

**SUPPLEMENTARY INFORMATION:** Franklin Laboratories, P.O. Box 669, Amarillo, TX 79105, has revised several NADA's to reflect a change of sponsor address from 2620 S. Parker Rd., Suite 240, P.O. Box 441470, Aurora, CO 80044. In addition, the firm provided for a change of sponsor for NADA 101-715 (dichlorophenotoluene capsules) to Fort Dodge Laboratories.

These actions concern a change of sponsor address and a change of sponsor, and do not involve any changes in manufacturing facilities, equipment, procedures, or production personnel. The regulations are amended to reflect the changes.

#### List of Subjects

##### 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Reporting requirements.

##### 21 CFR Part 520

Animal drugs, Oral use.

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), Parts 510 and 520 are amended as follows:

#### PART 510—NEW ANIMAL DRUGS

##### § 510.600 [Amended]

1. In Part 510, § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) for the entry "Franklin Laboratories" and (c)(2) for No. "010290" under "Firm name and address" by revising the address to read "P.O. Box 669, Amarillo, TX 79105."

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

##### § 520.580 [Amended]

2. In Part 520, § 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(1) by removing No. "010290."

Effective date: February 1, 1983.

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

Dated: January 26, 1983.

Robert A. Baldwin,

Associate Director for Scientific Evaluation,

[FR Doc. 83-2641 Filed 1-31-83; 8:45 am]

BILLING CODE 4160-01-M

#### 21 CFR Part 558

#### New Animal Drugs for use in Animal Feeds; Lincomycin

**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 for Carl S. Akey, Inc., providing for use of certain lincomycin premixes for the manufacture of a complete swine feed. The feed is used for control and treatment of swine dysentery.

**EFFECTIVE DATE:** February 1, 1983.

#### FOR FURTHER INFORMATION CONTACT:

Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

**SUPPLEMENTARY INFORMATION:** Carl S. Akey, Inc., P.O. Box 128, Lewisburg, OH 45338, is sponsor of NADA 132-657 filed in its behalf by the Upjohn Co. The NADA provides for use of 8- and 20-gram-per-pound lincomycin premixes for making 40- and 100-gram-per-ton lincomycin complete swine feeds used for the control and treatment of swine dysentery as provided in 21 CFR 558.325(f)(2). Based on the data and information submitted, the NADA is approved and the regulations are amended to reflect the approval.

Approval of this application is based on safety and effectiveness data contained in Upjohn's approved NADA 97-505. Upjohn has authorized use of the data in NADA 97-505 to support approval of this application. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of this NADA has been treated as a Category II supplement which does not require reevaluation of the safety and effectiveness data in the original approval.

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 significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

#### List of Subjects in 21 CFR Part 558

Animal drugs; Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.325 is amended by adding new paragraph (b)(5) to read as follows:

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

##### § 558.325 Lincomycin.

(b) \* \* \*

(5) Premix levels of 8 and 20 grams per pound have been granted to No. 017790 in § 510.600(c) of this chapter for use as provided in paragraph (f)(2)(i), (ii), and (iii) of this section.

Effective date: February 1, 1983.

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

Dated January 24, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-2519 Filed 1-31-83; 8:45 am]

BILLING CODE 4160-01-M

#### DEPARTMENT OF DEFENSE

##### Department of the Navy

##### 32 CFR Part 720

#### Delivery of Personnel—Service of Process and Subpoenas—Production of Official Records

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its regulations concerning delivery of personnel, service of process, and production of official records to

reflect changes to Chapter XIII of the Manual of the Judge Advocate General.  
EFFECTIVE DATE: June 11, 1982.

**FOR FURTHER INFORMATION CONTACT:** Commander Patricia M. Gormley, JAGC, U.S. Navy, Assistant Division Director, Litigation Division, Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332. Telephone number: (202) 325-9870.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Part 720, which is derived from Chapter XIII of the Manual of the Judge Advocate General, to reflect changes in that regulation. The amendment relates to internal naval management and personnel practices, and is being published by the Department of the Navy solely for the guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on this amendment prior to adoption would be impracticable and is not required under the public rulemaking provisions of 32 CFR Parts 296 and 701. It has also been determined that this final rule is not a "major rule" within the criteria specified in section 1(b) of Executive Order 12291, and does not have substantial impact on the public.

#### List of Subjects in 32 CFR Part 720

Courts, Military law.

#### PART 720—[AMENDED]

Accordingly, 32 CFR Part 720 is amended as follows:

1. The authority citation for Part 720 reads as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 5031 and 5146; 32 CFR 700.206 and 700.1202.

##### § 720.1 [Amended]

2. Section 720.1 is amended by adding, to the end of the paragraph the following sentence which reads: "A judge advocate of the Navy or Marine Corps should be consulted before delivery is effected if reasonably practicable."

##### § 720.4 [Amended]

3. Section 720.4 is amended by removing "720.8," from line 7.

##### § 720.5 [Amended]

4. Section 720.5 is amended by inserting a heading which reads "(a) *Delivery under 10 U.S.C. 814.*" Additionally, this paragraph (a) is amended by removing the language "A-13-b of the Manual of the Judge Advocate General" wherever it appears and inserting in their place the words "A to this section".

5. Section 720.5 is amended by adding a new paragraph (b) which reads as follows:

(b) *Delivery under Interstate Agreement on Detainers Act.* Special forms, not contained in the Manual of the Judge Advocate General, are used when delivering prisoners under the Interstate Agreement on Detainers Act. The Act is infrequently used and most requests are pursuant to 10 U.S.C. 814. See § 720.15 for a detailed discussion of the Act.

6. Section 720.5 is amended by adding a new Appendix A which reads as follows:

#### Appendix A to § 720.5—Delivery Agreement

In consideration of the delivery of (name of person delivered) \_\_\_\_\_, United States Navy (United States Marine Corps), to \_\_\_\_\_, at \_\_\_\_\_, for trial upon the charge of \_\_\_\_\_, I hereby agree pursuant to the authority vested in me as \_\_\_\_\_ that (name of person delivered) \_\_\_\_\_, United States Navy (United States Marine Corps) will be transported to the State of \_\_\_\_\_ without expense to him or the United States and that the Commanding Officer of the \_\_\_\_\_ will be notified immediately of the outcome of the trial and that the said (name of person delivered) \_\_\_\_\_, will be returned to the \_\_\_\_\_, or to such place as the Secretary of the Navy shall designate, or transportation issued thereto, without expense to the United States or to the person delivered immediately upon dismissal of the charges or completion of the trial in the event he is acquitted, or immediately upon satisfying the sentence of the court in the event he is convicted and a sentence imposed, or upon other disposition of the case, provided that the Department of the Navy shall then desire his return.

#### § 720.8 [Amended]

7. Section 720.8(a) is amended by removing the words "must obtain specific authority from the Secretary of the Navy (Judge Advocate General) to deliver personnel to Federal, State, Territory, Commonwealth, or local authorities" and by inserting in their place the words "should obtain legal guidance from a judge advocate of the Navy or Marine Corps prior to delivery of personnel to Federal, State, Territory, Commonwealth, or local authorities if reasonably practicable."

8. Section 720.8(b) is amended by inserting the word "only" between the words "refused" and "in", and inserting the word "limited" between the words "following" and "circumstances".

9. Section 720.8(d) is amended by removing the words "delivery is refused" and inserting in their place the words "refusal of delivery is intended".

10. Section 720.15 is amended by revising paragraphs (a), (b), and (c) to read as follows:

#### § 720.15 Request for delivery of personnel serving sentence of court-martial.

(a) *General.* Authority to honor requests for delivery of military personnel serving a sentence of court-martial is provided by 10 U.S.C. 814. Although seldom utilized, additional authority and mandatory obligation to deliver such personnel is provided by the Interstate Agreement on Detainers Act (18 U.S.C. Appendix, hereinafter "the Act") which applies to the Federal agency that is holding the prisoner and has been adopted by approximately four-fifths of the state jurisdictions. The Department of the Navy as an agency of the Federal Government shall comply with the Act. The Act is designed to avoid speedy-trial issues and to aid in rehabilitation efforts by securing a greater degree of certainty about a prisoner's future. The Act provides a way for the prisoner to be tried on charges pending before state courts, either at the prisoner's request, or at the request of the state where the charges are pending.

(b) *Interstate Agreement on Detainers Act.* Upon request under the Act by either the prisoner himself or state authorities, the cognizant Navy or Marine Corps staff judge advocate, as appropriate, shall effect liaison with the appropriate state officials and shall monitor and ensure that action is taken by the cognizant commander on all such requests. While requests between Federal authorities do not appear to be specifically covered by the Act, prisoner requests for disposition of Federal charges shall generally be handled in accordance with the procedures outlined herein except that no delivery agreement is required by Federal authorities. In the case of requests by state authorities under the Act, liaison shall be established with the Director, Bureau of Prisons, Washington, D.C. 20537, who has sole authority to deny the request. The Act provides that the court-martial sentence shall continue to run during temporary custody.

(1) *State Request.* State officials may demand delivery of prisoners in military custody under section 2, Article IV, of the Act if (i) a detainee has been lodged against the prisoner; and (ii) the prisoner is serving a sentence (regardless of whether an appeal is in process). Delivery of such prisoner upon state request is mandatory as to Navy/Marine Corps authorities and may be refused only if the request is disapproved by the Director of the Bureau of Prisons.

Washington, D.C., as the designee of the Attorney General for this purpose. 28 CFR 0.96(a). There has been no further delegation to military authority. The consent of the prisoner is not required and the Director of the Bureau of Prisons is the only authority who can provide relief to the prisoner.

(2) *Prisoner Request.* The obligation to grant temporary custody under the Act applies with equal force to requests to be delivered to state authority made by the prisoner. Section 2, Article III(c), of the Act requires the prisoner's custodial official to inform him of the existence of any detainer and of his right to request disposition. The prisoner's request is directed to the custodial official who is required to forward it to the appropriate prosecuting official and court together with a certificate of prisoner status, all as provided by Article III of the Act.

(3) *Delivery.*—(i) *Requests under Detainers Act.* When a request for delivery is received from civil authorities pursuant to section 2, Article IV of the Act, the prisoner should be informed that he may request the Director of the Bureau of Prisons, Washington, D.C. 20537, to deny the request, within 30 days after such request is received. Upon the expiration of such 30-day period or upon denial of the prisoner's request by the Director of the Bureau of Prisons, whichever occurs first, the prisoner shall be delivered to the requesting authority as soon as practicable.

(c) *10 U.S.C. 814.* When a request for custody does not invoke the Interstate Agreement on Detainers Act, delivery of custody shall be governed by 10 U.S.C. 814 and 32 CFR Part 720. The request shall be honored unless, in the exercise of discretion, there is an overriding reason for retaining the accused in military custody, e.g., situations where additional courts-martial are to be convened or the delivery would severely prejudice the prisoner's appellate rights. The agreement discussed in § 720.5 will be required as a condition precedent to delivery. Unlike delivery under the Act, delivery of custody pursuant to 10 U.S.C. 814 operates to interrupt the execution of the court-martial sentence.

11. Section 720.20(c)(2) is revised to read as follows:

**§ 720.20 Service of process upon personnel.**

(c) \* \* \*

(2) Any military member or civilian employee who is served with Federal or State court civil or criminal process or pleadings (including traffic tickets) arising from actions performed in the course of official duties shall

immediately deliver all such process and pleadings to the commanding officer. The commanding officer shall ascertain the pertinent facts, notify the Judge Advocate General (Code 14), preferably by telephone, of the service, and immediately forward to that Office the pleadings and process in the case.

The military member or civilian employee will be advised concerning his/her right to remove civil or criminal proceedings from State to Federal court under 28 U.S.C. 1442 and 1442a, his/her rights under the Federal Driver's Act (28 U.S.C. 2679B), (if applicable), and the right of a Federal employee to be represented by Department of Justice attorneys in State criminal proceedings and in civil and Congressional proceedings in which that employee is sued or subpoenaed in an individual capacity, as delineated in 28 CFR 50.15. Any letter requesting representation shall be addressed to the Secretary of the Navy (Judge Advocate General), and shall be endorsed by the commanding officer, who shall provide all necessary data bearing upon the question as to whether the employee was acting within the scope of employment at the time of the incident out of which the suit arose.

12. Section 720.20(e) is amended by inserting the symbol and word "/her" after the word "him", and by adding at the end of the paragraph the following sentences:

In cases where a member is being called as a witness for a nongovernmental party only because of performance of official duties, the commanding officer is authorized to issue the member permissive orders authorizing attendance at the trial at no expense to the Government. Members are permitted to accept fees and mileage tendered.

**§ 720.30 [Amended]**

13. Section 720.30(a) is amended as follows:

A. By inserting after the second sentence the following new sentence:

\* \* \* See the provisions in the Secretary of the Navy Instruction 5211.5 series which set forth the additional requirement that reasonable efforts be made to notify all individuals to whom the record pertains of (1) the disclosure, and (2) the nature of the information provided, when the court order has become a matter of public record and the record is contained in a system of records as defined in the Secretary of the Navy Instruction 5211.5 series.

B. By removing the word "all" in line 20, and insert in its place the words "one or more"; insert after the word "order" in line 24 the words "when such records are not in a 'system of records' as defined by the Privacy Act (5 U.S.C. 552a)"; and add in line 28 after "section." the sentences:

\* \* \* In determining whether or not a record contained in a "system of records" will be furnished in response to a written request for that record, consideration shall be given to the provisions of the Secretary of the Navy Instruction 5720.42 series. If the record is in a "system of records," it may be produced upon written request of one or more parties in interest or their respective attorneys in the absence of a court order only if the individuals to whom the record pertains give written consent to the production or if the production is otherwise authorized under the Privacy Act and the Secretary of the Navy Instruction 5211.5 series.

C. By adding in line 35 after "notified." the sentence "Any release of classified information for civil court proceedings (whether civil or criminal in nature) must also be coordinated within the office of the Chief of Naval Operations (OP-009D) in accordance with the Chief of Naval Operations Instruction 5510.1 series."

14. Section 720.30(b)(2) is amended by inserting after the word "officers" the words "or officials".

15. Section 720.30(c) is amended by removing in line 3 the words "confidential matters" and by inserting in their place the words "personal information, the release of which would result in a clearly unwarranted invasion of personal privacy," and by inserting in line 14 after "Navy." the following sentence: "When the request for production involves material related to claims in favor of the Government, notification should be made to the affirmative claims office at the naval legal service office having territorial responsibility in the area."

16. Section 720.30(d) is amended by removing in line 15 the words "otherwise confidential material" and by inserting in their place the words and symbol "For-Official-Use-Only information,".

**§ 720.31 [Amended]**

17. Section 720.31(b) is amended by removing the word "Advocate" and inserting in its place the word "Advocates", inserting after the words "(Civil Law)" the words "and (Military Law)", inserting after the word "herein"

the language "if less than a release of the complete requested record will result. In all other instances the Deputy Assistant Judge Advocates General, who have cognizance of the record(s) in issue, may release such records.", and by inserting before the word "include" the word "necessarily".

18. Paragraph (b)(1) of § 720.31 is amended by removing the remainder of the paragraph beginning with "Exception." and ending with "releaser."

19. Paragraph (c) of § 720.31 is redesignated as paragraph (d); and a new paragraph (c) is added to read as follows:

(c) *Affirmative Claims Files.* Affirmative claims files (including Medical Care Recovery Act files), except to the extent that such files contain copies of reports of investigations prepared under the Manual of the Judge Advocate General, or classified or privileged information, may be released by local holders to insurance companies to support claims; to civilian attorneys representing the injured party's and the Government's interests; and to other components of the Department of Defense, without the prior approval of the Judge Advocate General, provided that the amount of the claim is within the monetary settlement authority of the releaser. When the request for production involves material related to claims in favor of the Government, notification should be made to the affirmative claims office at the naval legal service office having territorial responsibility for the area.

Dated: January 26, 1983.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy,  
Alternate Federal Register, Liaison Officer.

[FR Doc. 83-2749 Filed 1-31-83; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 761

[OPTS-62017D, TSH-FRL 2295-2]

#### Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule; correction.

**SUMMARY:** This Notice corrects and inadvertent error in 40 CFR 761.3(nn) of the final rule on the manufacture, processing, distribution in commerce, and use of polychlorinated biphenyls (PCBs) in closed and controlled waste manufacturing processes, which was published in the Federal Register of October 21, 1982 (47 FR 46980). Section 761.3(nn) of the Final Rule incorrectly implies that controlled wastes containing any concentration of PCBs can be destroyed in any incinerator listed under the definition of "qualified incinerator." However, the preamble to the Final Rule states that incineration in high efficiency boilers is limited to PCBs in concentrations below 500 ppm, and incineration in RCRA-approved incinerators is limited to PCBs in concentrations below 50 ppm. This Notice adds these restrictions on PCB concentrations to § 761.3(nn) of the Final Rule.

**DATE:** Effective February 1, 1983.

**FOR FURTHER INFORMATION CONTACT:** Chris Tirpak, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-511, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), in Washington, DC.: (554-1404), Outside the USA: (Operator—202-554-1404).

**SUPPLEMENTARY INFORMATION:** In the Federal Register of October 21, 1982 (47 FR 46980), EPA issued final amendments to the rule governing the manufacture, processing, distribution in commerce, and use of PCBs. These amendments exclude PCBs that are produced in closed and controlled waste manufacturing processes from the Toxic Substances Control Act (TSCA) ban on the manufacture, processing, distribution in commerce, and use of PCBs. Section 761.3(kk) of the rule contains the following definition of a "controlled waste manufacturing process":

(kk) "Controlled waste manufacturing process" means a manufacturing process in which PCBs are generated but from which less than 10 micrograms per cubic meter from any resolvable gas chromatographic peak are contained in any release to air; less than 100 micrograms per liter from any resolvable gas chromatographic peak are contained in any release to water; less than 2 micrograms per gram from any resolvable gas chromatographic peak are contained in any product, and the remainder of PCBs are incinerated in a qualified incinerator, landfilled in a landfill approved under the provisions of § 761.75, or stored for such incineration or landfilling in accordance with the requirements of § 761.65(b)(1).

Section 761.3(nn) of the rule contains the following definition of a "qualified incinerator":

(nn) "Qualified incinerator" means one of the following:

(1) An incinerator approved under the provisions of § 761.70.

(2) A high efficiency boiler approved under the provisions of § 761.60(a)(3).

(3) An incinerator approved under section 3005(c) of the Resource Conservation and Recovery Act (42 U.S.C. 6925(c)) (RCRA). The manufacturer seeking to qualify a process as a controlled waste process by disposing of waste in a RCRA-approved incinerator must make a determination that the incinerator is capable of destroying less readily burned compounds than the PCB homologs to be destroyed. The manufacturer may use the same guidance used by EPA in making such a determination when issuing an approval under section 3005(c) of RCRA. The manufacturer is also responsible for obtaining a reasonable assurance that the incinerator, when burning PCB wastes, will be operated under conditions which have been shown to enable the incinerator to destroy the less readily burned compounds.

The preamble to the Final Rule explained that incineration of PCBs in high efficiency boilers is limited to PCBs in concentrations below 500 ppm, and that incineration of PCBs in RCRA-approved incinerators is limited to PCBs in concentrations below 50 ppm (see 47 FR 46987 and 46988). However, these limitations on the concentration of PCBs that can be destroyed in these two types of incinerators were inadvertently excluded from § 761.3(nn) of the Final Rule. This Notice corrects this inadvertent error by adding these restrictions to § 761.3(nn).

#### List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements, Environmental protection.

Dated: January 24, 1983.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

#### PART 761—[AMENDED]

Therefore, in § 761.3, paragraph (nn) is revised to read as follows:

#### § 761.3 Definitions.

(nn) "Qualified incinerator" means one of the following:

(1) An incinerator approved under the provisions of § 761.70. Any concentration of PCBs can be destroyed in an incinerator approved under § 761.70.

(2) A high efficiency boiler approved under the provisions of § 761.60(a)(3).

Only PCBs in concentrations below 500 ppm can be destroyed in a high-efficiency boiler approved under § 761.60(a)(3).

(3) An incinerator approved under section 3005(c) of the Resource Conservation and Recovery Act (42 U.S.C. 6925(c)) (RCRA). Only PCBs in concentrations below 50 ppm can be destroyed in a RCRA-approved incinerator. The manufacturer seeking to qualify a process as a controlled waste process by disposing of wastes in a RCRA-approved incinerator must make a determination that the incinerator is capable of destroying less readily burned compounds than the PCB homologs to be destroyed. The manufacturer may use the same guidance used by EPA in making such a determination when issuing an approval under section 3005(c) of RCRA. The manufacturer is also responsible for obtaining a reasonable assurance that the incinerator, when burning PCB wastes, will be operated under conditions which have been shown to enable the incinerator to destroy the less readily burned compounds.

[FR Doc. 83-2700 Filed 1-31-83; 845 am]

BILLING CODE 8560-50-M

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 5-3

[APD 2800.2 CHGE 29]

#### Procurement by Negotiation; Structured Approach Profit/Fee Objective

**AGENCY:** General Services Administration.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration Procurement Regulations GSPR, Chapter 5, are amended to prescribe uniform policies for establishing profit or fee prenegotiation objectives in acquisitions requiring cost analysis. The basis for the regulation is Office of Federal Procurement Policy (OFPP) Policy Letter 80-7, dated December 9, 1980, (45 FR Part 82593, December 15, 1980), and the implementation of the Policy Letter in the Federal Procurement Regulations on October 14, 1982, (47 FR 50251, November 5, 1982). The GSPR satisfies the OFPP policy letter requirement that each agency meeting threshold requirements develop an individual structured approach for determining profit or fee objectives. The intended effect is to provide a structured

approach for determining profit or fee objectives.

**EFFECTIVE DATE:** February 14, 1983.

**FOR FURTHER INFORMATION CONTACT:** Mr. Philip G. Read, Director, Office of Federal Procurement Regulations, Office of Acquisition Policy, (202-523-4755).

#### List of Subjects in 41 CFR Part 5-3

Accounting, Cost accounting standards, Government procurement, and Procurement by negotiation.

#### PART 5-3—PROCUREMENT BY NEGOTIATION

1. The table of contents for Subpart 5-3.8, is revised by adding the following:

Sec.  
\* \* \* \* \*

5-3.808-3 Structured approach for determining profit/fee objectives.

Authority: (Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

2. Section 5-3.808-3, Structured approach for determining profit/fee objectives, is added to read as follows:

#### § 5-3.808-3 Structured approach for determining profit fee objectives.

(a) General  
(1) The structured approach provides contracting officers with a technique that will ensure consideration of the relative value of prescribed profit factors for the conduct of negotiations. The contracting officer's analysis of these profit factors is based on information available to the Government before negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys and the like. The structured approach also provides a basis for documentation of a profit objective, including an explanation of any significant departure from this objective in reaching a final agreement. The extent of documentation should be directly related to the dollar value and complexity of the proposed procurement.

(2) The negotiation process does not require agreement on estimated cost elements or profit elements. The profit objective is a part of an overall negotiation objective. Specific agreement on the exact weights or values of the individual factors is not required and should not be attempted.

(3) When cost analysis is performed pursuant to § 1-3.807-2(c) of this title, profit consideration shall be in accordance with the structured approach set forth in paragraph (c) of this section. The structured approach shall be used in all contracts, including lease alterations, where cost analysis is

performed except as set forth in paragraph (b) of this section.

(b) Exemptions from requirement to use the structured approach.

(1) Under exempted procurements, other methods for establishing profit objectives may be used. Generally, such methods will be supported in a manner similar to that used in the structured approach (profit factor breakdown and documentation of profit objective). However, factors within the structured approach considered inapplicable to the procurement shall be excluded from the profit objectives. The following type of procurements are exempt from the structured approach:

(i) Management contracts for operation and/or maintenance of Government facilities;

(ii) Contracts primarily requiring delivery of material supplied by subcontractors;

(iii) Termination settlements;

(iv) Cost-plus-award-fee contracts;

(v) Contracts where only price analysis is required (FPR 1-3.807-2(a));

(vi) Contracts and contract modifications of \$100,000 or less in value; and

(vii) Architect-engineer and construction contracts.

(2) Other exemptions may be made in the negotiation of contracts having unusual pricing situations where the structured approach is determined to be unsuitable. Such exemptions shall be justified in writing and approved by the head of the procuring activity.

(c) Profit factors and weight ranges for use in the structured approach.

(1) The following factors shall be considered in all situations in which profit is to be specifically negotiated. The weight ranges listed after each factor shall be used when the structured approach is used.

Profit factors	Weight ranges (percent)
<b>Contractor effort:</b>	
Material acquisition	1 to 4
Direct labor	4 to 12
Overhead	3 to 6
Other costs	1 to 3
General management	4 to 8
<b>Other factors:</b>	
Cost risk	0 to 7
Investment	-2 to +2
Performance	-2 to +2
Socio-economic programs	-5 to +5
Special situations	-2 to +2

(2) GSA Form 1766, Structured Approach Profit/Fee Objective, shall be used to facilitate the profit objective computation. The contracting officer shall measure the "Contractor Effort" by the assignment of a profit percentage