal in this proceeding and believe Channel 285A should be assigned to Bryan, Texas. Considering the size of Bryan (which qualifies for one or two assignments), its current and anticipated growth, the fact that preclusion would be limited to Channel 285A in a very small area which is sparsely populated and the assignment would result in efficient use of radio spectrum, we are of the view that the assignment of Channel 285A to Bryan, Texas would serve the public interest.

6. Authority for the action taken herein is contained in sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.231(b)(6) of the Commission's rules.

§ 73.202 [Amended]

7. In view of the foregoing, *It is ordered*, That effective September 30, 1976, § 73.202(b) of the Commission's Rules, the Table of FM Assignments, is amended to read as follows:

City:	Bryan, Tex.	Channel No.	252A, 285A
-------	-------------	-------------	------------

8. *It is further ordered*, That this proceeding is terminated.

³ On April 9, 1976, the Commission granted the application (BMPH-14767) of Radio Lufkin, Ltd., licensee of KLUF-FM, to modify its existing construction permit so as to specify a transmitter site location 10.5 kilometers (6.5 miles) northwest of Lufkin. We also granted the earlier request of Radio Lufkin to dismiss a prior application (BMPH-14617) to locate the transmitter site for KLUF-FM southwest of Lufkin (a site which would have barred the proposed assignment to Bryan).