

receipt of the proposed amendments from the State.

[FR Doc. 80-20979 Filed 7-11-80; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Parts 884 and 926

Abandoned Mine Lands Reclamation Program; Cancelled Hearing

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Cancellation of scheduled public hearing on the State of Montana abandoned mine lands reclamation plan.

SUMMARY: On June 16, 1980, the State of Montana submitted to OSM its proposed Abandoned Mine Lands Reclamation Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On June 20, 1980, 45 FR 41659, Notice of Receipt of the Plan and notice of a public hearing were published in the Federal Register. Review of the Plan has established that the State of Montana provided adequate notice and opportunity for public participation in the development of the Montana Abandoned Mine Lands Reclamation Plan and that no unresolved controversies exist, and that there is insufficient interest as evidenced by no requests to hold the scheduled hearing.

Therefore the public hearing scheduled for July 21, 1980, beginning at 10:00 a.m. to 12:00 noon and 7:00 p.m. to 9:00 p.m. at the Federal Building, Court House, Room 289, 301 South Park, Helena, Montana 59601, is cancelled.

FOR FURTHER INFORMATION CONTACT: Hugh Montgomery, Assistant Regional Director, AML, Office of Surface Mining, Brooks Tower, 1020-15th Street, Denver, Colorado 80202, Telephone: 303/837-5918.

Dated: July 9, 1980.

Richard M. Hall,

Acting Director.

[FR Doc. 80-20956 Filed 7-11-80; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 3

Veterans Benefits; Incompetents; Estate Over \$1,500 and Hospitalized

AGENCY: Veterans Administration.

ACTION: Proposed regulation change.

SUMMARY: The Veterans Administration is proposing to amend its regulation concerning reduction of benefits payable to incompetent veterans who are

hospitalized, institutionalized, or domiciled at Government expense. We are proposing this change because it was brought to our attention that the regulation was not fully in accord with the statute that it implements. The effect of this action will be to bring the regulation into agreement with the statute.

DATES: Comments must be received on or before August 13, 1980. We propose to make this change effective the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

FOR FURTHER INFORMATION CONTACT: T. H. Spindle Jr. 202-389-3005.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 3203(b)(1) benefits to an incompetent veteran without dependents with an estate in excess of \$1,500 will be discontinued when the veteran is hospitalized, institutionalized or domiciled without charge by the United States or a political subdivision thereof. The implementing regulation, however, 38 CFR 3.557(b)(3), omits any mention of institutional or domiciliary care. Thus, as presently written the regulation does not provide for the subject reduction in the case of institutional or domiciliary care furnished by the United States or a political subdivision thereof. Consequently we are proposing to amend § 3.557(b)(3) to correct this omission.

The Veterans Administration does not consider this to be a significant proposal since only a small segment of the veteran population is affected and no compliance burdens or costs are imposed.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until August 25, 1980. Any person visiting the Veterans Administration Central Office, 810 Vermont Avenue, N.W., Washington, DC for the purpose of inspecting any such comments will be received by the Veterans Administration Central Office Veterans Assistance Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in the

Veterans Administration Central Office and furnished the address and the above room number.

Approved: July 3, 1980.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

Section 3.557 is amended as follows:

(a) By deleting the words "wife, husband," and inserting the word "spouse" in paragraph (a);

(b) By revising paragraph (b) as set forth below:

§ 3.557 Incompetents; estate over \$1,500 and hospitalized.

(b) Effective December 1, 1959, where a veteran: (1) Is rated incompetent by the Veterans Administration by reason of mental illness; and (2) has neither spouse nor child, and (3) is hospitalized, institutionalized or domiciled by the United States or any political subdivision, with or without charge, and (4) has an estate, derived from any source, which equals or exceeds \$1,500, further payments of pension, compensation or emergency officers' retirement pay will not be made, except as provided in paragraph (d) of this section, until the estate is reduced to \$500. If the veteran is hospitalized for observation and examination, the date treatment began is considered the date of admission.

[FR Doc. 80-20942 Filed 7-11-80; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRC 1536-8]

Approval and Promulgation of Implementation Plans—Massachusetts; Procter and Gamble Sulfur in Fuel Limitation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Commissioner of the Department of Environmental Quality Engineering (DEQE) has submitted a revision to the Massachusetts State Implementation Plan (SIP) which is not part of an attainment plan under Part D of the Clean Air Act. The proposed SIP revision to Regulation 310 CMR 7.05(1) "Sulfur Content of Fuels and Control Thereof" would allow a Procter and Gamble plant in Quincy to increase its sulfur in fuel content from 1% to 2.2%.

EPA is proposing to approve this revision.

DATES: Comments must be received on or before August 13, 1980.

ADDRESSES: Copies of the Massachusetts submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460; and Massachusetts Department of Environmental Quality Engineering, Air and Hazardous Materials Division, Room 320, 600 Washington Street, Boston, MA 02111.

Comments should be submitted to the Regional Administrator, Region I, Environmental Protection Agency, Room 2203, JFK Federal Building, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Margaret McDonough, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5609.

SUPPLEMENTARY INFORMATION: The request to allow the Procter and Gamble plant in Quincy to burn 2.2% sulfur fuel in accordance with Regulation 7.05(1) was submitted to EPA on November 27, 1979. The facility is rated at 124 million Btu's/hr, maximum design capacity, and is located in the Metropolitan Boston Air Pollution Control District (MBAPCD). Regulation 310 CMR 7.05(1) for the MBAPCD allows approved sources outside the Boston core area rated at 100 million Btu's/hr or greater to burn fuel with a maximum sulfur content of 1.21 pounds per million Btu heat release potential approximately 2.2% sulfur content residual oil by weight. All other sources are limited to 1% sulfur fuel oil. Within the Boston core area, all sources are limited to 0.5% sulfur oil, except those rated at 2.5 billion Btu/hr or greater, which may burn 1% sulfur oil.)

The original Massachusetts SIP limited all sources in the Metropolitan Boston Air Pollution Control District to 1% sulfur fuel. Pursuant to the enactment of Chapter 494 of the Massachusetts Legislative Acts of 1974, the Massachusetts DEQE was required to periodically review the control strategies and relax any regulation which was more stringent than necessary to attain National Ambient Air Quality Standards (NAAQS). During 1975, the DEQE reviewed the sulfur-in-fuel regulations for MBAPCD and as a result submitted revisions to its SIP to allow certain sources to burn higher

sulfur content fuel on a temporary basis. With exceptions, these revisions were approved on December 5, 1975, August 22, 1977 and November 30, 1978.

On May 21, 1979 (44 FR 29453) EPA approved a revision to the Massachusetts SIP allowing sources in the MBAPCD outside the Boston core area which were currently burning higher sulfur fuel oil to burn 2.2% sulfur fuel oil permanently. On October 2, 1979 (44 FR 56694), EPA approved the remainder of the sources in the MBAPCD eligible to burn 2.2% oil which were included on the list submitted by the DEQE. Procter and Gamble was not submitted for approval and, therefore, was not included in the October 2, 1979 revision.

Technical support for the proposed revision includes an evaluation of compliance with the NAAQS and Prevention of Significant Deterioration (PSD) increments for sulfur dioxide.

The NAAQS for SO₂ is 80 µg/m³ based on an annual averaging time; 365 µg/m³ based on a 24 hour averaging time and 1300 µg/m³ based on a 3 hour averaging time. Procter and Gamble is located in a Class II PSD area in which no PSD permits have been issued and no previous SIP revisions have consumed increment and therefore EPA considers the amount of SO₂ which may be added to the ambient air to be limited to increments of 20 µg/m³ based on an annual averaging time; 91 µg/m³ based on a 24 hour averaging time and 512 µg/m³ based on a 3 hour averaging time. Except for the peak impacts of nearby SO₂ point sources, available monitoring data is suitable for estimating short term ambient levels in the vicinity of Procter and Gamble. Recorded SO₂ levels appropriate for this are 141 µg/m³ (second highest 24 hour average), 242 µg/m³ (second highest 3 hour average), and 29 µg/m³ (annual average).

EPA's PTMAX model was used as a screening model to determine whether the source poses a potential threat to air quality. PTMAX predicts the maximum ground level concentration of SO₂ as a function of wind speed and stability for a single stack. The model showed that emissions from the Procter and Gamble plant would not violate NAAQS and would be well within the allowable PSD increment.

The CRSTER model, a follow-up to the PTMAX screening model, was also applied and showed violations of neither NAAQS nor PSD increments. The maximum ambient air concentration of SO₂ predicted by either model on an annual, 24 hour and 3 hour averaging time is 32 µg/m³, 199 µg/m³ and 372 µg/m³, respectively. These concentrations are calculated by adding the predicted

contribution from Procter and Gamble to the existing background concentrations. The maximum PSD increment consumption predicted by either model on an annual, 24 hour and 3 hour averaging time is 2 µg/m³, 17 µg/m³ and 51 µg/m³, respectively.

DEQE applied the PTMTP model to evaluate the concentration of SO₂ present when the plume of Procter and Gamble interacts with that of General Dynamics which is the only source within 10 km of the Procter and Gamble plant. The PTMTP model is designed to calculate the pollutant concentration from two or more sources. The modeling predicted no violations of NAAQS when background concentrations were added to the contributions from the two sources and no violations of PSD increments. However, the interaction of the two plumes was considered only for the case in which the wind blew the Procter and Gamble plume toward the General Dynamics stack. The complementary case in which the General Dynamics plume is carried toward the Procter and Gamble stack was not modeled by DEQE. EPA performed further modeling using a modified version of PTMTP to predict SO₂ concentration when this situation occurs. The maximum predicted levels of SO₂ on a 24 hour and 3 hour averaging time are 231 µg/m³ and 444 µg/m³ respectively.

Although 2.2 percent sulfur fuel oil burning will cause an increase in particulate emissions, the current Massachusetts' SIP particulate emission limitation (0.12 pounds per million Btu) will not be violated.

Therefore, EPA is proposing to approve DEQE's request to burn 2.2% sulfur fuel oil at the Procter and Gamble facility.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of Sections 110(a)(2) (A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to Sections 110(a) and 301 of the Clean Air Act, as

amended (42 U.S.C. 7401 et seq. and 7601).

Dated: May 15, 1980.

William R. Adams, Jr.,

Regional Administrator, Region I.

[FR Doc. 80-20948 Filed 7-11-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 180

[PP OE2284/OE2286/OE2287/P140; FRL 1537-7]

Carbon Dioxide, Nitrogen, and Combustion Product Gas; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that exemptions from the requirement of a tolerance be established for the pesticides carbon dioxide (CO₂), nitrogen, and combustion product gas. These proposals were submitted by the Interregional Project No. 4 (IR-4). These amendments will establish exemptions for the subject pesticides on all raw agricultural commodities from post-harvest application.

DATE: Written comments must be received on or before August 13, 1980.

ADDRESS COMMENTS TO: Patricia Critchlow, Office of Pesticide Programs, Room 107, East Tower, Registration Division (TS-767), Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Patricia Critchlow at the above address (202/426-0223).

SUPPLEMENTARY INFORMATION: The Interregional Research project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, NEW Brunswick, NJ-08903, has submitted Pesticide Petitions Nos. OE2284, OE2286, and OE2287 to EPA on behalf of the IR-4 Technical Committee and the U.S. Department of Agriculture. These petitions requests that the Administrator, pursuant to section 408(e) of the Federal Food and Cosmetic Act, establish an exemption from the requirement of a tolerance for residues of the pesticides carbon dioxide, nitrogen, and combustion product gas on all raw agricultural commodities resulting from post harvest application.

The data submitted in the petition and all other relevant material have been evaluated. The pesticides are considered useful for the purpose for which the tolerances are sought. The modified atmospheres will contain the

same elements which constitute air except they are in different proportions. The usual data requirements (toxicological studies, metabolism studies, analytical methods, residue data) for pesticide petitions are not applicable to carbon dioxide, nitrogen, and combustion product gas and are thus waived.

Thus, based on the above information considered by the Agency, it is concluded that the exemptions from the requirement of a tolerance will protect the public health. Therefore, it is concluded that the proposed amendment to 40 CFR Part 180 be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request on or before August 13, 1980, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "PP OE2284/OE2286/P140." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of Patricia Critchlow, Room 107, East Tower, from 8:00 a.m. to 4:00 p.m., Monday through Friday.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive order 12044.

(Sec. 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348a(e)))

Dated: July 7, 1980.

Douglas D. Camp, Jr.

Director, Registration Division Office of Pesticide Programs.

It is proposed that Part 180, Subpart C be amended by adding the exemptions from tolerances under Part 180 as follows:

§ 180.1049 Carbon Dioxide; exemption from the requirement of a tolerance.

The insecticide carbon dioxide is exempted from the requirement of a

tolerance when used after harvest in modified atmospheres for stored insect control on raw agricultural commodities.

§ 180.1050 Nitrogen; exemption from the requirement of a tolerance.

The insecticide nitrogen is exempted from the requirements of a tolerance when used after harvest in modified atmospheres for stored product insect control on all raw agricultural commodities.

§ 180.1051 Combustion Product Gas; exemption from the requirements of a tolerance.

The insecticide combustion product gas is exempted from the requirements of a tolerance when used after harvest in modified atmospheres for stored product insect control on all raw agricultural commodities (except fresh meat) with the following prescribed conditions.

(a) The insecticide is produced by the controlled combustion in air of butane, propane, or natural gas. The combustion equipment shall be provided with an absorption type filter capable of removing possible toxic impurities, through which all gas used in the treatment of food shall pass; and with suitable controls to insure that any combustion products failing to meet the specifications provided will be prevented from reaching the food being treated.

(b) The insecticide meets the following specifications:

- (1) Carbon monoxide content not to exceed 4.5 percent by volume.
- (2) It is used or intended for use to displace or remove oxygen in the storage of food, except fresh meat.

[FR Doc. 80-20949 Filed 7-11-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 761

[FRL 1537-8; OPTS-62003A]

Polychlorinated Biphenyls (PCB's) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Proposed Restrictions on Use of PCB's at Agricultural Pesticide and Fertilizer Facilities; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: In the Federal Register of May 9, 1980 (45 FR 30989), EPA proposed to amend its Final PCB Regulation (40 CFR Part 761) to prohibit the use of PCB Items (including PCB Large High and Low Voltage Capacitors, PCB

Transformers, PCB-Contaminated Transformers, PCB Heat Transfer Systems, and PCB Hydraulic Systems) as defined in § 761.2(x), in facilities manufacturing, processing, or storing fertilizers or agricultural pesticides. The comment period on the proposed rule amendment was to expire on July 8, 1980, and an informal public hearing was to be held July 29, 1980. EPA is extending the comment period, therefore the date of the informal public hearing will also be changed.

DATES: Written comments on the proposed rule amendment should be received by the Agency no later than November 5, 1980. EPA will hold an informal hearing 30 days after the close of the comment period. Requests to participate in the hearing will be accepted until the close of the comment period.

ADDRESSES: All comments should be sent to: Joni T. Repasch, Technical Information Specialist, Rm. 447 (TS-793), Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attn.: Docket Number OPTS-62003A (PCB/RR-3).

The exact location and time of the hearing may be obtained at a later date by calling the toll free number (800) 424-9065, or in Washington, 554-1404. Address requests to participate to: Gordon McCurdy, Toxic Substances Control Act (TSCA) Hearing Clerk, Office of Toxic Substances (TS-794), EPA, 401 M Street, S.W., Washington, D.C. 20460, Attn.: Docket Number OPTS-62003A (PCB/RR-3), Telephone: (202) 755-6660.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office (TS-799), Office of Toxic Substances, EPA, 401 M Street, S.W., Washington, D.C. 20460, Telephone (toll free): (800) 424-9065, (in Washington, D.C. 554-1404).

SUPPLEMENTARY INFORMATION: On May 9, 1980 (45 FR 30989), EPA proposed to amend its Final PCB Regulation (40 CFR Part 761) to prohibit the use of PCB Items (including PCB Large High and Low Voltage Capacitors, PCB Transformers, PCB-Contaminated Transformers, PCB Heat Transfer Systems, and PCB Hydraulic Systems) as defined in 40 CFR § 761.2(x), in facilities manufacturing, processing, or storing fertilizers or agricultural pesticides. EPA invited comment on any aspect of the proposal, in particular, (1) the likelihood of human exposure to PCBs via the mechanisms hypothesized in the proposal or any other mechanism involving agricultural chemicals, (2) whether excluding facilities

manufacturing anhydrous liquid ammonia and facilities storing packaged products is proper, (3) whether any other exclusions should be made, and (4) whether additional steps beyond those proposed should be taken to prevent human health risks that would result from food contamination incidents that might occur in the future.

Since the Notice of Proposed Rulemaking was published, EPA has received a number of requests for an extension of the July 8, 1980 deadline for comments. Those persons requesting an extension stated that more time would be necessary to (1) gather relevant data from the large number of sources involved, (2) analyze the data, (3) provide the best cost/use information possible, (4) assist in identifying and solving probable compliance problems in the proposals, and (5) compare the economic information gathered with the Agency's economic analysis. EPA is therefore extending the comment period one hundred and twenty days to allow interested parties time to complete their investigations. EPA believes that extending both the comment period and the time to request to participate in the hearing will result in more meaningful comments on the proposal.

The Agency continues to urge operators of agricultural chemical facilities to alert managers and employees to the problem of PCB contamination and to institute a program for preventive action.

The booklet, "Polychlorinated Biphenyls: An Alert for Food and Feed Facilities" will assist such firms. Copies are available from EPA's Office of Industry Assistance. Call the toll-free number (800) 424-9065 or in Washington, D.C. call 554-1404.

Dated: July 8, 1980.
Steven D. Jellinek,
Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 80-20972 Filed 7-11-80; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

41 CFR Part 3-1

Freedom of Information Act, Treatment of Data in Contract Proposals

AGENCY: Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary, Department of Health and Human

Services is proposing to amend its procurement regulations by adding a new section on the Freedom of Information Act and revising an existing section on the treatment of technical data in contract proposals.

DATE: Comments must be received by August 25, 1980.

ADDRESS: Any person or organization wishing to submit data, views, or comments pertaining to the proposed regulations may do so by filing them with Ed Lanham, Office of Procurement Policy, OGP-OASMB, OS, Room 538 H—Hubert H. Humphrey Building, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, telephone 202-245-0481.

SUPPLEMENTARY INFORMATION: The proposed section implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, provides guidance and procedures to procurement personnel regarding applicability of the Act to procurement records. The section does not elaborate on the entire FOIA process, but addresses that portion concerning the disclosure and withholding of procurement records.

The section concerning the treatment of technical data in contract proposals is being revised to reflect the impact of the FOIA, to extend the coverage to all data in contract proposals, not just technical data, and to update the section based upon the Federal Procurement Regulations coverage on unsolicited proposals (41 CFR Subpart 1-4.9).

It is proposed to amend 41 CFR Chapter 3 in the manner set forth below.

Dated: July 7, 1980.
Murray N. Weinstein,
Acting Deputy Assistant Secretary for Grants and Procurement.

Under Subpart 3-1.3, General Policies, of Part 3-1, General, § 3-1.352, Freedom of Information Act, is proposed to be added to 41 CFR Chapter 3, and § 3-1.353, Treatment of data in contract proposals, is proposed to be substituted for existing § 3-1.353, Treatment of technical data in contract proposals. In addition, the table of contents for Part 3-1 is proposed to be amended to add the following:

PART 3-1 GENERAL

Subpart 3-1.3—General Policies

* * * * *

Sec.
3-1.352 Freedom of Information Act.
3-1.352-1 General.
3-1.352-2 Applicability.

Sec.

- 3-1.352-3 Availability and nonavailability of specific records.
 3-1.352-4 Procedures.
 3-1.353 Treatment of data in contract proposals.

§ 3-1.352 Freedom of Information Act.

§ 3-1.352-1 General.

The Department's regulation implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, is set forth in 45 CFR Part 5. This section implements those aspects of the FOIA and 45 CFR Part 5 that apply to procurement and contract records.

§ 3-1.352-2 Applicability.

(a) The FOIA and 45 CFR Part 5 provide that Government records (see 45 CFR 5.5 for the definition of "records") are generally to be made available to the public after receipt of a request. However, the Department may withhold records if they fall within one or more of the specific categories exempted from disclosure by the FOIA, provided there is a significant and legitimate governmental purpose served by withholding the records, e.g., there is a demonstrable harm to the Government or any party through disclosure.

(b) In regard to procurement:

(1) The reason for denial of disclosure usually falls within exemption (b)(4) of the FOIA, i.e., "trade secrets and commercial or financial information obtained from a person and privileged or confidential." To be covered by this exemption, the record must contain either a trade secret within the meaning of 18 U.S.C. 1905, or must be commercial or financial information received in confidence and not generally made available by the source furnishing it to the Government.

(2) A significant and legitimate governmental purpose is served by withholding the record when disclosure would likely have the following effect:

(i) It would impair the Government's ability to obtain necessary information through purely voluntary cooperation in the future;

(ii) It would cause substantial harm to the competitive position of the source from whom the information was obtained; or

(iii) It would destroy the integrity of the competitive procurement process.

(c) A restrictive legend on a document does not by itself place the document under the exemption or create a significant and legitimate governmental purpose for withholding the document. (See § 3-1.353 for the treatment of data in proposals and § 3-1.352-4 for

procedures to be followed by the contracting officer.)

§ 3-1.352-3 Availability and nonavailability of specific records.

Subpart F of 45 CFR Part 5 identifies specific types of records that may or may not be disclosed under the FOIA. Refer to § 5.71(c) and (d) for general guidance and § 5.72(c), (d), and (e) for details on specific procurement records. In addition, the Appendix to 45 CFR Part 5 provides a list of examples of specific records or information concerning contracts which are generally available and those which are not generally available under the FOIA. Note that these are general guidelines and application may vary based upon the circumstances of each individual case.

§ 3-1.352-4 Procedures.

(a) The contracting officer, upon receiving an FOI request, shall follow Department and POC procedures. As necessary, actions should be coordinated with the cognizant FOI official and the Office of General Counsel.

(b) When evaluating an FOI request for a contract or procurement record which was obtained wholly or in part from a source outside the Department, the contracting officer must consider the origin of the record, its subject matter, and whether it was submitted under a restrictive legend.

(1) If there is reason to believe the source may object to release of the record or part of the record, the contracting officer shall notify the source in writing that a request has been received, and the Department is considering release of the requested material. The written notification must advise the source of the specific requested material and require that the source provide a justification for withholding the information under an exemption of the FOIA if the source objects to the release of the material. The notification must inform the source that the justification should explain in detail how disclosure of the requested material would result in significant harm to the competitive position of the source or benefit its competitors. The notification must also advise the source that the justification must be provided to the contracting officer within seven (7) working days from the date of the written notification.

(2) Based on the justification submitted by the source in response to the notification described above, and any other pertinent information, the contracting officer and the cognizant FOI official, in consultation with the Office of General Counsel if necessary,

shall consider whether to withhold the record or portions of the record from disclosure. Only the FOI official may make the determination to withhold the record or portions of the record from disclosure.

(3) If the source objects to the release of the information but the FOI official disagrees with the justification for withholding, that official will notify the source in writing of the determination. This notification must include a copy of the material marked as the Department proposes to release it and must state that release will be made seven (7) working days from the date of the letter.

§ 3-1.353 Treatment of data in contract proposals.

(a) *General.* The term "data," as used in this section, refers to trade secrets, business data, and technical data. Business data includes, for example, commercial information, financial information, and cost and pricing data. Technical data includes, for example, plans, designs, suggestions, improvements, and concepts.

(2) Data acquired by the Department may have been obtained under conditions which restrict the Department's right to use the data. Therefore, care must be taken when considering the use of data to assure that the Department has sufficient rights to use it in the manner desired.

(3) One of the principal ways in which the Department receives data is by means of proposals. However, some proposals are offered and received under conditions which may prevent the Department from using the data for other than evaluation purposes.

(b) *Types of proposals.* Proposals received by the Department are of two types—unsolicited and solicited.

(1) *Unsolicited proposal.* Essentially, an unsolicited proposal is a written offer to perform work which does not result from a formal written request for proposals or quotations. Unsolicited proposals are discussed in detail in Subparts 1-4.9 and 3-4.9.

(2) *Solicited proposal.* A solicited proposal is a written offer to perform work which results from a formal written request for proposals or quotations.

(c) *Policy for unsolicited proposals.* The policy for treatment of data in unsolicited proposals is located in §§ 1-4.913 and 3-4.913.

(d) *Policy for solicited proposals.* (1) The Department recognizes that requests for proposals may require the offeror, including its prospective subcontractor(s), if any, to submit data which the offeror does not want used or disclosed for any purpose other than for

evaluation of the proposal. Each proposal containing data which the offeror desires to restrict must be marked on the cover sheet by the offeror with the legend set forth within subparagraph (2) of this paragraph. Proposals, or portions of proposals, so marked shall be handled in accordance with the provisions of the legend.

(2) The following provision shall be included in the RFP:

The proposal submitted in response to this request may contain data (trade secrets; business data, e.g., commercial information, financial information, and cost and pricing data; and technical data) which the offeror, including its prospective subcontractor(s), does not want used or disclosed for any purpose other than for evaluation of the proposal. The use and disclosure of any data may be so restricted: *Provided*, That the Government determines that the data is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, and the offeror marks the cover sheet of the proposal with the following legend, specifying the particular portions of the proposal which are to be restricted in accordance with the conditions of the legend. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act:

Data contained in the portions of this proposal which have been specifically identified by the offeror as containing restricted information shall not be used or disclosed except for evaluation purposes: *Provided*, That the restriction does not limit the Government's right to use or disclose data if it is obtained from another source without restriction.

However, the offeror acknowledges that: (1) The Government may not be able to withhold a record (data, document, etc.) nor deny access to a record requested by an individual (the public) when an obligation is imposed on the Government under the Freedom of Information Act, 5 U.S.C. 552, as amended, and (2) The Government is not liable for disclosure of a record released under the Act.

The Government shall make the determination whether a record is required to be released under the Freedom of Information Act.

The offeror agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under the Freedom of Information Act.

Offerors are cautioned that proposals submitted with restrictive legends or statements differing in substance from the above legend may not be considered for

award. The Government reserves the right to reject any proposal submitted with a nonconforming legend.

(e) *Procedures for handling and disclosing proposals.* (1) The procedures and notice specified in § 1-4.913(c), (d), and (e) shall be used in handling both solicited and unsolicited proposals and for disclosing proposals outside the Government.

(2) Decisions to disclose proposals outside the Government for evaluation purposes shall be made by the chief official having programmatic responsibility for the procurement, after consultation with the contracting officer, and in accordance with principal operating component (POC) procedures. The decision to disclose either a solicited or unsolicited proposal outside the Government for the purpose of obtaining an evaluation shall take into consideration the avoidance of organizational conflicts of interest and any competitive relationship between the submitter of the proposal and the prospective evaluator(s).

(3) When it is determined to disclose a proposal outside the Government for evaluation purposes, the following conditions or similar appropriate conditions, shall be included in the written agreement with the evaluator(s) (see § 1-4.913(d) and (e)) prior to disclosure. Also, a review should be made to ensure that the notice required by § 1-4.913(c) is affixed to the proposal before it is disclosed to the evaluator(s).

Conditions for Evaluating Proposals

The evaluator agrees to use the data (trade secrets, business data, and technical data) contained in the proposal only for evaluation purposes.

This requirement does not apply to data obtained from another source without restriction.

Any notice or legend placed on the proposal by either the Department or the submitter of the proposal shall be applied to any reproduction or abstract thereof. Upon completion of the evaluation, the evaluator shall return all copies of the proposal and abstracts, if any, to the Departmental office which initially furnished the proposal for evaluation.

Unless authorized by the Department's initiating office, the evaluator shall not contact the submitter of the proposal concerning any aspects of its contents.

The evaluator will be obligated to obtain

commitments from its employees in order to effect the purposes of these conditions.

[FR Doc. 80-20994 Filed 7-11-80; 8:45 am]

BILLING CODE 4110-12-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA 5843]

National Flood Insurance Program; Proposed Flood Elevation Determinations

Correction

In FR Doc. 80-18981 appearing on page 42692 in the issue of Wednesday, June 25, 1980, make the following corrections:

(1) On page 42694, Indiana, Gary Lake County, change "Little Calument River" to read "Little Calumet River", and change "2,600 feet upstream of 180 and 94" to read "2,600 feet upstream of 180 and 94".

(2) On page 42695, Indiana, Brown Ditch, change "Just downstream of Grand Boulevard" to read "Just upstream of Grand Boulevard".

(3) On the same page, Bruce Ditch, change "Just downstream of State Route 219th Avenue" to read "Just downstream of 219th Avenue". Change "Just downstream of Conrail" to read "Just upstream of Conrail", and in the last line for Bruce Ditch, last column, the elevation (695) for 6,850 feet upstream of 181st Avenue was type set one line too high.

(4) On page 42696, Griesel Ditch, "Just upstream of Route 2" should have read "Just upstream of State Route 2".

(5) On page 42698, West Creek Tributary WT, the elevation for "Just upstream of 185th Avenue" now reading "665" should have read "668".

BILLING CODE: 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 22

[CC Docket No. 79-318; RM-3200]

Amending Rules Relative to Cellular Communications System; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.