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Wednesday
March 11, 1987

Briefings on How To Use the Federal Register—
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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

ATLANTA, GA

WHEN: March 26; at 9 am.
WHERE: L.D. Strom Auditorium, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA.
RESERVATIONS: Call the Atlanta Federal Information Center, 404–331–2170.

WASHINGTON, DC

WHEN: March 31; at 9 am.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Beverly Fayson, 202–523–3517

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Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Executive Order 12587 of March 9, 1987

Nuclear Cooperation With EURATOM

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to Section 126a(2) of such Act and extended by Executive Orders No. 12193, 12295, 12351, 12409, 12463, 12506 and 12554, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of the United States non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1988.

Ronald Reagan

THE WHITE HOUSE,
March 9, 1987.

[FR Doc. 87-5361
Filed 3-9-87; 4:49 pm]
Billing code 3195-01-M

Editorial note: For the text of the President's letters to the Speaker of the House of Representatives and the President of the Senate, dated Mar. 9, on nuclear cooperation with EURATOM, see the *Weekly Compilation of Presidential Documents* (vol. 23, no. 10).

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 110 and 300

Selective Service System Registration Requirements

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations, as required by section 1622 of the Department of Defense Authorization Act of 1986, to provide procedures for executive agencies to determine whether individuals have registered with the Selective Service System and are eligible for appointment. These regulations also provide procedures for OPM to use in determining, in certain cases, whether failure to register was knowing and willful. Comparable requirements have been enacted for certain Department of Education and Department of Labor programs in order to encourage young men to register with the Selective Service System.

EFFECTIVE DATE: April 10, 1987.

FOR FURTHER INFORMATION CONTACT: Donald L. Holum or Thomas O'Connor, (202) 632–6817.

SUPPLEMENTARY INFORMATION: On September 8, 1986, OPM published [at 51 FR 31954] proposed regulations to carry out the Selective Service registration requirement for Federal civil service appointment in 5 U.S.C. 3328, which was added by section 1622 of Pub. L. 99–145. The section provides that men born in 1960 or later who are required to but did not register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453) generally are ineligible for appointment to Federal executive agencies. A non-registrant who is not yet 26 years of age may correct his ineligibility by registering. After a non-registrant becomes 26 years of age or older, he can no longer register to correct his failure. The law requires OPM to prescribe regulations to carry out this statutory section.

Eight organizations submitted written comments for which the key points are summarized below under the appropriate section titles. We could not consider one suggestion—not to issue regulations—because we are required to do so by law.

I. Definitions

In § 300.703, we expanded the definition of "appointment" to include the transfer of an employee from one agency to another, as two commenters suggested. As another commenter recommended, we changed "covered job applicant" to "covered individual" because the regulations apply to employees as well as applicants, and added aliens and persons appointed before their 18th birthday to that definition.

II. Considering individuals for appointment

We have revised the wording in § 300.704(a) to make it clear that agencies may require applicants to complete the registration statement at any time agencies consider appropriate, provided they do so prior to appointment.

We did not adopt the suggestion of two organizations who recommended that we add the statement to Standard Form SF–171 (Application for Federal Employment). The lead time for printing and replenishing the SF–171 and the cost of replacing existing stocks worldwide makes the suggestion impractical. Also, the registration law applies to some agencies that are not otherwise under OPM jurisdiction, and these agencies may not necessarily use the SF–171. Our regulations provide agencies with a required statement text, giving them the flexibility of integrating it as they choose into the collection of other pre-employment information.

III. Agency action following statement

In response to suggestions from several organizations, we have made it clear in Section 300.705 that agencies (1) are not required to submit objections to OPM against considering individuals who did not register, and (2) may set a time limit for individuals to respond.

We did not adopt the suggestions of three organizations that felt agencies should not be responsible for verifying registration and should not have to contact individuals who did not register. Because the appointing power is vested in agencies rather than in OPM, we view verification and contact with applicants as a normal, everyday part of regular employment activity at agencies. Based on experience to date, we expect agencies will encounter very few situations in which individuals are not registered or in which verification—entailing a simple phone call to the Selective Service System's tollfree number—will be necessary.

IV. Office of Personnel Management adjudication

In response to one comment, we changed the wording in § 300.706(a) to show that our determination of whether failure to register was knowing and willful will be based on the individual's written explanation.

V. Additional information not included in the regulations

For Privacy Act purposes, OPM considers the completed statement of registration status in § 300.704(b) to be part of the application record covered by the system of records notice for OPM/GOVT–5, Recruiting, Examining, and Placement Records, published on September 20, 1984, at 49 FR 36964. Accordingly, disclosures of information on the statement to the Selective Service System fall within the scope of routine use described in that notice.

These regulations supersede interim memorandum instructions to personnel directors on December 23, 1985.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations only affect Federal employees and job applicants.

List of Subjects

5 CFR Part 110

Government employees, Reporting and recordkeeping requirements.

5 CFR Part 300

Administrative practice and procedure, Government employees.

U.S. Personnel Management

Constance Horner,

Director.

Accordingly, OPM is amending Parts 110 and 300 of Title 5 of the Code of Federal Regulations as follows:

PART 110—OPM REGULATIONS AND INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 110 continues to read as follows:

Authority: 5 U.S.C. 1103; § 110.201 also issued under 5 U.S.C. 1104, 5 CFR Part 5.2(c) and (d); 44 U.S.C. 3507(f); 5 CFR Part 1320.

2. Section 110.201(b) is amended to add in numerical order the applicable OMB control number for Section 300.704(b) to read as follows:

§ 110.201 OMB control numbers.

* * * * *

(b) * * *

5 CFR citation	OMB control No.
§ 300.704(b)	3206–0166

3. Part 300 is amended by adding Subpart G consisting of §§ 300.701 through 300.707 to read as follows:

PART 300—EMPLOYMENT (GENERAL)

* * * * *

Subpart G—Statutory Bar to Appointment of Persons Who Fail to Register Under Selective Service Law

Sec.

Authority: Pub. L. 99–145, section 1622; 5 U.S.C. 3328.

Subpart G—Statutory Bar to Appointment of Persons Who Fail to Register Under Selective Service Law

§ 300.701 Statutory requirement.

Section 3328 of title 5 of the United States Code provides that—

"(a) An individual—

(1) Who was born after December 31, 1959, and is or was required to register under section 3 of the Military Selective Service Act (50 U.S C. App. 453); and

(2) Who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual, shall be ineligible for appointment to a position in an executive agency of the Federal Government.

(b) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication within the Office of determinations of whether a failure to register was knowing and willful. Such procedures shall require that such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing nor willful.

§ 300.702 Coverage.

Appointments in the competitive service, the excepted service, the Senior Executive Service, or any other civil service personnel management system in an executive agency are covered by these regulations.

§ 300.703 Definitions.

In this subpart—

"Appointment" means any personnel action that brings onto the rolls of an executive agency as a civil service officer or employee as defined in 5 U.S.C. 2104 or 2105, respectively, a person who is not currently employed in that agency. It includes initial employment as well as transfer between agencies and subsequent employment after a break in service. Personnel actions that move an employee within an agency without a break in service are not covered. A break in service is a period of 4 or more calendar days during which an individual is no longer on the rolls of an executive agency.

"Covered individual" means a male (a) whose application for appointment is under consideration by an executive agency or who is an employee of an executive agency; (b) who was born after December 31, 1959, and is at least 18 years of age or becomes 18 following appointment; (c) who is either a United States citizen or an alien (including parolees and refugees and those who are lawfully admitted to the United States for permanent residence and for asylum) residing in the United States; and (d) is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453). Nonimmigrant aliens admitted under section 101(a)(15) of the Immigration and Nationality Act (8 U.S C. 1101), such as those admitted on visitor or student visas, and lawfully remaining in the United States, are exempt from registration.

"Executive agency" means an agency of the Government of the United States as defined in 5 U.S.C. 105.

"Exemptions" means those individuals determined by the Selective Service System to be excluded from the requirement to register under sections 3 and 6(a) of the Military Selective Service Act (50 U.S.C. App. 453 and 456(a)) or Presidential proclamation.

"Preponderance of the evidence" means that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

"Registrant" means an individual registered under Selective Service law.

"Selective Service law" means the Military Selective Service Act, rules and regulations issued thereunder, and proclamations of the President under that Act.

"Selective Service System" means the agency responsible for administering the registration system and for determining who is required to register and who is exempt.

§ 300.704 Considering individuals for appointment.

(a) An executive agency must request a written statement of Selective Service registration status from each covered individual at an appropriate time during the consideration process prior to appointment, and from each covered employee who becomes 18 after appointment. The individual must complete, sign, and date in ink the statement on a form provided by the agency unless the applicant furnishes other documentation as provided by paragraph (c) of this section.

(b) *Statement of Selective Service registration status.* Agencies should reproduce the following statement, which has been approved by the Office of Management and Budget for use through October 31, 1989, under OMB Control No. 3206–0166:

Applicant's Statement of Selective Service Registration Status

If you are a male born after December 31, 1959, and are at least 18 years of age, civil service employment law (5 U.S.C. 3328) requires that you must be registered with the Selective Service System, unless you meet certain exemptions under Selective Service law. If you are required to register but knowingly and willfully fail to do so, you are ineligible for appointment by executive agencies of the Federal Government.

Certification of Registration Status

Check one:

[ ] I certify I am registered with the Selective Service System.

[ ] I certify I have been determined by the Selective Service System to be exempt from the registration provisions of Selective Service law.
[ ] I certify I have not registered with the Selective Service System.
[ ] I certify I have not reached my 18th birthday and understand I am required by law to register at that time.

Non-Registrants Under Age 26

If you are under age 26 and have not registered as required, you should register promptly at a United States Post Office, or consular office if you are outside the United States.

Non-Registrants Age 26 or Over

If you were born in 1960 or later, are 26 years of age or older, and were required to register but did not do so, you can no longer register under Selective Service law. Accordingly, you are not eligible for appointment to an executive agency unless you can prove to the Office of Personnel Management (OPM) that your failure to register was neither knowing nor willful. You may request an OPM decision through the agency that was considering you for employment by returning this statement with your written request for an OPM determination together with any explanation and documentation you wish to furnish to prove that your failure to register was neither knowing nor willful.

Privacy Act Statement

Because information on your registration status is essential for determining whether you are in compliance with 5 U.S.C. 3328, failure to provide the information requested by this statement will prevent any further consideration of your application for appointment. This information is subject to verification with the Selective Service System and may be furnished to other Federal agencies for law enforcement or other authorized use in implementing this law.

False Statement Notification

A false statement may be grounds for not hiring you, or for firing you if you have already begun work. Also, you may be punished by fine or imprisonment. (Section 1001 of title 18, United States Code.)

Legal signature of individual (please use ink)

Date signed (please use ink)

(c) At his option, a covered individual may submit, in lieu of the statement described above, a copy of his Acknowledgment Letter or other proof of registration or exemption issued by the Selective Service System. The individual must sign and date the document and add a note stating it is submitted as proof of Selective Service registration or exemption.

(d) An executive agency will give no further consideration for appointment to individuals who fail to provide the information requested above on registration status.

(e) An agency considering employment of a covered individual who is a current or former Federal employee is not required to request a statement when it determines that the individual's Official Personnel Folder contains evidence indicating the individual is registered or currently exempt from registration.

§ 300.705 Agency action following statement.

(a) Agencies must resolve conflicts of information and other questions concerning an individual's registration status prior to appointment. An agency may verify, at its discretion, an individual's registration status by requesting the individual to provide proof of registration or exemption issued by the Selective Service System and/or by contacting the Selective Service System, toll-free telephone number 800–621–5388.

(b) An agency may continue regular pre-employment consideration of individuals whose statements show they have registered or are exempt.

(c) An agency will take the following actions when a covered individual who is required to register has not done so, and is under age 26:

(1) Advise him to register promptly and, if he wishes further consideration, to submit a new statement immediately to the agency once he has registered. The agency will set a time limit for submitting the statement.

(2) Provide written notice to an individual who still does not register after being informed of the above requirements that he is ineligible for appointment according to 5 U.S.C. 3328 and will be given no further employment consideration.

(d) An agency will take the following actions when a covered individual who is age 26 or over, was required to register, and has not done so:

(1) Provide written notice to the individual that, in accordance with 5 U.S.C. 3328, he is ineligible for appointment unless his failure to register was neither knowing nor willful, and that OPM will decide whether his failure to register was knowing and willful if he submits a written request for such decision and an explanation of his failure to register.

(2) Submit the individual's application, the statement described in § 300.704(b), a copy of the written notice, his request for a decision and explanation of his failure to register, and any other papers pertinent to his registration status for determination to—Registration Review, Staffing Operations Division, Career Entry Group, Room 6A12, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(3) An agency is not required to keep a vacancy open for an individual who seeks an OPM determination.

(e) Individuals described in paragraph (c) of this section who do not submit a statement of registration or exemption are not eligible for employment consideration. Individuals described in paragraph (d) of this section are not eligible for employment consideration unless OPM finds that failure to register was neither knowing nor willful. Agencies are not required to follow the objections-to-eligibles procedures described in § 332.406 concerning such individuals who were certified or otherwise referred by an OPM examining office or other office delegated examining authority by OPM. Instead, an agency will provide, for information as part of its certification report to that office, a copy of its written notice to the individual.

§ 300.706 Office of Personnel Management adjudication.

(a) OPM will determine whether failure to register was knowing and willful when an individual has requested a decision and presented a written explanation, as described in § 300.705. The Associate Director for Career Entry or his or her designee will make the determination based on the written explanation provided by the individual. The burden of proof will be on the individual to show by a preponderance of the evidence that failure to register was neither knowing nor willful.

(b) OPM may consult with the Selective Service System in making determinations.

(c) The Associate Director for Career Entry or his or her designee will notify the individual and the agency in writing of the determination. The determination is final unless reconsidered at the discretion of the Associate Director. There is no further right to administrative review.

(d) The Director of OPM may reopen and reconsider a determination.

(e) The Director of OPM may, at his or her discretion, delegate to an executive agency the authority to make initial determinations. However, OPM may review any initial determination and make a final adjudication in any case. If a delegation is made under this paragraph, the notice in § 300.705(d)(1) will state that the individual may submit a written request that OPM review the agency's initial determination. The agency will forward to OPM copies of all documents relating to the individual's

failure to register, including the individual's request for review and his explanation of his failure to register.

§ 300.707 Termination of employment.

A covered individual who is serving under an appointment made on or after November 8, 1985, and is not exempt from registration, will be terminated by his agency under the authority of the statute and these regulations if he has not registered as required, unless he registers or unless, if no longer eligible to register, OPM determines in response to his explanation that his failure to register was neither knowing nor willful.

[FR Doc. 87-5110 Filed 3-10-87; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 410

Subsistence Payments for Extended Training Assignments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to remove terms made obsolete by the Federal Civilian Employee and Contractor Travel Expenses Act of 1985, Pub. L. 99-234, 99 Stat. 1756. This Act eliminated the concept of high-rate geographical areas for per diem payments. These regulations delete references to high-rate geographical areas and, thus, make OPM's regulations consistent with the General Services Administration's Federal Travel Regulations at 41 CFR Part 101-7.

EFFECTIVE DATE: April 10, 1987.

FOR FURTHER INFORMATION CONTACT: Constance Guitian, (202)632-6172.

SUPPLEMENTARY INFORMATION: Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. Notice is unnecessary because the change is not substantive. It only involves the deletion of an obsolete reference and imposes no new duties or obligations on any person.

E.O.12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Government employees.

List of Subjects in 5 CFR Part 410

Authority delegation, Education, Government employees, Manpower training programs.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 410 as follows:

PART 410—TRAINING

1. The authority citation for Part 410 is revised to read as set forth below and authority citations following all the sections in Part 410 are removed.

Authority: 5 U.S.C. 4101, *et seq.*; E.O. 11348, 3 CFR, 1967 Comp., p. 275. Section 410.503 also issued under 5 U.S.C. 5364. Section 410.506 and Section 410.602 also issued under 5 U.S.C. 1104. Section 410.902 also issued under 42 U.S.C. 4746.

2. Section 410.603 is revised to read as follows:

§ 410.603 Subsistence payments for extended training assignments.

(a) An agency has the authority to pay all or—if agreed to by the employee—a part of actual subsistence expenses of an employee assigned to training at a temporary duty station. If an agency makes such payments during an assignment lasting more than 30 calendar days, paragraph (b) or (c) of this section shall apply. The agreed rate of payment shall be applicable from the first day of the assignment. An agency may adjust an agreed rate of payment when circumstances so justify provided any decrease in the rate of payment is agreed to by the employee. If lodging or meal costs are included in the fees paid to the training institution an appropriate reduction shall be made from any standardized subsistence payments.

(b) When standardized subsistence payments are made—

(1) An agency may pay 55 percent of the applicable full per diem rate specified by the Federal Travel Regulations.

(2) Where an agency has a large number of employees trained at facilities in a single area, the agency may make a standardized payment determined by the agency and based on survey data of actual subsistence expenses for that area, not exceeding the applicable full per diem rate specified by the Federal Travel Regulations.

(c) When an agency decides to make other than standardized payments, it may pay all or a part of the actual subsistence expenses including the cost of acceptable lodging and meals provided by the training facility or other nearby facility plus an incidental expenses payment. Any payment greater than the 55-percent rate authorized in paragraph (b)(1) may be made only after documentation of the circumstances (e.g., unavailability of acceptable lower cost lodging) leading the agency to the conclusion that the higher payment would be in the public interest. An agency shall not make any payment above the applicable full per diem rate specified by the Federal Travel Regulations.

[FR Doc. 87-5111 Filed 3-10-87; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

Olives Grown in California; Deletion of Assessment Crediting for Handler Paid Brand Advertising

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule removes § 932.145 which prescribes the procedures for handlers to receive credit against their assessment obligations for brand advertising expenditures. These procedures were originally recommended and adopted to foster an increase in total industry sales. The program has not been effective in achieving that objective, and, in fact, has resulted in disproportionately high assessment rates.

EFFECTIVE DATE: March 11, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250; Telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this regulatory action on small entities, and has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be

unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Currently, there are only seven handlers of California olives subject to regulation under the marketing order for olives grown in California. Handlers are considered small entities if gross annual revenues are less than $3,500,000. Some of the handlers may be classified as small entities. In addition, there are approximately 1,500 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000. The majority of California olive producers may be classified as small entities.

The regulatory action in this instance is a final rule that will remove § 932.145 which prescribes procedures by which handlers may receive a credit against their assessments for certain paid brand advertising expenditures and provides the formula for allocating total assessment funds collected each fiscal year for administrative expenses, generic advertising and promotion, and the program for crediting for paid brand advertising. The action was recommended by a unanimous vote of the California Olive Committee based on their view that this program has not been effective, and, in addition, has resulted in higher than necessary assessment rates. Furthermore, only the largest handlers were availing themselves of such crediting, and representatives of those handlers have indicated that they do not favor continuance of the current crediting provision. Thus, the Administrator has concluded that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under the Marketing Agreement and Order No. 932 (7 CFR Part 932), both as amended, regulating the handling of olives grown in California. The agreement and order are effective under the Act. This action was unanimously recommended by the California Olive Committee (COC) at its meeting of December 2, 1986. The committee works with the Department in administering the marketing agreement and order program.

Since the implementation of this rule (48 FR 24313) in 1983, and the amendment (49 FR 1) in 1984, the COC has found that there was not an overall increase in total industry sales. The COC has recommended termination of this program based on its determination that crediting against assessments for brand advertising expenditures does not contribute to the overall industry expansion of sales, which is the fundamental purpose of the market research and promotion program. Furthermore, the committee's view is that the program and the related formula for allocating assessment funds is unnecessarily restrictive and has resulted in disproportionately high assessment rates.

After consideration of all relevent information, including the recommendation and information submitted by the committee, it is hereby found that the removal of § 932.145 will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking procedure, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** for the following reasons. This action is based upon a unanimous recommendation of the California Olive Committee, and, in addition, reflects an industry concensus, even among those handlers utilizing the program, that it has not been effective and should be terminated promptly. Because this action changes the method of calculation of the assessment rate, and will result in a lowering of assessment rates, it is important that it become effective as soon as practicable. The recommendation and supporting information for this action were promptly submitted to the Department after a meeting of the committee open to the public. Information regarding specifications of this action has been provided to handlers, and this action is identical with the recommendation of the committee. Compliance with this action will not require any special preparation by the persons subject thereto.

List of Subjects in 7 CFR Part 932

Marketing agreements and orders, Olives, California.

1. The authority citation for 7 CFR Part 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 932.145 [Removed]

2. Section 932.145 is removed.

Dated: March 3, 1987.

Eric M. Forman,

Acting Director,

Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–5108 Filed 3–10–87; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 75

[Docket No. 86–104]

Contagious Equine Metritis (CEM); Areas Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations concerning contagious equine mertritis (CEM). Surveillance activity indicates that CEM no longer exists in areas of Kentucky or Missouri that, until now, have been quarantined because of this disease. Therefore, we are removing the quarantine provisions regarding these areas. We are also removing the restrictions on the interstate movement of horses and other equidae from and through these areas because there is no longer any known risk of spreading CEM to other areas. With these amendments, there are not areas quarantined or restricted because of the existence of CEM. However, in case CEM reappears, we are reserving the removed sections for possible future use.

EFFECTIVE DATE: March 11, 1987. We will consider your comments if we receive them on or before May 11, 1987.

ADDRESS: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 86–104. Comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. C.A. Gipson, VS, APHIS, USDA, Room 826 Federal Building, Hyattsville, Maryland, 20782, 301–436–8321.

SUPPLEMENTARY INFORMATION:

Background

The contagious equine metritis (CEM) regulations contained in 9 CFR Part 75 restrict the interstate movement of horses and other equidae from areas

designated as quarantined areas because of CEM.

We are amending 9 CFR Part 75 by removing all areas in Kentucky and Missouri from the CEM quarantine set forth in § 75.7. Before the publication of this interim rule, specific areas on certain premises were quarantined because of the existence of CEM.

The effect of the quarantine was to prohibit or restrict the interstate movement of certain horses and other equidae moving from or through the quarantined areas, as specified in § 75.8 for the quarantined areas in Kentucky, and in § 75.9 for the quarantined areas in Missouri. The quarantine and accompanying restrictions on interstate movement are no longer necessary. Surveys conducted by us, the State of Kentucky, and the State of Missouri show that CEM does not exist in areas previously quarantined. Therefore, we are releasing the areas from quarantine because of CEM, and we are removing the provisions in Part 75 that prohibit or restrict the interstate movement of certain horses and other equidae from or through the areas that were quarantined.

Definitions Removed

Before we published this interim rule, §§ 75.8 and 75.9 provided for the prohibition or restriction of the interstate movement of certain horses and other equidae from or through the quarantined areas in Kentucky and Missouri. Certain terms used exclusively in §§ 75.8 and 75.9 in the CEM regulations are defined in § 75.5, but the removal of the provisions in §§ 75.8 and 75.9 makes those definitions unnecessary. Therefore, we are removing from § 75.5 the definitions of those terms and the footnotes to which certain of those definitions refer. One of the definitions we are removing because it was used exclusively in §§ 75.8 and 75.9 is that of "breeding animal." However, in § 75.10, which we are retaining, there is a reference to "breeding mare." In order to clarify that term, we are adding a definition of "breeding mare" in § 75.5.

Quarantined Areas

The quarantining in § 75.7 of certain areas because of the existence of CEM specifies that certain areas are quarantined because of CEM "in the breed of Thoroughbred horses" in those areas. We made the specific reference to Thoroughbred horses because only Thoroughbred horses were known to be affected with CEM in the areas quarantined. However, because CEM can affect all breeds of horses, we are revising the language in § 75.7(a) that introduces areas quarantined because of CEM to refer to all horses. Please note that, with the removal of the areas in Kentucky and Missouri, § 75.7 does not quarantine any areas because of CEM.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The revisions in this document relieve restrictions on the interstate movement of horses and other equidae that are unnecessary because there is no known risk of spreading contagious equine metritis. Persons affected by this action are the equine industry and the owners of the nine premises that were quarantined. The effect of this docket is that the industry can move animals without the additional certification required by quarantine regulations, and the owners of the premises can use the formerly quarantined areas in normal day-to-day operations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

Effective Date

Pursuant to the administrative procedure provisions of 5 U.S.C. 533, we find that prior notice and other public procedures with respect to this interim rule are unnecessary and this interim rule may be made effective less than 30 days after publication of this document in the **Federal Register**. We are making this rule effective upon publication to relieve unnecessary restrictions on the movement of horses from or through the formerly quarantined areas, and to allow owners of the formerly quarantined areas to better utilize their land.

We require that comments concerning this interim rule be submitted within 60 days of its date of publication. We will discuss any comments received and any amendments required in a final rule that will be published in the **Federal Register**.

List of Subjects in 9 CFR Part 75

Animal diseases, Contagious equine metritis, Dourine, Equine, Equine infectious anemia, Horses, Quarantine, Transportation.

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

Accordingly, 9 CFR Part 75 is amended as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134–134(h); 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 75.5, paragraphs (d), (g), (h), (i), (j), (k), (l), and (m) are removed; the paragraph designations for the remaining definitions are removed; the remaining definitions are placed in alphabetical order.

3. In § 75.5, a new definition of "breeding mare" is added in alphabetical order to read as follows:

§ 75.5 Definitions.

* * * * *

Breeding mare. Any mare more than 731 days old on the date of interstate movement.

* * * * *

4. In § 75.5, footnotes "3a" and "4" are removed.

5. Section 75.7 is revised to read as follows:

§ 75.7 Areas quarantined.

Notice is hereby given that because of the existence of CEM in horses in certain areas, and because of the nature

and extent of such disease, the following areas are hereby quarantined:

(a) [Reserved]

§§ 75.8 and 75.9 [Removed and Reserved]

5. Sections 75.8 and 75.9 are removed and reserved.

Done in Washington, DC, this 6th day of March 1987.

B.G. Johnson,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-5106 Filed 3-10-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ANE-51; Amdt. 39-5573]

Airworthiness Directives; Valentin GmbH Model Taifun 17E

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Valentin GmbH Model Taifun 17E motor gliders which requires an initial and repetitive visual inspection, and replacement of the tailplane (horizontal stabilizer) front mounting. This action was prompted by the determination that the tailplane front mounting can fail from fatigue damage. This condition, if not corrected, could result in the glider becoming uncontrollable.

DATES: Effective March 27, 1987.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register on March 27, 1987.

ADDRESSES: The technical information and modification parts specified in this AD may be obtained from Morris Aviation Limited, Statesboro Airport, Box 718, Statesboro, Georgia 30458, Telephone No. (912) 489-8161. A copy of the technical note is contained in the Rules Docket, FAA, Office of the Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts 08103.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium, Telephone 513.38.30 Ext. 2710, or John J. Maher, New York Aircraft Certification Office, Aircraft Certification Division, FAA, New England Region, 181 S. Franklin Avenue, Room 202, Valley Stream, New York 11581, Telephone 516-791-6221.

SUPPLEMENTARY INFORMATION: Valentin GmbH has determined that fatigue failure may occur in the tailplane front mounting. The manufacturer has issued Technical Note No. 10/818 dated June 20, 1986, which recommends visual inspections and replacement of the tailplane front mounting. The Luftfahrt-Bundesamt (LBA), who has responsibility and authority to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, has issued an AD requiring compliance with the provisions of Technical Note No. 10/818 on motor gliders operated under the Federal Republic of Germany registration. The FAA relies upon the certification of the LBA, combined with FAA review of pertinent documentation, in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Valentin Technical Note No. 10/818 and the issuance of Airworthiness Directive No. 86-137 Valentin by the LBA. Based on the foregoing, the FAA has determined that the condition addressed by Valentin Technical Note No. 10/818 is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued to require initial and repetitive inspections, and replacement of the tailplane (horizontal stabilizer) front mounting on Valentin GmbH Model Taifun 17E motor gliders. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule, since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

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

2. By adding to § 39.13 the following new airworthiness directive (AD):

Valentin GmbH: Applies to Model Taifun 17E motor gliders equipped with tailplane (horizontal stabilizer) front mounting swivel head P/N KA10IHV certificated in any category.

Compliance is required as indicated unless already accomplished. To prevent the failure of the tailplane front mounting swivel head P/N KA10IHV which could result in the glider becoming uncontrollable, accomplish the following:

(a) Within the next 5 hours time-in-service after the effective date of this AD and thereafter at intervals not to exceed 25 hours time-in-service after the last inspection unless compliance with paragraph (c) has been accomplished, visually inspect the threaded shank of the tailplane front mounting swivel head P/N KA10IHV, using a 5 power or greater magnifying glass, for cracks or deformation in accordance with Action 1 of Valentin Technical Note 10/818, dated June 20, 1986.

(b) If a cracked or deformed mounting is found during the inspection required by paragraph (a) of this AD, before further flight, replace the tailplane front mounting with a serviceable tailplane front mounting installation P/N F1-2313 in accordance with Action 2 of Valentin Technical Note No. 10/818, dated June 20, 1986, and Installation Instruction to Technical Note No. 10/818, dated June 20, 1986.

(c) Prior to April 20, 1987, replace any tailplane front mounting not replaced in accordance with paragraph (b) of this AD, with an improved tailplane front mounting installation P/N F1-2313 in accordance with Action 2 of Valentin Technical Note No. 10/818, dated June 20, 1986, and Installation Instruction to Technical Note No. 10/818 dated June 20, 1986.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium, Telephone No. 513.38.30 ext. 2710 or the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, Telephone No. 516-791-6680.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office or the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Valentin Technical Note No. 10/818, dated June 20, 1986, and Valentin Installation Instruction to Technical Note No. 10/818, dated June 20, 1986, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Morris Aviation Ltd., Statesboro Airport, Box 718, Statesboro, Georgia 30458. These documents also may be examined at the Office of Regional Counsel, Rules Docket No. 86-ANE-51, Room 311, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, between the hours of 8:00 am and 4:30 pm, Monday thru Friday, except federal holidays.

This amendment becomes effective on March 27, 1987.

Issued in Burlington, Massachusetts, on February 19, 1987.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 87-5175 Filed 3-10-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 86-ACE-08]

Alteration of Transition Area, Storm Lake, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the 700-foot transition area at Storm Lake, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Storm Lake, Iowa, Municipal Airport, utilizing the Storm Lake Non-directional Radio Beacon (NDB) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR), and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, an additional approach procedure is being developed for the Storm Lake, Iowa, Municipal Airport, utilizing the Storm Lake NDB as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails alteration of the transition area at Storm Lake, Iowa, at or above 700 feet above the ground, within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR), and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was are republished in Handbook 7400.6B, dated January 2, 1986.

Discussion of Comments

On page 558 of the **Federal Register**, dated January 7, 1987, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations, so as to alter the transition area at Storm Lake, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

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

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

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Storm Lake, Iowa

That airspace extending upward from 700 feet above the surface within a 6.5 miles radius of the Storm Lake, Iowa Municipal Airport (Latitude 42°35'47" N, Longitude 95°14'22" W) within 3 miles each side of the 167°(T) 162°(M) bearing from the Storm Lake Municipal Airport extending from the 6.5 mile radius area to 7.5 miles south of the airport.

This amendment becomes effective at 0901 UTC, July 30, 1987.

Issued in Kansas City, Missouri, on February 27, 1987.

Clarence E. Newbern,

Acting Manager, Air Traffic Division.

[FR Doc. 87-5124 Filed 3-10-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 86-ACE-07]

Alteration of Transition Area, Beatrice, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the 700-foot transition area at Beatrice, Nebraska, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Beatrice, Nebraska, Municipal Airport, utilizing the Beatrice VOR and Shaw Non-directional Radio Beacon (NDB) as navigational aids. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR), and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE: July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th

Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, an additional approach procedure is being developed for the Beatrice, Nebraska, Municipal Airport, utilizing the Beatrice VOR and Shaw NDB as navigational aids. The establishment of an instrument approach procedure based on these approach aids entails alteration of the transition area at Beatrice, Nebraska, at or above 700 feet above the ground, within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR), and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

Discussion of Comments

On page 81 of the **Federal Register**, dated January 2, 1987, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations, so as to alter the transition area at Beatrice, Nebraska. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

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

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

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

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

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Beatrice, Nebraska

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Beatrice Municipal Airport (Latitude 40°18'01" N, Longitude 96°45'16" W) and within 5 miles each side of the Beatrice VOR 323° radial extending from the 6.5 miles radius to 14 miles northwest of the VOR and within 2.25 miles either side of the 175° radial of the Beatrice VOR extending from the 6.5 mile radius to 8.0 miles south of the VOR, and within 3.25 miles either side of the 185° bearing from the Shaw (HWB) NDB (Latitude 40°15'56" N, Longitude 96°45'24" W) extending from 6.5 mile radius to 8.0 miles south of the Beatrice Airport.

This amendment becomes effective at 0901 UTC July 30, 1987.

Issued in Kansas City, Missouri, on February 27, 1987.

Clarence E. Newbern,

Acting Manager, Air Traffic Division.

[FR Doc. 87–5123 Filed 3–10–87; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C–3207]

Aquanautics Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a San Francisco manufacturer of marine survival suits to notify owners and users of its suits of a safety defect that is potentially life-threatening and send a repair kit to all users and purchasers it can identify to correct the product defect.

DATE: Complaint and Order issued Feb. 17, 1987. [1]

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th St. & Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/A–4002, Theodore H. Hoppock, Washington, DC 20580. (202) 326–3087.

SUPPLEMENTARY INFORMATION: On Friday, Nov. 28, 1986, there was published in the **Federal Register**, 51 FR 43013, a proposed consent agreement with analysis In the matter of Aquanautics Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: S 13.10 Advertising falsely or misleadingly; S 13.170 Qualities or properties of product or service; S 13.190 Results; S 13.195 Safety; 13.195–60 Product; S 13.205 Scientific or other relevent facts. Subpart—Corrective Actions and/or Requirements: S 13.533 Corrective actions and/or requirements; 13.533–45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: S 13.1710 Qualities or properties; S 13.1730 Results; S 13.1740 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Marine survival suits, Trade practices.

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

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87–5105 Filed 3–10–87; 8:45 am]

BILLING CODE 6750-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Privacy Act of 1974; Exempt System of Records

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This rule exempts a new system of records maintained by TVA's Office of the Inspector General (OIG) for investigations and entitled "OIG Investigative Records—TVA" from subsections (c)(3), (d), (e)(1), (e)(4) (G),

(H), and (I) and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act) pursuant to 5 U.S.C. 552a(k)(2). This exemption is required because application of those subsections could alert investigation subjects to the existence or scope of investigations, disclose investigative techniques or procedures, reduce the cooperativeness of witnesses, or otherwise impair investigations.

EFFECTIVE DATE: March 11, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cressler II, (615) 632–2170.

SUPPLEMENTARY INFORMATION: TVA published a proposed rule on exempting OIG's new system of records from certain subsections of 5 U.S.C. 552a on December 5, 1986 (51 FR 43934). No comments were received. A description of the new system is published in the Notice Section of today's **Federal Register.**

Subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), (f) and (k)(2) of 5 U.S.C. 552a were cited incorrectly in the regulatory text of the proposed rule; however, they are cited correctly herein.

Since this rule relates to individuals rather than small entities, it will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy, and Sunshine Acts.

For the reasons set out in the preamble, Title 18, Chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority for Part 1301, subpart B, continues to read as follows:

Authority: Sec. 3, Pub. L. 93–579, 88 Stat. 1897 (5 U.S.C. 552a).

2. Section 1301.24 is amended by adding paragraph (d) as follows:

§ 1301.24 Specific Exemptions.

* * * * *

(d) The TVA system OIG Investigative Records is exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act) and corresponding sections of these rules pursuant to 5 U.S.C. 552a(k)(2). This system is exempted because application of these provisions might alert investigation subjects to the existence or scope of investigations, disclose investigative techniques or procedures, reduce the cooperativeness of witnesses, or otherwise impair investigations.

W.F. Willis,

General Manager.

[FR Doc. 87–5138 Filed 3–10–87; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 146

[Docket No. R–87–876; FR–1161]

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, Technical Amendment

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Technical amendment.

SUMMARY: This document amends 24 CFR Part 146, Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, to add OMB control numbers relating to collection of information requirements and to announce the effective date of the final rule which was published on December 17, 1986 (51 FR 45264).

EFFECTIVE DATE: April 10, 1987.

FOR FURTHER INFORMATION CONTACT: Myra Kennedy, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 5230, Washington, DC 20410 (202) 755–5904. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The information collection requirements contained in the regulatory sections listed below have been approved by the Office of Management and Budget under provisions of the Paperwork Reduction Act of 1980 (44 CFR Chapter 35) and have been assigned control number 2529–0030.

List of Subjects in 24 CFR Part 146

Reporting and recordkeeping requirements.

Accordingly, 24 CFR Part 146 is amended as follows:

PART 146—NONDISCRIMINATION ON THE BASIS OF AGE IN HUD PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The authority citation for Part 146 continues to read as follows:

Authority: Age Discrimination Act of 1975 (42 U.S.C. 6103); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§§ 146.21, 146.25, 146.27 and 146.33 [Amended]

2. Sections 146.21, 146.25, 146.27 and 146.33, are amended by adding the following sentence immediately following the text of each section:

(Information collection requirements have been approved by Office of Management and Budget under OMB Control No. 2529–0030.)

Date: March 6, 1987.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 87–5158 Filed 3–10–87; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[T.D. 8129]

26 CFR Parts 1, 5f, and 602

Information Reporting for Tax-Exempt Bond Issues; Income Tax Regulations Under TEFRA 1982; OMB Control Numbers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations and final regulations.

SUMMARY: This document contains rules implementing the provisions of section 1301(a) of the Tax Reform Act of 1986 (Pub. L. No. 99–514), which added section 149(e) to the Internal Revenue Code of 1986. These regulations affect issuers and purchasers of tax-exempt bonds. In addition, the text of the temporary regulations set forth in this document serves as the comment document for the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

EFFECTIVE DATE: These regulations are effective for all bonds issued after December 31, 1986 (including bonds issued to refund a prior issue of bonds).

FOR FURTHER INFORMATION CONTACT: Robert Beatson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3459, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations and final regulations to be added to the Income Tax Regulations (26 CFR Part 1) under section 149(e) of the Internal Revenue Code of 1986, and temporary regulations under 26 CFR Part 5f. The amendments are issued to provide regulations implementing changes made by section 1301(a) of the Tax Reform Act of 1986.

Explanation of Provisions

Section 103(a) provides generally that gross income does not include interest on any State or local bond (that is, an obligation of a State or a political subdivision thereof).

Prior to January 1, 1987, sections 103(1) and 103A(j)(3) of the Internal Revenue Code required issuers of tax-exempt industrial development bonds, student loan bonds, obligations a major portion of the proceeds of which are used by section 501(c)(3) organizations, qualified mortgage bonds, and qualified veterans' mortgage bonds to report certain information to the Internal Revenue Service. The interest on an issue that did not satisfy these information reporting requirements was not excluded from gross income.

Temporary and proposed regulations under section 103(1) (§ 5f.103–3) were issued on May 6, 1983 (48 FR 21120). Final regulations under section 103A(j)(3) (§ 1.103A–2(k)(2)) were published on August 29, 1985 (50 FR 35540). These regulations provide that issuers satisfy the information reporting requirement by filing Form 8038, Information Return for Private Activity Bond Issues, with the Internal Revenue Service by the 15th day of the second month after the close of the calendar quarter in which the obligations are issued. In addition, § 1.103A–2(k)(2)(ii) required issuers of qualified mortgage bonds and qualified veterans' mortgage bonds to submit annual reports containing information on the borrowers of the original proceeds of each issue. Section 1.103A–2(1) required that issuers of qualified mortgage bonds publish a policy statement by the last day of the year preceding the year in which such bonds are issued.

Section 1301(a) of the Tax Reform Act of 1986 amended the information reporting requirements of sections 103(i) and 103A(j)(3) by adding section 149(e) to the Internal Revenue Code of 1986. Section 149(e) revises the information required to be reported and extends the information reporting requirements to all tax-exempt bonds (including bonds issued to refund a prior issue of bonds).

Final Regulations

The amendments to paragraphs (k), (l), and (m) of § 1.103A–2 are final rules. These amendments conform existing final regulations to provisions contained in the Tax Reform Act of 1986.

Temporary Regulations

The amendment to Part 1 which adds § 1.149(e)–1T to the regulations, and the amendment to Part 5f, which adds a sentence to § 5f.103–3(a), are temporary regulations. These regulations provide issuers with guidance regarding compliance with the information reporting requirement of section 149(e). In general, revised Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues Under section 149(e), is to be filed for each issue of tax-exempt private activity bonds issued after December 31, 1986. Form 8038–G, Information Return for Tax-Exempt Governmental Bond Issues Under section 149(e), is to be filed for each issue of tax-exempt bonds other than private activity bonds ("governmental bonds") issued after December 31, 1986, except that with respect to all issues of governmental bonds with an issue price of less than $100,000, the issuer must annually file a single Form 8038–GC, Consolidated Information Return for Small Tax-Exempt Governmental Bond Issues Under Section 149(e). Form 8038–GC will require the reporting of less detailed information than Form 8038–G, such as information concerning the types of issues; a brief description of the characteristics of the combined issues and any refunded bonds (if applicable); the amount of the bonds designated by the issuer under section 265(b)(3)(B)(ii); the amount of the proceeds of the issues used to make loans to other governmental units; and the amount of the proceeds of the issues derived from loans made from the proceeds of other tax-exempt bonds. Form 8038–GC may be completed on the basis of information readily available to the issuer at the close of the calendar year, supplemented by good faith estimates.

Forms 8038 and 8038–G are to be filed on or before the 15th day of the second calendar month after the close of the calendar quarter in which the issue is issued. Form 8038–GC is to be filed on or before February 15th of the following calendar year. All forms are to be filed with the Internal Revenue Service Center, Philadelphia, PA 19255. Revised Form 8038 and Form 8038–G are available. Form 8038–GC will be available in sufficient time for issuers to file in a timely manner.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that these temporary regulations are not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information contained in these regulations has been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is Robert Beatson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and the Treasury Department participated, however, in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.61–1–1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 5f

Income taxes, Tax Equity and Fiscal Responsibility Act of 1982.

26 CFR Part 602

OMB control numbers, Paperwork Reduction Act, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1, 5f, and 602 are amended as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805. * * * Section 1.103A–2 also issued under 26 U.S.C. 103A(j). * * * Section 1.149(e)–1T also issued under 26 U.S.C. 149(e).

Par. 2. Section 1.103A–2 is amended by adding a sentence at the end of paragraph (k)(1), by adding a sentence at the end of paragraph (l)(1)(ii), and by revising the last sentence of paragraph (m)(1). These added and revised provisions read as follows:

§ 1.103A–2 Qualified mortgage bond.

* * * * *

(k) *Information reporting requirement*—(1) *In general.* * * * With respect to bonds issued after December 31, 1986, see the regulations under section 149(e).

* * * * *

(l) *Policy statement*—(1) *In general.* * * *

(ii) * * * With respect to reports required to be published and submitted to the Commissioner not later than December 31, 1986, the Commissioner has determined that there is a reasonable cause for the failure to publish and file such reports in a timely fashion; such reports will be considered published and filed in a timely fashion if, not later than December 31, 1987, the report is published (after having a public hearing following reasonable public notice) and a copy is submitted to the Commissioner.

* * * * *

(m) *State certification requirements*—(1) *In General.* * * * The requirements of this paragraph apply to obligations issued after December 31, 1984; see section 149(e) and the regulations thereunder with respect to obligations issued after December 31, 1986.

* * * * *

PART 1—INCOME TAX REGULATIONS

Par. 3. A new § 1.149(e)–1T is added immediately following § 1.143–1 to read as follows:

§ 1.149(e)–1T Information reporting requirements for tax-exempt bonds (Temporary).

(a) *General rule.* Under section 149(e) and this section, interest on any bond issued as part of an issue issued after December 31, 1986 (including any bond issued to refund a bond issued on or before December 31, 1986) shall be included in gross income unless the requirements of this section are satisfied with respect to the issue of which the bond is a part.

(b) *Requirements for private activity bonds*—(1) *In general.* A private activity bond satisfies the requirements of this section if it is issued as part of an issue with respect to which—

(i) The issuer files with the Internal Revenue Service a completed Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues Under section 149(e), not later than the 15th day of the second calendar month after the close of the calendar quarter in which the issue is issued;

(ii) If any bond is taken into account under section 146 (relating to volume cap on private activity bonds), the State certification requirement of paragraph (b)(2) of this section is satisfied; and

(iii) If any bond is a qualified mortgage bond or qualified veterans' mortgage bond (within the meaning of section 143 (a) or (b) or section 103A(c) (1) or (3) as in effect on the day before enactment of the Tax Reform Act of 1986) the issuer submits the annual report containing information on the borrowers of the original proceeds of the issue as required under § 1.103A–2 (k)(2)(ii) and (k)(3) through (k)(6).

(2) *State certification*—(i) *In general.* An issue satisfies the requirements of this paragraph (b)(2) if a State official designated by State law (or, if there is no such official, the Governor or his delegate) certifies that the issue meets the requirements of section 146 (relating to volume cap on private activity bonds), and the certification is attached to the Form 8038 filed with respect to the issue. In the case of any constitutional home rule city (as defined in section 146(d)(3)(C)), the preceding sentence shall be applied by substituting "city" for "State" and "chief executive officer" for "Governor".

(ii) *Certification.* The certifying official need not perform an independent investigation in order to certify that the issue meets the requirements of section 146. For example, the certifying official may rely on an affidavit executed by an officer of the issuer responsible for issuing the bonds which sets forth, in brief and summary terms, facts necessary to determine that the issue meets the requirements of section 146, after comparing the information in that affidavit to other readily available information with respect to that issuer (*e.g.*, previous affidavits and certifications for other private activity bonds issued by that issuer).

(c) *Requirements for governmental bonds.* A bond other than a private activity bond satisfies the requirements of this section if it is issued as part of an issue with respect to which the issuer files with the Internal Revenue Service—

(1) In the case of any issue with an issue price of $100,000 or more, a completed Form 8038–G, Information Return for Tax-Exempt Governmental Bond Issues Under section 149(e), not later than the 15th day of the second calendar month after the close of the calendar quarter in which the issue is issued; or

(2) In the case of any issue with an issue price of less than $100,000, a completed Form 8038–GC, Consolidated Information Return for Small Tax-Exempt Governmental Bond Issues Under section 149(e), with respect to all such issues issued by the issuer during the calendar year, not later than February 15th of the calendar year following the year in which the issue is issued.

(d) *Filing of forms and special rules*—(1) *Completed form.* For purposes of this section—

(i) *Good faith effort.* A form shall be treated as completed if the issuer (or a person acting on behalf of the issuer) has made a good faith effort to complete the form in accordance with the form and the instructions for the form. An inadvertent failure to file the correct form with respect to an issue shall be disregarded for purposes of determining whether the issue meets the requirements of this section.

(ii) *Information.* Form 8038 and form 8038–G shall be completed on the basis of available information and reasonable expectations as of the date the issue is issued. Form 8038–GC may be completed on the basis of information readily available to the issuer at the close of the calendar year to which the form relates, supplemented by estimates made in good faith.

(iii) *Certain information not required.* The Commissioner has determined that the information specified in the first sentence of section 149(e)(2) which is not required to be reported to the Internal Revenue Service pursuant to this section is not necessary to carry out the purposes of section 149(e). Accordingly, the reporting of such information is not required in order to satisfy the requirements of section 149(e) or this section.

(iv) *Revised or renumbered forms.* If any form is revised or renumbered, any reference in this section to the form shall be treated as a reference to the revised or renumbered form.

(2) *Manner of filing.* (i) *Place for filing.* A form is filed when it is mailed to the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255 (or any other location specified on the form or the instructions for the form).

(ii) *Extension of time.* The Commissioner may grant an extension of time to file any form (or attachment) required under this section if the Commissioner determines that the failure to file in a timely manner was not due to willful neglect. Such a determination may be made with respect to an issue or a class of issues.

(e) *Definitions.* For purposes of this section—

(1) *Private activity bond.* The term "private activity bond" has the meaning given that term in section 141(a), except that such term does not include any bond described in section 1312(c) of the Tax Reform Act of 1986 to which section 1312 or 1313 of the Tax Reform Act of 1986 applies.

(2) *Issue*—(i) *In general.* Except as otherwise provided in this paragraph (e)(2), bonds shall not be treated as part of the same issue if the bonds are not issued (A) by the same issuer, (B) on the same date, and (C) pursuant to a single transaction (or series of related transactions).

(ii) *Draw-down loans, commercial paper, etc.* Bonds issued during the same calendar year (A) pursuant to a loan agreement under which amounts are to be advanced periodically ("draw-down loan"), or (B) with a term not in excess of 270 days, may be treated as part of the same issue if the bonds are equally and ratably secured under a single indenture or loan agreement and issued pursuant to a common financing arrangement (*e.g.*, pursuant to the same official statement, periodically updated to reflect changing factual circumstances). In addition, in the case of bonds issued pursuant to a draw-down loan which meets the requirements of the preceding sentence, bonds issued during different calendar years may be treated as part of the same issue if all the amounts to be advanced pursuant to the drawdown loan are reasonably expected to be advanced within 3 years of the date of issue of the first bond.

(iii) *Leases and installment sales.* Bonds other than private activity bonds may be treated as part of the same issue if (A) the bonds are issued pursuant to a single agreement that is in the form of a lease or installment sale, and (B) all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first bond.

(iv) *Qualified 501(c)(3) bonds.* If an issuer elects pursuant to section 141(b)(8) to treat a portion of an issue as a qualified 501(c)(3) bond, that portion shall be treated as a separate issue.

(3) *Date of issue*—(i) *Bond.* A bond is issued on the date the bond is exchanged by the issuer for the underwriter's (or other purchaser's) funds. A bond issued as part of an issue that is in the form of a lease or installment sale is issued on the date interest begins to accrue on the bond for Federal income tax purposes.

(ii) *Issue.* An issue is issued on the date of issue of the first bond issued as part of the issue. See paragraph (d)(2)(ii) and (iii) of this section for rules relating to draw-down loans, commercial paper, *etc.*, and leases and installment sales.

(iii) *Bonds to which prior law applied.* Notwithstanding the provisions of this paragraph (e)(3), an issue for which an information report was required to be filed under section 103(1) or 103A(j)(3) shall be treated as issued prior to January 1, 1987.

(4) *Issue price.* The term "issue price" has the same meaning as when used in section 148(h), except that such term shall not include interest accrued to the date of issue (if payable at regular intervals of 1 year or less).

PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER TEFRA 1982

Par. 3. The authority citation for Part 5f continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 4. Section 5f.103–3 (a) is amended by adding a new sentence following the first sentence. This added provision reads as follows:

§ 5f.103–3 Information reporting requirements for certain bonds.

(a) *General rule.* * * * For rules concerning bonds issued after December 31, 1986, see § 1.149 (e)–1T. * * *

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 601.101 [Amended]

Par. 5. Section 601.101(c) is amended by inserting in the appropriate place in the table "§ 1.149 (e)–1T . . . 1545–0720."

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: February 25, 1987.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 87–4980 Filed 3–10–87; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 14

[Order No. 1179–87]

Administrative Claims Under the Federal Tort Claims Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order clarifies the requirement that a claim include evidence of authority to present the claim whenever it is presented by an agent or legal representative on behalf of a claimant.

EFFECTIVE DATE: March 11, 1987.

FOR FURTHER INFORMATION CONTACT: Jeffrey Axelrad, Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, D.C. 20530 (202/724–6810).

SUPPLEMENTARY INFORMATION: The amendment would modify 28 CFR Part 14 to clarify the mandatory requirement that a claim include evidence of authority to present the claim whenever it is presented by an agent of legal representative on behalf of a claimant. This order is not a major rule within the meaning of Executive Order 12291. It will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 14

Tort claims.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 2672, and 5 U.S.C. 301, Title 28 of the Code of Federal Regulations, Part 14 is amended as follows:

PART 14—[AMENDED]

1. The authority citation for Part 14 is revised to read as follows: All other authority citations are removed.

Authority: 5 U.S.C. 301, 28 U.S.C. 509, 510, 2672.

2. Section 14.2(a) is revised to read as follows:

§ 14.2 Administrative claim; when presented.

(a) For purposes of the provisions of 28 U.S.C. 2401(b), 2672, and 2675, a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have

occurred by reason of the incident; and the title or legal capacity of the person signing, and is accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

* * * * *

§ 14.13 [Amended]

3. Section 14.3 is amended by removing paragraph (e).

Dated: February 20, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-5132 Filed 3-10-87; 8:45 am]

BILLING CODE 4410-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3166-7]

Kansas, Missouri, Nebraska; Schedule of Compliance for Modification of Waste Programs

AGENCY: Environmental Protection Agency, Region VII.

ACTION: Notice of Kansas, Missouri and Nebraska Compliance Schedules to Adopt Program Modifications.

SUMMARY: On September 22, 1986 EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing compliance schedules for Kansas, Missouri and Nebraska to modify their programs in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Jane Ratcliffe, Kansas Authorization Coordinator, RCRA Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-2852. Chet McLaughlin, (Acting) Missouri Authorization Coordinator, RCRA Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-2852. Jack Coakley, Nebraska Authorization Coordinator, RCRA Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-2852.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b) 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1-271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR § 271.21. See 51 *FR* 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Kansas

Kansas received final authorization for its hazardous waste program on October 17, 1985 [50 FR 40377, October 3, 1986]. Today EPA is publishing a compliance schedule for Kansas to obtain program modifications for the following Federal program requirements:

- Availability of Information, section 3006(f), and;
- Modifications in the Federal program for non-HSWA Cluster 1 including:

a. Uniform National Manifest, 49 FR 10490-510;

b. Interim Status Standards, 49 FR 46095;

c. Redefinition of Solid Waste, 50 FR 614-668;

d. Interim Status Standards for Landfills, 50 FR 16044-48.

The State has agreed to seek the needed program modifications according to the following schedule:

1. Submit availability of information checklist to Region VII EPA for review and comment—March 1, 1987.

2. Complete internal changes for availability of information requirement if sufficient state statutory authority exists—September 15, 1987.

3. Submit application to EPA for authorization—October 1, 1987.

C. Missouri

Missouri received final authorization of its hazardous waste program on December 4, 1985 [50 FR 47740, November 20, 1985]. Today EPA is publishing a compliance schedule for Missouri to obtain program modifications for the following Federal program requirements:

- Availability of Information, section 3006(f).

The State has submitted an application for the non-HSWA cluster 1 provisions which is being perfected. The State has agreed to seek the needed program modifications according to the following schedule:

(1) Regulations drafted, February 27, 1987;

(2) Public hearings before HW Commission, March 31, 1987;

(3) Regulations voted upon by HW Commission, April 30, 1987;

(4) Regulations submitted as order of rulemaking, May 31, 1987;

(5) Regulations promulgated and published; June 30, 1987.

Missouri expects to submit an application to EPA for authorization of the above mentioned program modifications by September 30, 1987.

D. Nebraska

Nebraska received final authorization of its hazardous waste program on February 7, 1985 [50 FR 3345, January 24, 1985]. Today EPA is publishing a compliance schedule for Nebraska to obtain program modifications for the following Federal program requirements:

- Availability of Information, section 3006(f).

The State has agreed to seek the needed program modifications according to the following schedule:

(1) Complete regulatory revisions to provide Nebraska the authority to implement section 3006(f), June 20, 1987.

Nebraska expects to submit an application to EPA for authorization of the above mentioned program modifications by September 1, 1987.

Nebraska expects to submit a final application for the non-HSWA cluster 1 requirements promulgated prior to July 1, 1985 by March 30, 1987. Authorization for these program modifications is expected by June 30, 1987.

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, 6974(B).

Dated: March 2, 1987.

Morris Kay,

Regional Administrator.

[FR Doc. 87-5114 Filed 3-10-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 418

[BERC-301-F]

Medicare Program; Hospice "Core" Service; Nursing

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These final regulations permit certain hospices located in areas that are not urbanized to receive from HCFA a waiver of the requirement to provide nursing services directly. The regulations implement section 2343 of the Deficit Reduction Act of 1984 (Pub. L. 98–369).

DATE: These final regulations are effective on April 10, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas Hoyer, (301) 594–9446.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction of Hospice Care

Hospice care is an approach to treatment that recognizes that the impending death of an individual warrants a change in focus from curative care to palliative care. The goal of hospice care is to help terminally ill individuals continue life with minimal disruption in normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through the use of a broad spectrum of professional and other care-givers with the goal of making the individual as physicially and emotionally comfortable as possible.

The hospice experience in the United States has placed emphasis on home care. It offers physician services, specialized nursing services, and other forms of care in the home in order to enable the terminally ill individual to remain at home in the company of family and friends as long as possible. Inpatient hospice settings have been used when the individual's pain and symptoms must be closely monitored in order to be controlled, when medical intervention is required to control pain or palliate symptoms, or when the family needs a rest from the stress involved in caring for the individual (respite care).

B. Legislative History

Section 122 of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 (Pub. L. 97–248, enacted on September 3, 1982) enacted section 1861(dd) of the Social Security Act (Act) to expand the scope of Medicare benefits by authorizing coverage for hospice care for terminally ill beneficiaries with a life expectancy of six months or less. Section 1861(dd)(2)(A)(ii)(I) of the Act specifies that a hospice must routinely provide directly substantially all of the following "core services": nursing care, medical social services, physicians' services and counseling services. The remaining "non-core services" may be provided either directly by the hospice or under arrangements with others, in which case the hospice must maintain professional management responsibility for all such services furnished to an individual, regardless of the location of or type of facility in which such services are furnished.

On July 18, 1984 section 2343 of the Deficit Reduction Act of 1984 (DRA), Pub. L. 98–369, amended section 1861(dd) of the Act by adding a new paragraph (5), to permit the Secretary to waive, for certain hospices, the requirement that a hospice routinely provide directly substantially all nursing services. Section 1861(dd)(5)(A) of the Act specifies that to obtain a waiver a hospice must be located in an area that is not an urbanized area (as defined by the Bureau of the Census), must have been in operation on or before January 1, 1983, and must demonstrate a good faith effort (as determined by the Secretary) to hire a sufficient number of nurses to provide nursing care directly. Section 1861(dd)(5)(B) of the Act specifies that if a waiver is requested by an organization that meets the statutory requirements, and if it is submitted in the form and contains the information required by the Secretary, the waiver will be deemed granted unless the request is denied by the Secretary within 60 days after the request is received by the Secretary. Further, that paragraph states that the granting of a waiver will not preclude the favorable consideration of a subsequent waiver request should such a request be necessary.

Section 2343 of DRA specifies that the Secretary must study the necessity and appropriateness of the "core services" requirement and submit the findings to Congress prior to January 1, 1986. (This date corresponds to the date that the Secretary must submit a report concerning the hospice program's reimbursement method and benefit structure.) The study must include not only an analysis of Medicare-approved hospices but also a review of non-Medicare hospices. Although this report has not yet been submitted because of the difficulty of obtaining the necessary information, research reports are being compiled and we expect that we will submit the report in early 1987.

C. Current Regulations.

We published a final rule on December 16, 1983 (48 FR 56008) to implement the hospice program under Medicare (42 CFR Part 418). The final rule defines a hospice as a public agency or private organization or subdivision of either of these that is primarily engaged in providing care to terminally ill individuals, meets the conditions specified in the regulations and has a valid provider agreement.

The December 16, 1983 final rule requires that a hospice provide nursing care and services by or under the supervision of a registered nurse (42 CFR 418.82) and that these services routinely be provided directly by hospice employees (42 CFR 418.80). Under these regulations, a hospice may use contracted staff to meet the "core service" needs of its patients, but only when necessary to supplement hospice employees during periods of peak patient loads or under extraordinary circumstances.

On March 3, 1986, we published in the **Federal Register** a proposed regulation (51 FR 7292) to implement section 2343 of Pub. L. 98–369 concerning waiving the requirement for certain hospices routinely to provide directly substantially all nursing services.

II. Provisions of the Proposed Regulations

As evidenced by the amendment to the statute, Congress was concerned that the original law and current regulations may have placed an unreasonable burden on hospices located in rural areas by requiring them to provide nursing care services directly. Rural hospices have reported problems in hiring enough nurses to provide hospice care, and they have also questioned the cost-effectiveness of directly employing nurses in rural areas where hospice utilization is relatively low.

We proposed on March 3, 1986 to implement the statutory provision that permits the Secretary to waive the requirement that an agency or organization must routinely provide directly substantially all of the nursing "core services" for certain agencies or organizations with respect to all or part of the nursing care. Hospices that are located in non-urbanized areas (as identified by the Bureau of the Census) and were operational on or before January 1, 1983, may be given a waiver of the requirement that nursing services be provided directly if they can demonstrate that they made a good faith effort to hire nurses. This waiver may involve nursing services throughout the hospice's service area or, for a hospice which functions in a large non-urban area where availability of nurses differs from one location to another, may be granted only for a part of the hospice's

service area. The proposed rule would have made the waivers granted under this authority effective for one year.

The statute permits the Secretary to set forth the form and information required in order to determine whether to gant the waiver. The statute and our criteria require that the hospice demonstrate an effort at recruitment which failed.

As required by the statute, we proposed to make determinations as to urbanized and non-urbanized areas based on current Census Bureau designations. For a hospice which operates in several areas, the location of the hospice would be considered the location of its central office. We proposed to determine whether a hospice was operational on or before January 1, 1983 based on:

1. Proof that the organization was established to provide hospice services on or before January 1, 1983 (for example, newspaper advertisements, dated correspondence on hospice letterhead, dated invoices, articles of incorporation, governing body minutes);

2. Evidence that hospice-type services were actually furnished to patients on or before January 1, 1983 (for example, dated copies of medical records, nursing notes, pharmaceutical orders); and

3. Evidence that the hospice care was a discrete activity rather than an aspect of another type of provider's patient care program on or before January 1, 1983 (that is, evidence of a distinct program in an existing provider or articles of incorporation that show it to be a discrete and separate organization).

We proposed to adopt these criteria because we recognize that most of these hospices would not have been able to meet the full range of requirements set forth in section 1861(dd)(2) of the Act, the statutory definition of "hospice program", since the definition did not exist until the enactment of the provision. Nonetheless, it is clear that the basic statutory concept of a hospice is of a discrete activity providing hospice care and that, therefore, these waivers should be restricted to such hospices.

We proposed to make determinations of good faith efforts to hire nurses based on the following:

1. Proof of recruitment efforts through advertisements in professional journals or local newspapers;

2. Copies of job descriptions for nurse employees;

3. Evidence that salary and benefits are competitive for the area (for example, evidence of salary and benefit offers in connection with recruitment advertisements); and

4. Any other contributing activities (for example, recruiting efforts at health fairs).

We were especially interested in comments concerning the appropriateness of the above criteria and any suggestions for other items and we specifically requested comments/suggestions in the proposed rule.

We proposed that a hospice would submit a request for waiver of the nursing core services requirement directly to HCFA. We proposed to respond to all requests within 60 days; however, any waiver request would, under the law, be deemed to be granted unless it is denied within 60 days after it is received. The granting of a waiver would not preclude the favorable consideration of a subsequent waiver request should such a request be necessary.

III. Analysis of and Responses to Public Comments

We received 11 pieces of correspondence from national hospice, hospital, and nurses' organizations; State agencies; and health care providers commenting on the proposed rule. In drafting this final regulation, we considered all comments. The comments and our responses to these comments are discussed below.

A. General Comment

Comment: One commenter requested that we state in regulations that the granting of a waiver would not preclude favorable consideration of a subsequent waiver request should such a request be necessary.

Response: We do not believe it necessary to state in regulations that the granting of a waiver would not preclude favorable consideration of a subsequent waiver request should such a request be necessary. The regulation states the conditions for granting waivers and the length of time for each waiver.

B. Core Services Waiver Requirements

Comment: Five organizations commented on the statement that the location of a hospice that operates in several areas is considered to be the location of its central office (§ 418.83(a)). These commenters believe that this definition unnecesarily restricts eligibility for the waiver and that waivers should be allowed for hospices or parts of hospices that perform most of their services in rural locations. One of these commenters also suggested that HCFA should not permit hospices that were in operation by January 1, 1983, to expand, relocate, or otherwise begin operating in rural areas so that they may qualify for a waiver. The commenter noted that any manipulation that results in a hospice being allowed to operate on a Statewide basis through the granting of a waiver would negate the intent of the statutory core services requirement.

Response: In developing the proposed regulations, we were careful to avoid either exceeding or narrowing the statutory scope of the waiver. When we approve a hospice for Medicare participation, the approved unit is essentially the central office of the provider, although the provider is responsible for services furnished throughout its service area. In this respect, we are following a policy we have used for many years in determining the location of a provider for purposes of determining its Medicare payment status (for example, which wage index to apply to its services). Although we recognize that a hospice may provide services in areas that are somewhat distant from its central office, we do not believe that these areas should be considered separate entities for purposes of allowing this waiver. To do so would divide the hospice into unmanageable parts for purposes of Medicare participation and for purposes of its own personnel management. The creation of this waiver authority was not for the purpose of allowing hospices to expand their service areas beyond their capacity to care directly for patients. A hospice service area should be such that a hospice can directly manage the care of its patients. The waiver was enacted to permit hospices to exist in rural areas where a shortage of nurses would otherwise preclude it from meeting the core services requirement and we are providing for partial waivers not to permit undue expansion in rural areas but to assure that a waiver is granted only to the extent that it is needed to permit the hospice to function. Admittedly, there exists the possibility that an urban hospice may experience a similar problem; however, section 1861(dd)(5)(A) of the Act permits waivers only for hospices located in nonurban areas. Because we consider the location of a hospice to be the location of its central office, we will not approve waivers for hospices whose central offices are located in urban areas. An additional concern is that allowing waivers in parts of an urban hospice's nonurban service area could encourage expansion to even more remote areas where the hospice's control of the services provided would be questionable and monitoring would be infeasible. We agree with the commenter who suggested that we not allow waivers for hospices that relocate

or otherwise begin operating in rural areas so as to qualify for a waiver. We will address this issue in guidelines.

Comment: Three organizations commented on the requirement that an applicant submit evidence that the hospice was a discrete activity rather than an aspect of another type of provider's care program on or before January 1, 1983 (§ 418.83(a)(2)). One commenter believes that this requirement appears to narrow eligibility unnecessarily and the other two commenters requested clarification of the type of evidence that would be expected. The commenters suggested several examples of possible evidence, including articles of incorporation, records indicating that hospice-type care was provided by a separate department, and accounting records that indicate a separate cost center.

Response: This requirement is designed to implement the statutory requirement that the agency or organization was in operation on or before January 1, 1983. We recognize that home health agencies, hospitals, and other providers may have provided special care to terminal patients for many years. Because the Medicare hospice benefit is relatively new, we did not specify any particular model for the hospice-type care provided on or before January 1, 1983, but we believe that it is essential to establish that the hospice care provided was a distinct and organized activity rather than general care provided to terminal patients who were part of the provider's general patient population. All of the examples of evidence that the commenters suggested and any other evidence that indicates that the hospice activity was distinct from the provider's general care may be submitted. We do not believe that it is appropriate to limit the range of materials that may be submitted by listing acceptable evidence in regulations.

Comment: Five organizations commented on the requirement concerning evidence that would demonstrate a good faith effort to hire nurses (§ 418.83(a)(3)). One group suggested that we require that recruitment efforts be undertaken within the six months preceding the date that a waiver is requested. Another organization suggested that we provide more specificity concerning competitiveness of the salary and benefits offered. Two organizations suggested that we list items of evidence as examples rather than requiring that all items be submitted. One organization requested that we require a copy of an advertisement in a local newspaper and not allow an advertisement in a professional journal to be substituted for this evidence because the newspaper advertisement is much more likely to come to the attention of a nurse in the locale. This commenter also suggested that evidence of a recruitment plan include contacting nurses in other health care settings such as visiting nurse associations, public health departments and hospitals.

Response: While we believe these suggestions are useful, we do not believe it appropriate to include them in regulations. We plan to incorporate many of them into our manual instructions when we publish interim instructions for the Hospice Manual (HCFA Pub. 21), the State Operations Manual (HCFA Pub. 7), the Part A Intermediary Manual (HCFA Pub. 13), and the Regional Office Manual (HCFA Pub.23). These instructions will provide details relating to submission of waiver requests. With respect to the local newspaper advertisement for recruiting nurses, we have accepted that comment and changed the regulations accordingly (§ 418.83(a)(3)(i)).

Comment: Three groups commented that the proposed one-year duration of a waiver (§ 418.83(c)) is too short in view of the substantial recruitment efforts and documentation required to obtain a waiver. One commenter also noted that the employment market for nurses is unlikely to change in the course of one year. All three commenters suggested a three-year waiver period.

Response: We believe the commenters raised a valid concern. Accordingly, although we have retained a one-year waiver period, we have added a provision permitting a maximum of two one-year extensions (§ 418.83(d)). Under this provision, of a hospice wishes to receive a one-year extension, the hospice must submit a certification to HCFA, prior to the expiration of the waiver period, that the employment market for nurses has not changed significantly since the time the initial waiver was granted. In the event that new Census Bureau designations are made during the course of a waiver period (including any extension), and the hospice is no longer located in a non-urbanized area, the initial waiver will remain in effect until the end of the approved period.

C. Contracting for Nurses

Comment: Three commenters believe that a waiver should be granted if a hospice can establish that it would be more cost-effective to contract for nurses than to hire them or if a small hospice is too poor to hire nurses. One commenter suggested that contracting be allowed so as to avoid staff burnout.

Response: We have no statutory authority to provide waivers for hospices on any basis other than those described in section 1861(dd)(5)(A) Of the Act, which relates only to the inability of hospices in certain locations to recruit nurses.

IV. Summary of Changes in the Final Regulations

As stated in our discussion of the comments and responses, we have made some changes to the approach we had proposed in the regulations published on March 3, 1986. With the exception of the changes identified below, the final regulations reflect the proposals made in the March 3, 1986 proposed rule.

A. Evidence of Recruitment Efforts to Hire Nurses

We have revised § 418.83(a)(3)(i) to require a hospice to demonstrate recruitment efforts to hire nurses by providing us with copies of local newspaper advertisements. We eliminated the option of advertisements in professional journals as proof of recruitment efforts. We have also included "contacts with nurses at other providers in the area" as an example of recruiting activities in § 418.83(a)(3)(iv).

B. Duration of Waiver Period

We have extended the duration of the waiver period to three years. In the event that new Census Bureau designations are made during the course of a waiver period, and the hospice is no longer located in a non-urbanized area, the waiver would remain in effect until the end of the approved three-year period.

C. Census Bureau Designations

We inadvertently included in § 418.83(a)(1) of the proposed regulations a reference to the "1980" Bureau of the Census designations for determining non-urbanized areas. The statute does not require the use of the 1980 designations. In the final regulations, we have deleted the reference to "1980". The Bureau of the Census updates its designations every ten years and we will use the most current designations available when a waiver application is received.

V. Impact Analysis

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for regulations that are likely to meet criteria for a "major rule". A major rule is one that will result in: (1) an annual

effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider all for-profit and most not for-profit providers to be small entities.

As noted elsewhere in this preamble, section 2343 of Pub. L. 98–369, seeks to correct an unreasonable burden that may have been created by the original law and the current regulations. Specifically, Congress concluded that rural hospices were encountering problems in hiring enough nurses to provide hospice care directly. This final rule permits certain rural hospices to request a waiver that will provide them administrative flexibility in securing nursing services. Since the main test for obtaining a waiver is the demonstrated inability to recruit nurse employees, we expect that virtually no existing hospices (which have already been approved for Medicare participation) will be applying successfully for a waiver. Rather, the main groups of candidates should be organizations that, because of an inability to recruit nurses, have been unable to participate.

To the extent that some hospices have been unsuccessfully trying to recruit nurses, this provision may enable them to postpone additional efforts and thus save advertising costs. For hospices which have not yet begun to recruit nursing staff, this provision will enable recruitment efforts to be suspended when it can be determined that they will not be effective. We believe that the incremental difference between the incurred costs of current hiring practices and hiring practices of hospices receiving a waiver under this provision will not be significant.

We have determined that this final regulation will not result in a significant economic impact that meets the threshold criteria of Executive Order 12291. In addition, we have determined, and the Secretary certifies that these final regulations will not result in a significant economic impact on a substantial number of small entities. Therefore, we have not prepared either an economic impact analysis or regulatory flexibility analysis.

VI. Information Collection Requirements

Section 418.83(a) of this final rule contains information collection requirements that are subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This section has been reviewed by OMB and is approved under OMB No. 0938–0475.

List of Subjects in 42 CFR Part 418

Coinsurance, Hospice, Medicare, Respite care, Volunteers.

For the reasons set forth in the preamble, 42 CFR Part 418 is amended as follows:

PART 418—HOSPICE CARE

1. The authority citation for Part 418 continues to read as follows:

Authority: Secs. 1102, 1811–1814, 1861–1866 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395c–1395f, 1395x–1395cc and 1395hh).

2. Section 418.80 is revised to read as follows:

§ 418.80 Condition of participation—Core services.

Except as permitted in § 418.83, a hospice must ensure that substantially all the core services described in §§ 418.82 through 418.88 are routinely provided directly by hospice employees. A hospice may use contracted staff if necessary to supplement hospice employees in order to meet the needs of patients during periods of peak patient loads or under extraordinary circumstances. If contracting is used, the hospice must maintain professional, financial, and administrative responsibility for the services and must assure that the qualifications of staff and services provided meet the requirements specified in §§ 418.82 through 418.88.

3. A new § 418.83 is added to read as follows:

§ 418.83 Nursing services—Waiver of requirement that substantially all nursing services be routinely provided directly by a hospice.

(a) HCFA may approve a waiver of the requirement in § 418.80 for nursing services provided by a hospice which is located in a non-urbanized area. The location of a hospice that operates in several areas is considered to be the location of its central office. The hospice must provide evidence that it was operational on or before January 1, 1983, and that it made a good faith effort to hire a sufficient number of nurses to provide services directly. HCFA bases its decision as to whether to approve a waiver application on the following:

(1) The current Bureau of the Census designations for determining non-urbanized areas.

(2) Evidence that a hospice was operational on or before January 1, 1983 including:

(i) Proof that the organization was established to provide hospice services on or before January 1, 1983;

(ii) Evidence that hospice-type services were furnished to patients on or before January 1, 1983; and

(iii) Evidence that the hospice care was a discrete activity rather than an aspect of another type of provider's patient care program on or before January 1, 1983.

(3) Evidence that a hospice made a good faith effort to hire nurses, including:

(i) Copies of advertisements in local newspapers that demonstrate recruitment efforts;

(ii) Job descriptions for nurse employees;

(iii) Evidence that salary and benefits are competitive for the area; and

(iv) Evidence of any other recruiting activities (e.g., recruiting efforts at health fairs and contacts with nurses at other providers in the area);

(b) Any waiver request is deemed to be granted unless it is denied within 60 days after it is received.

(c) Waivers will remain effective for one year at a time.

(d) HCFA may approve a maximum of two one-year extensions for each initial waiver. If a hospice wishes to receive a one-year extension, the hospice must submit a certification to HCFA, prior to the expiration of the waiver period, that the employment market for nurses has not changed significantly since the time the initial waiver was granted.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance)

Dated: December 2, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: December 31, 1986.

Don M. Newman,

Under Secretary.

[FR Doc. 87–5166 Filed 3–10–87; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 80

[PR Docket No. 84-477; FCC 87-16]

Maritime Service; Amendment of the Rules To Permit the Use of Maritime Radar Transponders and Radio Beacons

AGENCY: Federal Communications Commission.

ACTION Final rule.

SUMMARY: The adopted rules establish the technical characteristics and operational requirements applicable to radar transponders and radio beacons used for maritime radiodetermination services. This action responds to public comments and is intended to satisfy the maritime industry's need for additional radiodetermination devices.

EFFECTIVE DATE: March 23, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted January 5, 1987, and released February 11, 1987. The full text of this Commission decision including the adopted rules is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision including the adopted rules may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

SUMMARY OF REPORT AND ORDER

1. On October 1, 1985, the Commission released a Notice of Proposed Rulemaking, PR Docket No. 84-477, FCC 85-524, which proposed technical characteristics and operational requirements applicable to radar transponders and radio beacons used for maritime radiodetermination services. This action intended to satisfy the industry's needs for additional radiodetermination devices. This Report and Order discusses the comments filed by the public regarding these proposals and amends the rules to allow the use of radar transponders and radio beacons in the maritime services.

2. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rule will not have a significant economic impact on a substantial number of small entities. The changes herein will have a minor beneficial effect on the maritime community by permitting the use of radio transponders and radio beacon devices by ships at sea. No new equipment will be required on board any ship. These changes allow greater flexibility and will not cause significant economic impact on any entity.

3. The Report and Order contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified requirements or burden upon the public. Implementation of any new or modified requirements or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

4. This Report and Order is issued under the authority of 47 U.S.C. 154(i) and 303(r).

5. A copy of this Report and Order will be served on the Chief Counsel for Advocacy of the Small Business Administration.

6. It is ordered, that Parts 2 and 80 of the Commission's rules are amended as shown below. It is further ordered, that this proceeding is terminated.

List of Subjects

47 CFR Part 2

Communications equipment.

47 CFR Part 80

Radiodetermination.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Amended Rules

Parts 2 and 80 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. In § 2.1 paragraph (c) is amended by adding after "Terrestrial Station" a new definition "Transponder" to read as follows:

§ 2.1 Terms and definitions.

* * * * *

(c) * * *

* * * * *

Transponder. A transmitter-receiver facility the function of which is to transmit signals automatically when the proper interrogation is received. (FCC)

* * * * *

§ 2.106 [Amended]

3. Section 2.106 is amended by adding footnote "NG148" at column (5) and "MARITIME (80)" at column (6) in the 152.855–156.2475 MHz, 158.115–161.575 MHz, 454–455 MHz and 459–460 MHz bands, by deleting footnote "US286" and adding footnote "772" at columns (4) and (5) in the 2900–3100, 5470–5600 MHz and 5600–5650 MHz, and by deleting the text of footnote "US286" and adding the text of a new footnote "NG148" on the list of footnotes following the Table of Frequency Allocations to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

Non-Government Footnotes

* * * * *

NG148 The frequencies 154.585 MHz, 159.480 MHz, 160.725 MHz, 160.785 MHz, 454.000 MHz and 459.000 MHz may be authorized to maritime mobile stations for offshore radiolocation and associated telecommand operations.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.5 after the definitions "Non-commercial communications" and "Safety signal" add, respectively, the definitions "Non-selectable transponder" and "Selectable transponder" to read as follows:

§ 80.5 Definitions.

* * * * *

Non-selectable transponder. A transponder whose coded response is displayed on any conventional radar operating in the appropriate band.

* * * * *

Selectable transponder. A transponder whose coded response may be inhibited or displayed on a radar on demand by the operator of that radar.

* * * * *

3. In § 80.205 paragraph (a) is amended by adding new emissions A1D after A1B, A2D after A2B, F1D after F1C,

F2D after F2C, G1D after F3N and G2D after G1D and footnote 12 as follows:

§ 80.205 Bandwidths.

(a) * * *

Class of Emission	Emission designator	Authorized bandwidth (kHz)	Footnote
*	* * * * *		
A1D	16K0A1D	20.0	(12)
*	* * * * *		
A2D	16K0A2D	20.0	(12)
*	* * * * *		
F1D	16K0F1D	20.0	(12)
*	* * * * *		
F2D	16K0F2D	20.0	(12)
*	* * * * *		
G1D	16K0G1D	20.0	(12)
G2D	16K0G2D	20.0	(12)
*	* * * * *		

[12] Applicable to radiolocation and associated telecommand ship stations operating on 154.585 MHz, 159.480 MHz, 160.725 MHz, 160.785 MHz, 454.000 MHz and 459.000 MHz.

* * * * *

4. In § 80.207 paragraph (d) is amended by adding under the ship stations *Radiodetermination* the frequency band 154–459 MHz and footnote 12 as follows:

§ 80.207 Classes of emission.

* * * * *

(d) * * *

Types of stations	Classes of emission
Ship Stations[1]	
* * * *	
Radiodetermination	
285–325 kHz:[7] ...	A1A, A2A
405–525 kHz (Direction Finding):[8].	A3N, H3N, J3N, NON
154–459 MHz:[12].	A1D, A2D, F1D, F2D, G1D, G2D
2.4–9.5 GHz:	PON
14.00–14.05 GHz:.	F3N
* * * * *	

[12] For frequencies 154.585 MHz, 159.480 MHz, 160.725 MHz, 160.785 MHz, 454.000 MHz and 459.000 MHz, authorized for offshore radiolocation and related telecommand operations.

5. In § 80.209 paragraph (a), paragraphs (5) and (7) are revised and paragraph (c) and footnote 4 are added to read as follows:

§ 80.209 Transmitter frequency tolerances.

(a) * * *

Frequency bands and categories of stations	Tolerances applicable until Jan. 1, 1990, for transmitters installed before January 2, 1987	Tolerances applicable [1] to new transmitters installed after Jan. 1, 1987, and to all transmitters after Jan. 1, 1990
* *	* *	*
(5) *Band 154–162 MHz*		
* *	* *	*
(ii) Ship stations.....	[4] 10	[4] 10
* *	* *	*
(7) *Band 454–466 MHz*		
(i) On-board stations.....	5	5
(ii) Radiolocation and telecommand stations.....	5	5
* *	* *	*

[4] For transmitters in the radiolocation and associated telecommand service operating on 154.585 MHz, 159.480 MHz, 160.725 MHz and 160.785 MHz the frequency tolerance is 15 parts in 10^6.

* * * * *

(c) For stations in the maritime radiodetermination service, other than ship radar stations, the authorized frequency tolerance will be specified on the license when it is not specified in this Part.

6. § 80.213 paragraphs (c), (d), (f) and (g) are redesignated as paragraphs (d), (c), (g) and (k) respectively and new paragraphs (f), (h), (i) and (j) are added to read as follows:

§ 80.213 Modulation requirements.

* * * * *

(f) Radiodetermination ship stations operating on 154.585 MHz, 159.480 MHz, 160.725 MHz, 160.785 MHz, 454.000 MHz and 459.000 MHz must employ a duty cycle with a maximum transmission period of 60 seconds followed by a minimum quiescent period four times the duration of the transmission period.

* * * * *

(h) Radar transponder coast stations using the 2920–3100 MHz or 9320–9500 MHz band must operate in a variable frequency mode and respond on their operating frequencies with a maximum range error equivalent to 75 meters. Additionally, their response must be encoded with a Morse character starting with a dash. The duration of a Morse dot is defined as equal to the width of a space and ⅓ of the width of a Morse dash. The duration of the response code must not exceed 50 microseconds. The sensitivity of the stations must be adjustable so that received signals below −10 dBm at the antenna will not activate the transponder.

Antenna polarization must be horizontal when operating in the 9320–9500 MHz band and both vertical and horizontal when operating in the 2920–3100 MHz band. Racons using frequency while transmitting techniques must include circuitry designed to reduce interference caused by triggering from radar antenna sidelobes.

(i) Variable frequency ship station transponders operating in the 2920–3100 MHz or 9320–9500 MHz band that are not used for search and rescue purposes must meet the following requirements:

(1) Non-selectable transponders must have the following characteristics:

(i) They must respond on all their frequencies with a maximum range error of equivalent to 75 meters;

(ii) They must use a Morse encoding of "PS" (dot-dash-dash-dot, dot-dot-dot), meaning "You should not come any closer". The width of a Morse dot is defined as equal to the width of a space and ⅓ of the width of a Morse dash;

(iii) When they employ swept frequency techniques they must not transmit on any frequency for more than 10 seconds in any 120 second period;

(iv) Any range offset of their response must occur during their pause on the fixed frequency;

(v) The duration of the response code must not exceed 50 microseconds;

(vi) The sensitivity of the stations must be adjustable so that received

signals below −10 dBm at the antenna input will not activate the transponder;

(vii) Antenna polarization must be horizontal when operating in the 9320–9500 MHz band and both vertical and horizontal when operating in the 2920–3100 MHz band; and

(viii) Transponders using frequency agile techniques must include circuitry designed to reduce interference caused by triggering from radar antenna sidelobes.

(2) Selectable transponders must be authorized under Part 5 of the Commission's rules until standards for their use are developed.

(j) The transmitted signals of search and rescue transponders must cause to appear on a radar display a series of at least 20 equally spaced dots.

* * * * *

7. In § 80.215 new paragraphs (l) and (m) are added to read as follows:

§ 80.215 Transmitter power.

* * * * *

(l) For radiodetermination transmitters using A1D, A2D, F1D, F2D, G1D and G2D emissions on 154.585 MHz, 159.480 MHz, 160.725 MHz, 160.785 MHz, 454.000 MHz and 459.000 MHz the mean output power of the unmodulated carrier must not exceed 25 watts.

(m) For radiodetermination stations operating above 2400 MHz the output power must be as follows:

(1) For radar stations that use F3N emission the mean output power must not exceed 200 milliwatts;

(2) For search and rescue stations the output power must be at least 400 milliwatts peak e.i.r.p.

(3) For all other transponder stations the output power must not exceed 20 watts peak e.i.r.p. Licensees of non-selectable transponder coast stations operating in the 2920–3100 MHz and 9320–9500 MHz bands must notify in writing the USCG District Commander of any incremental increase of their station's output power above 5 watts peak e.i.r.p.

8. In § 80.375 paragraphs (c) and (d) are revised to read as follows:

§ 80.375 Radiodetermination frequencies.

* * * * *

(c) *Radiodetermination frequencies below 500 MHz.* The frequencies 154.585 MHz, 159.480 MHz, 160.725 MHz, 160.785 MHz, 454.000 MHz and 459.000 MHz are authorized for offshore radiolocation and associated telecommand operations under a ship station license provided:

(1) The use of these frequencies is related to the ship's commercial operations;

(2) The station antenna height does not exceed 20 feet above sea level in a buoy station or 20 feet above the mast of the ship in which it is installed.

(d) *Radiodetermination frequency bands above 2400 MHz.* (1) The radiodetermination frequency bands assignable to ship and shore stations including ship and shore radar and transponder stations are as follows: 2450–2500 MHz; 2900–3100 MHz; 5460–5650 MHz; 9300–9500 MHz; and 14.00–14.05 GHz.

(2) Assignment of these bands to ship and coast stations are subject to the following conditions:

(i) The 2450–2500 MHz band may be used only for radiolocation on the condition that harmful interference must not be caused to the fixed and mobile services. No protection is provided from interference caused by emissions from industrial, scientific, or medical equipment;

(ii) The use of the 2900–3100 MHz, 5470–5650 MHz and 9300–9500 MHz bands for radiolocation must not cause harmful interference to the radionavigation and Government radiolocation services;

(iii) In the 2920–3100 MHz and 9320–9500 MHz bands the use of fixed-frequency transponders for radionavigation is not permitted;

(iv) Non-Government radiolocation stations may be authorized in the 5460–5470 MHz band on the condition that harmful interference shall not be caused to the aeronautical or maritime radionavigation services or to Government radiolocation service;

(v) The use of the 5460–5650 MHz band for radionavigation is limited to shipborne radar;

(vi) The use of the 14.00–14.05 GHz band will be authorized only for test purposes and maritime radionavigation on a secondary basis to the fixed-satellite service; and

(vii) Selectable transponders must be authorized under Part 5 of the Commission rules until technical standards for their use are developed.

(3) In addition to the conditions in (2) of this paragraph ship stations are subject to the following conditions:

(i) Transponders used for safety purposes will be authorized in the 2900–3100 MHz, 5470–5650 MHz and 9300–9500 MHz bands. Transponders used for non-safety purposes will be confined to the 2930–2950 MHz, 5470–5480 MHz and 9300–9500 MHz subbands only;

(ii) In the 2900–2920 MHz and 9300–9320 MHz subbands the use of radars other than those installed prior to January 2, 1976, is not permitted;

(iii) In the 2920–3100 MHz and 9320–9500 MHz bands non-selectable transponders will be authorized only for safety purposes;

(iv) Non-selectable transponders must not be used to enhance detection of marine craft;

(4) In the 2920–3100 MHz and 9320–9500 MHz bands shore station radar transponders used only as racons will be authorized.

(e) In addition to the other technical requirements contained in Subpart E of this part search and rescue transponder stations must meet the following technical standards contained in the latest international Radio Consultative Committee (CCIR) Recommendation 628 titled "Technical Characteristics for a Search and Rescue Radar Transponder":

(1) Operate in the 9300–9500 MHz band;

(2) Be horizontally polarized at their source;

(3) Have an effective receiver sensitivity including its antenna gain better than −50 dBm;

(4) Operate within specifications between the temperatures of −20 and +50 degrees Celsius;

(5) Operate within specifications for at least 48 hours at 0 degrees Celsius without changing batteries;

(6) Have a sawtooth sweep with a 5 microseconds ± 0.5 microseconds rate and return of less than 0.5 microseconds;

(7) Have a pulse emission of 100 microseconds maximum duration;

(8) Have a recovery time following excitation of 10 microseconds or less;

(9) Have a delay between receipt of a radar signal and start of transmissions of 1.25 microseconds or less;

(10) Have an antenna whose vertical beamwidth is no less than 25 degrees and its azimuthal beamwidth is omnidirectional within 2 dB; and

(11) Suppress interference caused by the interrogating radar antenna's sidelobes.

9. In § 80.605 the existing paragraph is revised and designated as paragraph (a) and new paragraphs (b), (c) and (d) are added to read as follows:

§ 80.605 U.S. Coast Guard coordination.

(a) Radionavigation coast stations operated to provide information to aid in the movement of any ship are private aids to navigation. Before submitting an application for an radionavigation station, an applicant must obtain written permission from the cognizant Coast Guard District Commander at the area in which the device will be located. Documentation of the Coast Guard approval must be submitted with the application.

Note: Surveillance radar coast stations do not require U.S. Coast Guard approval.

(b) Applications for type acceptance of coast and ship station transponders

must include a description of the technical characteristics of the equipment including the scheme of interrogation and the characteristics of the transponder response. When a type acceptance application in submitted to the Commission a copy of such application must be submitted concurrently to: Commandant (G–TTS–3), U.S. Coast Guard, Washington, DC 20593.

(c) Prior to submitting an application for a non-selectable transponder coast station license in the 2920–3100 MHz or 9320–9500 MHz band the applicant must submit a letter requesting written approval of the proposed station to the cognizant Coast Guard District Commander of the area in which the device will be located. The letter must include:

(1) The necessity for the station;

(2) The latitude and longitude of its position;

(3) The transponder antenna height above sea level;

(4) The antenna azimuth response (angle of directivity);

(5) The manufacturer and model number of the transponder;

(6) The identifying Morse character for transponders used as racons;

(7) The name and address of the person responsible for the operation and maintenance of the station;

(8) The time and date during which it is proposed to operate the station; and

(9) The maximum station e.i.r.p. if it would exceed 5 watts.

A copy of the request and the U.S. Coast Guard approval must be submitted to the Commission with the station license application.

(d) Prior to submitting an application for a non-selectable transponder ship station license in the 2920–3100 MHz or 9320–9500 MHz band the applicant must submit a letter requesting approval of the proposed station to: Commandant (G–NSR), U.S. Coast Guard, Washington, DC 20593. The letter must include the name, address and telephone number of a person or a point of contact responsible for the operation of the device, the specific need for the station, the name of the associated ship, the area in which the transponder will be used, and the hours of operation. A copy of the request and the U.S. Coast Guard approval must be submitted to the Commission with the station license application.

[FR Doc. 87–4939 Filed 3–10–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 73 and 74

[MM Docket No. 86–286; FCC 87–44]

Low Power Television and Television Translator Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends §§ 73.3564 and 73.3572 of the Commission's Rules to provide that no more than five (5) new applications for low power TV or TV translator stations may be filed by any applicant or by an individual or entity with a 1% or greater interest in any applicant during a filing window, and to institute a procedure whereby a station in this service which is displaced by the conflicting operation of a subsequently authorized primary service may specify a new output channel without facing competing applications. This action also makes numerous editorial changes to clarify Parts 73 and 74 rules relating to this service.

These actions are taken by the Commission to speed application processing and to preserve an overall level of television service to the public.

EFFECTIVE DATE: April 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Terry L. Haines, Policy and Rules Division, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in MM Docket No. 86–286, FCC 87–44, adopted February 2, 1987, and released February 27, 1987. The full text of this Commission decision is available for inspection and copying during normal busuess hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Report and Order:

1. In the *Notice of Proposed Rule Making* that initiated this proceeding, the Commission sought comment on two issues affecting the low power television and television translator service. First, because a backlog of 37,000 applications caused by the massive over-filings of a small number of applicants resulted in a three-year freeze on application filing, the Commission sought alternatives to the present unrestricted nationwide filing window procedure to limit the number of applications that could be filed in any given window. Specifically, the Commission proposed three alternative ways of achieving this goal: (1) A limit or "cap" on the number of new applications that could be filed by an applicant or principal of an applicant during a window; (2) a "geographic" approach, in which applications would only be accepted for state(s) or regions announced in advance; or (3) some combination of these two approaches. No limit would be placed on major change applications filed during a window.

2. Second, the Commission expressed its concern that the displacement of stations in this service due to interference with full service television stations and the land mobile radio service could diminish overall television service to the public. Consequently, the *Notice* requested comment on a proposal to allow low power television and television translator permittees and licensees that must cease operation on their output channels due to interference to primary services to specify a new channel without being forced to compete with other applicants. This channel change would be allowed when the permittee or licensee submits an acceptable application for a new channel on which there are no pending applications, demonstrates predicted interference to a full service television station or to the land mobile radio service, and does not propose a substantial change in the station's service area, keeping any new antenna site change to less than 10 miles.

3. The Commission decided that retaining the nationwide filing window procedure with a cap of five new applications per window is the best and simplest way of assuring that all applicants in this service have the ability to file applications for any location when they desire. Major change applications are not subject to this cap. A grave problem with any kind of geographic filing window approach, whether states or regions are used, is that application filings on a geographic border in one window could preclude filings for locations across that border in a subsequent window. This situation could result in a lack of television service to areas where it is most needed or desired. It was for this reason that the Commission originally adopted the nationwide approach, and it remains a compelling consideration. Further, a geographic window could actually work against the speedy institution of new service, since most areas could not be filed for until all applications in the first

window have been processed. The comments in this proceeding generally support these views.

4. Further, the possibility of future application backlogs will be minimized with a new application cap of five per window. The *Notice* in this proceeding stated that, according to the Commission's application data base, approximately 80 percent of applicants have filed five or less applications, and that at least 75 percent of applications have been filed by 10 percent of all applicants. Thus, a small cap provides the best inurance against over-filing and the attendant processing delays. The cap of five applications will also allow the Bureau to use its resources most efficiently by opening frequent windows to maintain a constant application flow. Frequent filing windows will greatly benefit commerical and noncommercial TV interests that wish to apply television translators to extend their service areas, since applications could be filed within a relatively short time. Finally, the bulk of the comments on the appropriate number for a cap, including those of the major broadcasting trade associations, suggested that a small cap of five applications or less would best safeguard against further over-filings. To enforce the cap, ownership information will be required of all applicants, as well as a list of all other applications filed in that window in which any principal of an applicant has any interest, through a question added to FCC Form 346.

5. The Commission also decided to adopt its "displacement" procedure substantially as advanced in the *Notice*. The Commission recognized in the *Notice* that the risk of displacement run by low power television and television translator permittees and licensees may serve to discourage long-term financial backing for this fledgling industry, leading to its destabilization. More importantly, this situation might result in inferior service and the lessening of viewing choices available to the public. While the low power television and television translator service should not be upgraded from its secondary status, the displacement of low power television and television translator stations could diminish overall television service. Consequently, a procedure should be implemented whereby a low power television or television translator station permittee or licensee could specify a new output channel on which there are no other pending applications, is not mutually exclusive with other pending applications, demonstrates predicted interference to or from a full service television station, the land mobile radio service, or other primary services on its former channel (including cable TV systems, MDS and ITFS), and does not propose a substantial change in the station's coverage area (*e.g.*, proposes an antenna site change of less than 10 miles). These applications will be exempted from the "major change" provisions of § 73.3572 of the Rules, and will be processed in the same manner as applications for minor changes in authorized facilities.

6. The Commission also made a number of minor editorial clarifications and modifications to Parts 73 and 74 rules to reflect changes in terminology and referenced rule section numbers. All such changes are reflected in the amendments below.

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

8. The action herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

9. Accordingly, it is ordered that under the authority contained in sections 1, 3, 4 (i) and (j), 303, 308, 309, and 403 of the Communications Act of 1934, as amended, the actions taken herein and the amendment of the Commission's Rules set forth below are effective April 13, 1987.

10. It is further ordered, that FCC Form 346 is amended effective upon approval by the Office of Management and Budget.

11. It is further ordered that this proceeding is terminated.

List of Subjects in 47 CFR Parts 73 and 74

Television broadcasting.

Rule Changes

1. The authority citation for Parts 73 and 74 continue to read as follows:

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

2. Section 73.3564 is amended by revising paragraphs (a) and (d) to read as follows:

§ 73.3564 Acceptance of applications.

(a) Applications tendered for filing are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination is made to ascertain whether the applications are complete. Except for low power TV, TV translator applications and non-reserved band FM (except for Class D) applications, those found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications that are not substantially complete will be returned to the applicant. In the case of non-reserved band FM applications, those found to be substantially complete at tender are accepted for tender and are given file numbers. Non-reserved band FM applications that are not substantially complete will be returned to the applicant. In the case of low power TV and TV translator applications, those found to be complete and sufficient are accepted for filing and are given file numbers. Low power TV and TV translator applications that are not complete and sufficient will be returned to the applicant.

* * * * *

(d) New and major change applications for non-reserved band FM stations (except for Class D stations) and for low power TV and TV translator stations will be accepted only on date(s) specified by the Commission. Low power TV and TV translator station filing period(s) will be designated by the Commission in a Public Notice. No more than five (5) applications for new low power TV or TV translator stations may be tendered for filing by any applicant, or by any individual or entity having an interest of one (1) percent or greater in any applicant(s) in a single filing period. This restriction does not apply to applications for major or minor changes in low power TV or TV translator stations as defined by § 73.3572. Non-reserved band FM facilities and major change applications will have filing dates designated by the Commission in the following manner:

* * * * *

3. Section 73.3572 is amended by revising paragraph (a) to read as follows:

§ 73.3572 Processing of TV broadcast, low power TV, and TV translator station applications.

(a) Applications for TV stations are divided into two groups:

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. A major change for TV broadcast stations authorized under this part is any change in frequency or community of license

which is in accord with a present allotment contained in the Table of Allotments (§ 73.606). Other requests for change in frequency or community of license for TV broadcast stations must first be submitted in the form of a petition for rule making to amend the Table of Allotments. In the case of low power TV and TV translator stations authorized under Part 74 of this chapter, a major change is any change in:

(i) Frequency (output channel) assignment;

(ii) Transmitting antenna system including the direction of the radiation, directive antenna pattern or transmission line;

(iii) Antenna height;

(iv) Antenna location exceeding 200 meters; or

(v) Authorized operating power.

However, if the proposed modification of facilities, other than a change in frequency, will not increase the signal range of the low power TV or TV translator station in any horizontal direction, the modification will not be considered a major change. Provided, that in the case of an authorized low power TV or TV translator station which is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to § 74.705 or interferes with broadcast or other services under §§ 74.703 or 74.709, that an application for a change in output channel, together with technical modifications which are necessary to avoid interference (including a change in antenna location of less than 16.1 km), will not be considered as an application for a major change in those facilities. Provided further, that the FCC may, within 15 days after the acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3580 and 1.1111 pertaining to major changes.

* * * * *

4. Section 73.3584 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 73.3584 Petitions to deny.

(a) Except in the case of applications for new low power TV or TV translator stations, for major changes in the existing facilities of such stations, or for applications for a change in output channel tendered by displaced low power TV and TV translator stations pursuant to § 73.3572(a)(1), any party in interest may file with the Commission a Petition to Deny any application (whether as originally filed or if amended so as to require a new file number pursuant to §§ 73.3571(j), 73.3572(b), 73.3573(b), 73.3574(b) or 73.3578) for which local notice pursuant to § 73.3580 is required, provided such petitions are filed prior to the day such applications are granted or designated for hearing; but where the FCC issues a public notice pursuant to the provisions of §§ 73.3571(c), 73.3572(c) or § 73.3573(d), establishing a "cut-off" date, such petitions must be filed by the date specified. In the case of applications for transfers and assignments of construction permits or station licenses, Petitions to Deny must be filed not later than 30 days after issuance of a public notice of the acceptance for filing of the applications. In the case of applications for renewal of license, Petitions to Deny may be filed at any time up to the last day for filing mutually exclusive applications under § 73.3516(e). Requests for extension of time to file Petitions to Deny applications for new broadcast stations or major changes in the facilities of existing stations or applications for renewal of license will not be granted unless all parties concerned, including the applicant, consent to such requests, or unless a compelling showing can be made that unusual circumstances make the filing of a timely petition impossible and the granting of an extension warranted.

(b) Except in the case of applications for new low power TV or TV translator stations, for major changes in the existing facilities of such stations, or for applications for a change in output channel tendered by displaced low power TV or TV translator stations pursuant to § 73.3572(a)(1), the applicant may file an opposition to any Petition to Deny, and the petitioner a reply to such opposition in which allegations of fact or denials thereof shall be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such oppositions and replies shall be those provided in § 1.45 except that as to a Petition to Deny an application for renewal of license, an opposition thereto may be filed within 30 days after the Petition to Deny is filed, and the party that filed the Petition to Deny may reply to the opposition within 20 days after opposition is filed, whichever is longer. The failure to file an opposition or a reply will not necessarily be construed as an admission of any fact or argument contained in a pleading.

(c) In the case of applications for new low power TV or TV translator stations, for major changes in the existing facilities of such stations, or for applications for a change in output channel tendered by displaced low power TV and TV translator stations pursuant to § 73.3572(a)(1), any party in interest may file with the FCC a Petition to Deny any application (whether as originally filed or if amended so as to require a new file number pursuant to § 73.3572(b)) for which local notice pursuant to § 73.3580 is required, provided such petitions are filed within 30 days of the FCC Public Notice proposing the application for grant (applicants may file oppositions within 15 days after the Petition to Deny is filed); but where the FCC selects a tentative permittee pursuant to Section 1.1601 *et seq.*, Petitions to Deny shall be accepted only if directed against the tentative selectee and filed after issuance of and within 15 days of FCC Public Notice announcing the tentative selectee. The applicant may file an opposition within 15 days after the Petition to Deny is filed. In cases in which the minimum diversity preference provided for in § 1.1623(f)(1) has been applied, an "objection to diversity claim," and opposition thereto, may be filed against any applicant receiving a diversity preference, within the same time period provided herein for Petitions and Oppositions. In all pleadings, allegations of fact or denials thereof shall be supported by appropriate certification. However, the FCC may announce, by the Public Notice announcing the acceptance of the last-filed mutually exclusive application, that a notice of Petition to Deny will be required to be filed no later than 30 days after issuance of the Public Notice.

* * * * *

5. Section 74.701 is amended by revising paragraph (h) to read as follows:

§ 74.701 Definitions.

* * * * *

(h) *Local origination.* Program origination if the parameters of the program source signal, as it reaches the transmitter site, are under the control of the low power TV station licensee. Transmission of TV program signals generated at the transmitter site constitutes local origination. Local origination also includes transmission of programs reaching the transmitter site via TV STL stations, but does not include transmission of signals obtained from either terrestrial or satellite microwave feeds or low power TV stations.

6. Section 74.702 is amended by revising paragraph (b) to read as follows:

§ 74.702 Channel assignments.

* * * * *

(b) Changes in the TV Table of Allotments (§ 73.606(b) of Part 73 of this chapter), authorizations to construct new TV broadcast stations or to change facilities of existing ones, may be made without regard to existing or proposed low power TV or TV translator stations. Where such a change results in a low power TV or TV translator station causing actual interference to reception of the TV broadcast station, the licensee or permittee of the low power TV or TV translator station shall eliminate the interference or file an application for a change in channel assignment pursuant to § 73.3572 of Part 73 of this chapter.

7. Section 74.732 is amended by revising paragraph (d) to read as follows:

§ 74.732 Eligibility and licensing requirements.

* * * * *

(d) The FCC will not act on applications for new low power TV or TV translator stations, for changes in facilities of existing stations, or for changes in output channel tendered by displaced stations pursuant to § 73.3572(a)(1), when such changes will result in a major change until the applicable time for filing a petition to deny has passed pursuant to § 73.3584(c).

* * * * *

8. Section 74.735 is amended by removing paragraph (c)(4) and redesignating paragraphs (c)(5) and (c)(6) as (c)(4) and (c)(5).

9. Section 74.763 is amended by adding paragraph (b) to read as follows:

§ 74.763 Time of operation.

* * * * *

(b) In the event that causes beyond the control of the low power TV or TV translator station licensee make it impossible to continue operating, the station may discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, DC not later than the 10th day of discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 days period, the licensee will so notify the FCC of this date in writing. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

* * * * *

10. Section 74.765 is amended by revising paragraph (b) to read as follows:

§ 74.765 Posting of station and operator licenses.

* * * * *

(b) The licenses or permits of operators employed at low power TV stations locally originating programs (as defined by § 74.701(h)) shall be posted in accordance with the provisions of § 73.1230(b).

* * * * *

11. Section 74.780 is revised to read as follows:

§ 74.780 Broadcast regulations applicable to low power TV and TV translator stations.

The following rules are applicable to low power TV stations and TV translator stations:

Section 73.653—Operation of TV aural and visual transmitters.

Section 73.658—Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

Part 73, Subpart G—Emergency Broadcast System (for low power TV stations locally originating programming as defined by § 74.701(h)).

Section 73.1201—Station identification (for low power TV stations locally originating programming as defined by § 74.701(h)).

Section 73.1205—Fraudulent billing practices.

Section 73.1206—Broadcast of telephone conversations.

Section 73.1207—Rebroadcasts.

Section 73.1208—Broadcast of taped, filmed or recorded material.

Section 73.1211—Broadcast of lottery information.

Section 73.1212—Sponsorship identifications; list retention, related requirements.

Section 73.1216—Licensee conducted contests.

Section 73.1510—Experimental authorizations.

Section 73.1515—Special field test authorizations.

Section 73.1615—Operation during modifications of facilities.

Section 73.1635—Special temporary authorizations (STA).

Section 73.1650—International broadcasting agreements.

Section 73.1680—Emergency antennas.

Section 73.1940—Broadcasts by candidates for public office.

Section 73.2080—Equal employment opportunities (for low power TV stations only).

Section 73.3500—Application and report forms.

Section 73.3511—Applications required.

Section 73.3512—Where to file; number of copies.

Section 73.3513—Signing of applications.

Section 73.3514—Content of applications.

Section 73.3516—Specification of facilities.

Section 73.3517—Contingent applications.

Section 73.3518—Inconsistent or conflicting applications.

Section 73.3519—Repetitious applications.

Section 73.3521—Mutually exclusive applications for low power TV and TV translator stations.

Section 73.3522—Amendment of applications.

Section 73.3525 (a), (b), (d), (f), (h) and (i)—Agreements for removing application conflicts.

Section 73.3533—Application for construction permit or modification of construction permit.

Section 73.3534—Application for extension of construction permit or for construction permit to replace expired construction permit.

Section 73.3536—Application for license to cover construction permit.

Section 73.3538 (a)(1)(3)(4), (b)(2)—Application to make changes in existing station.

Section 73.3539—Application for renewal of license.

Section 73.3540—Application for voluntary assignment of transfer of control.

Section 73.3541—Application for involuntary assignment or transfer of control.

Section 73.3542—Application for emergency authorization.

Section 73.3544—Application to obtain a modified station license.

Section 73.3545—Application for permit to deliver programs to foreign stations.

Section 73.3561—Staff consideration of applications requiring Commission action.

Section 73.3562—Staff consideration of applications not requiring action by the Commission.

Section 73.3564—Acceptance of applications.

Section 73.3566—Defective applications.

Section 73.3568—Dismissal of applications.

Section 73.3572—Processing of TV broadcast, low power TV, and TV translator station applications.

Section 73.3580—Local public notice of filing of broadcast applications.

Section 73.3584—Petitions to deny.
Section 73.3587—Informal objections.
Section 73.3591—Grants without hearing.
Section 73.3593—Designation for hearing.
Section 73.3594—Local public notice of designation for hearing.
Section 73.3597—Procedures on transfer and assignment applications.
Section 73.3598—Period of construction.
Section 73.3599—Forfeiture of construction permit.
Section 73.3601—Simultaneous modification and renewal of license.
Section 73.3603—Special waiver procedure relative to applications.
Section 73.3612—Annual employment report (for low power TV stations only).
Section 73.3613—Filing of contracts (network affiliation contracts for low power TV stations only).

12. Section 74.783 is amended by revising paragraph (a) introductory text and paragraph (c) to read as follows:

§ 74.783 Station identification.

(a) Each low power TV and TV translator station not originating local programming as defined by § 74.701(h) operating over 0.001 kw peak visual power (0.002 kw when using circularly polarized antennas) must transmit its station identification as follows:

* * * * *

(c) A low power TV station shall comply with the station identification procedures given in § 73.1201 when locally originating programming, as defined by § 74.701(h). The identification procedures given in paragraphs (a) and (b) are to be used at all other times.

* * * * *

Form Changes

FCC Form 346 is amended to add the following question to section II, page 2:

9. (a) If the applicant is an *individual*, submit as Exhibit ____ the applicant's name, address, home and business telephone number (including area code) and the applicant's individual interest.

If the applicant is a *partnership*, whether general or limited, submit as Exhibit ____ the name, address, home and business telephone number (including area code) of all general or limited partners (including silent partners), and the nature and percentage of the ownership interest of each partner.

If the applicant is a *corporation* or an *unincorporated association*, submit as Exhibit ____ the names, addresses, home and business telephone numbers (including area codes) of all officers, directors, and other members of the governing board of the corporation or association and the nature and the percentage of their ownership interests in the applicant (including stockholders with interests of 1% or greater).

(b) Submit as Exhibit ____ a list of all other applications filed during the same window period as this application in which the applicant or any principal of the applicant has any interest, and detail the percentage of that interest for each listed application.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-4942 Filed 3-10-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Lesquerella pallida (White Bladderpod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service has determined that a plant, *Lesquerella pallida* (white bladderpod), is an endangered species. This plant occurs on both public and private land in San Augustine County, Texas. Its three known populations are threatened by herbicide use, county road maintenance or improvement, grazing, and encroachment of shrubby vegetation into the species' habitat. This determination of endangered status for *Lesquerella pallida* implements protection provided by the Endangered Species Act of 1973 (Act), as amended.

DATES: The effective date of this rule is April 10, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Service's Regional Office of Endangered Species, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Charles McDonald, Botanist, Endangered Species Office, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Lesquerella pallida was discovered in the 1830's by M.C. Leavenworth on small prairies near San Augustine, Texas. It was recognized first as a variety of *Vesicaria grandiflora* (Torrey and Gray 1838) and soon elevated to species rank in that genus (Torrey and Gray 1840). Watson (1888) erected the genus *Lesquerella* and placed *Lesquerella pallida* within the group. Because no plants had been found since the initial collection in the 1830's and because the flower color of the only specimen was questionable, Rollins and Shaw (1973) considered *Lesquerella pallida* to be a slightly anomalous form of *Lesquerella gracilis*. In 1981, a population of *Lesquerella pallida* was discovered by Nixon and Ward. Upon this discovery and based on new information indicating the plant's distinctness, Nixon *et al.* (1983) proposed the reinstatement of *Lesquerella pallida* as a species. With these new findings, Dr. Reed C. Rollins, an expert on this group of plants, fully agrees that *Lesquerella pallida* is a distinct species in its own right (Rollins, Harvard University, pers. comm., 1984).

Lesquerella pallida is an erect to spreading annual in the mustard family (Brassicaceae). Plants range from 5 to 60 centimeters (2 to 23.6 inches) tall. The leaves are linear to oblanceolate with entire to dentate margins. Basal leaves are up to 10 centimeters (3.9 inches) long and 2 centimeters (0.8 inch) wide with petioles up to 4 centimeters (1.6 inches) long; stem leaves are gradually reduced upward, becoming sessile and extending into the inflorescence. The flowers are arranged in racemes up to 16 centimeters (6.3 inches) long and containing up to 24 flowers; the pedicels are up to 18 millimeters (0.7 inch) long and slightly recurved at maturity. The flowers have four white petals, each with a yellow base. The petals are up to 12 millimeters (0.5 inch) long and 8.5 millimeters (0.3 inch) wide. The fruits are globose to ellipsoid, up to 5.5 millimeters (0.2 inch) long, and 6 millimeters (0.2 inch) wide.

Lesquerella pallida occurs in the oak-hickory-pine vegetation type (Küchler 1964) of the gently rolling Coastal Plain (Hunt 1967) of eastern Texas. Specifically, it occurs in open areas associated with rock outcrops of the Weches geologic formation. This formation usually consists of calcareous marine sediments underlain by a grayish-green layer of glauconite. Because of the impermeability of the glauconite layer, Weches outcrops are seepy and wet much of the year. Soils around Weches outcrops are basic in pH due to the high levels of calcium and magnesium in the rocks. These soils are in sharp contrast to the acid, sandy, and leached soils usually encountered in eastern Texas.

Presently, three populations of *Lesquerella pallida* exist. The largest, discovered in 1981, is located approximately 8 miles west of San Augustine, Texas, on private land used for pasture. The population covers approximately 2 hectares (5 acres). It contained about 3,300 individuals in 1982, but had far fewer in the dry spring of 1984 (Nixon 1984). In 1985, which was again a wet year, the number of individuals equaled or exceeded that of 1982 (Mahler 1985). The other two populations were discovered in 1985 (Mahler 1985). One population is located approximately 10 miles west of San Augustine, Texas, on private land. It is confined to a single opening about 4 x 15 meters (13 x 49 feet) and contains about 50 plants. The area nearby is used to some extent as a garbage dump. The site is also being invaded by Macartney rose (*Rosa bracteata*) and other shrubs and trees. The other population is located approximately 6 miles southeast of San Augustine, Texas, on a county road right-of-way and in adjacent private pasture. The population occupies an area approximately 30 x 75 meters (98 x 246 feet) and contains about 160 plants. The right-of-way is quite brushy and the remaining open habitat is being invaded by shrubs and trees.

Federal action involving this species began when *Lesquerella pallida* was included as a category 2 species in a November 28, 1983, supplement (48 FR 53640) to the 1980 notice (45 FR 82480) of plants that were under review for threatened or endangered classification. Category 2 includes taxa for which the Service has insufficient biological information to determine the appropriateness of proposing the species as endangered or threatened. Status reports on *Lesquerella pallida* were completed in 1984 and 1985. These reports provided sufficient biological information to support the appropriateness of proposing *Lesquerella pallida* for listing as endangered. *Lesquerella pallida* was included in category 1 (those species for which the Service has substantial information indicating that they should be proposed for endangered or threatened status) in the September 27, 1985, revision (50 FR 39526) of the 1980 notice and 1983 update. On April 9, 1986 (51 FR 12184), the Service proposed *Lesquerella pallida* as an endangered species. With the publication of this final rule, the Service now determines that this plant is an endangered species.

Summary of Comments and Recommendations

In the April 9, 1986, proposed rule (51 FR 12184) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the *Nacogdoches Daily Sentinel* on April 30, 1986. Four comments were received and are discussed below. A public hearing was not requested.

Comments on the proposal were received from three botanists and the Texas Natural Heritage program. All parties expressed support for the listing and had no further information to add. Dr. Reed Rollins of the Gray Herbarium of Harvard University noted that surveys by himself and other botanists had confirmed the rarity of the species.

Summary of Factors Affecting the Species

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

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Herbicide spraying for pasture brush control is a common practice in the region. Inadvertent application of herbicide to *Lesquerella pallida* could destroy the two smaller populations and seriously reduce the larger one. Although spraying might open new habitat and therefore be beneficial in the longterm, the short-term effect on any population being sprayed would be detrimental. Plants in pastures could be seriously damaged by trampling and overgrazing. Although the pastures where plants occur are presently only moderately grazed, the land is privately owned so there is no control over how intensively the land might be used. The population on county road right-of-way would be damaged by road improvements or right-of-way grading or mowing. The population occurs in a wide portion of right-of-way where the road jogs to go up a small hill. If this road is ever widened or improved, the jog will likely be straightened, running the road directly through the population. This portion of right-of-way is also large enough to be used to stockpile roadbuilding material or as a dumpsite for excess soil taken from elsewhere. Either of these activities would destroy a major portion of the population.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial trade in this plant is not known to exist; however, because of its restricted range, collecting and vandalism pose a threat to survival of this species. The populations on private land will not be protected from taking by the Act, and all three populations are easily accessible.

C. *Disease or predation.* No threats are known.

D. *The inadequacy of existing regulatory mechanisms.* Currently, *Lesquerella pallida* is not protected by either Federal or State laws.

E. *Other natural or manmade factors affecting its continued existence. Lesquerella pallida* grows in openings associated with rock outcrops. These areas are invaded by shrubby species, eliminating *Lesquerella pallida* habitat. Common invaders are Macartney rose (*Rose bracteata*), blackberry (*Rubus* spp.), and sumac (*Rhus* spp.). Since there has been little study of the species biology or ecology of *Lesquerella pallida*, the appropriate method of maintaining suitable open habitat for the species is not known.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Lesquerella pallida* as endangered without critical habitat. Endangered status seems appropriate because there are only three known populations of this species and they could be eliminated by herbicide spraying, overgrazing, road maintenance or construction, or the loss of open habitat due to the invasion of shrubby species. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time due to its restricted distribution and easy accessibility. The Act does not protect endangered plants from taking or vandalism on lands that are not under Federal jurisdiction. This would result in an especially severe problem for *Lesquerella pallida*, which occurs on both private and public land, and whose

habitat is easily accessible. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Publication of critical habitat descriptions would make this species more vulnerable to taking by collectors or to vandalism. Therefore, it would not be prudent to determine critical habitat for *Lesquerella pallida* at this time.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. However, *Lesquerella pallida* is not known to occur on Federal lands and no Federal involvement with this species is currently known or expected.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or to remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Lesquerella pallida* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

National Environmental Policy Act

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

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Author

The author of this final rule is Sue Rutman, Endangered Species Office, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972). The editor is E. LaVerne Smith, Office of Endangered Species, Washington, DC 20240. Status information was provided by Dr. E.S. Nixon, Stephen F. Austin State University, Nacogdoches, Texas 75962, and Dr. W.F. Mahler, Southern Methodist University, Dallas, Texas 75275.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below.

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 et seq.).

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

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brassicaceae—Mustard family:						
Lesquerella pallida	White bladderpod	U.S.A. (TX)	E	260	NA	NA

Dated: January 28, 1987.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–5065 Filed 3–10–87; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 52, No. 47
Wednesday, March 11, 1987

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 572

Travel and Transportation Expenses; New Appointees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to issue regulations setting forth the basic criteria and procedures used to determine whether a shortage of qualified candidates exists for particular positions. The shortage determination is required before Federal agencies may pay the costs which new appointees incur for travel and moving their residences to their first official duty stations. These regulations would delegate to agencies the authority to make new shortage determinations in accordance with these criteria and would terminate existing shortage determinations that do not meet the criteria.

DATE: Comments must be received on or before May 11, 1987.

ADDRESS: Send or deliver written comments to Curtis J. Smith, Associate Director for Career Entry, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6817.

SUPPLEMENTARY INFORMATION: Section 5723 of title 5, United States Code, provides that OPM may find that a shortage of eligibles exists for particular positions and, based on that finding, may authorize agencies to pay travel and transportation expenses to the first post of duty for appointees to those positions. The criteria and procedures now being used by OPM in making determinations under 5 U.S.C. 5723 are currently published in chapter 571 of the Federal Personnel Manual (FPM).

Shortage determinations may involve individual vacancies and terminate when the vacancies are filled. However, when agencies are experiencing difficulty in recruiting qualified candidates for many vacancies in a particular occupation(s), grade(s), and location(s), and when those conditions are likely to continue for the foreseeable future, OPM has authorized agencies filling such positions to pay travel and transportation expenses without obtaining prior approval each time. These authorizations, which remain in effect without time limit unless OPM terminates them, are also published in FPM chapter 571. Continuing shortage determinations are now in effect for: (1) All positions for which special pay rates have been established pursuant to 5 U.S.C. 5303; (2) all positions filled by members of the National Defense Executive Reserve Program who are called to active duty in the event of a national emergency; and (3) 159 specific series, grades, and locations.

The criteria for authorizing special pay rates [5 CFR Part 530] are more stringent than those used to authorize payment of travel and transportation expenses to first post of duty. Any positions meeting the former criteria would necessarily meet the latter. The National Defense Executive Reserve Program is designed to provide a pool of experts in various managerial, professional, and technical fields to serve in executive positions in the Federal Government in time of national emergency. Because of the high level of skills required, and the fact that executive reservists would be called to duty only in a declared national emergency, it is reasonable to assume that these positions, also, would be characterized by a shortage of qualified candidates. No change is proposed for these two determinations, which will continue without time limit.

Payment of travel and transportation expenses would also be permitted under these proposed regulations for those positions for which direct-hire authorities are in effect. The criteria for granting direct-hire authority for particular series, grades, and locations are almost identical to those proposed for authorizing payment of travel and transportation expenses to first post of duty. Direct-hire authorities are reviewed regularly and are continued only as long as a shortage of eligibles exists. Therefore, any position covered by a current direct-hire authority would necessarily meet the criteria for payment of travel and transportation expenses. The shortage determination contained in these proposed regulations would not, however, cover appointments made under direct-hire authorities that apply to particular *candidates* (e.g., persons scoring above a predetermined cutoff) unless the *positions* those candidates would fill meet the criteria set out in the regulations.

The remaining authorizations for agencies to pay travel and transportation expenses for appointees in specific titles, series, grades, and geographic locations listed in appendix A of FPM chapter 571 do not clearly meet the proposed criteria. Many of these shortage determinations were made 20 or more years ago when labor market conditions were very different from today. Those positions that are still characterized by a shortage of qualified candidates are frequently filled under direct-hire authorities and would be covered by the proposed general authorization for payment of travel and transportation expenses even without a specific listing. Therefore, the proposed regulations would terminate all shortage determinations covering specific titles, series, grades, and geographic locations.

Any agency that finds a shortage of eligibles exists for a position not covered by either special pay rates or a direct-hire authority may make a new determination in accordance with the proposed regulations. If approved, the shortage determination would become effective immediately and would remain in effect for a specified period not to exceed 2 years. The agency could renew the shortage determination at the end of that period upon demonstration that the conditions specified in the regulations still exist.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions, because

they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 572

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management,

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 572 as follows:

PART 572—TRAVEL AND TRANSPORTATION EXPENSES; NEW APPOINTEES

1. The authority citation for Part 572 is added as set forth below, and the authority citation following any sections in Part 572 is removed:

Authority: 5 U.S.C. 5723.

2. Subpart A is redesignated as Subpart B with the heading revised to read as follows:

Subpart B—Shortage Determinations for Positions above Grade GS-15 (or Equivalent)

3. Sections 572.101 and 572.201 are redesignated as §§ 572.201 and 572.202, respectively.

4. A new Subpart A is added to Part 572 to read as follows:

Subpart A—General Provisions

Sec.

572.101 Agency authority.

572.102 Agencies' discretion in paying travel and transportation expenses.

Subpart A—General Provisions

§ 572.101 Agency authority.

Subject to the provisions of Subparts B and C of this part, an agency may determine that a shortage of qualified candidates exists for particular positions and that payment of appointees' travel and transportation expenses to the first post of duty is appropriate as a recruiting incentive. An agency may exercise this authority only in accordance with the requirements set out in this part and with standards of performance established by the Office of Personnel Management.

§ 572.102 Agencies' discretion in paying travel and transportation expenses.

Payment of travel and transportation expenses for any individual appointee will be at the discretion of the employing agency. A determination by one agency that a shortage of eligibles exists for a particular title, series, grade, and geographical location does not require a like determination by any other agency. A determination made in connection with one specific vacancy does not require a like determination in connection with future vacancies. In deciding whether to pay travel and transportation for an individual appointee, an agency may consider such factors as availability of funds, as well as the shortage criteria set out in this part.

5. A new Subpart C is added to Part 572 to read as follows:

Subpart C—Shortage Determinations for Positions at Grades GS-15 and Below (or Equivalents)

Sec.

572.301 Determination of shortage for positions at grades GS-15 and below (or equivalents).

Subpart C—Shortage Determinations for Positions at Grades GS-15 and Below (or Equivalents)

§ 572.301 Determination of shortage for positions at grades GS-15 and below (or equivalents).

(a) *Continuing determinations.* The Office of Personnel Management has determined that a shortage of qualified candidates exists for the positions listed below. Agencies may pay travel and transportation expenses to first post of duty for appointees to these positions without making a specific shortage determination, assuming other legal requirements are met.

(1) Positions for which special pay rates established pursuant to 5 U.S.C. 5303 are in effect;

(2) Positions filled by members of the National Defense Executive Reserve Program who are called to duty in the event of a national emergency; and

(3) Positions filled under direct-hire authority, when that authority covers all positions in a specific series, grade, and geographic location. Payment of travel and transportation expenses is not authorized under this paragraph when direct-hire authority is granted only for certain candidates for the positions (e.g., candidates attaining a predetermined cutoff score; outstanding scholars).

(b) *Other determinations.* An agency may pay appointees' travel and transportation expenses for positions other than those listed above only when the agency determines that there is a shortage of qualified candidates for the positions. The criteria in paragraphs (b) (1) and (2) of this section will be used in determining whether a shortage exists for a particular position and whether the shortage will also exist for future vacancies in the same series, grade, and location.

(1) *Reasonable recruitment effort.* Appropriate recruiting efforts for positions in the competitive service will include requests for referral of eligibles from the appropriate competitive examination, contact with the State Employment Service office or offices serving the locality concerned, and contact with academic institutions, technical and professional organizations, or other organizations likely to produce qualified candidates for the positions. Recruiting for positions in the excepted service will be in accordance with the agency's staffing procedures, but must include contacts with academic institutions, State Employment Service offices, or other organizations appropriate for the particular positions. The possibility of relieving a shortage for a certain type of position through broader publicity and recruitment will be considered in determining whether a shortage of qualified candidates exists.

(2) *Internal efforts.* Consideration will be given to efforts to relieve the shortage situation through such techniques as job engineering, training programs for under utilized employees, or automation.

(3) *Duration of the shortage.* Shortage determinations will be effective for a period not to exceed 2 years and may be renewed by the agency only upon a showing that the criteria of this paragraph are still met. Unless there is evidence that the shortage of qualified candidates for particular positions is continuing, the shortage determination will terminate when the current vacancy or vacancies in the positions are filled. The length of time active recruiting has been conducted for the position(s), the current and projected vacancy rate, and the number of declinations will be considered in determining whether the shortage of qualified candidates for particular positions is continuing.

[FR Doc. 87-5109 Filed 3-10-87; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 959 and 980

Onions Grown in South Texas; Proposed Amendment No. 5 To Handling Regulation; Vegetable Import Regulations; Onions; Proposed Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require handlers to pack in 40- and 50-

pound cartons Texas Grano 1015Y onions that are three to four inches in size. In addition, it would change the termination date of inspection requirements from June 15 to May 31 to relieve restrictions on handlers in a small production area far from the primary production area, and would also shorten the period for inspection requirements on handlers in the primary production area. The proposal would change the termination date of grade, size, inspection, and Sunday shipment requirements from June 1 to May 31. This amendment would also allow onions, except those subject to the previously mentioned container requirements, to be shipped in 40- or 50-pound cartons or other authorized containers. The proposal is designed to assure the condition and quality of onions in the marketplace during the 1987 and subsequent seasons, and to lessen the regulatory requirements on handlers. The proposal is based on recommendations submitted by the South Texas Onion Committee. In addition, conforming changes to the import regulation for onions are proposed to reflect applicable changes in the domestic regulation. For the 1987 season only, the proposed revisions to the handling regulation would commence as soon as practicable after the beginning of the 1987 season instead of March 10, the customary beginning of the period for the handling regulation applicable to onions grown in South Texas. The existing handling regulation will begin on March 10.

DATES: Comments must be received by March 26, 1987.

ADDRESSES: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2085–S, U.S. Department of Agriculture, Washington, DC 20250. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250 (202) 447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules issued thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 40 handlers of onions will be subject to regulation under the South Texas Onion Marketing Order during the course of the current season. In addition, there are about 160 producers of onions in South Texas. There are approximately 28 onion importers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $100,000 and agricultural service firms which include handlers and importers are defined as those whose gross annual receipts are less than $3,500,000. The majority of producers, handlers and importers may be classified as small entities.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this proposal on small entities. The regulatory action in this instance is a proposal to: (1) Require handlers to pack in 40- or 50-pound cartons Texas Grano 1015Y onions which are in the three- to four-inch diameter size range; (2) allow onions, other than these, to be shipped in 40- or 50-pound cartons on a regular commercial basis and not subject to the experimental/special purpose shipment safeguards currently applied to handlers utilizing such cartons; (3) change the termination date of inspection requirements from June 15 to May 31 to relieve handlers in a small producing area from these requirements while also shortening the period for inspection requirements on handlers in the primary production area; and (4) change the termination date of grade, size, inspection, and Sunday shipment handling requirements applicable to all handlers in the production area so the requirements end on May 31 rather than June 1.

The primary production area for South Texas onions in the lower Rio Grande Valley. Onion production in the entire production area in 1986 was 4.2 million hundredweight with harvested acreage amounting to 12,000 acres. The percentage of the crop marketed fresh has not fallen below 92.6 percent since 1977.

The Texas Grano 1015Y onion is a relatively new variety and distinguishable from other onions by its large size, high sugar content, and high yield. The large sizes (three to four inches, in diameter) which normally comprise close to 75 percent of the production of this variety, are more susceptible to bruising and other mechanical and transportation damage than other onions. During the last season, handlers were permitted to pack these and other onions in cartons rather than bags on an experimental basis with committee approval. Shippers were required to submit to the committee reports on the performance of cartons so that this information could be evaluated before use of cartons was expanded. The results of this evaluation indicate that cartons can help lessen damage and help in delivering a quality product to the marketplace. The committee expects that cartons would help assure the quality of three- to four-inch diameter Texas Grano 1015Y onions and foster increased consumption which would benefit both growers and handlers. Similar benefits are expected for other varieties of onions and sizes of Texas Grano 1015Y onions outside the three- to four-inch size range when handlers ship in authorized cartons.

With respect to the Texas Grano 1015Y onions, 3,043 acres of such onions have been registered with the committee as being planted for the 1987 spring crop. This acreage is expected to yield approximately 1.5 million hundredweight of these onions. This amount equates to approximately three million 40- or 50-pound equivalent cartons. Of this amount, the committee estimates that at least one million hundredweight of these onions will pack out as the proposed "Jumbo" size onions (three to four inches in diameter). That amount equates to approximately two million 40- or 50-pound equivalent cartons that would be required as shipping containers for Jumbo size Texas Grano 1015Y onions in the event that this proposed rule is adopted. The cost of a 40- or 50-pound bag is approximately $0.25 whereas the cost of a 40– or 50–pound carton is approximately $0.75. The higher carton cost is expected to be offset by the anticipated increase in consumption and improvement in arrival quality and reduced shrinkage. Such improvements in quality would increase returns by decreasing discounts.

For those handlers considering setting up their own carton lines for the packing of onions the cost of retooling to handle cartons is estimated to be in the range of a few dollars to $1,000.00. Some handlers have existing carton lines for packing cucumbers and peppers. Part of that equipment could be used in an onion line. Handlers could also make arrangements for packaging onions with other handlers having carton lines. Not all handlers are expected to handle Texas Grano 1015Y onions.

Although the proposal would require Texas Grano 1015Y onions which are in the three- or four-inch diameter size range to be packed in 40- or 50-pound cartons, handlers would be able to pack smaller or large onions of this variety in the other cartons and bags authorized by the handling regulation. Moreover, the handling of gift packages of onions, not exceeding 25 pounds per package, individually addressed to the buyer and not for resale, and export shipments are exempt from the container requirements of the handling regulation. Additionally, another change proposed would allow some of the carton shipments authorized under the special purpose and experimental shipment authority of the programs to be made on a regular commercial basis without the prior committee approval, supervision, and other safeguards required for special purpose and experimental shipments. Currently, special purpose shipments for charity, relief, canning, or freezing are exempt from the grade, size, container, and inspection requirements of the handling regulation if they are handled in accordance with safeguards established in § 959.322(g). Moreover, regulation exemptions for experimental onion shipments can be authorized by the committee provided the shipments are made in accordance with safeguards established in § 959.322(g). Finally, any handler may handle, other than for resale up to, but not to exceed 110 pounds of onions per day without regard to the handling requirements.

Another proposed change would provide relief to a small production area by terminating inspection requirements May 31 each season. This small producing area is remotely located and area handlers have experienced a comparatively high cost of obtaining inspection at their facilities. This date is also when the primary production area handlers usually complete their operations. Inspection requirements for these handlers would also be terminated on May 31 each season.

Another proposed change would remove the requirement that certain carton shipments such as those made for special purpose or experimental shipment be made in accordance with the safeguard provisions of the regulation. Except for the packaging limitation for three- to four-inch diameter Texas Grano 1015Y onions, this change would allow onions to be shipped in 40- or 50-pound cartons as regular shipments, not special purpose or experimental shipments. The designation of a new size "Colossal" will add additional specificity in the descriptive requirements, reflecting current production trends.

It is the Department's view that the impact of the proposed changes upon growers and handlers and when applicable upon importers would not be adverse. Any additional costs to handlers and growers in implementing the proposed change for packing three- or four-inch diameter Texas Grano 1015Y onions would be significantly offset when compared to the benefits of the change. The other proposed changes generally relieve restrictions and thus would not impose any additional costs.

This proposed rule is issued under marketing agreement and Order No. 959, both as amended, regulating the handling of onions grown in designated counties in South Texas. The program is effective under the Act. Shipments of these onions are regulated under a handling regulation contained in § 959.322. Section 959.322 was amended and published in the **Federal Register** on March 5, 1986 (51 FR 7547). The South Texas Onion Committee, established under the order, is responsible for its local administration.

In October 1981 the committee recommended, and the Secretary approved, a handling regulation (47 FR 8551) which would continue in effect from marketing season to marketing season idefinitely unless modified, suspended or terminated by the Secretary upon recommendation submitted by the committee or other information available to the Secretary.

The committee recommended an amendment to the handling regulation that would require Texas Grano 1015Y onions that are three or four inches in size to be packed in 40- or 50-pound cartons for the 1987 and subsequent seasons. As indicated earlier, this oinon is distinguished from other onions by its large size, high sugar content, high yields, and sensitivity to bruising during packaging and transportation to the marketplace. Experimental use of the cartons during the 1986 season indicates that cartons are better able than other containers such as bags to protect these onions from such damage and thereby, assure their quality and condition in the marketplace. It was also found that onions store well in cartons. To the extent improvement occurs, increased consumption will be fostered and returns increased because there would be less price deductions for shrinkage.

It is also proposed that the size requirements be amended to establish a new size "Colossal" which would include those onions 4 inches or larger in diameter which are presently included in the "Jumbo" size. This proposed change reflects the increased production of larger varieties of onions and the proposed changes to the container requirements. Colossal size Texas Grano 1015Y onions would not be required to be packed in 40- or 50-pound cartons.

In addition, the committee recommended an amendment that would relieve handlers in a small volume production area from an inspection burden. Presently, the minimum grade and size requirements, and the prohibition against Sunday packaging, loading, and handling onions terminate on June 1 of each season. The container and inspection requirements continue in effect until June 15, the end of the effective period of the handling regulations. This amendment would include the inspection requirements in the list of provisions that are terminated before June 15 in order to relieve the "Winter Garden" area of Texas, which usually begins shipping in early June, from such requirements. This area produces a small volume of onions and such change is necessary so that this area's handlers will obtain relief from the comparatively high cost of obtaining inspection at their facilities because they are far from the primary production area inspection facilities, approximately 100 miles. Few onions are shipped during the June 1 to June 15 period. This proposed relaxation in requirements should not adversely affect the program's effectiveness.

Another proposed change would change the June 1 termination date for grade, size, inspection, and Sunday shipment handling requirements to May 31 so that requirements cease at the final day of the month rather than the first day of the following month.

Section 8e of the Act provides that whenever a Federal marketing order is in effect for onions, the importation of onions shall be prohibited unless the onions meet the grade, size, quality, and maturity provisions of the order. Accordingly, § 959.322(i) of the handling regulation contains provisions which apply to imports during the approximately mid-March through May period of each year. The import

regulation appears in § 980.117. While the proposed earlier termination date of May 31 from June 1 for grade and size would not require a change to these provisions, a change is proposed to both § 959.322(i) and § 980.117 to clarify that the beginning of the effective period for imports begins March 10, the same date as the beginning of the handling regulation for domestic onions grown in South Texas and ends May 31 of each season. Furthermore, § 8e provides that whenever two marketing orders regulating onions produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces onions in most direct competition with the imported onions. Currently, onions are regulated on a twelve month basis each season (August 1 to July 31) under the Idaho-Eastern Oregon Order No. 958. The South Texas Order No. 959 has historically been the dominant shipper and has been found to be in most direct competition with imported onions during the period March 10 through June 1 each season. With the proposed change to the termination of the effective period for the South Texas onion handling regulation, it is found that South Texas Order No. 959 is the dominant shipper and is in most direct competition with imported onions during the revised period March 10 through May 31. Conforming changes to the Idaho-Eastern Oregon Order No. 958 effective period for imports would also be made. Accordingly, for imports to the applicable period for Order No. 958 would be June 1 through March 9. A change to § 980.117 is proposed which would make the above changes to the applicable effective periods for imports. In addition it is proposed that § 980.116 *Onion Import Regulation* be removed from the regulations because it is obsolete. The effective period for that regulation ended on April 30, 1978.

Another change would allow handlers to ship in 40- or 50-pound cartons all varieties and sizes of onions that are not subject to the proposed packaging requirement. This change would require changes to be made in paragraphs (c), (f), and (g) of § 959.322. Shipments of cartons are currently authorized only under the special purpose and experimental purpose provisions of the handling regulation because it was thought that onions would not store as well in cartons as bags because of ventilation problems. Hence, only limited use of cartons was authorized. As discussed earlier, experimental use of the cartons indicates that onions store as well in cartons as bags and that cartons offer other advantages in terms of reducing handling and transportation damage, and in delivering a better quality product to the consumer. As the committee receives additional information about cartons in the marketplace, other net weights may be authorized for shipment.

A 15-day comment period is deemed adequate because the handling regulation for South Texas onions starts March 10 each season. It is desirable to implement the changes, if adopted, early in the season so that the benefits derived from the changes are effective as soon as possible. In addition, a prompt decision on this proposal is necessary so that the handlers and importers may have sufficient time to adjust and plan their operations in response to any changes that result from this rulemaking. Any changes, if adopted, would become effective as soon as practicable after the beginning of the 1987 season, and for each subsequent season, beginning on the customary date of March 10. The present provisions of the handling regulation are applicable until any changes are made effective.

Additionally, the Department has information which indicates that some members of the industry believe that the proposed packaging requirements for Texas Grano 1015Y three- to four-inch diameter onions should be permissive and not mandatory. It has also been suggested that the protection afforded by cartons may not be as good as the committee believes, especially in view of the added cost of cartons over bags. Comments are specifically invited on these areas. All written comments timely received in respone to this request for comments will be considered in reaching a final decision on this issue.

List of Subjects

7 CFR Part 959

Marketing agreements and orders, Onions, Texas.

7 CFR Part 980

Marketing agreements and orders, Imports, Onions.

For the reasons set forth in the preamble, it is proposed that 7 CFR Parts 959 and 980 be amended as follows:

1. The authority citation for 7 CFR Parts 949 and 980 continue to read as follows:

Authority: Secs. 1,–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 959—ONIONS GROWN IN SOUTH TEXAS

2. Section 959.322 (47 FR 8551, March 1, 1982; 48 FR 7427, February 22, 1983; 48 FR 25169, June 6, 1983; 49 FR 4931, February 9, 1984; and 51 FR 7547, March 5, 1986) is hereby further amended by revising the introductory text of § 959.322, by revising paragraphs (b)(4) and (b)(5) and adding a new paragraph (b)(6); by revising the introductory text of paragraph (c), revising (c)(4), and by adding new paragraph (c)(5) and (c)(6); by revising paragraph (d)(1); by revising paragraphs (f)(2) through (f)(5), and removing paragraph (f)(6); by revising the introductory text of paragraph (g) and revising paragraph (i) as follows:

§ 959.322 Handling regulation.

During the period beginning on the effective date of this rule and ending on June 15 for the 1987 season and during the period beginning March 10, and ending on June 15 each season, no handler shall package or load onions on Sunday, or handle any onions, except red varieties, unless they comply with paragraph (a) through (d), or (e), or (f) of this section. However, the requirements of paragraphs (a), (b), (d), and the Sunday prohibition shall terminate at 11:59 p.m. on May 31 of each season.

* * * * *

(b) * * *

(4) "Jumbo"—3 to 4 inches in diameter; or

(5) "Colossal"—4 inches or larger in diameter.

(6) Tolerances for size in the U.S. onion standards shall apply except that for "repacker" and "medium" sizes not more than 20 percent, by weight, of onions in any lot may be larger than the maximum diameter specifed. Application of tolerances in the U.S. onion standards shall apply.

(c) *Container requirements.* Except as provided in paragraph (f) of this section, only the following containers shall be used, provided that Texas Grano 1015Y onions of the "Jumbo" size designation shall only be shipped in accordance with paragraphs (c)(4) or (5) of this section:

* * * * *

(4) 40-pound cartons, with an average net weight in any lot of not more than 45 pounds per carton; or

(5) 50-pound cartons, with an average net weight in any lot of not more than 55 pounds per carton.

(6) These container requirements shall not be applicable to onions sold to Federal agencies or for export.

(d) *Inspection.* (1) No handler may handle any onions regulated hereunder,

except pursuant to paragraphs (e), (f)(1), or (f)(3)(ii) of this section, unless an inspection certificate has been issued by the Texas-Federal Inspection Service covering them and the certificate is valid at the time of shipment. City destinations shall be listed on inspection certificates and release forms.

* * * * *

(f) * * *

(1) * * *

(2) *Gift packages.* The handling to any person of gift packages of onions not exceeding 25 pounds per package, individually addressed to such person and not for resale, is exempt from the container requirements of paragraph (c) of this section, but shall conform to all assessment requirements of § 959.42 and inspection requirements of paragraph (d) of this section, if such onions were not previously handled by a first handler. All such onions shall meet the grade and size requirements of paragraphs (a) and (b) of this section.

(3) *Experimental shipments.* (i) Upon approval of the committee, onions may be shipped in bulk bins with inside dimensions of 47 inches x 37½ inches x 36 inches deep and having a volume of 63,450 cubic inches, or containers deemed similar by the committee. Each container shall have a new perforated polyethylene liner at least 2 mils in thickness. Also, onions may be shipped in 25- and 20-pound cartons, upon approval of the committee. Such experimental shipments shall be exempt from paragraph (c) of this section but shall be handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section. The committee shall be notified of carton size and furnished a container manifest, and shippers must furnish the committee with outturn reports on such shipments.

(ii) Upon approval by the committee, onions may be shipped for other experimental purposes exempt from regulations issued pursuant to §§ 959.42, 959.52, and 959.60, provided they are handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section.

(iii) Upon approval of the committee, onions may be shipped for testing in types and sizes of containers other than those specified in paragraphs (c) and (f)(2) of this section, provided that the handling of onions in such experimental containers shall be under the supervision of the committee.

(4) *Export shipments.* (i) Upon approval of the committee, the prohibition against packaging or loading onions on any Sunday may be modified or suspended to permit the handling of onions for export provided that such handling complies with the procedures and safeguards specified by the committee.

(ii) Following approval, if the handler grades, packages, and ships onions for export on any Sunday, such handler shall on the first weekday following shipment, cease all grading, packaging, and shipping operations for the same length of time as the handler operated on Sunday. Upon completion of such shipments, the handler shall report thereon as prescribed by the committee.

(iii) Export shipments shall also be exempt from all container requirements of this section.

(5) *Onions failing to meet requirements.* Onions failing to meet the grade, size, and container requirements of this section, and not exempt under paragraphs (e) or (f) of this section, may be handled only pursuant to § 959.126. Such onions not handled in accordance with paragraph (g) of this section shall be mechanically mutilated at the packing shed rendering them unsuitable for fresh market.

(g) *Safeguards.* Each handler making shipments of onions for relief, charity, canning, freezing, or experimental purposes shall:

* * * * * *

(i) *Applicability to Imports.* During the period beginning on the effective date of this rule and ending on June 15 for the 1987 season and during the period beginning March 10 and ending May 31 of each year.

* * * * * *

PART 980—VEGETABLES; IMPORT REGULATIONS; ONIONS

§ 980.116 [Removed]

3. Section 980.116 is removed.

4. Section 980.117 Import Regulations; Onions (43 FR 5499, February 9, 1978) is amended by revising paragraphs (a) (2) and (b) (1) and (2) to read as follows:

§ 980.117 Import regulations; onions.

(a) * * *

(2) Therefore, it is hereby determined that: Imports of onions during the June 1 through March 9 period are in most direct competition with the marketing of onions produced in designated countries of Idaho and Malheur County, Oregon, covered by Marketing Order No. 958, as amended (7 CFR Part 958), and during the March 10 through May 31 period the marketing of imported onions is in most direct competition with onions produced in designated counties in South Texas covered by Market Order No. 959, as amended (7 CFR Part 959).

(b) * * * (1) During the period June 1 through March 9 of each marketing year, whenever onions grown in designated counties in Idaho and Malheur County, Oregon, are regulated under Marketing Order No. 958, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

(2) During the period March 10 through May 31 of each marketing year, whenever onions grown in designated counties in South Texas are regulated under Marketing Order No. 959, imported onions shall comply with the grade, size, quality and maturity requirements imposed under that order.

* * * * * *

Dated: March 5, 1987.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-5184 Filed 3-9-87; 12:07 pm]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 55, 60, 61, 70, 71, 72, 110, and 150

Completeness and Accuracy of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The NRC is amending its regulations to codify the obligations of licensees and applicants for licenses to provide the Commission with complete and accurate information, to maintain accurate records and to provide for disclosure of information identified by licensees as significant for licensed activities.

DATE: Comment period expires April 10, 1987. Comments received after this date will be considered if it is practical to do so, but assurance of consideration is given only for comments received on or before this date.

ADDRESSES: Interested persons are invited to send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to Room 1121, 1717 H Street, NW., Washington, DC between 8:15 a.m and 5:00 p.m. Copies of any comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Assistant General Counsel for Enforcement, Office of the

General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–7496.

SUPPLEMENTARY INFORMATION:

Accuracy and forthrightness in communications to the NRC by licensees and applicants for licenses are essential if the NRC is to fulfill its responsibilities to ensure that utilization of radioactive material is consistent with the health and safety of the public, the common defense and security and the protection of the environment. Several provisions of the Atomic Energy Act highlight the importance of accurate information. Section 186 provides that "Any license may be revoked for any material false statement in the application or any statement of fact required under section 182 . . . ."

Section 182 provides that:

> The Commission may at any time after the filing of the original application, and before the expiration of the license, require further written statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked. All applications and statements shall be signed by the applicant or licensee. Applications for and statements made in connection with, licenses under sections 103 and 104 shall be made under oath or affirmation. The Commission may require any other applications or statements to be made under oath or affirmation.

This need for accuracy in communications has been emphasized through the adoption in licensing provisions, although not on a uniform basis, of requirements regarding the submission of applications. *See, e.g.*, 10 CFR 50.30(b), 55.10(d), 61.20(a), 70.22(e) and 72.11(b).

The Commission's expectation of accuracy in communications has not been limited to written information submitted in applications. The Commission's decision is an enforcement action taken against Virginia Electric and Power Co. established a comprehensive requirement for applicants and licensees to provide complete and accurate information to the Commission. In the *VEPCO* case, of false statement were alleged to have been made in VEPCO's submissions to the Commission on the geology of the North Anna site. Omissions of information by VEPCO were also evaluated: Two were failures to present evidence at the Licensing Board construction permit hearings about suspected faulting and the third omission was VEPCO's failure to provide the Board or staff with reports prepared by its geology consultant. In its decision, the Commission concluded that the material false statement phrase in the Atomic Energy Act may appropriately be read to require full disclosure of material data". *Virginia Electric & Power Company* (North Anna Power Station, Units 1 and 2), CLI–76–22, 4 NRC 480 (1976), *aff'd*, 571 F.2d 1289 (4th Cir. 1979). The Commission decided materiality is to be judged by whether information has a natural tendency or capability to influence an agency decisionmaker; that knowledge of the falsity of a material statement is not necessary for a material false statement under section 186 and that material omissions are actionable to the same extent as affirmative material false statements.

Under this standard, both the written statements and omissions made by *VEPCO* were subject to civil penalties. In subsequent years, the Commission took a number of enforcement actions for material false statements. These enforcement actions included the following factual situations: Omission of information about receipt of draft reports during oral statements made in an informal meeting between the staff and a licensee; statements in a telephone call, letter and oral briefing that mobile sirens forming part of a licensee's prompt public notification system were installed and operational, when in fact they were not; oral statements to an NRC inspector that licensed material had not been out of storage, when in fact it had been used; and erroneous statements in response to an IE Bulletin concerning the use of certain lubricants and fasterners.

The Commission's General Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, App. C, originally published on March 9, 1982, (47 FR 9987) specifically dealt with enforcement for material false statements. In March 1984, after several years of handling enforcement cases under the *VEPCO* holding and this enforcement policy, the Commission specifically solicited comments on the issue of material false statements. Responses to the following questions were requested:

(1) Has the Commission's emphasis on material false statements had a positive effect on the quality of communications with the NRC or has it had a chilling effect on such communications?

(2) Should the definition of material false statement be changed to apply only to written statements, submitted under oath?

(3) Should materiality be contingent upon the safety significance of the underlying information?

(4) Should materiality be dependent upon actually influencing an agency reviewer as opposed to having the capability of influencing a reasonable agency reviewer?

(5) What would the expected effect of such changes be? (49 FR 8584, March 8, 1984).

The Commission received comments from twenty-nine organizations and individuals, including utilities, law firms, utility associations, an architect engineer, an intervenor, an employee at a nuclear facility, and members of the public. The comments are summarized below categorized into five principal concerns.

Threshold for Material False Statements

Most of the commenters suggested that the definition of material false statement which the Commission had been using since the *VEPCO* decision in 1976 is too broad. *VEPCO* case does not contain an actual definition of the term "material false statement" but it does describe the elements of the phrase. Under that decision, a material false statement may be an affirmative statement or an omission. By implication, therefore, a material false statement need not be in writing or under oath. It need not be made with knowledge of its falsity; it can be unintentionally made.

Some commenters sought to limit the definition by changing the materiality standard. Some suggested that it should take into greater account the safety significance of the information. Others suggested that instead of merely having the capability of influencing a reasonable agency reviewer, the statement should be required to actually influence a reasonable agency reviewer.

Omissions

Comments criticized the application of material false statement on an omission, arguing that if the NRC wanted to require full disclosure of material information it should clarify its reporting requirements to indicate just what information is required to be disclosed.

Legal Issues

A number of commenters expressed the view that, as matter of law, a material false statement must be submitted in writing and under oath for a power reactor. This conclusion was based on their reading of sections 186 and 182 of the Atomic Energy Act that a material false statement can exist only when when the statement in question is contained in an application or sought by the NRC under section 182 of the Act. Section 182 provides that "applications for, and statements made in connection with, licenses under sections 103 and 104 [of the Act] shall be made under

oath or affirmation." Not all commenters favored restricting application of the term to only those statements under oath. Some argued that such a limitation will only create a greater administrative burden on the licensee, because the Commission will demand that all correspondence be notarized.

Negative Connotations

Many of the commenters focused on the adverse impact on the integrity of individuals and licensees which they believe results from a citation for a material false statement. In their view, a material false statement is understood by the public as a lie with all of the connotations of dishonesty which that entails. Largely because of these connotations, many commenters urged that the definition of material false statement be narrowed and its use limited to those situations where integrity or honesty is actually at issue. Accordingly, some suggested that it be reserved for intentional false statements.

Oral Statements

Many commenters also focused their criticism on the application of sanctions for material false statements involving oral communications since many of the day-to-day contacts with the NRC are by telephone or through oral conversations with inspectors on site. The commenters indicated that the inclusion of these statements in the definition of material false statements had a chilling effect on day-to-day communications to the detriment of the regulatory process.

At the time the Commission solicited these comments, it also stated its intention to have an in-depth study of the enforcement program performed by a small committee of individuals selected from outside the agency. The Advisory Committee for Review of the Enforcement Policy was formally established by the NRC on August 31, 1984. (49 FR 35273, September 6, 1984). In addition to considering the comments already submitted to the Commission, the Committee solicited further comments from interested persons on the extent to which th NRC's enforcement policy has been serving the purposes announced by the Commission, including the policy on material false statements. (50 FR 1142, January 9, 1985). Public meetings were held by the Committee during which 46 witnesses drawn from NRC staff, licensees, industry groups and law/consulting groups gave testimony to the Committee, many commenting on the material false statement policy.

In its Report submitted to the Commission on November 23, 1985 the Committee made the following recommendation:

> The material false statement policy should be changed to limit citations for material false statements to written statements or sworn testimony made knowing the statement was incorrect or made with careless disregard for correctness. If incorrect oral statements or omissions are to be cited, it should be under another label.

The Committee concluded that the application of the label material false statement to unintended and inadvertent statements and omissions, as well as to intentional ones, will ultimately, if it has not already, impede the flow of information to the Commission. The evidence of growing pressure toward limiting oral communications was found to be especially apparent. In addition, the labeling of honest errors as material false statements was found to have a "depressing effect on utility staff morale" and to some extent limited an organization's ability to "recruit and retain capable staff." Committee Report at 24. The indistinctness in defining what is required to avoid a material false statement citation for an omission creates an "uncontrollable and openended liability" for licensees, which, considering the high cost to the utility of such a citation, is an "unreasonable and unfair burden." Committee Report at 26.

In its meeting with the Commission on December 10, 1985, several of the Committee members elaborated on their recommendation. Briefly, they indicated that oral communications can be made by anyone within the licensee's organization and, unlike written communications, the licensee generally has no way of controlling the exchange or of assuring that the statement in fact represents the licensee's position. It is very difficult as a matter of proof to reconstruct what exactly was said for an oral statement. There will likely be disputes about what is said and whether the misstatement, if there was one, was intentional, accidental, negligent or reckless. It is reasonable to reserve the category of "material false statements" to written or sworn statements where there is another mechansim for penalizing oral statements, *e.g.*, as inaccurate information, and where the penalty can be as severe as for those statements labeled material false statements. If the Commission persists in labeling oral statements as material false statements, Committee members recommended that the Commission limit and define the people in licensee organizations who are capable of making oral material false statements and provide some description of the circumstances in which they have to be aware that they carry that liability.

With respect to the citation of omissions as material false statements, several Committee members indicated that it is such a wide open potential source of liability, that even though the number of such citations is small, the perception of vulnerability in the regulated community is pervasive. Although an egregious omission case can be posed where the strongest sanction including the label material false statement is warranted, the day-to-day cases will be more ambiguous and difficult situations. From the standpoint of an effective enforcement program, deterrence does not suffer if an occasional egregious omission or oral statement is cited as inaccurate information with a civil penalty for a severity level one or two violation, rather than as a material false statement with a civil penalty of similar severity level.

In view of the concerns which have been developing within the Commission and which are evident from the public comments and the efforts of the Advisory Committee, principally with the application of the "material false statement" label to unintentionally inaccurate information, the Commission has determined that changes are necessary to: (1) The manner in which its standards for accuracy in information provided to or maintained for Commission inspection are articulated for licensees and applicants; and (2) its current material false statement policy articulated in the Commission's *VEPCO* decision and in the Enforcement Policy in Appendix C to Part 2 of the Commission's regulations. The Commission has concluded that a new requirement should be placed in each of the licensing sections of the Commission's regulations which sets forth an applicant's and a licensee's obligations concerning accuracy and completeness in their communications with the NRC and in the records required to be maintained by the Commission. The Commission believes this approach will continue to provide incentives for applicants and licensees to scrutinize their internal operations to determine that information provided to the NRC is complete and accurate and that records maintained in accordance with Commission requirements are complete and accurate and give the Commission greater flexibility to enforce these obligations without invoking the negative connotations about a licensee's character by a

citation for a material false statement in cases involving an unintentionally inaccurate or incomplete submittal.

The new regulations include identical provisions in Parts 30, 40, 50, 55, 60, 61, 70, 71, 72, and 110 which contain two elements: (1) A general provision which requires that all information provided to the Commission by an applicant or licensee or required by the Commission to be maintained by the applicant or licensee shall be complete and accurate in all material respects; and (2) a reporting requirement to replace the full disclosure aspects of the current material false statement policy and would require applicants and licensees to report to the NRC information identified by the applicant or licensee as having a significant implication for the public health and safety or common defense and security. Section 150.20 is being amended to provide that when an Agreement State licensee is operating within NRC's jurisdiction under the general license granted by § 150.20, the licensee is subject to the above requirements.

These regulations are being issued under the Commission's authority in sections 62, 63, 65, 81, 82, 103, 104, 161(o), 182, and 274 as well as 186 of the Atomic Energy Act of 1954, as amended. While section 186 can be read as addressing only material false statements made in certain contexts, the scope of the Commission's responsibilities under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as well as the Commission's decision in the *VEPCO* case and subsequent enforcement actions under that statement of the law, make it clear that the Commission has the inherent authority to require communications with the agency on regulatory matters to be complete and accurate regardless of their context. Under section 186 of the Atomic Energy Act failure to observe any of the terms or provisions of any regulation of the Commission is an explicit basis for revocation of a license. Thus, with the adoption of these new regulations regarding accuracy in communications and records, a violation of paragraph (a) or (b) of the proposed rule may be grounds for revocation of a license as well as imposition of civil penalties under section 234 of the Atomic Energy Act.

Paragraph (a) of the proposed rule would codify in a uniform manner an applicant's and a licensee's obligation, as articulated in the *VEPCO* decision, to ensure the accuracy of its communications with the Commission. The provision does not create any new obligations for licensees and applicants; rather, it describes in a regulation rather than in an adjudicatory decision, the standard for accuracy to be adhered to when supplying information to the agency or when generating and maintaining records required to be kept by the Commission. The standard described in paragraph (a) of the proposed rule, "complete and accurate in all material respects," continues the degree of accuracy prescribed in the *VEPCO* decision; that is, any information provided to the Commission or maintained in records required by the Commission which has the ability to influence the agency in the conduct of its regulatory responsibilities must be complete and accurate.

Under this proposed rule, not only material incorrect information, written or oral, but omitted information which causes an affirmative statement to be materially incomplete or inaccurate, will be subject to sanctions. The proposed rule uses the phrase "provided to the NRC" rather than "submitted to the NRC" to indicate that all communications, oral or written, throughout the term of the license, not just at the application stage, are expected to be complete and accurate. The Commission intends to apply a rule of reason in assessing completeness of a communication. For example, in the context of reviewing an initial application or a renewal application for a license, it is not uncommon for an NRC reviewer to seek additional information to clarify his or her understanding of the information already provided. Such an inquiry by the NRC does not necessarily mean that incomplete information which would violate this rule has been submitted.

This new provision also makes explicit the requirement that records required to be maintained by the Commission must be complete and accurate in all material respects. It is clear that when the Commission establishes a requirement that a licensee generate records to document a particular licensed activity, inherent in that requirement is the expectation that those records will accurately reflect the activities accomplished. In the past, when the Commission has discovered that inaccurate or incomplete records have been developed or maintained, citations have been issued for violation of the underlying recordkeeping requirement. Now that the Commission is adopting a regulation which states a generic requirement for accuracy in information made available to the agency, it was deemed desirable to explicitly refer to information kept in records pursuant to Commission requirements for inspection by the NRC, as well as information submitted to the NRC, since the standard for accuracy and completeness is the same for all information in whatever form it is made available to the Commission. This explicit statement of the standard of accuracy required for records does not in any way change existing recordkeeping requirements or add to the kind or nature of records expected to be maintained.

Paragraph (b) of the proposed rule codifies in a modified form, and replaces, the "full disclosure" aspects of licensees' and applicants' obligations established by the *VEPCO* decision. In that decision the Commission recognized its obligation "to promulgate regulations which provide clear, comprehensive guidance to applicants and licensees," *VEPCO* at 489, but went on to conclude that,

> [T]he fact remains that no specific set of regulations, however carefully drawn, can be expected to cover all possible circumstances. Information may come from unexpected sources or take an unexpected form, but if it is material to the licensing decision and therefore to the public health and safety, it must be passed on to the Commission if we are to perform our task. . . .

Since the initial description of the "full disclosure" requirement in *VEPCO*, however, reporting obligations for substantial additional categories of significant safety information have been affirmatively established, *e.g.*, 10 CFR 21.21, and 10 CFR 50.72 and 50.73. Both material and reactor licenses contain numerous reporting requirements. Most safety information which a licensee may develop will likely be required to be reported by some specific requirements. Nevertheless, there may be some circumstances where a licensee possesses some residual safety information which could affect licensed activities but which is not otherwise required to be reported.

Therefore, the proposed rule provides that if a licensee or an applicant identifies information which has significant implications for public health and safety or the common defense and security, it must be reported to the Commission. The rule makes clear that reporting under this section is not required if such reporting would duplicate information already submitted in accordance with other requirements such as 10 CFR 20.402 through 20.408, 21.21, 50.34, 50.71, 50.72, 50.73, and 73.71.

Consideration was given to proposing a more broadly worded requirement such as "each applicant or licensee shall notify the Commission of information material to the regulatory process." The

Commission concluded, however, that with such a formulation of the rule, with essentially no guidance on how to determine what must be reported, it would be difficult for licensees or applicants to predict with any certainty what the Commission will deem to be material. Such a rule would likely provide little incentive for licensees or applicants to scrutinize or police their information gathering process for reportable information. The purpose of the reporting requirement which is being proposed is to provide clear notice that if any applicant or licensee recognizes it has information with significant health or safety or common defense or security implications, the information must be reported to the NRC notwithstanding the absence of a specific reporting requirement. Submission of a report depends upon the licensee's recognition of the significance of the information.

The codification of a full disclosure requirement in this manner should not result in additional burdens on applicants and licensees. Licensees and applicants will not be required to develop formal programs similar to those prescribed under 10 CFR Part 21 to identify, evaluate, and report information. What is expected is a professional attitude toward safety throughout a licensee's or applicant's organization such that if a person identifies some potential safety information, the information will be freely provided to the appropriate company officials to determine its safety significance and reportability to the Commission.

While proposed paragraph (b) defers to the licensee's judgment of the significance of information, the licensee's "identification" of the significance of the information need not be in the form of a specific documented decision before a violation of the rule exists for failure to report. An applicant's or licensee's recognition of information as significant could be established by the fact that specific meetings were held to discuss the matter, analyses performed or other internal actions taken to evaluate the matter. In addition, abuse of a licensee's responsibility under paragraph (b), if not punishable as a violation of paragraph (b), could be addressed by the Commission under its authority to issue orders to modify, suspend or revoke a license. For example, an order would be appropriate where the action of a licensee in not recognizing the significance of the information and failing to report it, together with other relevant facts, raises serious questions about either its competence, *i.e.*, its ability to evaluate information, or its trustworthiness, *i.e.*, its failure to consider potentially significant information for evaluation.

Finally, the Commission has decided to exercise its discretion in the application of the term material false statement to miscommunications and limit use of the term to situations where there is an element of intent. A Charge of material false statement is equated by the public and most people in the industry with lying and intention to mislead. Yet under the current policy, a material false statement under the Atomic Energy Act can be either an affirmative statement, oral as well as written, or an omission, and can be unintended and inadvertent as well as international. The Advisory Committee concluded that enforcement of accuracy in communications by citations for a material false statement is "too blunt and heavy an instrument to be effective in achieving improved accuracy and completeness of information given to the NRC by licensees." The Commission agrees. The free flow of information from applicants and licensees is essential to the effectiveness of the NRC's regulatory program. A policy of sanctions for inaccurate information which has the likelihood to impede information flow, or which causes licensees to concentrate on limiting and qualifying what they say rather than on the quality of the information provided in order to avoid being charged with lying, does not serve the interests of the NRC.

This change recognizes the negative connotations which are associated by the public and the industry with the term material false statement but retains the use of this label as an additional enforcement tool in egregious situations, which will be determined on a case-by-case basis. The Commission expects to use the term rarely because with the adoption of this proposed rule, the Commission will have the mechanism to apply the full range of enforcement sanctions to inaccurate communications or records without reliance on the term material false statement. Consequently, the Commission sees no need to develop a specific definition of the term "material false statement." [1] The Department of Justice supports this approach in view of the potential for confusion from the Commission's use of the term material false statement in its civil context and prosecutions for material false statements under 18 U.S.C. 1001. However, should a violation of the proposed requirement for complete and accurate information be lableled as a material false statement, it is expected that the communication failure will be flagrant and involving, for example, instances (1) where an inaccurate or incomplete written or sworn oral statement is made knowing the statement is inaccurate or incomplete, or with careless disregard for its accuracy or completeness; or (2) where an inaccurate or incomplete unsworn oral statement is made with a clearly demonstrable knowledge of its inaccuracy or incompleteness.

The Commission's existing material false statement policy is currently reflected in the General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C. Modifications to this policy to reflect the new rules and the changes to Commission policy announced here will be made at the time a final rule on this subject is adopted by the Commission.

[1] Any characterization or use which the Commission gives to the term material false statement as used in the Atomic Energy Act of 1954, as amended, is, of course, limited to the Commission's civil enforcement actions and has no legal impact on the meaning given to similar terms and phrases used in other statutes, *e.g.*, 18 U.S.C. 1001, or on the authority of the Department of Justice to prosecute under such statutes. Thus, regardless of what enforcement action NRC may take for a communication failure, the failure may be subject to criminal sanctions.

Environmental Impact: Categorical Exclusion

With respect to the proposed amendments to 10 CFR Parts 30, 40, 50, 60, 61, 70, 71, and 72, the NRC has determined that the proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). The NRC has also determined that the proposed amendments to 10 CFR Parts 55, 110, and 150 meet the eligibility criteria for the categorical exclusion described in 10 CFR 51.22(c)(1). Accordingly, neither an environmental impact statement nor an environmental assessment has been prepared in connection with the issuance of the proposed rule.

Paperwork Reduction Act Statement

This proposed rule would add a specific information collection requirement that is subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This proposed rule is being submitted to the Office of Management and Budget for review and approval of the paperwork requirement.

Regulatory Analysis

The Commission's current requirement for accuracy and completeness of information provided to the Commission is specified in the adjudicatory decision rendered with

respect to an enforcement action taken against Virginia Electric Power Company in 1976. The proposed rule would articulate this requirement, which governs the day-to-day interactions between NRC personnel and licensees and applicants, in a regulation issued under the Commission's general authority to establish instructions for the provision of information and reports to the Commission rather than by interpretation of the material false statement provision of section 186 of the Atomic Energy Act in an adjudicatory decision. Codifying this requirement is preferable to the only alternative, which is continued reliance on the adjudicatory decision, as the only statement of the requirement. Codification of the requirement will given the regulated community more explicit and accessible notice of the standards of accurancy expected of it and will given the Commission greater flexibility to enforce these standards without unnecessarily applying the label material false statement to communications from licensees and applicants. In view of the extensive public comments and the recommendations of the Advisory Committee for Review of the Enforcement Policy received in response to the Commission's request for evaluation of the existing practice and proposed changes to it, it is apparent that this proposed rule is the preferred alternative and the cost entailed in its promulgation and application is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

Backfit Statement

The proposed rule codifies the existing obligations of applicants and licensees to provide information relating to licensed activities which could have significant implications for those activities and to ensure that all information provided to the Commission or maintained pursuant to Commission requirements is complete and accurate in all material respects. The Commission has determined, therefore, that the backfit rule, 10 CFR 50.109, does not apply to the proposed rule. The rule is purely administrative in nature, and therefore does not result in the "modification of or addition to systems, structures, components, or design of a facility . . . or the procedures or organization required to design, construct, or operate a facility. . ." See 10 CFR 50.109(a)(1).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), and consistent with NRC's Size Standards published December 9, 1985 (50 FR 50241), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule, which will affect large and small licensees alike, merely codifies an existing requirement, established through an adjudicatory decision, that all information provided to the Commission relating to licensed activities or maintained pursuant to Commission requirements be complete and accurate in all material respects. In addition, the proposed rule, if adopted, would reduce the existing burden on licensees because the full disclosure aspect of the current judicially imposed requirement has been modified to limit it to that information which the licensee itself has determined has a significant implication for licensed activities.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size in terms of annual income or revenue, and number of employees;

(b) How the proposed regulation would result in a significant economic burden upon the licensee as compared to that on a larger licensee;

(c) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

10 CFR Part 55

Manpower training programs, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Low-level waste, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Reporting and recordkeeping requirements.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 110

Administrative practice and procedure, Classified information, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 150

Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reoganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 30, 40, 50, 55, 60, 61, 70, 71, 72, 110 and 150.

PART—30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (442 U.S.C. 2234). Section 30.61 also issued under Sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3 30.34 (b) and (c), 30.41(a) and (c), and 30.53 are issued under sec. 161b., 68 Stat. 948 as amended (42 U.S.C. 2201(b)); and §§ 30.6, 30.9, 30.36, 30.51, 30.52, 30.55 and 30.56 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Immediately following § 30.8, a new § 30.9 is added under the undesignated center heading "General Provisions" to read as follows:

§ 30.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for Part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 955, as amended, secs. 11(e)(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) is also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 40.3, 40.25(d) (1) through (3), 40.35(a) through (d), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948 as amended, (42 U.S.C. 2201(b)); and §§ 40.5 40.9 40.25 (c), (d) (3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64 and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. Immediately following § 40.8, a new § 40.9 is added under the undesignated center heading "General Provisions" to read as follows:

§ 40.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100 through 50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) under 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. Immediately following § 50.8, a new § 50.9 is added under the undesignated center heading "General Provisions" to read as follows:

§ 50.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license condition to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the

Commission by other reporting or updating requirements.

PART 55—OPERATORS' LICENSES

7. The authority citation for Part 55 is revised to read as follows:

Authority: Secs. 107, 161, 68 Stat. 939, 948, as amended (42 U.S.C. 3137, 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 55.40 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 55.3 and 55.31 (a) through (d) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 55.6b, 55.9 and 55.41 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. Immediately following § 55.6a, a new § 55.6b is added under the undesignated center heading "General Provisions" to read as follows:

§ 55.6b Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 60—DISPOSAL OF HIGH LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

9. The authority citation for Part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233), secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); sec. 121, Pub. L. 97–425, 96 Stat. 2228 (42 U.S.C. 10141).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273). §§ 60.8a, 60.71 to 60.75 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

10. Immediately following § 60.8, a new § 60.8a is added to Subpart A to read as follows:

§ 60.8a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

11. The authority citation for Part 61 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5821).

For the purposes of sec. 223, 68 Stat. 958, as amended, (42 U.S.C. 2273); Tables 1 and 2, §§ 61.3, 61.24, 61.25, 61.27(a), 61.41 through 61.43, 61.52, 61.53, 61.55, 61.56, and 61.61 through 61.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 61.8a, 61.10 through 61.16, 61.24, and 61.80 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

12. Immediately following § 61.8, a new § 61.8a is added to Subpart A to read as follows:

§ 61.8a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

113. The authority citation for Part 70 is revised to read as follows:

Authority: Secs. 51, 53 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246, (42 U.S.C. 5841, 5842, 5845, 5846).

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Section 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954 as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended, (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22(a), (b), (d) through (k), 70.24(a) and (b), 70.32(a)(3), (5), (6), (d), and (i), 70.36, 70.39(b) and (c), 7041(a), 70.42(a) and (c), 70.56, 70.57(b), (c), and (d), 70.58(a) through (g)(3) and (h) through (j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); § 70.7, 70.20a (a) and(d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g), 70.36, 70.51(c) through (g), 70.56, 70.57(b) and (d), and 70.58(a) through (g)(3) and (h) through (j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i));

and §§ 70.5, 70.9, 70.20b(d) and (e), 70.38, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k), and (l), 70.59 and 70.60(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

14. Immediately following § 70.8, a new § 70.9 is added under the undesignated center heading "General provisions" to read as follows:

§ 70.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

15. The authority citation for Part 71 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, and 5846).

Section 71.97 also issued under sec. 301, Pub. L 96–295, 94 Stat. 789–790.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 71.3, 71.43, 71.45, 71.55, 71.63 (a) and (b), 71.83, 71.85, 71.87, 71.89, and 71.97 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 71.5(b), 71.6a, 71.91, 71.93, 71.95, and 71.101(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

16. Immediately following § 71.6, a new § 71.6a is added to subpart A to read as follows:

§ 71.6a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 72—LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL IN AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION (ISFSI)

17. The authority citation for Part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2882); sec. 274, Pub. L. 88–273, 73 Stat. 688, as amended (42 U.S.C. 2021); secs. 201, 202, 206, 86 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332).

Section 72.34 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2330 (42 U.S.C. 10154).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273): Sections 72.6, 72.14, 72.15, 72.17(d), 72.19, 72.33(b) (1), (4), (5), (e), (f), 72.36(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10, 72.15, 72.17(d), 72.33 (c), (d) (1), (2), (e), 72.81, 72.83, 72.84(a), 72.91 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.9a, 72.33 (b)(3), (d)(3), (f), 72.35(b), 72.50–72.52, 72.53(a), 72.54(a), 72.55, 72.56, 72.80(c), 72.84(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

18. Immediately following § 72.9, a new § 72.9 is added to Subpart A to read as follows:

§ 72.9a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL AUTHORITY

19. The authority citation for Part 110 is revised to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 110.1(b)(2) also issued under Pub. L. 96–533, 94 Stat. 3138 (42 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.21 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80 through 110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30 through 110.35 also issued under 5 U.S.C. 553.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 110.20 through 110–29, 110.50, and 110.120 through 110.129

also issued under secs. 161b and i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b) and (i)); and §§ 110.7(a) and 110.53 are also issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

20. Immediately following § 110.7, a new § 110.7a is added to Subpart A to read as follows:

§ 110.7a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

21. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); § 150.20(b)(2) through (4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); 150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 150.16 through 150.19 and 150.20(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

22. The introductory paragraph of § 150.20(b) is revised to read as follows:

§ 150.20 Recognition of agreement state licenses.

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to the provisions of §§ 30.7(a) through (e), 30.9, 30.14(d) and §§ 30.34, 30.41, and 30.51 to 30.63, inclusive, of Part 30 of this chapter; § 40.7(a) through (e), § 40.9, and §§ 40.41, 40.51, 40.61, 40.63, inclusive, 40.71 and 40.81 of Part 40 of this chapter; and § 70.7(a) through (e), § 70.9, and §§ 70.32, 70.42, 70.51 to 70.56, inclusive, 70.60 to 70.62, inclusive, and 70.71 of Part 70 of this chapter; and to the provisions of Parts 19, 20, and 71 and Subpart B of Part 34 of this chapter. In addition, any person engaging in activities in non-Agreement States or in offshore waters under the general licenses provided in this section:

* * * * *

Separate views of Commissioner Asselstine follow.

Dated at Washington, DC, this 6th day of March, 1987.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

Separate Views of Commissioner Asselstine

The Commission's proposal to substitute this regulation for its present standards governing material false statements suffers from two major flaws. First, it requires less than the full disclosure required by the Commission in the *VEPCO* case. Second, it fails to provide clear guidance to the licensees on what their responsibilities are in reporting information to the NRC.

The Commission has for ten years used the standards set out in the *VEPCO* case when taking enforcement action for misstatements or failures to report information. Licensees and applicants are required to assure that all submissions of material information are complete and accurate, whether made orally or in writing. In addition, licensees and applicants have an affirmative duty to report all material information to the Commission, even in the absence of a specific reporting requirement in the regulations. Material information is that which has the capability of influencing a reasonable agency expert in the conduct of his duties.

That standard is rather broad, but the Commission has justified such a full disclosure requirement on the ground that it is essential to ensure that the Commission could fulfill its duty to protect the public health and safety. CLI–76–22, 4 NRC 480, 488. A full disclosure requirement is essential given the audit nature of the NRC's regulatory activities. Because the agency actually observes or inspects only a small portion of a licensee's activities, we must depend heavily on the licensee to identify and report to the NRC any problems which may affect the safety of the public. The full disclosure requirement established in *VEPCO* provides assurance that licensees will bring to the agency's attention all material safety information. Only with all relevant information can the NRC make a thorough appraisal before reaching a regulatory decision. While specific reporting requirements in regulations are important to provide guidance to the licensees, they are not sufficient to ensure full disclosure:

> . . . no set of specific regulations, however carefully drawn, can be expected to cover all possible circumstances. Information may come from unexpected sources or take an unexpected form, but if it is material to the licensing decision and therefore to the public health and safety it must be passed on to the Commission if we are to perform our task. 4 NRC 489.

Thus, the Commission properly felt that a full disclosure provision which is broad enough to cover all circumstances is necessary. The Commission said that a healthy dose of common sense and a look at the context in which the issue arose would be sufficient to resolve most problems which might arise because of the breadth of the requirement. That has, in fact, been the case in the past ten years since the *VEPCO* decision was issued. The Commission has used the material false statement violation in a limited number of cases and only after careful review. The Commission's judicious use of these citations has effectively corrected deficient performance on the part of a few licensees and has served as a reminder to the rest of the industry of the need for full disclosure of material information.

The Commission is no longer willing to rely on common sense, however. Largely because of concerns raised about the difficulty of controlling the oral statements of all licensee employees and about the pejorative

connotations of the label "material false statement" the Commission has decided to engage in rulemaking to articulate a modified policy on disclosure of information. Unfortunately the proposed rule fails to accomplish one of the primary purposes of rulemaking—to establish clear guidance to the regulated entities. Rather, the rule discards well-thought-out and well-established principles and substitutes something that even the lawyers will have difficulty understanding.

Subsection b. of the proposed rule is the Commission's substitute for the full disclosure requirement. It falls far short of the *VEPCO* standard. First, The rule limits the ability of the Commission to take enforcement action if a licensee fails to report significant information. The rule only requires disclosure of information, which is not otherwise required by regulation, order, statute, or license condition, in those cases where the licensee has *identified* it as "having for the regulated activity a significant implication" for the public health and safety. This standard in effect allows the licensee to determine what information is relevant to the conduct of agency business. It is unusual, to say the least, for an agency to leave up to the regulated entity the determination of what information is material for purposes of deciding whether to take enforcement action. The Commission does not explain what benefit this additional element provides. In fact, it will add to the difficulty in taking enforcement action because it requires proof of a new element, the fact of identification by the licensee.[1]

Moreover, the rule includes no provision for enforcement action if the licensee should have identified information as being significant and did not. A licensee only violates subsection b. if it actually identifies information and fails to report it. If the licensee fails to identify significant information, the Commission can take no enforcement action based on the rule. The Commission states that it intends to fall back on its general authority to revoke, suspend or modify licenses in those cases where there is a question about the reasonableness of the licensee's failure to identify information as being significant:

> . . . an order might be appropriate where the action of the licensee in not recognizing the significance of the information and failing to report it, together with the relevant facts, raises serious questions about either its competence, *i.e.*, its ability to evaluate information, or its trustworthiness, *i.e.*, its failure to consider potentially significant information for evaluation.

Thus, the rule provides that a licensee can be penalized under the rule only for failure to report information it has identified as significant. Yet, according to the Commission, the licensee can be penalized under the Commission's general regulatory authority for failure to identify information as being significant. However, the Commission fails to explain what standards will be used in determining whether to take enforcement action for a failure to identify. There certainly are no standards in the rule. This seems to be a particularly clumsy way of regulating the reporting of significant information. A more logical approach would be to set out a clear standard governing what information the Commission thinks should be reported and to clearly explain when licensees will be subject to enforcement action for failure to report such information. It would be easier for the licensees to understand and would not require them to go beyond the rule to understand when they might be penalized for failure to identify information.

A third problem with the proposed rule is that the Commission has raised the threshhold for what information has to be reported. Under *VEPCO* the full disclosure standard requires that a licensee report any information which has the capability to influence a reasonable agency expert. The Commission has substituted for that standard a requirement that licensees report information "having for the regulated activity significant implications for the public health and safety and the common defense and security." What that phrase means is anybody's guess. The Commission makes no attempt to explain what it means, and it certainly has no accepted legal definition as does the term "material" which is used in the Commission's present standard. Once again the Commission fails to add clarity. Rather, this phrase will only provide fertile ground for litigation.

The only thing that is clear about this phrase is that it sets a higher threshhold for reporting than that required under the present full disclosure requirement. Obviously by inserting the term "significant" into the rule the Commission meant to require something less than that all material information be reported. The Commission fails to explain why such a change is necessary, what benefit will accrue from the change, or how tht change will help the Commission to ensure that it is aware of all relevant information when it carries out its duty to protect the public health and safety.

The Commission's rule thus fails not only to require full disclosure of material safety information, but it fails to provide clear guidance. The law on material false statements was well settled and worked effectively for ten years. The Commission has substituted for that long-settled law a rule which makes requirements less clear, which establishes new standards that make little sense, which will only make it more difficult to take enforcement action, and which will surely lead to much litigation. The benefits of this rule are, on the other hand, difficult to discern. The rule certainly will not encourage full disclosure, and it does nothing to clarify Commission requirements. In its effort to ensure that reporting violations will no longer be labelled material false statements, the Commission has diminished the NRC's ability to obtain the information it needs to discharge its safety mission and to deal effecitvely with licensees who fail to provide the agency with needed information.

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BILLING CODE 7590-01-M

[1] The Commission seems to recognize that there may be some difficulty in actually establishing that a licensee has identified information as significant because the Commission sets out in the statement of considerations a few examples of actions which may be indicative of identification.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

Powers Inconsistent With Purposes of Federal Deposit Insurance Law

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Extension of deadline for consideration, adoption, and publication of final rule.

SUMMARY: This notice serves to extend the period of time which the FDIC may use under its internal policy statement for the consideration, adoption, and publication of the FDIC's final rule on participation by insured banks in real estate development and insurance underwriting activities.

DATE: The deadline for final agency action on the proposed rule is extended to September 15, 1987.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202) 898-3743, or Robert E. Feldman, Senior Attorney, Legal Division, (202) 898-3743, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC's Statement of Policy on Development and Review of Rules and Regulations (44 FR 31007 (1979)) states that it is the intention of the FDIC formally to withdraw any proposed regulation on which final action by the Board of Directors has not been taken within nine months from the date the regulation was last published for comment. The FDIC published on June 7, 1985, a proposed amendment to Part 332 of FDIC's regulations governing "Powers Inconsistent with the Purposes of Federal Deposit Insurance Law." (50 FR 23964 (June 7, 1985).) The proposed amendment would, among other things, prohibit insured banks, subject to certain exceptions, from directly engaging in real estate development and insurance underwriting activities and establish certain restrictions on the indirect conduct of such activities.

Pursuant to the FDIC's policy, final action on this proposed regulation should have been taken on March 7, 1986, in order to avoid withdrawal of the proposed rule. Inasmuch as FDIC staff was actively reviewing the June 7, 1985, proposal in the spring of 1986 and due to the then-recent appointments of two members of the FDIC's three member Board of Directors, the Board of Directors determined that additional time was necessary for the staff to complete its review and for the Board of Directors to familiarize itself with the subject matter dealt with by the proposal. As withdrawing the proposal and initiating the rulemaking process anew would have caused unnecessary delay, the Board of Directors determined to extend the deadline for final agency action on the proposed regulation to September 8, 1986. (51 FR 7077 (Feb. 28, 1986).) The Board extended the due date a second time to March 15, 1987 (51 FR 32336 (Sep. 11, 1986)) in order for the FDIC and the Board of Governors of the Federal Reserve System to attempt to coordinate the final action taken in this rulemaking with any final action taken by the Board of Governors in connection with its solicitation of public comment on real estate activities of bank holding companies and their subsidiaries. (See 50 FR 4519 (1985) (solicitation of public comments).)

Since that time, the Board of Governors has published a proposed rule on the "Permissibility of Real Estate Investment Activities for Bank Holding Companies and Their Direct and Indirect Nonbank Subsidiaries" with a public comment due date of February 23, 1987. (51 FR 543 (Jan. 7, 1987).) That comment date has since been extended to March 25, 1987. (52 FR 4629 (Feb. 13, 1987).) Additional time is now required for FDIC staff to study the Federal Reserve Board's proposal, the comments received in response thereto, and the direction taken by the Board of Governors in response to those comments. Efforts at coordinating final action between the two agencies will also be continued. Therefore, the Board of Directors has determined to extend the deadline for final action on the proposed regulation until September 15, 1987, by publication of this notice.

Dated at Washington, DC., this 3rd day of March 1987.

By order of the Board of Directors.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-5113 Filed 3-10-87; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number 86-ANE-36]

Airworthiness Directives; Pratt & Whitney (PW) JT9D-7R4D, D1, E, E1, E4, H1, and G2 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require installation of containment shields in the fan case assembly and stronger material B-flange bolts on PW JT9D-7R4 turbofan engines. The proposed AD is needed to prevent fragments of a failed fan blade from penetrating the fan case assembly which could result in damage to the aircraft.

DATE: Comments must be received on or before May 25, 1987.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attn. Rules Docket Number 86-ANE-36, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 86-ANE-36".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletins (SB) may be obtained from Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457. A copy of the SB's is contained in Rules Docket Number 86-ANE-36, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Diane Kirk, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7082.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86-ANE-36". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that the energy of a failed fan blade may have the required force to penetrate the fan case assembly. Blade fragments penetrated the fan case assembly forward of B-flange in three events, two occurring on a JT9D-7R4G2 powered B747 aircraft, and one occurring on a JT9D-7R4E powered B767 aircraft. In another event, although the fan case was punctured just forward of B-flange, airframe equipment prevented the

release of blade fragments through the case. In all four events, the fan blade fractured and punctured the fan case forward of B-flange. Three out of four failures were uncontained events resulting in engine and aircraft damage. Therefore, the containment capability of the fan case assembly must be improved in the B-flange area to prevent fan blade fragment penetration.

Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require modification of the fan case assembly by incorporating containment shields forward and rearward of B-flange, and replacement of B-flange bolts with stronger material bolts, to improve fan containment capability on PW JT9D–7R4 series engines prior to December 31, 1989.

Conclusion

The FAA has determined that this proposed regulation involves 619 total engines at an approximate cost of $520,000. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since this proposed regulation affects only operators using B767, B747, A310, or A300 aircraft in which the JT9D–7R4 series engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the period identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D–7R4D, D1, E, E1, E4, H1, and G2 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent fan blade fragment penetration of the fan case assembly, accomplish the following prior to December 31, 1989.

(a) For JT9D–7R4G2 series turbofan engines:

(1) Modify fan case assembly by installing shield, Part Number (P/N) 802094, using bolts, P/N 1A7544, at B-flange, in accordance with PW Service Bulletin (SB) 72–311, dated November 10, 1986, or FAA approved equivalent.

(2) Modify outer front fan exit case assembly (fan exit case and vane assembly), by installing ring segments, P/N's 803264–01, 803265–01, and 802448, in accordance with PW SB 72–311, dated November 10, 1986, or FAA approved equivalent.

(3) Reidentify the modified fan case assembly, outer front fan exit case assembly, and the fan exit case and vane assembly, in accordance with PW SB 72–311, dated November 10, 1986, or FAA approved equivalent.

(b) For JT9D–7R4D, D1, E, E1, E4, and H1 series turbofan engines:

(1) Modify fan case assembly by installing shield, P/N 802095, for JT9D–7R4 D, D1, E, E1, and H1 series engines, and shield, P/N 802096, for JT9D–7R4E4 series engine, using bolts, P/N MS9209–16, at B-flange, in accordance with PW SB 72–312, dated January 19, 1987, or FAA approved equivalent.

(2) Modify outer front fan exit case assembly or detail of fan exit case and vane assembly, and install ring segments, P/N's 803261–01, 803262–01, and 802447, in accordance with PW SB 72–312, dated January 19, 1987, or FAA approved equivalent.

(3) Reidentify the modified fan case assembly, outer front fan exit case assembly, fan exit case and vane assembly, in accordance with PW SB 72–312, dated January 19, 1987, or FAA approved equivalent.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's SB's identified and described in this document.

Issued in Burlington, Massachusetts, on March 4, 1987.

Clyde DeHart, Jr.,

Acting Director, New England Region.

[FR Doc. 87–5101 Filed 3–10–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ASO–6]

Proposed Designation of Transition Area; Roxboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Roxboro, North Carolina, Transition Area to accommodate Instrument Flight Rules (IFR), Operations at Person County Airport. This action will lower the base of controlled airspace from 1,200 to 700' above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Person County nondirectional radio beacon (RBN), has been developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

DATE: Comments must be received on or before April 28, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 87–ASO–6, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Herbert A. Wachsman, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASO–6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the Docket No. 87–ASO–6 notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will designate the Roxboro, North Carolina, Transitional Area. This action will provide controlled airspace for executing a new instrument approach procedure to Person County Airport. If the proposed designation is found acceptable, the operating status of the airport will be changed to IFR and establishment of the RBN approved. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

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

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

2. Section 71.181 is amended as follows:

Roxboro, North Carolina (New)

That airspace extending upward from 700' above the surface within a 6.5 mile radius of the Person County Airport (Lat. 36°17'07" N., Long. 78°59'01" W.).

Issued in East Point, Georgia, on February 24, 1987.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 87–5126 Filed 3–10–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ACE–02]

Proposed Alteration of Transition Area; Maquoketa, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Maquoketa, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Maquoketa,Iowa, Municipal Airport utilizing the Davenport, Iowa, VORTAC as a navigational aid.

DATES: Comments must be received on or before April 10, 1987.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106. Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181), by altering the 700-foot transition area at Maquoketa, Iowa. To enhance airport usage, an additional instrument approach procedure is being developed for the Maquoketa, Iowa, Municipal Airport, utilizing the Davenport VORTAC as a navigational aid. The establishment of this new instrument approach procedure, based on this navigational aid, entails alteration of the transition area at Maquoketa, Iowa, at and above 700 feet above ground level within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR). and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—

(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

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

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

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Maquoketa, Iowa

That airspace extending upward from 700 feet above the surface within a 7 mile radius of Maquoketa Municipal Airport (Latitude 42°03'05" N, Longitude 90°44'27" W); and that airspace 3 miles each side of the 343° bearing from the Maquoketa NDB (Latitude 42°03'05" N, Longitude 90°44'27" W); extending from the 7 mile radius area to 8.5 miles northwest of the NDB; and within 2.5 miles each side of the 151° bearing from the Maquoketa NDB, extending from the 7 mile radius area to 9 miles southeast of the NDB.

Issued in Kansas City, Missouri, on March 2, 1987.

Clarence E. Newbern,

Acting Manager, Air Traffic Division.

[FR Doc. 87-5125 Filed 3-10-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 159

[Docket No. 25204; Notice No. 87-1]

Charges for Use of Metropolitan Washington Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA proposes to adjust its fees and charges for use of Washington National Airport and Washington Dulles International Airport for general aviation operators and for air carriers that do not have a contract for use of the Airports. General aviation users would pay landing fees at the same rate as the air carriers. The exemption from landing fees at Dulles for aircraft under 3,500 pounds would be eliminated and a minimum landing fee of $4.00 imposed. Non-signatory air carriers would pay a higher landing fee and would pay fees for the services they receive.

DATES: Comments must be submitted on or before April 13, 1987.

ADDRESSES: Comments may be mailed in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25204, 800 Independence Avenue, SW., Washington, DC 20591

or delivered in duplicate to:

Room 915G, 800 Independence Avenue, SW., Washington, DC 20591.

Comments must be marked: Docket No. 25204.

Comments received may be inspected at Room 915G between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Edward Faggen, Legal Counsel, AMA-7, Hangar 9, Washington National Airport, Washington, DC 20001, Telephone: (703) 557-8123.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25204". The postcard will be date/time stamped and returned to the commenter. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA-300), 800 Independence Avenue, SW., Washington, DC. 20591 or by calling (202) 267-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Supplemental Information

Washington National Airport and Washington Dulles International Airport are owned and presently operated by the Federal Government. The Secretary of Transportation has control over and responsibility for the care, operation, maintenance, and protection of the airport and the authority to issue rules and regulations necessary for these

purposes. This responsibility has been delegated to the Administrator of the Federal Aviation Administration (FAA).

As proprietor of the Airports, FAA establishes the terms and conditions for commercial activities occurring at the Airports. The FAA collects fee charges from aircraft operators to recover the cost associated with the airfields. It is common for the regular users of the Airports, such as the scheduled carriers, to have contracts with FAA which prescribe the formula for calculating their landing fees. Users, including general aviation, who do not have a contractually prescribed landing fee pay the fees prescribed in the regulations in § 159.181 (14 CFR 159.181).

On October 18, 1986, the "Metropolitan Washington Airports Act of 1986" became effective. The Act provides for a long-term lease and transfer of the operation of National and Dulles Airports from the Federal Government to a regional Authority, the Metropolitan Washington Airports Authority. The Act contains a provision relating to the landing fees of general aviation aircraft which warrants immediate regulatory action on the part of the FAA. Section 6005(c)(10) provides:

> The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft except that the Airports Authority may require a minimum landing fee not in excess of the minimum landing fee for aircraft weighing 12,500 pounds.

In the current FAA contracts with the air carriers, which expire in December 1989, the carriers have agreed to pay a landing fee for each 1,000 pounds of the maximum authorized landing weight of their aircraft. The fee is calculated to enable the Government to recover the net cost for the landing areas at both Airports. Net costs are determined by totalling the Government's cost for maintenance, operation, utilities, interest and depreciation, fire and crash rescue services, police, and certain other administrative costs, allocable to the landing area. From this total, FAA subtracts the revenues from general aviation landing fees, some commissions from the fixed based operator (the private company that services and fuels general aviation), and fees from non-contracting air carriers. The excess costs over revenues constitute the net costs to be recovered in the landing fee. These costs, divided by the estimated total landing weight of the air carrier aircraft for the calendar year, yields the fee per pound of landed weight. Each year of the Government's contract with the air carriers the fee is adjusted to reflect the current costs less current revenues allocated to the landing area. The current (1986) air carrier fee at the Airports is $0.4817 per 1,000 pounds of landing weight.

The landing fees for general aviation were last adjusted in 1968. The current fees at National Airport are only $0.12 per 1,000 pounds for turbopropeller and reciprocating engine aircraft and $0.30 per 1,000 pounds for turbo-jet aircraft. There is a $4.00 minimum fee at National Airport for all aircraft. At Dulles Airport, the basic landing fee is $0.25 per 1,000 pounds for turbo-jet and reciprocating engine aircraft. There is a $0.75 minimum fee, but there is no fee for non-commercial aircraft weighing less than 3,500 pounds, which accounts for 25 percent of the general aviation aircraft landing at Dulles.

The FAA's regulations will become regulations of the new Airport Authority in accordance with the Act transferring the Airports. FAA is proposing to modify its regulation of landing fees to conform to the Act's requirements so that on the effective date of the transfer, general aviation will pay for landing at the Airports on the same basis, i.e., cost per thousand pounds, and at the same rate, as the air carrier users pay. The costs allocable to the airfields would be spread over all user classes. Outmoded distinctions between engine type would be eliminated. Estimated general aviation landing weights would be added to the weights estimated for the air carriers. Costs, less revenues, would be divided by the estimated landing weight for all classes—air carrier, commuter air carrier, and general aviation—to determine the fee per 1,000 pounds.

The effect of this approach is that general aviation fees would increase from the present $0.12, $0.25 or $0.30 per 1,000 pounds, to between $0.45 and $0.50 per 1,000 pounds given the current cost structure. The total landing weights generated by the air carriers in one year is in excess of 22 billion pounds. The total general aviation landing weight is considerably less, 1.2 billion pounds. Therefore, although both user classes would be paying at the same rate, the air carriers would continue to pay the greatest share of the Airports' landing field costs.

At Dulles Airport, noncommercial general aviation aircraft weighing less than 3,500 pounds currently pay no landing fee. FAA proposes to eliminate this provision and to apply the landing fee, as revised herein, to all aircraft on the same rate per 1,000 pounds, along with a minimum landing fee. Operators of aircraft below 3,500 pounds would have to pay the applicable fee under this proposal in order to more equitably share in the cost of providing services at Dulles Airport.

Minimum Landing Fees

The FAA is also proposing that there be a mininum landing fee at Dulles. The minimum fee at Dulles would be $4.00 which is the same as the minimum fee at National.

The Metropolitan Washington Airports Act permits a minimum fee to be equivalent to the fee that is imposed on aircraft weighing 12,500 pounds. At current rates, a 12,500 pound aircraft would pay approximately $6.00. FAA is not proposing to set the minimum rate at the maximum permitted by law. The change to a weight-based method to calculate fees would increase general aviation fees. Therefore, FAA is not proposing to raise the minimum fee above the $4.00 that is already in effect at National. A future change in the minimum landing fee to the level permitted by law may be appropriate if it is determined by the new Authority that the cost of providing basic services at National and Dulles to light aircraft is not being recovered by the weight-based landing fee and by the current minimums.

Helicopters are presently exempted from the $4.00 minimum landing fee at National. FAA is proposing to discontinue this exemption. Helicopter operators would pay fees on a weight-based method and pay at least the minimum fee at both Airports. Helicopter operators receive the benefits of services from the Airports, including a helipad, fire and police protection, as do the other general aviation users who are subject to the minimum fees.

Finally, for general aviation operators, the proposed rule would specify that unless another arrangement is made, the landing fee is to be paid to the Airports' fixed base operator.

Other Fees

FAA proposes to modify fees other than the landing fee for those carriers that do not have contracts for regular use of the airports. The signatory carriers (carriers operating under Parts, 121, 127, 129 or providing scheduled operations under Part 135 that have signed contracts with the Airports) have agreed to pay fees to defray the costs of the airports' operation. At both Airports signatory carriers pay security fees for pre-boarding security. At Dulles, the carriers pay fees for the use of the Federal Inspection Service area where United States Customs Service inspections are performed. Also at Dulles, the carriers pay a common use

facility fee to pay for the cost of providing the large common hold rooms, baggage claim areas and other baggage handling and sky-cap facilities. A portion of the cost of the mobile lounges to transport passengers between terminal and aircraft is also recovered through the common use facility fee. Currently, the signatory carriers pay a fixed fee of $2,155.00 a month plus a fee per passenger.

In addition to the fees, the signatory carriers pay rent for the space that they lease for their exclusive use. They have agreed to be responsible for considerable maintenance of Government premises on the Airports including portions of the airfield, the terminals, and the hangars at National Airport. In addition to prescribing significant financial and maintenance responsibilities for the carriers, the contracts advance airport policies regarding the accommodation of new entrant carriers. The signatory carriers who lease space on the Airports have agreed to a process that may require them to accommodate other carriers, including new entrant carriers, in their leased space, if the Director of the Airports determines that it is necessary. Finally, in the contracts, the Airports and the carriers have agreed to a detailed statement of rights and obligations for each of the parties. These contracts were negotiated. They represent a non-regulatory approach to the Airports' operation and reflect the business needs of the carriers as well as the needs of the Government.

Non-signatory carriers and other irregular users use the same facilities as signatory carriers at the Airports. The non-signatory carriers are, in most cases, serviced by one of the signatory carriers or by one of the ground handling/passenger handling companies at the Airports and are then billed for services provided by the Airports.

As is the case at most airports, the non-signatory carriers pay fees to the Government in accordance with an ordinance or regulation as opposed to a contract. The fees for non-signatory carriers at National and Dulles are set by regulation. The existing regulation provides for a landing fee for non-signatory carriers of $0.25 per 1,000 pounds at Dulles and $0.30 per 1,000 pounds at National. When these fees were established in 1968, they were comparable to the fees being paid by the signatory carriers. These fees today are substantially below that which the signatory carriers are obligated to pay according to their contracts.

FAA is proposing to change the regulation on fees to bring the fees for non-signatory carriers back into line with the other fees charged to users of the Airports. With regard to the landing fee, rather than fixing a number in the regulation which needs constant regulatory action to remain current, FAA is proposing to have non-signatory carriers pay a percentage of the signatory carrier landing fee. The fee would be set at 125 percent of the signatory carrier landing fee. The 25 percent differential is in lieu of certain facility charges discussed below which are impractical to impose on irregular users. It also recognizes the additional administrative cost associated with non-signatory carriers who operate at the Airports.

Every carrier has the opportunity to sign the current FAA contract. However, no carrier is obligated to be a signatory carrier unless that carrier seeks to lease or sublease space on the Airports. Carriers that elect not to sign this agreement would pay the rates and charges set out in the regulation. The charges would be paid either directly to the Airports' management or, in some cases, to Airports' management through the party that handles a non-signatory carrier's operations at the Airports.

The proposed regulation would specify that non-signatory carriers and general aviation operators are obligated to pay a fee if they use common facilities such as common holdrooms and mobile lounges, security services and the Federal Inspection Service (FIS) area at Dulles where the customs clearance occurs. The Airport adjusts these fees for the signatory carriers annually and, in some cases, semi-annually. The proposed regulation would apply fees to the non-signatory users of the FIS area. In lieu of the formula used by signatory carriers to pay for mobile lounges at Dulles, non-signatory carriers would pay only a flat fee of $50.00 per trip for mobile lounge use. The mobile lounge fee may be adjusted in the future as the fees to the signatory carriers are adjusted. Infrequent, non-signatory carriers at the Airport are not expected to pay for common use areas under the common-use formula or pay the security fee. Such fees are imposed on a 6 month basis and are impractical to administer for such low volume users. Instead, the premium landing fee will be charged for each operation. Non-signatory carriers will report their landing weight to the authorized handler at the Airport and the report will be used for billing by the Airport.

Other Considerations

The regulations, as proposed, would provide that the fees may be waived by the Director of the Metropolitan Washington Airports when the public interest requires. From time to time, a flight is conducted for charitable purposes or for a special demonstration for which the Director may determine that it is appropriate to waive the landing fees. This waiver would require specific written authorization.

Regulatory Evaluation

The proposed rule would assure that the Airports recover their costs of operating from all categories of aircraft operators. Landing fees will increase for perhaps 75 percent of the general aviation users at Dulles Airport. However, the landing fee increase, the first since 1968, will not be a hardship. Aircraft weighing approximately 8,000 pounds or less will pay the $4.00 minimum fee. For general aviation aircraft weighing less than 3,000 pounds, which currently pay no landing fee at Dulles and a $4.00 fee at National, the new rule would result in a fee of $4.00 at both Airports. A 10,000 pound aircraft which today pays $2.50 in landing fees at Dulles and $4.00 at National will pay $4.82 at both Airports regardless of whether it is a turbo-jet or turbo-propeller aircraft.

Air carriers using the Airports that are not signatories to the Airports contract will pay an increased fee. These are domestic and foreign operators of large aircraft under Parts 121 and 129, primarily. A DC–10 aircraft landed by a signatory carrier at the current landing fee pays about $200.00. The non-signatory fee today is about $105.00 for this aircraft. The non-signatory landing fee would increase to approximately $250.00 under the proposed rule. Also, the non-signatory operator of a Boeing 727–200 pays approximately $38.00, approximately as compared to $74.00 by a signatory carrier. Under the proposed rule, the non-signatory carrier would pay $92.50 to land a Boeing 727–200 at the Airports. In addition, the non-signatory carrier would pay for any mobile lounge use at Dulles Airport. Non-signatory carriers would continue not to be obligated to pay the formula fee for the upkeep of the common use areas of the Airports that the signatory carriers pay. That fee is currently $2,155.00 a month.

Although the proposed rule would increase fees for users, the economic impact on the typical corporate aircraft operators, private pilots and air carriers is expected to be minimal. Therefore, a full regulatory evaluation is not required. Also, for the same reasons, FAA has determined that this proposed rule is not a "major rule" under Executive Order 12291, or a "significant

rule" under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress in order to insure, among other things, that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant impact on a substantial number of small entities." For purposes of the RFA, small entities are considered to include small businesses, non-profit organizations, and municipalities but not private individuals. Small entities affected by the proposed rules are likely to be itinerant non-scheduled Part 135 air taxis who use the Airports from time to time, non-scheduled air taxi operators who are based at the Airports and non-scheduled operators of large aircraft. The rule would not require any change in the operations of these companies as currently conducted. No additional record keeping requirements would be imposed. The air taxi operators are general aviation for landing fee purposes. The increase may have a significant impact on one or more of the air taxis that are based at the Airports but it will not have a significant impact on a substantial number of small entities which operate aircraft, including large aircraft. The impact on the affected small entities would be substantially less than the threshold for significant impact under agency guidelines. Therefore, I certify that, under the criteria of the Regulatory Flexibility Act, these rules, if promulgated, will not have a significant impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 159

Washington National Airport, Washington Dulles International Airport Fees.

Proposed Amendment

In consideration of the above, the FAA proposes to amend Part 159 of the Federal Aviation Regulation (14 CFR Part 159) as follows:

1. The authority citation of Part 159 is revised to read as follows:

Authority: 49 U.S.C. 2402 and 2424; The Metropolitan Washington Airports Act of 1986, Pub. L. 99-500; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

2. By revising § 159.181 to read as follows:

§ 159.181 Landing fees.

(a) Except as provided in paragraph (b) of this section, the charges for each landing of an aircraft at Washington National Airport or Washington Dulles International Airport are as follows:

(1) *Signatory carriers.* Unless the carrier has a contract with the Airports' management which provides otherwise, the carrier shall pay a landing fee for each of its aircraft that comes to a full stop at the Airports. The fee shall be paid at a rate for each 1,000 pounds or part thereof of the maximum authorized landing weight of the aircraft permitted at the Airports. The rate per 1,000 pounds will be calculated by the Director, Metropolitan Washington Airports to recover the net direct and allocated costs of the airfield cost center, including utilities. The fee shall be calculated annually and adjusted for the underrecovery or the overrecovery of the prior year's costs.

(2) *Non-signatory carriers.* Each non-signatory carrier shall pay a landing fee equal to 125 percent of the current fee applicable to signatory carriers under paragraph (a) of this section.

(3) *Other operators.* All other users of the Airports shall pay landing fees on the same basis and at the same rate as the signatory carriers except that a minimum landing fee shall be applicable as provided in paragraph (a)(4) of this section.

(4) The minimum landing charge at Washington National Airport and Washington Dulles International Airport for all aircraft, including helicopters, shall be $4.00.

(b) There is no landing charge under this section for the following:

(1) Public aircraft

(2) Aircraft compelled to return to either Airport for safety reasons without stopping at any other airport.

(3) Aircraft operations for which the Director, Metropolitan Washington Airports determines that a charge should not be imposed.

3. By revising § 159.183 as follows:

§ 159.183 Service fees.

Each carrier or general aviation operator which uses the following services shall pay to the Director, Metropolitan Washington Airports the fee established by the Airports for the service as follows unless the carrier or operator has a contract with the Airport which prescribes a different fee:

(a) Common use facilities—for use of the holdroom areas, baggage claim areas, baggage roadways, and porter facilities: The landing fee prescribed by § 159.181.

(b) Mobile lounge fees per trip: $50.00.

(c) Federal Inspection Service fees (established annually) for use of the area where the Federal Inspection Services are performed: The fee per passenger paid by the signatory carriers.

4. By adding new § 159.184 to Subpart H as follows:

§ 159.184 Definitions.

For the purpose of §§ 159.181 and 159.183.

(a) A "signatory carrier" is a carrier operating under Part 121, Part 127, Part 129, or providing scheduled operations under Part 135, that has entered into a contract with the Airport specifying the fees and charges for use of the Airport; and

(b) A "non-signatory carrier" is a carrier operating under Part 121, Part 127, Part 129, or providing scheduled operations under Part 135, that does not have a contract with the Airport specifying the fees and charges for use of the Airport.

5. By revising § 159.185 as follows:

§ 159.185 Payment for services.

(a) Unless other arrangements for payment have been made with the approval of the airport management, general aviation landing fees shall be paid to the fixed base operator at the Airport and a carrier shall report its weight to an authorized ground handler at the Airport.

(b) Unless satisfactory credit arrangements have been made, a person who has used Airport facilities, or who owes for storage, supplies, repairs, or other services by the Airports, must pay for them before takeoff.

Issued in Washington, DC, on March 5, 1987.

James A. Wilding,

Director, Metropolitan Washington Airport.

[FR Doc. 87-5159 Filed 3-10-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[LR-146-86]

Information Reporting for Tax-Exempt Bond Issues

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to information reporting for tax-exempt

bonds under section 149(e) of the Internal Revenue Code of 1986, as enacted by the Tax Reform Act of 1986 (Pub. L. 99–514). The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by May 11, 1987.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–146–86), 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert Beatson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3590, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** add new § 1.149(e)–1T to Part 1 of Title 26 of the Code of Federal Regulations. The final regulations, which this document proposes to be based on those temporary regulations, would be added to Part 1 of Title 26 of the Code of Federal Regulations as new § 1.149(e)–1. For the text of the temporary regulations, see FR Doc. (T.D. 8129) published in the Rules and Regulations portion of this issue of the **Federal Register.** The preamble to the temporary regulation explains the additions to the Income Tax Regulations.

The proposed regulations provide needed guidance regarding the provisions of section 149(e), as enacted by section 1301(a) of the Tax Reform Act of 1986.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, this proposed regulation does not constitute a regulation subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is Robert Beatson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations both on matters of substance and style.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. Comments are encouraged both with respect to the matters addressed in these proposed regulations and any other issues arising under section 149(e) with respect to which guidance is needed. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.** The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87–4981 Filed 3–10–87; 8:45 am]

BILLING CODE 4830–01–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Election Procedures; New Rule

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: In order to facilitate the election process, the National Labor Relations Board proposes to amend its rules to include a new provision that requires an employer to post, 3 days prior to an election, a notice notifying employees of an election conducted under section 9(c) of the National Labor Relations Act, 29 U.S.C. 159(c). The Board has resolved to utilize notice-and-comment rulemaking, rather than be presented with continuing litigation over the issue of the appropriate time period for posting an election notice.

DATE: Comments by: April 10, 1987.

ADDRESS: Comments should be sent to: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, DC 20570, Telephone: (202) 254–9430.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION: Since its inception, the Board has given the highest priority to its election procedures. In order to achieve the fullest participation by an informed electorate, we deem it of the utmost importance that copies of the official Board Notice of Election be posted in conspicuous places by employers.

As noted in *Kilgore Corp.*, 203 NLRB 118 (1973), enf. denied 510 F.2d 1165 (6th Cir. 1975):

> Apart from information on the election notice as to the date, time and place of polling, eligibility requirements, and the type of ballot to be used, the official election notices now in use contain important information with respect to the rights of employees under the Act. The purpose of this latter information is to alert employees to their rights and to warn unions and management alike against conduct impeding a free and fair election. All these matters should have been brought to the employees' attention sufficiently in advance of the election that, by the day of the election, they could have asked any questions that bothered them—e.g., about the unit description and their possible eligibility or ineligibility thereunder—and could discuss the election issues with their fellow employees and friends so they might come to a reasoned decision by the date of the election.

Moreover, the notice assumes special importance in foreign language elections, since, in those elections, the notice is translated into as many foreign languages as are required to make the election procedures understandable to voters who do not read English.

In the past, though several Board Members have suggested the Board adopt a rule regarding notice posting (e.g., the expressed position of Member Murphy and the implied position of Member Truesdale in *Printhouse Co.*, 246 NLRB 741, 742 (1979)), the Board has chosen to proceed on a case-by-case basis. *Kilgore Corp.*, 203 NLRB at 118; *Kane Industries*, 246 NLRB 738 (1979). The Board recently has received a number of cases posing this same issue, and has decided that the issue lends itself well to the rulemaking procedure. Posting of a notice is a relatively simple matter, and one not worthy of extensive litigation in each case as to how long the notice need have been posted in the particular circumstances, depending on size of the electorate, number of trips made by each employee per day past the notice, size of turnout, good or bad faith of the employer, etc. See, e.g., *Kane Industries*.

The Board has considered various periods for its proposed posting requirement. A period of 7 calendar days was among those considered, and in some respects would have been more desirable since it would afford the employees a longer time to familiarize themselves with the election details and their rights under the Act. However, a period of 7 days' length might also have required the delay of a number of elections in view of the length of time it takes to prepare and deliver some notices, particularly those for foreign language voters. Hence, the Board has decided upon a period of 3 full working days in the proposed rule, defining working days as all days other than Saturdays, Sundays, and holidays.

In order to avoid the expense of certified mail and the necessity to keep track of certified receipts, the Board will conclusively presume the employer received the notices in sufficient time for the required posting, absent notification by the employer to the Regional Office 5 working days prior to the election. Though not made part of the proposed rule, Regional Office personnel will endeavor to remain employers of their obligation to notify then 5 working days in advance of the election if the notices are not received. In all cases of alleged nonreceipt, Regional Offices will make every effort to deliver new notices to employers in sufficient time for posting. A party shall estopped from objecting to nonposting if it is responsible for the nonposting.

The proposed rule provides that, in cases involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, notices shall remain posted until the end of the election.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 29 CFR Part 103

Administrative practice and procedure, Labor management relations.

For the reasons set forth in the preamble, 29 CFR Part 103 is proposed to be amended as follows.

PART 103—OTHER RULES

1. The authority citation for 29 CFR Part 103 is revised to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156), and sec. 553 of the Administrative Procedure Act (5 U.S.C. 500, 553).

2. Part 103 is amended by adding Subpart B to read as follows:

Subpart B—Election Procedures

Sec.
103.20 Posting of election notices.

Subpart B—Election Procedures

§ 103.20 Posting of election notices.

(a) Employers shall post copies of the Board's official Notice of Election is conpicuous places at least 3 full working days prior to the commencement of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working days" shall mean all days other than Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless if notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

Dated, Washington, DC, March 6, 1987.

By direction of the Board.

National Labor Relations Board.

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 87-5198 Filed 3-10-87; 8:45 am]

BILLING CODE 7545-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1928

[Docket No. H-308]

Agriculture Health and Safety Standards; Field Sanitation

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of preliminary determination and limited reopening of rulemaking record.

SUMMARY: On October 21, 1985, the Secretary published his decision (50 FR 42660) to set aside the April 16, 1985 determination not to issue a federal field sanitation standard (50 FR 15086). The Secretary concluded that a federal field sanitation standard would be necessary unless enough state standards were issued that were adequate according to the criteria set forth in the October 1985 decision. The Secretary has now made a preliminary determination that a federal standard is necessary and is reopening the record for field sanitation for the limited purpose of seeking additional information and public comment on the states' response to the October 1985 decision.

DATE: Information and written comments must be submitted by March 31, 1987.

ADDRESSES: Comments should be sent in quadruplicate to: Officer, Docket H-308, Room N3670, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Room N3637, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1984 (49 FR 7589), the Agency published a Notice of Proposed Rulemaking for a field sanitation standard and a request for comments. In response to that proposal, an extensive rulemaking record was developed, including many prehearing comments, testimony at five public hearings, and additional exhibits and post-hearing comments. The record was closed on August 31, 1984. (A fuller explanation of the background and legal history surrounding the field sanitation

standard can be found at 49 FR 7589 and 50 FR 15086.)

On April 16, 1985, OSHA published its decision not to issue a field sanitation standard at that time (50 FR 15086). Shortly thereafter, incoming Secretary William E. Brock determined that he would review that decision.

The Secretary, following a thorough review of all the evidence in the record and the reasons behind the earlier determination, issued a decision superseding the April 16, 1985 determination (October 21, 1985, 50 FR 42660). In the October decision, the Secretary set aside the earlier decision because of the clear evidence in the record of unacceptable risks to the health of hand laborers in the fields arising from the inadequate provision of sanitary facilities and drinking water at their worksites. In order to clarify the extent of those risks, the Secretary reopened the record, inserted two quantitative risk assessments that had been submitted to OSHA after the previous comment period had closed, and sought public comment.

While not rejecting the policy reasons set forth in the April 16, 1985 determination, the Secretary found that further regulation was required to deal with the health problems of hand laborers in the fields. However, for a variety of reasons, the Secretary agreed that state action responsive to this need would be preferable to, and more effective than, federal action. He therefore decided to afford the states 18 months in which to take adequate action to protect farmworkers. The Secretary stated that OSHA would determine at the end of the 18 months (April 1987) whether state action had been sufficient to preclude the need for a federal standard. The Secretary further stated that if it was determined that state action was insufficient, OSHA would issue its own standard within six months after that determination.

The Secretary also offered assistance to the states and established guidelines for appropriate state action, which he would use to determine whether state action had been sufficient to preclude the need to issue a federal standard. The guidelines are as follows:

First, to be adequate, a state field sanitation standard had to provide protection equivalent to the federal field sanitation standard proposed in 1984. This does not mean that a state standard has to be identical with the federal proposal. The Secretary expressly stated that the guidelines were intended to provide individual states with sufficient flexibility so they could shape provisions to fit local climatic, topographical, crop, and labor conditions. To be adequate, a state standard does have to require employers to provide drinking water, handwashing facilities, and appropriate toilet facilities. Moist towelettes, the Secretary stated, are not an adequate substitute for handwashing facilities.

Second, regarding the extent of action required of states without field sanitation standards as of October 1985, the increase in the number of states with adequate standards had to be sufficient to assure that the vast majority of hand laborers working in the field who were not then covered by state standards would be protected.

Third, the states also must have adequate enforcement programs, including adequate resources, compliance staff, inspection authority, and methods to compel abatement.

In addition, in order for the states to adequately protect agricultural fieldworkers, the Secretary indicated that "deficiencies in certain existing state standards and in the enforcement of certain existing standards" had to be corrected.

The Secretary's October 21, 1985 decision was challenged in court by the Farmworker Justice Fund, Inc. and others. On February 6, 1987, a divided panel of the U.S. Court of Appeals for the District of Columbia Circuit ruled that the Secretary's decision was based on factors the Secretary could not lawfully consider and on an unreasonable expectation that the states could be encouraged to provide adequate protection to farmworkers within 18 months. The court ordered the Secretary to promulgate a federal field sanitation standard within 30 days of the issuance of the court's mandate (*Farmworkers Justice Fund* v. *Brock* (D.C. Cir., No. 85–1824)).

As more fully described below, the Secretary has made a preliminary determination, based upon his evaluation of state response to-date or likely to be completed by April 1987 in light of the criteria set out in the October 1985 notice, that a federal field sanitation standard should be issued. However, because the Secretary believes that the court of appeals decision contravenes well-established principles of law, the Secretary on March 9, 1987, filed a petition for rehearing of the decision by the entire Circuit Court of Appeals. The filing of that petition for rehearing should not delay the Secretary's decision regarding the need for a federal standard and the promulgation of that standard. Such a standard will be issued as expeditiously as possible (on or about April 21, 1987).

Reopening the Record

In order to complete the record regarding the adequacy of state action, the Agency is placing in the record (Docket H–308) the 22 state standards now in effect. They include standards of the States of Alaska, Arizona, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Maryland, New Mexico, Maine, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Texas, Utah, Wisconsin, and Wyoming. (Although a Colorado field sanitation standard is part of the existing OSHA record, Colorado officials indicate that the state currently does not have an enforceable regulation.) OSHA is also including any information provided by the states on their enforcement programs. Twelve other states (including Puerto Rico, Colorado, Indiana, Kentucky, Massachusetts, Michigan, Minnesota, North Dakota, Ohio, Rhode Island, Virginia, and Washington) are in the process of developing standards. As their standards are promulgated, they will be submitted to the record.

OSHA also is placing in the record state-by-state estimates of the number of hand laborers in the fields, and the number of hand laborers on farms with 11 or more employees. These estimates are derived from data submitted to OSHA by its contractor, Centaur Associates, Inc. (Exh. 16).

The Secretary's Evaluation of the State Response to Date

Many states have responded positively to the Secretary's October 1985 notice. At the time of the Secretary's October 1985 decision, 12 states (California, Connecticut, Florida, Idaho, Illinois, Maine, New Jersey, New York, North Carolina, Oregon, Pennsylvania, and Texas) had enforceable field sanitation standards of some sort. These standards cover approximately 70% of the fieldworkers on farms with 11 or more employees. Since then, 10 more states (Alaska, Arizona, Delaware, Hawaii, Maryland, New Mexico, South Carolina, Utah, Wisconsin, and Wyoming), which cover approximately an additional 7% of those fieldworkers, have promulgated standards. Another 12 states (including Puerto Rico, Colorado, Indiana, Kentucky, Massachusetts, Michigan, Minnesota, North Dakota, Ohio, Rhode Island, Virginia, and Washington), which cover approximately 17% of those fieldworkers, are in the process of developing standards. Thus, by April 1987, as many as 34 states, covering 94% of fieldworkers on farms with 11 or more

employees, could possibly have field sanitation standards. The Secretary is gratified by the action taken by these states.

However, 4 of the states which have standards (Hawaii, Idaho, North Carolina, and New York) do not require employers to provide all three of the facilities deemed necessary to provide adequate protection. These 4 states contain 13% of all of the fieldworkers on farms of 11 or more employees. Another 4 states (Florida, Illinois, Maine, and Wisconsin) have standards that allow employers to provide moist towelettes as a substitute for handwashing facilities. These 4 states account for approximately 16% of all of the fieldworkers on farms of 11 or more employees. In addition, 18 states (including the Virgin Islands, Alabama, Arkansas, Georgia, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, Oklahoma, South Dakota, Tennessee, Vermont, and West Virginia), covering approximately 6% of the fieldworkers on farms with 11 or more employees, have not promulgated field sanitation standards and are not in the process of developing them.

Thus, without considering the adequacy of their enforcement programs, as of this date only 14 states covering approximately 48% of the fieldworkers on farms with 11 or more employees have standards that provide protection equivalent to the federal field sanitation standard proposed in 1984. Even assuming that all 12 of the states presently developing field sanitation standards promulgate adequate standards prior to April 1987, no more than 65% of the fieldworkers on farms with 11 or more employees would be adequately protected. In addition, only 48% of all field hand laborers (i.e., those on farms with fewer than 11 employees as well as those on farms with 11 or more employees) are presently covered by state field sanitation standards. This amounts to an increase of 4%, from 44% at the time of publication of the October 1985 notice. No more than an additional 6% of all field workers may be covered as a result of state action between now and April 1987. Thus, the percentage of all fieldworkers protected by state standards will not have significantly increased by April.

Consequently, based on the state response, the Secretary has made a preliminary determination that a federal field sanitation standard must be promulgated. Such a standard will be issued as expeditiously as possible (on or about April 21, 1987).

Request for Comments

To complete the rulemaking record on the question whether state action on field sanitation has been sufficient to preclude the need for a federal standard, OSHA seeks public comment and additional information on the states' response to the Secretary's October 21, 1985 notice.

Evidence or comments already in the record or duplicative of what is in the record should not be resubmitted. Comments should be sent by [insert date 20 days after publication date] to: Docket Officer, Docket H–308, Room N3670; Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, where the entire record is available for inspection and copying.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, pursuant to sections 6 and 8 of the Occupational Safety and Health Act of 1970 [84 Stat. 1593 (29 U.S.C. 655, 657); 29 CFR Part 1911; and Secretary of Labor's Order No. 9–83 (48 FR 35736)].

Signed at Washington, DC, this 6th day of March 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 87–5234 Filed 3–9–87; 2:00 pm]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Reg. 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Modification of Payment Limitation for Multiple Surgical Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed Amendment of Rule.

SUMMARY: This proposed amendment revises the comprehensive CHAMPUS regulation, DoD 6010.8–R (32 CFR Part 199), pertaining to payment for multiple surgical procedures performed during the same operative session. This proposed amendment allows payment for second and subsequent surgical procedures at fifty (50) percent of the CHAMPUS-determined allowable charge, whether or not the second and subsequent procedures are related—i.e., performed through the same surgical opening—to the first procedure.

DATES: Written public comments must be received on or before April 10, 1987.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Policy Branch, OCHAMPUS, telephone (303) 361–4005.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DoD Regulation 6010.8–R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

Section 199.4(c)(3)(i)(A) provides that in cases involving related surgical procedures (procedures which are performed through the same surgical opening or by the same surgical approach), ". . . benefits shall be limited to that part of the surgical care for which the greatest amount is payable. . . ." This limitation may result in inadequate payment, since the second surgical procedure often requires a significant amount of time and effort by the surgeon. In addition, in some cases it may serve to encourage separate hospital admissions, or at least separate surgical episodes, in cases where procedures could be safely performed concurrently.

In order to correct these problems, we are proposing that multiple surgical procedures performed during the same operative session be reimbursed based on one hundred (100) percent of the CHAMPUS-determined allowable charge for the major procedure and fifty (50) percent of the CHAMPUS-determined allowable charge for any other procedures. Certain exceptions to this policy are provided under which reduced payments are to be made for procedures involving the fingers and toes as well as for specific procedures identified by OCHAMPUS and under which payment for incidental procedures defined by OCHAMPUS is prohibited.

This amendment is being published in the **Federal Register** for proposed rulemaking at the same time it is being coordinated within the Department of Defense and with other interested agencies so that consideration of both internal and external comments and

publication of the final rule can be expedited.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub L. 96–354) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub L. 96–354), that this regulation amendment will not have a significant economic impact on a substantial number of small businesses, organizations or government jurisdictions.

We have determined that this Regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR, Part 199 is amended to read as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by revising paragraph (c)(3)(i) to read as follows:

§ 199.4 [Amended]

* * * * *

(c) * * *

(3) * * *

(i) *Multiple Surgery.* In cases of multiple surgical procedures performed during the same operative session, benefits shall be extended as follows:

(A) One hundred (100) percent of the CHAMPUS-determined allowable charge for the major surgical procedure (the procedure for which the greatest amount is payable under the applicable reimbursement method); and

(B) Fifty (50) percent of the CHAMPUS-determined allowable charge for each of the other surgical procedures;

(C) Except that:

(*1*) If the multiple surgical procedures involve the fingers or toes, benefits for the first surgical procedure shall be at one hundred (100) percent of the CHAMPUS-determined allowable charge; the second procedure at fifty (50) percent; and the third and subsequent procedures at twenty-five (25) percent.

(*2*) If the multiple surgical procedures include an incidental procedure, no benefits shall be allowed for the incidental procedure.

(*3*) If the multiple surgical procedures involve specific procedures identified by OCHAMPUS, benefits shall be limited as set forth in CHAMPUS instructions.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 4, 1987.

[FR Doc. 87–5177 Filed 3–10–87; 8:45 am]

BILLING CODE 3810–01–M

POSTAL SERVICE

39 CFR Parts 224 and 962

Implementation of the Program Fraud Civil Remedies Act

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to adopt regulations implementing the Program Fraud Civil Remedies Act of 1986. These regulations would establish administrative procedures for imposing the statutorily authorized civil penalties and assessments against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the Postal Service.

DATE: Comments must be received on or before April 10, 1987.

ADDRESS: Written comments should be mailed or delivered to the Assistant General Counsel, Legislative Division, Law Department, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260–1114. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 5 p.m., Monday through Friday, in Room 6113, at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Klepac, (202) 268–2962.

SUPPLEMENTARY INFORMATION: The Program Fraud Civil Remedies Act, Pub. L. 99–509, enacted on October 21, 1986, codified at 31 U.S.C. 3801 through 3812, generally provides that any person who knowingly submits a false claim or statement to the Federal Government in an amount less than $150,000 may be liable for an administrative civil penalty of not more than $5,000 for each false claim or statement, and, in certain cases, to an assessment equal to double the amount falsely claimed.

The Act vests authority to investigate allegations of liability under its provisions in an agency's Investigatory Official. Based upon the results of an investigation, the agency Reviewing Official determines, with the concurrence of the Attorney General, whether to refer the matter to a Presiding Officer for an administrative hearing. Any penalty or assessment imposed under the Act may be collected by the Attorney General, through the filing of a civil action, or by offsetting amounts, other than tax refunds, owed the particular party by the Federal Government.

The Act grants agency Investigatory Officials authority to require by subpoena the production of documentary evidence which is "not otherwise reasonably available." If the case proceeds to hearing, the Presiding Officer may require the attendance and testimony of witnesses as well as the production of documentary evidence.

The Postal Service is proposing to adopt implementing regulations as new 39 CFR Part 962, which would designate the Chief Postal Inspector as the Postal Service's Investigatory Official for purposes of the Program Fraud Civil Remedies Act and would assign the role of Reviewing Official under the Act to the General Counsel. Any hearing under the Act would be presided over by an Administrative Law Judge designated by the Postal Service Judicial Officer. Administrative appeals of a Presiding Officer's decision would be determined by the Judicial Officer under 39 CFR 224.1(c)(4)(ii)(A), and the same section would be amended to authorize the Judicial Officer to issue final decisions under 31 U.S.C. 3803.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments of Title 39, Code of Federal Regulations:

List of Subjects in 39 CFR Parts 224 and 962

Organization and functions (Government agencies), Administrative practice and procedure, Fraud, Penalties, Postal Service.

PART 224—[AMENDED]

1. The authority citation for Part 224 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, and 409.

§ 224.1 [Amended]

2. In § 224.1, paragraph (c)(4)(ii)(A) is amended by inserting "section 3803 of title 31," immediately after "title 18,".

2. Part 962 is added to read as follows:

PART 962—RULES RELATIVE TO IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT

Subpart A—General Provisions

Subpart B—Hearing Procedures

Subpart C—Miscellaneous Provisions

Authority: 31 U.S.C. Chapter 38; 29 U.S.C. 401.

Subpart A—General Provisions

§ 962.1 Purpose.

This part establishes:

(a) Procedures for imposing civil penalties and assessments against any person who makes, submits or presents, or causes to be made, submitted, or presented, a false, fictitious, or fraudulent claim or written statement to the Postal Service; and

(b) Procedures governing the hearing and appeal rights of any person alleged to be liable for such penalties and assessments.

§ 962.2. Definitions.

(a) "Attorney" refers to an individual authorized to practice law in any of the United States or the District of Columbia or a territory of the United States.

(b) "Claim" means any request, demand, or submission—

(1) Made to the Postal Service for property, services, or money (including money representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from the Postal Service or to a party to a contract with the Postal Service—

(i) For property or services if the United States—

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to the Postal Service which has the effect of decreasing an obligation to pay or account for property, services, or money.

(c) "Complaint" refers to the administrative Complaint served by the Reviewing Official on a Respondent pursuant to § 962.8.

(d) "Initial Decision" refers to the written decision which the Presiding Officer is required by § 962.26 to render, and includes a revised initial decision issued following a remand.

(e) "Investigating Official" refers to the Chief Postal Inspector of the Postal Service or any designee within the United States Postal Inspection Service who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(f) "Judicial Officer" refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service.

(g) "Knows or has reason to know," for purposes of establishing liability under 31 U.S.C. 3802 means that, with respect to a claim or statement, although no proof of specific intent to defraud is required, a person—

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberte ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless desregard of the truth or falsity of the claim or statement.

(h) "Party," in the context of the procedures governing hearings under this part, refers to the Postal Service or the Respondent.

(i) "Person" refers to any individual, partnership, corporation, association, or private organization.

(j) "Postal Service" refers to the United States Postal Service.

(k) "Postmaster General" refers to the Postmaster General of the United States or his designee.

(l) "Presiding Officer" refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing authorized by 31 U.S.C. 3803.

(m) "Recorder" refers to the Recorder of the United States Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260–6100.

(n) "Representative" refers to an attorney or other advocate.

(o) "Respondent" refers to any person alleged to be liable for a civil penalty or assessment under 31 U.S.C 3802.

(p) "Reviewing Official" refers to the General Counsel of the Postal Service or any designee within the Law Department who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(q) "Statement" means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from, the Postal Service, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money of property under such contract of for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan or benefit.

§ 962.3 Liability for false claims and statements.

Section 3802 of Title 31, United States Code, provides for liability as follows:

(a) *Claims.* (1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement asserting a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made, presented, or submitted to the Postal Service, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Postal Service, recipient, or party.

(4) Each claim for property, services, or money is subject to the civil penalty referred to in paragraph (a)(1) of this section regardless of whether such property, service, or money is actually delivered or paid.

(5) If the Government has made payment on a claim, a person subject to the civil penalty referred to in paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or twice the amount of that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. This assessment shall be in lieu of damages sustained by the United States because of such claim.

(b) *Statements.* (1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making, presenting or submitting such statement had a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made, presented; or submitted to the Postal Service when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Postal Service.

(c) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, the civil penalty referred to in paragraph (a)(1) of this section may be imposed on each such person without regard to the amount of any penalties collected or demanded from others.

(d) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment, an assessment may be imposed against any such person or jointly and severally against any combination of such persons. The aggregate amount of the assessments collected with respect to such claim shall not exceed twice the portion of such claim determined to be in violation of paragraph (a)(1) of this section.

§ 962.4 Non-exclusivity of penalty authority.

(a) A determination by the Reviewing Official that there is adequate evidence to believe that a person is liable under 31 U.S.C. 3802, or a final determination that a person is liable under such statute, may provide the Postal Service with grounds for commencing any administrative or contractural action against such person which is authorized by law and which is in addition to any action against such person under Chapter 38 of Title 31, United States Code.

(b) In the case of an administrative or contractural action to suspend or debar any person from eligibility to enter into contracts with the Postal Service, a determination referred to in paragraph (a) of this section shall not be considered as a conclusive determination of such person's responsibility pursuant to Postal Service procurement regulations.

§ 962.5 Investigations of alleged violations.

(a) Investigations of allegations of liability under 31 U.S.C. 3802 shall be conducted by the Investigating Official.

(b) For purposes of an investigation under this part, the Investigation Official may issue a subpoena requiring the production of all information, documents, reports, answers, records, accounts, papers, and data not otherwise reasonably available to the Postal Service. Any subpoena issued by the Investigation Official shall cite 31 U.S.C. 3804(a) as the authority under which it is issued, shall be signed by the Investigating Official, and shall command each person to whom it is directed to produce the specified documentary material at a prescribed time and place.

(c) Upon completing an investigation under this part, the Investigating Official shall submit to the Reviewing Official a report containing the findings and conclusions of his investigation, including:

(1) A description of the claims or statements for which liability under 31 U.S.C. 3802 is alleged;

(2) A description of any evidence which supports allegations of liability under 31 U.S.C. 3802, or where applicable, a description of any evidence that tends to support a conclusion that such statute has not been violated;

(3) An estimate of the amount of money or the value of property or services allegedly requested or demanded in violation of 31 U.S.C. 3802;

(4) A statement of any exculpatory or mitigating circumstances which may relate to the claims or statements under investigation;

(5) A statement of the amount of penalties and assessments that, considering the information described in paragraphs (c)(3) and (4) of this section, the Investigation Official recommends be demanded from the person alleged to be liable; and

(6) An estimate of the prospects of collecting the amount specified in paragraph (c)(5), of this section and any reasons supporting such estimate.

(d) Nothing in these regulations modifies any responsibility of the Investigation Official to report violations of criminal law to the Attorney General.

§ 962.6 Evaluation by Reviewing Official.

(a) Based upon the investigatory report prepared by the Investigation Official, the Reviewing Official shall determine whether there is adequate evidence to believe that a person is

liable under 31 U.S.C. 3802, and, if so, whether prosecution would likely result in the imposition and collection of civil penalties and applicable assessments.

(b) If the Reviewing Official determines that a case has merit and should be referred to a Presiding Officer for further action, he must first transmit to the Attorney General a written notice containing the following information:

(1) A statement setting forth the Reviewing Official's reasons for proposing to refer the case to a Presiding Officer;

(2) A description of the claims or statements for which liability under 31 U.S.C. 3802 is alleged;

(3) A statement specifying the evidence that supports the allegations of liability;

(4) An estimate of the amount of money or the value of property or services requested or demanded in violation of 31 U.S.C. 3802;

(5) A statement of any exculpatory or mitigating circumstances which may relate to the claims or statements under investigation;

(6) A statement of the amount of penalties and assessments that, considering the factors listed in paragraphs (b)(4) and (5) of this section, the Reviewing Official recommends be demanded from the person alleged to be liable; and

(7) A statement that, in the opinion of the reviewing Official, there is a reasonable prospect of collecting the amount specified in paragraph (b)(6) of this section and the reasons supporting such statement.

(c) No allegations of liability under 31 U.S.C. 3802 with respect to any claim made, presented, or submitted by any person shall be referred to a Presiding Officer if the Reviewing Official determines that (1) an amount of money in excess of $150,000; or (2) property or service with a value in excess of $150,000 is requested or demanded in violation of section 3802 in such claim or in a group of related claims which are submitted at the time such claim is submitted.

§ 962.7 Concurrence of Attorney General.

(a) The Attorney General is required by 31 U.S.C. 3803(b) to respond to the Reviewing Official's written notice described in § 962.6 within 90 days. The Reviewing Official may refer allegations of liability to a Presiding Officer only if the Attorney General or his designee approves such action in a written statement which specifies—

(1) That the Attorney General or his designee approves the referral to a Presiding Officer of the allegations of liability set forth in the notice described in § 962.6; and

(2) That the initiation of a proceeding under the Program Fraud Civil Remedies Act is appropriate.

(b) If at any time after the Attorney General approves the referral of a case to a Presiding Officer, the Attorney General or his designee transmits to the Postmaster General a written finding that the continuation of any hearing under these regulations with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, such hearing shall be immediately stayed and may be resumed only upon written authorization of the Attorney General.

§ 962.8 Issuance of Complaint.

(a) If the Attorney General of his designee approves the referral of allegations of liability to a Presiding Officer, the Reviewing Official shall serve, pursuant to § 962.28, a Complaint, described in paragraph (b) of this section, on the Respondent.

(b) A Complaint issued by the Reviewing Officer shall:

(1) Specify the allegations of liability against the Respondent, including the statutory basis for liability;

(2) Identify the claims or statements that are the basis for the alleged liability, and the reasons why liability allededly arises from such claims or statements;

(3) Specify the amount of penalties or assessments the Postal Service seeks to impose;

(4) Inform the Respondent of his right to request an oral hearing or a decision on the record concerning the allegations of liability and the amount of proposed penalties or assessments, and instructions for requesting such hearing;

(5) Notify the Respondent that his or her failure to request a hearing on the issues raised by the Complaint within 30 days of its receipt may result in the imposition of the proposed penalty and assessments; and

(6) Include a copy of the regulations under this part.

Subpart B—Hearing Procedures

§ 962.9 Petition for hearing.

The Respondent may request a hearing concerning the allegations of liability set forth in a Complaint by filing a written Hearing Petition with the Recorder, in accordance with § 962.20(b), within 30 days of receiving the Postal Service's Complaint. The Respondent's Petition must include the following:

(a) The words "Petition for Hearing Under the Program Fraud Civil Remedies Act," or other words reasonably identifying it as such;

(b) The name of the Respondent as well as his or her work and home addresses, and work and home telephone numbers; or other address and telephone number where the Respondent may be contacted about the hearing proceedings;

(c) A statement of the date the Respondent received the Complaint issued by the Reviewing Official;

(d) A statement indicating whether the Respondent requests an oral hearing or a decision on the record;

(e) If the Respondent requests an oral hearing, a statement proposing a city for the hearing site, with justification for holding the hearing in that city, as well as recommended dates for the hearing; and

(f) A statement admitting or denying each of the allegations of liability made in the Complaint, and stating any defense on which the Respondent intends to rely.

§ 962.10 Referral of complaint.

(a) If the Respondent fails to request a hearing within the specified period, the Reviewing Official shall transmit the Complaint to the Judicial Officer for referral to a Presiding Officer, who shall issue an initial decision based upon the information contained in the Complaint.

(b) If the Respondent files a Hearing Petition, the Reviewing Official, upon receiving a copy of the Petition, shall promptly transmit to the Presiding Officer a copy of the Postal Service's Complaint.

§ 962.11 Scope of hearing; evidentiary standard.

(a) A hearing under this part shall be conducted by the Presiding Officer on the record (1) to determine whether the Respondent is liable under 31 U.S.C. 3802, and (2) if so, to determine the amount of any civil penalty or assessment to be imposed.

(b) The Postal Service must prove its case against a Respondent by a preponderance of the evidence.

(c) The parties may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the Presiding Officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. However,

relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 962.12 Notice of hearing.

(a) Within a reasonable time after receiving the Respondent's Hearing Petition and the Complaint, the Presiding Officer shall serve, in accordance with § 962.28, upon the Respondent and the Reviewing Official, a Notice of Hearing containing the information set forth in paragraph (b) of this section.

(b) The Notice of Hearing required by paragraph (a) must include:

(1) The tentative hearing site, date, and time;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The nature of the hearing;

(4) The matters of fact and law to be decided;

(5) A description of the procedures governing the conduct of the hearing; and

(6) Such other information as the Presiding Officer deems appropriate.

§ 962.13 Hearing location.

An oral hearing under this Part shall be held—

(a) In the judicial district of the United States in which the Respondent resides or transacts business; or

(b) In the judicial district of the United States in which the claims or statement upon which the allegation of liability under 31 U.S.C. 3802 was made, presented, or submitted; or

(c) In such such other place as may be agreed upon by the Respondent and the Presiding Officer.

§ 962.14 Rights of parties.

Any party to a hearing under this Part shall have the right—

(a) To be accompanied, represented, and advised, by a representative of his own choosing;

(b) To participate in any prehearing or post-hearing conference held by the Presiding Officer;

(c) To agree to stipulations of facts or law, which shall be made part of the record;

(d) To make opening and closing statements at the hearing;

(e) To present oral and documentary evidence relevant to the issues at the hearing;

(f) To submit rebuttal evidence;

(g) To conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(h) To submit written briefs, proposed findings of fact, and proposed conclusions of law.

§ 962.15 Responsibilities and authority of Presiding Officer.

(a) The Presiding Officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The Presiding Officer's authority includes, but is not limited to, the following:

(1) Establishing, upon adequate notice to all parties, the date and time of the hearing, as well as, in accordance with § 962.13, selecting the hearing site;

(2) Holding conferences, by telephone or in person, to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(3) Continuing or recessing the hearing in whole or in part for a reasonable period of time;

(4) Administering oaths and affirmations to witnesses;

(5) Issuing subpoenas, requiring the attendance and testimony of witnesses and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the Presiding Officer considers relevant and material to the hearing;

(6) Ruling on all offers, motions, requests by the parties, and other procedural matters;

(7) Issuing any notices, orders or memoranda to the parties concerning the proceedings;

(8) Regulating the scope and timing of discovery;

(9) Regulating the course of the hearing and the conduct of the parties and their representatives;

(10) Examining witnesses;

(11) Receiving, ruling on, excluding, or limiting evidence in order to assure that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded;

(12) Deciding cases, upon motion of a party, in whole or in part by summary judgment where there is no disputed issue of material fact;

(13) Establishing the record in the case; and

(14) Issuing a written initial decision containing findings of fact, conclusions of law, and determinations with respect to whether a penalty or assessment should be imposed, and if so, the amount of such penalty or assessment.

§ 962.16 Prehearing conferences.

(a) At a reasonable time in advance of the hearing, and with adequate notice to all parties, the Presiding Officer may conduct, in person or by telephone, one or more prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations, admissions of fact or as to the contents and authenticity of documents;

(4) Limitation of the number of witnesses;

(5) Exchange of witnesses lists, copies of prior statements of witnesses, and copies of hearing exhibits;

(6) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(7) Discovery;

(8) Possible changes in the scheduled hearing date, time or site; and

(9) Any other matters related to the proceeding.

(b) Within a reasonable time after the completion of a prehearing conference, the Presiding Officer shall issue an order detailing all matters agreed upon by the parties, or ordered by the Presiding Officer, at such conference.

§ 962.17 Respondent access to information.

(a) (1) Except as provided in paragraph (a)(2) of this section, the Respondent, at any time after receiving the Notice of Hearing required by § 962.12, may review, and upon payment of a duplication fee established under § 265.8(c) of this chapter, may obtain a copy of all relevant and materials documents, transcripts, records, and other materials, which relate to the allegations of liability, and upon which the findings and conclusions of the Investigating Official under § 962.5 are based.

(2) The Respondent is not entitled to review or obtain a copy of any document, transcript, record, or other material which is privileged under Federal law.

(b) At any time after receiving the Notice of Hearing required by § 962.12, the Respondent shall be entitled to obtain all exculpatory information in the possession of the Investigating Official or the Reviewing Official relating to the allegations of liability under 31 U.S.C. 3802. Paragraph (a)(2) of this section does not apply to any document, transcript, record, or other material, or any portion thereof, in which such exculpatory information is contained.

(c) Requests to review or copy material under this section must be directed to the Reviewing Official.

§ 962.18 Depositions; interrogatories; admission of facts; production and inspection of documents.

(a) *General Policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the Presiding Officer may issue any order which justice required to protest a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents. Each party shall bear its own expenses relating to discovery.

(b) *Depositions.* (1) After the issuance of a Notice of Hearing described in 962.12, the parties may mutually agree to, or the Presiding Officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence of for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(2) The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Presiding Officer.

(3) No testimony taken by depositions shall be considered as part of the evidence in the hearing unless and until such testimony if offered and received in evidence at such hearing. Depositions will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Presiding Officer may, in his discretion, receive depositions as evidence in supplementation of that record.

(c) *Interrogatories to parties.* After the issuance of a Notice of Hearing described in § 962.12, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Presiding Officer will determine the extend to which the interrogatories will be permitted.

(d) *Admission of facts.* After the issuance of a Notice of Hearing described in § 962.12, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(e) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Presiding Officer may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the Presiding Officer shall specify just terms and conditions in making the inspection and taking the copies and photographs.

(f) *Limitations.* Under no circumstances, may a discovery procedure be used to reach—

(1) Documents, transcripts, records, or other material which a person is entitled to review pursuant to § 962.17;

(2) The notice sent to the Attorney General from the Reviewing Official under § 962.6; or

(3) Other documents which are privileged under Federal law.

§ 962.19 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the Presiding Office may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Presiding Officers;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of books and papers.* In addition to paragraphs (a)(1) and (2) of this section, the production by the witness at the deposition or hearing of books and papers dsignated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party books, papers, documents, or other tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books, papers, documents, or other tangible things sought.

(3) The Presiding Officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) *Request to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Presiding Officer may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Presiding Officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the title of the proceeding, shall cite 31 U.S.C. 3804(b) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Presiding Officer shall sign the subpoena and may in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781 through 1784.

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named

therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Presiding Officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

§ 962.20 Form and filing of documents.

(a) Every pleading filed in a proceeding under this part must—

(1) Contain a caption setting forth the title of the action, the docket number (after assignment by the Recorder), and a designation of the document (e.g., "Motion to Quash Subpoena");

(2) Contain the name, address, and telephone number of the party or other person on whose behalf the paper was filed, or the name, address and telephone number of the representative who prepared such paper; and

(3) Be signed by the party or other person submitting the document, or by such party's or person's representative.

(b) The original and three copies of all pleadings and documents in a proceeding conducted under this Part shall be filed with the Recorder, Judicial Officer Department, United States Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260–6100. Normal Recorder business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time. The Recorder will transmit a copy of each document filed to the other party, and the original to the Presiding Officer.

(c) Pleadings or document transmittals to, or communications with, the Postal Service shall be made through the Reviewing Official or designated Postal Service attorney. If a notice of appearance by a representative is filed on behalf of a Respondent, pleadings or document transmittals to, or communications with, the Respondent shall be made through his representative.

§ 962.21 Sanctions.

(a) The Presiding Officer may sanction a person, including any party or representative, for—

(1) Failing to comply with a lawful order or prescribed procedure;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) *Failure to comply with an order.* When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the Presiding Officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit such party from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) *Failure to prosecute or defend.* If a party fails to prosecute or defend an action under this part commenced by service of a Complaint, the Presiding Officer may dismiss the action or enter an order of default.

(e) *Failure to make timely filing.* The Presiding Officer may refuse to consider any motion or other pleading, report, or response which is not filed in a timely fashion.

§ 962.22 Disqualification of Reviewing Official or Presiding Official.

If a Respondent believes, in good faith, that the Reviewing Official or Presiding Officer should be disqualified because of personal bias, or other reason, the Respondent may file a timely and sufficient affidavit alleging such belief with supporting evidence. If the Presiding Officer finds that such allegations concerning the Reviewing Official are meritorious, he may direct the Reviewing Official to disqualify himself and request the appointment of a new Reviewing Official. Where a Respondent seeks the disqualification of a Presiding Officer, such Presiding Officer, may, in his discretion, disqualify himself at any time during the proceeding. In the event a Reviewing Official or Presiding Officer withdraws from a hearing, the proceeding shall be stayed until the assignment of a new Reviewing Official or Presiding Officer.

§ 962.23 Ex Parte communications.

Communications between a Presiding Officer and a party shall not be made on any matter in issue unless on notice and opportunity for all parties to participate. This prohibition does not apply to procedural matters. A memorandum of any communication between the Presiding Officer and a party shall be transmitted by the Presiding Officer to all parties.

§ 962.24 Post-hearing briefs.

Post-hearing briefs and reply briefs may be submitted upon such terms as established by the Presiding Officer at the conclusion of the hearing.

§ 962.25 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Presiding Officer orders otherwise. Transcripts or copies of the proceedings may be obtained by the parties at such rates as may be fixed by contract between the reporter and the Postal Service.

§ 962.26 Initial decision.

(a) After the conclusion of the hearing, and the receipt of briefs, if any, from the parties, the Presiding Officer shall issue a written initial decision, including his or her findings and determinations. Such decision shall include the findings of fact and conclusions of law which the Presiding Officer relied upon in determining whether the Respondent is liable under 31 U.S.C. 3802, and, if liability is found, shall set forth the amount of any penalties and assessments imposed.

(b) The Presiding Officer shall promptly send to each party a copy of his or her initial decision, and a statement describing the right of any person determined to be liable under 31 U.S.C. 3802, to appeal, in accordance with § 926.27, the decision of the Presiding Officer to the Judicial Officer.

(c) Unless the Respondent appeals the Presiding Officer's initial decision, such decision, including the findings and determinations, is final.

§ 962.27 Appeal of initial decision to Judicial Officer.

(a) *Notice of appeal and supporting brief.* (1) A Respondent may appeal an adverse initial decision by filing, within 30 days after the Presiding Officer issues an initial decision, a Notice of Appeal with the Recorder. The Judicial Officer may extend the filing period if the Respondent files a request for an extension within the initial 30-day period and demonstrates good cause for such extension.

(2) The Respondent's Notice of Appeal must be accompanied by a written brief specifying the Respondent's exceptions, and any reasons for such exceptions, to the Presiding Officer's initial decision.

(3) Within 30 days of receiving the Respondent's brief, the Reviewing Official may file with the Judicial Officer a response to the Respondent's

specified exceptions to the Presiding Officer's initial decision.

(b) *Form of Review.* (1) Review by the Judicial Officer will be based entirely on the record and written submissions.

(2) The Judicial Officer may affirm, reduce, reverse, or remand any penalty or assessment determined by the Presiding Officer.

(3) The Judicial Officer shall not consider any objection that was not raised in the hearing unless the interested party demonstrates that the failure to raise the objection before the Presiding Officer was caused by extraordinary circumstances.

(4) If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence, the Judicial Officer shall remand the matter to the Presiding Officer for consideration of such additional evidence.

(c) *Decision of Judicial Officer.* (1) The Judicial Officer shall promptly serve each party to the appeal with a copy of his decision and a statement describing the right to judicial review under 31 U.S.C. 3805 of any Respondent determined to be liable under 31 U.S.C. 3802.

(2) The decision of the Judicial Officer constitutes final agency action and becomes final and binding on the parties 60 days after it is issued unless a petition for judicial review is filed.

Subpart C—Miscellaneous Provisions

§ 962.28 Service of Complaint, Notice of Hearing, other documents.

Unless otherwise specified, service of any Complaint, Notice of Hearing, or other document under this part must be effected by registered or certified mail, return-receipt requested, or by personal delivery. In the case of personal service, the person making service shall, if possible, secure from the party or other person sought to be served, or his or her agent, a written acknowledgment of receipt, showing the date and time of such receipt. If the person upon whom service is made declines to acknowledge receipt, the person effecting service shall execute a statement, indicating the time, place and manner of service, which shall constitute evidence of service.

§ 962.29 Computation of time.

(a) In computing any period of time provided for by this Part, or any order issued pursuant to this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the applicable period of time is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

§ 962.40 Enforcement of subpoenas.

In the case of contumacy or refusal to obey a subpoena issued pursuant to § 962.5(b) or § 962.15(b)(5) and § 962.19, the district courts of the United States have jurisdiction to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt. In any case in which the Postal Service seeks the enforcement of a subpoena under this section, the Postal Service shall request the Attorney General to petition the district court for the district in which a hearing under this part is being conducted or in which the person receiving the subpoena resides or conducts business to issue such an order.

§ 962.31 Settlement.

(a) Either party may make offers of settlement or proposals of adjustment at any time.

(b) The Reviewing Official has the exclusive authority to compromise or settle any allegations of liability under 31 U.S.C. 3802 without the consent of the Presiding Officer at any time after the date on which the Reviewing Official is permitted to refer allegations of liability to a Presiding Officer and before the date on which the Presiding Officer issues an initial decision.

(c) The Postmaster General has the exclusive authority to compromise or settle any penalty or assessment determined under this part at any time after the date on which the Presiding Officer issues an initial decision, or at any time after the date on which the Judicial Officer issues a decision on appeal, except during the pendency of an appeal to the appropriate United States District Court or during the pendency of an action to collect any penalties or assessments.

(d) The Attorney General has the exclusive authority to compromise or settle any penalty or assessment the determination of which is the subject of a pending petition for judicial review, or a pending action to recover such penalty or assessment.

(e) The Reviewing Official may be recommend settlement terms to the Postmaster General, or the Attorney General, as appropriate.

§ 962.32 Collection of civil penalties or assessments.

(a) Any penalty or assessment imposed in a final determination may recovered in a civil action brought by the Attorney General. In any such action, no matter that was raised or that could have been raised in a hearing conducted under this Part or pursuant to judicial review may be raised as a defense and the determination of liability and the determination of amounts of penalties and assessments shall not be subject to review.

(b) The amount of any penalty or assessment which has become final, or for which a judgment has been entered, or any amount agreed upon in a compromise or settlement, may be collected by administrative offset in accordance with 31 U.S.C. 3716, 3807.

(c) Any penalty or assessment imposed by the Postal Service under this part shall be deposited in the Postal Service Fund established by section 2003 of Title 39.

§ 962.33 Limitations.

(a) A hearing under this Part concerning a claim or statement shall be commenced within six years after the date on which such claim or statement is made, presented, or submitted.

(b) A civil action to recover a penalty or assessment shall be commenced within three years after the date on which the determination of liability for such penalty or assessment becomes final.

(c) If at any time during the course of proceedings brought pursuant to Chapter 38 of Title 31, United States Code, the Postmaster General receives or discovers any specific information regarding bribery, gratuities, conflict of interest, or other corruption or similar activity in relation to a false claim or statement, the Postmaster General shall immediately report such information to the Attorney General and to the Chief Postal Inspector.

§ 962.34 Reports.

(a) Not later than October 31 of each year, the Postmaster General shall prepare and transmit to the appropriate committees and subcommittees of the Congress an annual report summarizing actions taken under this part during the most recent 12-month period ending the previous September 30.

(b) The report referred to in paragraph (a) of this section shall include the following information for the period covered by the report:

(1) A summary of matters referred by the Investigating Official to the Reviewing Official under this part;

(2) A summary of matters transmitted to the Attorney General under this part;

(3) A summary of all hearings conducted by the Presiding Officer under this part, and the results of such hearings; and

(4) A summary of the actions taken during the reporting period to collect any civil penalty or assessment imposed under this part.

Paul J. Kemp,

Supervisory Attorney, Legislative Division.

[FR Doc. 87-5181 Filed 3-10-87; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 276

[Docket No. R-110]

Construction-Differential Subsidy Repayment

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Intended Actions.

SUMMARY: This notice sets forth the administrative approach that the Maritime Administration (MARAD) intends to take in response to the recent decision by the Court of Appeals for the District of Columbia on construction-differential subsidy (CDS) repayment. MARAD plans to address the CDS repayment issue through rulemaking.

FOR FURTHER INFORMATION CONTACT: Lynne Adams-Whitaker, Chief, Division of Regulations, 400 Seventh Street SW, Washington, DC 20590, Tel. (202) 366-5181.

SUPPLEMENTARY INFORMATION: On January 16, 1987, the Court of Appeals for the District of Columbia held that the Secretary of Transportation violated section 553(c) of the Administrative Procedure Act by adopting a final rule on CDS repayment published at 50 F.R. 19170 (May 6, 1985). The court vacated the rule, but withheld issuance of its mandate until July 16, 1987 "to avoid further disruptions in the domestic market and to allow the Secretary to undertake further proceedings to address the problems of the merchant marine trade." *Independent U.S. Tanker Owners Committee* v. *Dole*, Civil Action Nos. 85-01555, 85-01740, 85-01752 and 85-1771, (D.C. Cir. 1987). The court ruled that, as of July 16, 1987, the present rule will be vacated and conditions will be returned to the *status quo ante*, before the CDS repayment rule took effect, subject to any "further action" that the agency may have taken in the interim.

MARAD hereby announces the action it intends to take. MARAD has decided to address the issue of CDS repayment through rulemaking. The tentative schedule for proceeding with such rulemaking is as follows:

(1) MARAD plans to publish in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) on CDS repayment. MARAD intends to request comments on that NPRM. A draft regulatory evaluation and an environmental assessment will be made available to the public at that time.

(2) MARAD plans to publish a Final Rule in the **Federal Register** prior to July 16, 1987. MARAD intends to address the comments received on the NPRM in the Final Rule. A final regulatory evaluation and environmental assessment will be made available to the public at that time.

By Order of the Maritime Administrator.

Dated: March 9, 1987.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 87-5294 Filed 3-10-87; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Delisting of the Amistad Gambusia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to remove the Amistad gambusia (*Gambusia amistadensis*) from the List of Endangered and Threatened Wildlife. This action is based on a review of all available data, which indicate that this fish species is extinct. *Gambusia amistadensis* is known to have occurred naturally only in Goodenough Spring, Val Verde County, Texas. It was eliminated there after the Amistad Reservoir, an impoundment constructed in 1968, on the Rio Grande, inundated Goodenough Spring. In 1979, all Texas springs within 50 kilometers (31 miles) of Goodenough Spring with outflow in excess of 10 liters per second (0.353 cubic feet per second) were examined, but no *G. amistadensis* were found. Captive populations of *G. amistadensis* were maintained, but have since died or been eliminated through hybridizations with and predation due to contamination by the mosquitofish (*Gambusia affinis*).

DATES: Comments from all interested parties must be received by May 11, 1987. Public hearing requests must be received by April 27, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Gerald L. Burton, Endangered Species Biologist, at the above address (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

The Amistad (Goodenough) gambusia (*Gambusia amistadensis*) is known to have occurred only in Goodenough Spring, a tributary of the Rio Grande in Val Verde County, Texas. It was described by Dr. Alex Peden in 1973, based on specimens collected in 1968 from Goodenough Spring just prior to its inundation by Amistad Reservoir. The species was not recognized as distinct until well after reservoir construction began (Peden 1973). During extensive collecting by Peden (1973) in spring areas immediately upstream and downstream from the Amistad Reservoir, no additional *G. amistadensis* were found, and Peden believed that the species was restricted to the Goodenough Spring area.

In July 1968, backwaters of the Amistad Reservoir, constructed by the U.S. Army Corps of Engineers, began permanent flooding of the area. In subsequent visits to the area after the reservoir had filled, the spring was found to be under more than 21.3 meters (70 feet) of silt-laden water, and Peden (1973) believed that the species was probably extirpated there. In 1979, all Texas springs listed by Brune (1981) as being within 50 kilometers (31 miles) of Goodenough Spring with outflow in excess of 10 liters per second (0.353 cubic feet per second) were surveyed, but no *G. amistadensis* were found and the species is believed to be extinct (Hubbs and Jensen 1984).

Gambusia amistadensis was listed as endangered on April 30, 1980 (45 FR 28721), under provisions of the Endangered Species Act of 1973, as amended, at which time it occurred only in captivity at the University of Texas and Dexter National Fish Hatchery in

New Mexico. Since that time, all captive populations have died or been eliminated through hybridization with and predation by the mosquitofish, *Gambusia affinis*.

Summary of Factors Affecting the Species

50 CFR 424.11 requires that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to *G. amistadensis* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Amistad gambusia was known to occur only in Goodenough Spring, tributary to the Rio Grande in Val Verde County, Texas. In July of 1968, backwaters of the Amistad Reservoir began permanent flooding of the area. The Amistad gambusia is believed to have been extirpated in that area.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* Not applicable.

E. *Other natural or manmade factors affecting its continued existence.* All captive populations of *G. amistadensis* have died or been eliminated due to contamination (hybridization) with and predation by the mosquitofish (*Gambusia affinis*).

The regulations at 50 CFR 424.11(d) state that a species may be delisted if: (1) It becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes that enough evidence exists to declare *Gambusia amistadensis* extinct.

Effect of Rule

The proposed action would result in the removal of this species from the List of Endangered and Threatened Wildlife. Federal agencies would no longer be required to consult with the Secretary to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of the Amistad gambusia. There is no designated critical habitat for this species. Federal restrictions on taking this species would no longer apply. Because there are no specific preservation or management programs for the species, there would be no impact on any agency or individuals.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions regarding any aspect of this proposal are hereby solicited from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties. The Service particularly requests any evidence that the species is not extinct.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (49 FR 49244).

References Cited

Brune, G. 1981. Springs of Texas, 1. Branch-Smith, Inc. Ft. Worth, Texas.

Hubbs, C. and B.L. Jensen. 1984. Extinction of *Gambusia amistadensis*, an endangered fish. Copeia 1984(2):529–530.

Peden, A.E. 1973. Virtual extinction of *Gambusia amistadensis* n. sp., a poeciliid fish from Texas. Copeia 1973(2):210–221.

Primary Author

The primary author of this proposed rule is Alisa M. Shull, Endangered Species Biologist, U.S. Fish and Wildlife Service, Albuquerque, NM 87103 (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et. seq.*).

2. It is proposed to amend § 17.11(h) by removing the entry for Gambusia Amistad (*Gambusia amistadensis*) under "Fishes" from the List of Endangered and Threatened Wildlife.

Dated: January 28, 1987.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildfife and Parks.

[FR Doc. 87–5066 Filed 3–10–87; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment; withdrawal; correction.

SUMMARY: In FR Doc. 87–4377 beginning on page 6357 in the issue of Tuesday, March 3, 1987, the final sentence of the summary was inadvertenty omitted. The notice announces withdrawal of Amendment 2 to the fishery management plan. The final sentence should be added to read: Under section 304(b)(3)(B)(ii) of the Magnuson Act, the public will be afforded 30 days to comment on the resubmitted amendment.

FOR FURTHER INFORMATION CONTACT: William N. Lindall (Regional Plan Coordinator), 813–893–3722.

(16 (U.S.C. 1801 *et seq.*)

Dated: March 6, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–5170 Filed 3–10–87; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 52, No. 47
Wednesday, March 11, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 6, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin, Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

Animal and Plant Health Inspection Service
Application/Certification Purebred Animals Imported for Breeding
VS Form 17–338
On occasion
Farms; 300 responses; 75 hours; not applicable under 3504(h)
Dr. William E. Ketter, (301) 436–8565

New

• Agricultural Research Service
Economics of Tick Control in Recreational Areas
On occasion
Individuals or households; 200 responses; 100 hours; not applicable under 3504(h)
Glen I. Garris, (918) 647–9121

Food and Nutrition Service
WIC Breast Feeding Promotion Study and Demonstration
On occasion
Individual or households; Non-profit institutions; 379 response; 245 hours; not applicable under 3504(h)
Brenda S. Lisi, (703) 756–3554

Revision

• Farmers Home Administration
7 CFR 1942–A, Community Facility Loans
FmHA–440–11, –24, 442–2, –3, –7, –20, –21, –22, –28, –30, –46, 1942–8, –9, –19, 47
Recordkeeping; On occasion; Quarterly, Annually
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 104,878 reponses; 232,215 hours; not applicable under 3504(h)
Jack Holston, (202) 382–9736.

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 87–5107 Filed 3–10–87; 8:45 am]
BILLING CODE 3410–01–M

Food Safety and Inspection Service

[Docket No. 87–005N]

Testing for Listeria Monocytogenes

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Food Safety and Inspection Service (FSIS) is increasing its testing of meat and poultry products for *Listeria monocytogenes*. The possibility of contamination of meat and poultry products by *L. monocytogenes* has prompted FSIS to expand its testing program for *L. monocytogenes* in both cooked and ready-to-eat meat and poultry products prepared in federally inspected establishments or imported from certified foreign establishments. If *L. monocytogenes* is found in monitoring samples of cooked or ready-to-eat products, FSIS intends to initiate followup action to eliminate any hazard to consumers.

DATES: Increased testing for *L. monocytogenes* is effective immediately and will continue indefinitely.

FOR FURTHER INFORMATION CONTACT: Ronald E. Engel, Deputy Administrator, Science, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2326.

Background

Since 1982, *L. monocytogenes* has been implicated in illnesses and deaths from consuming *L. monocytogenes*-contaminated products such as shredded cabbage, pasteurized milk and soft Mexican-style cheese. Although meat or poultry products have not been involved in any reported human outbreaks, there is a strong possibility that meat and poultry products could contain this bacterium.

Contamination of ready-to-eat or cooked meat and poultry products with *L. monocytogenes* can result from inadequate processing or after processing, from improper handling or storage. *L. monocytogenes* is more resistant than other nonsporeforming bacteria to heat, salt, nitrite and pH and is capable of slow growth on foods under refrigeration. Therefore, it is more difficult to control. In addition, *L. monocytogenes* has been found in the habitats of farm animals, which are believed to be a primary source of *L. monocytogenes*. These characteristics, coupled with the potential for serious illness or death among high risk individuals, such as pregnant women, the unborn, and immunosuppressed individuals, from consuming *L. monocytogenes*-contaminated meat or poultry products, require that FSIS, as a preventive measure, expand its current testing program.

FSIS is concerned with possible contamination of both cooked and ready-to-eat meat and poultry products because consumers are unlikely to further cook these products so as to destroy any of the bacteria that may be present. Therefore, effective immediately, FSIS will begin phasing in a testing/monitoring program for *L. monocytogenes* in cooked meat and ready-to-eat meat and poultry products with a special emphasis on ready-to-eat products such as dry-cured pork products, fermented sausages, and cooked luncheon meats. In addition, FSIS may test ready-to-eat and cooked products returned to an establishment for reprocessing. Information regarding the testing methodology used is available upon request from the information contact above.

If an establishment is identified by FSIS as having a positive test for *L. monocytogenes* in any such products prepared at the establishment, additional samples will be collected at the establishment for followup testing. If the samples test positive for *L. monocytogenes*, FSIS will consider the products to be adulterated and they will be subject to seizure and condemnation or other action as appropriate.

Because of the morbidity and mortality rates of susceptible groups associated with this form of contamination, FSIS is strongly encouraging affected establishments to carefully review their operations for conditions which are conducive to the growth of *L. monocytogenes* and where possible to reduce the potential for this microorganism to contaminate their products. Processors need to ensure that current procedures for handling raw materials, and for processing, packaging and storage of product will not contribute to the growth of *L. monocytogenes*, that any existent *L. monocytogenes* is destroyed during processing operations, and the possibility of recontamination is eliminated. For example, underprocessing, use of insanitary equipment, or improper handling and storage procedures all could lead to growth of *L. monocytogenes* and should be prevented. FSIS will carefully monitor all operations associated with the production of ready-to-eat or cooked meat and poultry products.

Done at Washington, DC on: March 6, 1987.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-5104 Filed 3-10-87; 8:45 am]

BILLING CODE 3410-DM-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Notice of Renewal

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, it has been determined that the renewal of the General Advisory Committee is necessary and is in the public interest in connection with the performance of duties imposed upon the U.S. Arms Control and Disarmament Agency by the Arms Control and Disarmament Act of 1961, as amended. This determination follows consultation with the General Services Administration pursuant to section 14(a) of the Federal Advisory Committee Act and the G.S.A. interim rule on Federal advisory committee management.

Authority for this advisory committee shall expire January 5, 1989 unless continuance is formally determined to be in the public interest.

Dated: March 4, 1987.

Kenneth L. Adelman,

Director

[FR Doc. 87-5180 Filed 3-10-87; 8:45 am]

BILLING CODE 6820-32-M

CENTRAL INTELLIGENCE AGENCY

Privacy Act of 1974; Establishment of New Record System

AGENCY: Central Intelligence Agency.

ACTION: Notice of new system of records subject to the Privacy Act.

SUMMARY: The Central Intelligence Agency is adding a new system of records to its existing inventory of record systems subject to the Privacy Act as amended (5 U.S.C. 552a).

EFFECTIVE DATES: The proposed action will be effective without further notice on or before April 9, 1987, unless comments are received which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Lee S. Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, telephone: (703) 351-2083.

SUPPLEMENTARY INFORMATION: The new record system identified as CIA-70 is entitled: Intelligence Community Staff Information Records System. A new system report as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on March 3, 1987, pursuant to section 4.b. of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Dated: March 3, 1987.

William F. Donnelly,

Deputy Director for Administration.

CIA-70

SYSTEM NAME:

Intelligence Community Staff Information Records System.

SYSTEM LOCATION:

Intelligence Community Staff, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have an employment, detailee, liaison, or contractual relationship with the Intelligence Community Staff or with Intelligence Community agencies, and individuals who are of foreign intelligence or counterintelligence interest to the Intelligence Community, including individuals identified as being involved in activities related to intelligence matters such as the possible compromise of classified information or activities otherwise implicating intelligence sources and methods as well as other information protected by statute or Executive order.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include administrative information; intelligence requirements, analysis, and reporting; Intelligence Community operational records; bibliographic information about individuals of intelligence interest; articles, public-source data, and other published information on individuals and events of interest to the Intelligence Community; actual or purported compromises of classified intelligence; countermeasures in connection therewith; identification of classified source documents and distribution thereof; investigative data related to compromises of classified intelligence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended—Pub. L. 80-253.

Central Intelligence Agency Act of 1949, as amended—Pub. L. 81-110.

Executive Order 12333.

Executive Order 12356.

Section 506(a), Federal Records Act of 1950 (44 U.S.C., Section 3101).

Intelligence Authorization Act for Fiscal Year 1987—Pub. L. 99-569.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide classified and unclassified information within the Central Intelligence Agency and to appropriate Intelligence Community and U.S. Government officials for the conduct of authorized activities.

To inform and provide information to U.S. Government officials regarding compromises of classified information including the document(s) apparently compromised, implications of disclosure upon intelligence sources and methods, investigative data on compromises, and statistical and substantive analysis of the data.

A record from this system of records may be disclosed as a "routine use" in order to facilitate any security, employment, detail, liaison, or contractual decision by the Intelligence Community Staff or any U.S. Government organization. Records may further be disclosed in response to or by direction of a court order, or where there is an indication of a violation or potential violation of law, whether civil, criminal, or administrative in nature, to the appropriate Federal, state, or local agency charged with the responsibility of prosecuting such violation or charged with implementing or enforcing a statute or law, regulation, or order issued pursuant thereto. Records also may be disclosed to other agencies if necessary for the protection of intelligence sources and methods and in support of intelligence analysis and reporting. Additionally, records from this system are used to prepare periodic statistical reports for U.S. Government officials related to the control and dissemination of classified information.

The statement of general routine uses applicable to and incorporated by reference into systems of records maintained by the Central Intelligence Agency are incorporated into this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic media attached to automated information systems operated by agencies of the Intelligence Community.

RETRIEVABILITY:

By category of information contained therein, including by name.

SAFEGUARDS:

All records are maintained in safes or vaulted areas. Access is limited on a need-to-know basis.

RETENTION AND DISPOSAL:

Records destroyed when obsolete or no longer needed. Destruction by pulping, burning, or erasure or destruction of magnetic media.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Intelligence Community Staff, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

Identification requirements are specified in the Central Intelligence Agency rules published in the Code of Federal Regulations (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURE:

Request from individuals should be addressed as indicated in the Notification Procedure section above.

CONTESTING RECORD PROCEDURES:

The Central Intelligence Agency's regulations for access to individual records, for disputing the contents thereof, and for appealing an initial determination by the Central Intelligence Agency concerning access to or correction of the records, are promulgated in the Central Intelligence Agency rules section of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Individuals themselves; other U.S. agencies and organizations; media, including periodicals, newspapers, and broadcast transcripts; public and classified reporting, intelligence source documents, investigative reports, correspondence.

[FR Doc. 87-5084 Filed 3-10-87; 8:45 am]

BILLING CODE 6310-02-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1988 Dress Rehearsal Program—Precanvass Operation
Form Number: Agency—DX-102A, DX-31; OMB—NA
Type of Request: New collection
Burden: 236,700 respondents; 5,917 reporting hours
Needs and Uses: The Census Bureau is planning to conduct various methods of address list compilation and update in conjunction with the 1988 Dress Rehearsal Program. This precanvass operation will require respondents to provide information about their mailing address and the physical location of the housing unit.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: March 5, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-5171 Filed 3-10-87; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic
Form Number: Agency—N/A; OMB—0648-0097
Type of Request: Revision of a currently approved collection
Burden: 1,000 respondents; 170 new reporting hours
Needs and Uses: Permits are needed to identify commercial fisherman in the spiny lobster fishery in Florida. The information will be used for enforcement and to prevent recreational anglers from circumventing recreational bag limits.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Donald Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–3271, Department of Commerce, Room 6628, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: March 6, 1987.

Edward Michals,

Department Clearance Officer, Officer of Management and Organization.

[FR Doc. 87–5172 Filed 3–10–87; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Sablefish Area Registration
Form Number: Agency—N/A; OMB—N/A
Type of Request: New Collection—Expedited Review
Burden: 500 respondents; 50 reporting hours
Needs and Uses: Area registration of hook and line fisherman seeking sablefish is needed to estimate fishing effort during sablefishing season. The information will be used to predict when quotas will be taken.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Donald Arbuckle 395–7340.

Copies of the above information collection proposed can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: March 5, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–5173 Filed 3–10–87; 8:45 am]

BILLING CODE 3510-CW-N

Bureau of the Census

Motor Freight Transportation and Warehousing Survey; Determination

In accordance with Title 13, United States Code, sections 182, 224, and 225, and due Notice of Consideration having been published January 23, 1987 (52 FR 2572), I have determined that 1986 revenues and expenses for the trucking and warehousing industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. This survey will yield 1986 estimates of operating revenues and expenses for the for-hire trucking and warehousing industries.

The Census Bureau will require a selected sample of trucking and warehousing firms in the United States (with payroll size determining the probability of selection) to report in the 1986 Motor Freight Transportation and Warehousing Survey. The sample will provide, with measurable reliability, national level statistics on operating revenues and expenses for these industries.

We will furnish report forms to the firms covered by this survey and will require their submission within 20 days after receipt. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

I have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: March 4, 1987.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 87–5117 Filed 3–10–87; 8:45 am]

BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Amended Meeting Notice

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The agenda as published in the **Federal Register** (52 FR 5566–5567, February 25, 1987) for the North Pacific Fishery Management Council's public meeting (March 18–20, 1987), has been amended to include discussion of initial recommendations for domestic annual processing (DAP) needs for pollock in the Western and Central Gulf of Alaska for 1987, as well as consideration of further recommendations in this regard to the National Marine Fisheries Service (NMFS).

In December 1986 the Council recommended an initial DAP of 83,700 metric tons for pollock in the Western and Central Gulf based on a NMFS survey of the U.S. processing industry. Later evaluation of those survey figures indicates that they may have been high and the Administrator, NOAA, has asked to review the figures and to make further recommendations to the NMFS as to the appropriate allocation.

All other information remains unchanged. For further information contact Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: March 6, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–5120 Filed 3–10–87; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic/Mid-Atlantic Fishery Management Councils; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic and Mid-Atlantic Fishery Management Councils will convene separate and joint public meetings, March 23–26, 1987, in Fort Pierce FL, as follows:

South Atlantic Council—in a separate meeting will convene March 23, 24 and 26, to discuss the Coastal Migratory Pelagics and Snapper/Grouper Fishery Management Plans; redfish; bluefish; large pelagics; shrimp; flounder, as well as other fishery management business.

South Atlantic/Mid-Atlantic Councils—in a joint meeting will convene March 25, to discuss large pelagics; flounder; tilefish; king and Spanish mackerel; tuna; bluefish; sea scallops, as well as other fishery management business. A detailed agenda will be available on or about March 13, 1987. For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery

Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: March 6, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–5121 Filed 3–10–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1987 commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped

Comments must be received on or before: April 10, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodities

Necktie, Khaki, 8440–00–555–7194.

Services

Janitorial/Custodial, U.S. Post Office and Courthouse, Sixth and Rogers Avenue, Fort Smith, Arkansas.

Completion of Forms DD 1574 and DD 1574–1. (Requirements for Robins Air Force Base, Georgia only)

Deletion

It is proposed to delete the following commodities and services from Procurement List 1987, November 3, 1986 (51 FR 39945):

Services

Commissary Shelf Stocking and Custodial, Myrtle Beach Air Force Base, South Carolina.

Janitorial/Mechanical, Federal Office Building, 591 Park Avenue, Idaho Falls, Idaho.

Janitorial/Custodial, All Family Housing Units and Buildings; 672, 1001, 2004, 2033, 2034, 2042, 2044, 2048, 2076, 2077, 2082, 2085, 2100, 2121, 3041, 3074, 3094, 3100, 3104, 3169, 3228, 3250, 3252, 3255, 3301, 3307, 3400, 4320, 24003, 24164, and 24165.

U.S. Marine Corps, MCDEC, Quantico, Virginia.

C.W. Fletcher,

Executive Director.

[FR Doc. 87–5156 Filed 3–10–87; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1987; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1987 commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 10, 1987.

ADDRESS: Committee for Purchases from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On June 20, 1986, October 30, 1986 and December 29, 1986 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (51 FR 22541, 39702 and 46908) of proposed additions to Procurement List 1987, November 3, 1986 (51 FR 39945).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities and services listed.

c. The action will result in authorizing small entities to produce the commodities and services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1987:

Commodities

Insect Bar, Cot, 7210–00–266–9740.

Service

Janitorial/Custodial, Buildings 46, 228, and 963, Robins Air Force Base, Georgia.

Tape Cleaning, Wright-Patterson Air Force Base, Ohio.

C.W. Fletcher,

Executive Director.

[FR Doc. 87–5157 Filed 3–10–87; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information:

(1) Type of submission;

(2) Title of Information Collection and Form Number, if applicable;

(3) Abstract statement of the need for and the uses to be made of the information collected;

(4) Type of Respondent;

(5) An estimate of the number of responses;

(6) An estimate of the total number of hours needed to provide the information;

(7) To whom comments regarding the information collection are to be forwarded;

(8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Appendage to Department of Defense Transportation Security Agreement; DIS Form 1150 (0704–0198)

The Defense Investigative Service (DIS) is responsible for administering the Industrial Security Program on behalf of DoD components and other federal "user" agencies.

Form 1150 is completed by the home office of a commercial carrier firm who has entered into a contractual obligation with the DoD as established by execution of Form 1149, Transportation Security Agreement. Form 1149 is used to identify all terminals of that particular commercial carrier which will be used for transportation of classified shipments. These identified terminals are thereby additionally obligated to adhere to all security requirements outlined in the Transportation Security Agreement.

Responses 2

Burden Hours 1.2768 or 1.3.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Dale L. Hartig, DIS, Chief, Information and Public Affairs, 1900 Half Street SW., Washington, DC 20324–1700, telephone (202) 475–1062.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 4, 1987.

[FR Doc. 87–5178 Filed 3–10–87; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information:

(1) Type of submission;

(2) Title of Information Collection and Form Number, if applicable;

(3) Abstract statement of the need for and the uses to be made of the information collected;

(4) Type of Respondent;

(5) An estimate of the number of responses;

(6) An estimate of the total number of hours needed to provide the information;

(7) To whom comments regarding the information collection are to be forwarded;

(8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Department of Defense Transportation Security Agreement; DIS Form 1149 (0704–0199).

The Defense Investigative Service (DIS) is responsible for administering the Industrial Security Program on behalf of DoD components and other Federal "user" agencies.

The Transportation Security Agreement (DIS Form 1149) is one of the factors used by DIS to determine eligibility of a commercial carrier to participate in the Industrial Security Program.

DIS Form 1149 is a legally binding contractual document between government and obligates the contractor (commercial carrier) to adhere to all security requirements outlined in same.

Responses 2.

Burden Hours 1.364

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Dale L. Hartig, DIS, Chief, Information and Public Affairs, Room 5222, 1900 Half Street, SW., Washington, DC 20324–1700, telephone (202) 475–1062.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense

March 4, 1987.

[FR Doc. 87–5179 Filed 3–10–87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday, 30 March 1987.

Times of Meeting: 0830–1630 hours.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for Army Analysis will meet for discussions with the Army leadership. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–5068 Filed 3–10–87; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Wed. and Thurs., 25–26 March 1987.

Times of Meeting: 0900–1700 hours each day.

Place: LTV Aerospace and Defense Company, 1725 Jefferson Davis Highway, Suite 900, Crystal City, Arlington, VA.

Agenda: The Army Science Board Summer Study Panel for Army Force Cost Drivers will receive briefings on TEMPEST, EMP and chemical specifications as they apply to the development of Army equipment and systems. The panel will have a lengthy executive session to discuss a myriad of issues brought out at previous sessions and begin to develop findings, conclusions and recommendations for the final report. They will also subdivide into various groups and begin planning for a series of field visits designed to further investigate aspects of the acquisition process as it relates to environmental requirements and specifications. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–5257 Filed 3–10–87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning North Carolina Sales Tax Certification.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C. W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523–3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose:

The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure in North Carolina. However, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the Government.

The information is used as evidence to establish exemption from State and local taxes.

b. Annual reporting burden:

The annual reporting burden is estimated as follows: Respondents, *106;* responses per respondent, *4;* total annual responses, *424;* hours per response, *.17;* and total burden hours, *72.*

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification.

Dated: March 2, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–5127 Filed 3–10–87; 8:45 am]

BILLING CODE 6820–61–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Overtime.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523–3775 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

Federal solicitations normally do not specify delivery Schedules that will require overtime at the Government's expense. However, when overtime is required under a contract and it exceeds the dollar ceiling established during negotiations, the contractor must request approval from the contracting officer for overtime. With the request, the contractor must provide information regarding the need for overtime.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *1270;* responses per respondent, *1;* total annual responses *1270;* hours per response, *.5;* and total burden hours, *635.*

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0065, Overtime.

Dated: March 2, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–5128 Filed 3–10–87; 8:45 am]

BILLING CODE 6820–61–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Professional Employee Compensation.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523–3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

OFPP Policy Letter No. 78–2, March 29, 1978, requires that all professional employees shall be compensated fairly and properly. Implementation of this requires that a total compensation plan setting forth proposed salaries and fringe benefits for professional employees with supporting data be submitted to the contracting officer for evaluation.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *7120;* responses per respondent, *1;* total annual responses, *7120;* hours per response, *.5;* and total burden hours, *3560.*

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No.

9000–0066, Professional Employee Compensation.

Dated: March 2, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–5129 Filed 3–10–87; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87–280–000 et al.]

Electric Rate and Corporate Regulation Filings; American Electric Power Service Corp. et al.

March 4, 1987.

Take notice that the following filings have been made with the Commission:

1. American Electric Power Service Company

[Docket No. ER87–280–000]

Take notice that American Electric Power Service Corporation (AEP) on March 2, 1987, tendered for filing on behalf of its affiliates, Appalachian Power Company, Indiana & Michigan Electric Company, Kentucky Power Company, Ohio Power Company, and Wheeling Electric Company, which are all AEP affiliated operating subsidiaries (and are sometimes collectively referred to as the AEP Parties), revisions to the AEP Parties' Short Term Power and Non-Displacement Energy rates. The AEP Parties' Short Term Power demand and energy rates have been revised to "up to" $2.00 per kilowatt per week and to "up to" 110% of the out-of-pocket cost respectively. In addition, the AEP Parties' Non-Displacement rates have been revised to a demand rate of "up to" 25 mills per kilowatthour and an energy rate of "up to" 110% of out-of-pocket cost. These rates have previously been filed by AEP and accepted for filing by FERC and will allow the AEP Parties to charge less than the cost supported charges and thereby enhance sales and an efficient supply of electricity in a competitive market. AEP has requested an effective date of January 1, 1987.

Copies of this filing were served upon the Kentucky Public Service Commission, Public Service Commission of Indiana, Michigan Public Service Commission, Public Utilities Commission of Ohio, State Corporate Commission of Virginia, Public Service Commission of West Virginia and the appropriate utilities interconnected with the AEP Parties.

Comment date: March 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. The Connecticut Light & Power Company

[Docket No. ER87–274–000]

Take notice that on February 27, 1987, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed initial rate schedule with respect to a Transmission Agreement dated March 1, 1987 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) Green Mountain Power Corporation ("GMP").

CL&P states that the Transmission Agreement provides for transmission services to GMP for the wheeling of all of Bozrah Light and Power Company's electricity requirements.

The transmission charge rate is a monthly cost-of-service rate equal to one-twelfth of estimated annual average cost of firm transmission service on the CL&P system determined in accordance with Appendix I of the Transmission Agreement. The monthly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-month) and (ii) Bozrah's billing peak load in kilowatts for such month.

CL&P requests that the Commission waive its standard notice period and permit the Transmission Agreement to become effective on March 1, 1987 or on such later date as service has commenced from GMP to Bozrah under the agreement filed in Docket No. ER87–207–000.

WEMCO has filed a Certificate of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed to GMP, South Burlington, Vermont.

CL&P further states that the filing is in accordance with Section 35 of the Commission Regulations.

Comment date: March 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company

[Docket No. ER87–107–001]

Take notice that on February 20, 1987, Idaho Power Company ("Idaho Power") of Boise, Idaho, submitted for filing its response to the Commission's Letter Order of December 23, 1986, and a January 21, 1987, Notice in Docket No. ER87–107–000. Idaho Power states that the purpose of its submittal is to provide amendments and data and to cure deficiencies in its November 14, 1986, filing in Docket No. ER87–107–000 which concerns a 1980 Agreement for Transmission Service ("1980 Transmission Agreement") between Idaho Power and Pacific Power & Light Company ("Pacific"). The 1980 Transmission Agreement amends an operation agreement dated September 22, 1969 ("1969 Operation Agreement") which is on file as FPC Rate Schedule No. 58. Idaho Power has also filed a December 14, 1973 Amendment related to the 1969 Operation Agreement.

The transmission service provided by Idaho Power to Pacific pursuant to the 1980 Transmission Agreement permits the transfer of up to 1,600 megawatts of Pacific's share of the Jim Bridger project, as well as Pacific's other Wyoming generation, in a westerly direction to Pacific's western system for its use. The filing includes an amendment to the 1980 Agreement which removes the automatic rate of return adjustment provisions in compliance with the December 23 Letter Order, a detailed billing format and summaries for charges under the 1980 Transmission Agreement.

Idaho Power requests that the requirements of prior notice be waived for an effective date of September 10, 1980. Because the only purchasing party under the Agreement is Pacific, there would be no effect upon purchasers under other rate schedules.

Idaho Power states that it has served copies of its filling on the affected customer, Pacific, and on the public utilities commissions of the States of California, Idaho, Montana, Oregon, Washington and Wyoming.

Comment date: March 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Long Island Lighting Company

[Docket No. ER87–269–000]

Take notice that Long Island Lighting Company on October 31, 1986, tendered for filing a proposed supplement to its Contract No. 96 between LILCO and the Incorporated Village of Rockville Centre for the interchange of emergency electric power between them.

The purpose of this supplement to the interchange agreement is for Rockville Centre to provide LILCO with 8,000 kW of firm capacity for the 12-month period ending October 31, 1987; to set the price of any energy provided during that time period; and to enable Rockville Centre continued access to LILCO's transmission system during that time period.

Copies of this filing were served upon the New York Power Authority, The Municipal Electric Utilities Association of New York State, the Incorporated Village of Rockville Centre and the New York State Public Service Commission.

Comment date: March 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Long Island Lighting Company

[Docket No. ER87-270-000]

Take notice that Long Island Lighting Company on October 31, 1986, tendered for filing a proposed supplement to its Contract No. 139 between LILCO and the Incorporated Village of Freeport for the interchange of emergency electric power between them.

The purpose of this supplement to the interchange agreement is for Freeport to provide LILCO with 23,000 kW of firm capacity for the 12-month period ending October 31, 1987; to set the price of any energy provided during that time period; and to enable Freeport continued access to LILCO's transmission system during that time period.

Copies of this filing were served upon the New York Power Authority, The Municipal Electric Utilities Association of New York State, the Incorporated Village of Freeport and the New York State Public Service Commission.

Comment date: March 18, 1987, in accordance with Standard Paragraph E at the end of this document.

6. Long Island Lighting Company

[Docket No. ER87-271-000]

Take notice that Long Island Lighting Company on October 31, 1986, tendered for filing a proposed supplement to its Agreement between LILCO and the Incorporated Village of Greenport for the interchange of emergency electric power between them.

The purpose of this supplement to the interchange agreement is for Greenport to provide LILCO with 5,000 kW of firm capacity for the 12-month period ending October 31, 1987; to set the price of any energy provided during that time period; and to enable Greenport continued access to LILCO's transmission system during that time period.

Copies of this filing were served upon the New York Power Authority, The Municipal Electric Utilities Association of New York State, the Incorporated Village of Greenport and the New York State Public Service Commission.

Comment date: March 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Missouri Public Service

[Docket No. ER87-278-000]

Take notice that UtiliCorp United Inc. d/b/a Missouri Public Service, on March 2, 1987, tendered for filing a proposed change in its FERC Electric Service Tariffs for wholesale firm power service to supersede and replace the contract rate schedule presently in effect and on file with the Commission which relates to the City of Rich Hill located in the State of Missouri. The proposed contract would supersede and replace Supplement No. 2 to FERC Rate Schedule Number 37. The proposed contract reflects a change in contract capacity and a change in the expiration date of the contract. The new contract does not change anticipated annual revenues.

The proposed contract capacity change is in compliance with a request received from the City of Rich Hill. The extension in the term of the contract is to assure a long-term source of power to the City of Rich Hill and to justify recent and any additional expenditures required by the Company to maintain and improve the capacity of facilities used to serve the City of Rich Hill.

Copies of the filing were served upon the City of Rich Hill whose contract would be affected thereby, and upon the Public Service Commission of Missouri. The rates and charges would not be affected.

Comment date: March 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER87-279-000]

Take notice that on March 2, 1987, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) jointly tendered for filing revised exhibits for their Interchange Agreement. The revised exhibits would (1) adjust the demand cost allocation procedures under the agreement and (2) adopt new procedures for allocating transmission losses under the agreement. The filing is made pursuant to Article III of the settlement agreement approved on August 21, 1985, in Docket No. ER84-690.

The Interchange Agreement presently provides for demand cost allocation on the basis of the average of 12 projected peaks. The revised exhibits would allocate demand costs on the basis of 36 monthly peaks, 18 of which would be actual peaks and the remaining 18 of which would be projected peaks.

The Interchange Agreement presently attributes to each company the transmission losses experienced in its service area. The revised exhibits would attribute system-wide losses to the companies ratably according to their usage, so that each company would have the system-wide average transmission losses.

The filing companies request an effective date of April 30, 1987.

Copies of the filing have been served upon the wholesale customers of the filing companies and upon the state commissions of Michigan, Minnesota, North Dakota and Wisconsin. Copies have also been served upon all intervenors in Docket No. 84-690.

Comment date: March 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5143 Filed 3-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF87-259-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; American Resource Recovery et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. American Resource Recovery

[Docket No. QF87-259-000]

March 3, 1987.

On February 12, 1987, American Resource Recovery (Applicant), of 600 Larry Court, Waukesha, Wisconsin 53186, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in New Richmond, Wisconsin. The facility will consist of

three incineration units, three heat recovery steam generators and an extraction/condensing turbine-generator. The primary energy source will be municipal solid waste. The net electric power production capacity of the facility will be 1000 kW. Installation is scheduled to begin in April 1987.

2. Fieldcrest Cannon, Inc., Eagle-Phenix Associates

[Docket No. QF87-258-000]

March 5, 1987.

On February 11, 1987, Fieldcrest Cannon, Inc., and Eagle-Phenix Associates (Applicant), of 326 East Stadium Drive, Eden, North Carolina 27288 and 1412 Front Avenue, P.O. Box 180, Columbus, Georgia 31901, respectively, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 23.1 megawatt hydroelectric facility (FERC P. 2655) will be located in Columbus, Georgia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. First Cumberland Associates

[Docket No. QF87-268-000]

March 4, 1987.

On February 18, 1987, First Cumberland Associates (Applicant), of 56 Kearney Road, Needham, Massachusetts 02194, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Mendon Road, Cumberland, Rhode Island 02864. The facility will consist of two combustion turbine generators, a heat recovery steam generator and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used for space heating and cooling, and sanitary hot water. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 17.24 MW. Installation of the facility is scheduled to begin by July 1987.

4. Indeck Energy Services, Inc.

[Docket No. QF87-265-000]

March 5, 1987.

On February 17, 1987, Indeck Energy Services, Inc. (Applicant), of 1111 South Willis Avenue, Wheeling, Illinois 60090 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Buffalo, New York and will consist of a combustion turbine generator, a heat recovery steam generator, and a steam turbine generator. Thermal energy recovered from the facility in the form of steam will be used for space heating and as process steam in the production of plastic film and sheet products. The electric power production capacity of the facility will be 36.5 MW. The primary energy source will be natural gas. The facility is expected to go into service February 1, 1989.

5. Union Carbide Corporation and Fina Oil and Chemical Company

[Docket No. QF87-274-000]

March 4, 1987.

On February 24, 1987, Union Carbide Corporation of 39 Old Ridgebury Road, Danbury, Connecticut 06817-0001, and Fina Oil and Chemical Company, P.O. Box 2159, Dallas, Texas 75221 (Applicant) submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the Fina Oil and Chemical Company on Highway 366 and 32nd Street in the City of Port Arthur, Texas 77640. The facility will consist of two combustion turbine generators, two heat recovery steam generators (HRSGs) and two extraction/condensing steam turbine generators. The heat recovered from the facility will be used at the Fina Oil and Chemical Company for process applications. The nominal electric power production capacity of the facility will be 85 MW. The primary energy source will be natural gas. The installation of the facility will commence in June 1987.

Standard Paragraphs

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5144 Filed 3-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-168-005]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 5, 1987.

Take notice that on February 27, 1987, Columbia Gas Transmission Corporation (Columbia Transmission) tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

One hundred and sixteenth Revised Sheet No. 16 Eighth Revised Sheet No. 16A2
Substitute First Revised Sheet No. 22D
Substitute First Revised Sheet No. 22F
Substitute First Revised Sheet No. 22O
Substitute First Revised Sheet No. 22Q

The foregoing revised tariff sheets bear an issue date of February 27, 1987 and a proposed effective date of April 1, 1987.

The revised filing is being made in accordance with Ordering Paragraph (G) of the Commission's Order issued October 30, 1986 in these proceedings. In this regard, the revised tariff sheets reflect the following:

(1) Columbia Transmission has eliminated from its rates the costs related to its facilities and those facilities of Columbia Gulf Transmission Company (Columbia Gulf) which were included in its September 30, 1986 filing but which are not expected to be in service on or before February 28, 1987, the end of the test period.

(2) Columbia Transmission has revised its rates to reflect the level of

purchased gas costs contained in its Purchased Gas Adjustment filing in Docket No. TA87–4–21–000 (PGA 87–3) which will be filing concurrently with the instant filing.

(3) Columbia Transmission has included the tariff sheets filed as a result of the Commission's Order issued October 2, 1986 in Docket Nos. RP86–108–016 and RP86–112–017 and accepted by Commission Order dated November 6, 1986 in those dockets. These dockets, as well as Docket Nos. RP86–14–000 and RP86–15–00, *et seq.*, are still awaiting Commission action and no other orders have been issued necessitating changes in the instant filing.

The rates reflected in the revised filing are based upon a Federal corporate income tax rate of 46 percent. Columbia Transmission anticipates that any issues related to changes in the Federal tax laws will be resolved during the course of settlement or in litigation.

Copies of the filing were served by the company upon each of its wholesale customers, interested State commissions and to each of the parties set forth on the Official Service List in the consolidated proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 12, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any persons wishing to become a party must file a motion to intervene. Copies of Columbia Transmission's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–5145 Filed 3–10–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–167–005]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

March 5, 1987.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on February 27, 1987 tendered for filing revised changes in its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 2 to become effective April 1, 1987.

Columbia Gulf states that such tariff sheets are necessary to place its rates suspended by Commission Order issued October 30, 1986 in this proceeding into effect at the end of the prescribed suspension period and to consolidate proceedings herein with proceedings in Docket No. RP86–168.

The tariff sheets encompass Columbia Gulf's rate filing herein of September 30, 1986, with adjustments to its cost of service to (1) eliminate all costs associated with facilities which will not be in service by February 28, 1987; (2) reflect the level of purchased gas costs in Columbia Gas Transmission Corporation's (Columbia Transmission) most recent Purchased Gas Cost Adjustment filing in Docket No. TA87–4–21–000 (PGA87–3) filed February 27, 1987; (3) Columbia Gulf has included the tariff sheets filed as a result of the Commission's Order issued October 2, 1986 in Docket Nos. RP86–108–016 and RP86–112–017 and accepted by Commission Order dated November 6, 1986 in those dockets. These dockets, as well as Docket Nos. RP86–14–000 and RP86–15–000, *et seq.*, are still awaiting Commission action and no other orders have been issued necessitating changes in the instant filing; and (4) Columbia Gulf has reflected the forty-six percent federal corporate income tax rate in this filing, and anticipates that its rates will be restated at July 1, 1987 based upon a thirty-four percent rate.

Copies of this filing were served upon all of Columbia Gulf's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed on or before March 12, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–5146 Filed 3–10–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. G9262–004, G–18615–000, CP64–249–000, CP65–284–000]

Florida Gas Transmission Co.; Petition to Amend

March 5, 1984.

Take notice that on February 17, 1987, Florida Gas Transmission Company (Petitioner), P.O. Box 1188, Houston, Texas, 77251–1188 filed in Docket Nos. G–9262–004, G–18615–000, CP64–249–000, CP65–284–000 a petition to amend the Commission's orders issued in Docket Nos. G–9262, as amended, G–18615, CP64–294, and CP65–284 so as to authorize the delivery of all or part of the current daily demand for gas of certain direct sales customers that use the gas for the generation of electricity to the plants of other direct sales customers that use the gas of the generation of electricity, and to declare that certain aspects of the proposed transactions are not subject to the Commission's jurisdiction under the National Gas Act, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner explains that it is currently making direct sales of natural gas to Fort Pierce Utilities Authority, the City of Gainesville, the City of Homestead, Kissimmee Utility Authority, the City of Lakeland, Orlando Utilities Commission, Sebring Utilities Commission, the City of Starke, the City of Tallahassee and the City of Vero Beach (Gas Users) under the direct sales contracts all dated January 1, 1986. Petitioner states that the transportation service necessary to permit the direct sales to the Gas Users and to Florida Power Corporation was authorized in the captioned dockets. By this petition to amend, Petitioner requests authority to deliver gas for the account of any of the Gas Users, including Florida Power Corporation, to any of the alternative delivery points indentified in Appendix A to this notice.

Petitioner states further that the Gas Users would retain title to all gas delivered for the account of the Gas Users and that all gas so delivered would be used to generate electricity for the Gas Users. Petitioner alleges that the proposed change in service would permit the Gas Users to use their natural gas in the generating equipment of other utilities to achieve more economic generation of electricity, more environmentally compatible generation of electricity and/or better conservation of energy than they would achieve by using natural gas in their generating equipment.

Based upon representations by each of the Gas Users that the title to all gas

delivered to the alternative delivery points would remain with those Gas Users and that all such gas so delivered would be used to generate electric power for the Gas Users' customers, Petitioner further requests a declaration by the Commission that the deliveries for the account of the Gas Users for use in the facilities of another customer would not cause the sale by Petitioner to the Gas Users to be considered as a sale for resale under the Natural Gas Act and that Petitioner's sales rates to the direct sale customers would not be regulated by the Commission.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before

March 30, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protect in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Appendix A—Florida Gas Transmission Co.

LIST OF ALTERNATIVE DELIVERY POINTS

Customer	Alternate delivery points[1]
City of Gainesville..	Kelly Plant.
City of Homestead.	Deerhaven Plant.
City of Kissimmee..	Kissimee Municipal Generating Plant.
City of Lakeland.....	Larsen Plant. McIntosh Plant.
City of Starke	Starke Municipal Generating Plant.
City opf Tallahassee.	Tallashassee West Plant. St. Marks Plant.
City of Vero Beach.	Vero Beach Municipal Power Plant.
Ft. Pierce Utilities Auth..	Ft. Pierce Power Plant.
Orlando Utilities Comm..	Highland Plant. Indian River Plant.
Sebring Utilities Comm..	Sebring Power Plant.

LIST OF ALTERNATIVE DELIVERY POINTS—Continued

Customer	Alternate delivery points[1]
Florida Power Corp..	Bartow. Turner. Avon Park. Higgins.

[1] Each delivery point listed is proposed to be added as a delivery point for each of the customers listed.

[FR Doc. 87-5147 Filed 3-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-5-000, 001]

Midwestern Gas Transmission Co.; Tariff Filing and Rate Filing Pursuant to Tariff Rate Adjustment Provisions

March 5, 1987.

Take notice that on February 27, 1987, Midwestern Gas Transmission Company (Midwestern), tendered for filing ten copies of the following tariff sheets to its FERC Gas Tariff proposed to be effective April 1, 1987:

Original Volume No. 1:

Twenty-Fourth Revised Sheet No. 6
First Revised Sheet No. 169B
Original Sheet No. 169C
Original Sheet No. 169D
Fifth Revised Sheet No. 263
Third Revised Sheet No. 264

Original Volume No. 2:

First Revised Sheet No. 28A

Midwestern states that the purposes of this filing are to: (a) Implement a PGA rate adjustment applicable to Midwestern's Northern System Rate Schedules CR-2, CRL-2, SR-2 and I-2 to be effective April 1, 1987, pursuant to Article XVIII of the General Terms and Conditions, (b) amend Article XVIII of the General Terms and Conditions to provide for interim adjustments to Midwestern's Northern System gas rates, and (c) provide notice of cancellation of Rate Schedule EX-6, which provides for exchange service with ANR Pipeline Company and Northern States Power Company under contract dated August 30, 1973, pursuant to the Commission's Order dated December 29, 1986, in Docket No. CP76-84-002, *et al.*

Midwestern states that copies of this filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 12, 1987. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5148 Filed 3-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-27-001]

Northwest Pipeline Corp.; Filing of Revised Tariff Sheets

March 5, 1987

Take notice that on February 27, 1987, Northwest Pipeline Corporation ("Northwest") tendered for filing Revised Tariff Sheets pursuant to Commission Order dated February 24, 1987 in this docket.

Northwest proposed changes in its Rate Schedule T-1 Facility Charge in accordance with the above referenced order through Seventeenth Revised Sheet No. 10-A to be effective February 1, 1987 to reflect the current corporate federal income tax rate of 46 percent and through Nineteenth Revised Sheet No. 10-A to be effective July 1, 1987 to reflect the change in the federal income tax rate to 34 percent. Nineteenth Revised Sheet No. 10-A also reflects a new in the Transmission Fuel Use Reimbursement percentage in which Northwest has proposed to revise April 1, 1987 in a separate filing made concurrently herewith.

Copies of this filing have been served on Pacific Interstate Transmission Company and all jurisdictional customers and affected state agencies.

Any person desiring to be heard or make any protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 12, 1987. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5149 Filed 3-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-39-000, 001]

Pacific Interstate Transmission Co; Rate Change

March 5, 1987.

Take notice that Pacific Interstate Transmission Company (Pacific Interstate) on February 27, 1987, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following sheets:

Thirty-First Revised Sheet No. 4
Fourteenth Revised Sheet No. 4-A
Twenty-Sixth Revised Sheet No. 5

Pacific Interstate states that these tariff sheets are issued pursuant to Pacific Interstate's Purchased Gas Cost Adjustment (PGCA) Provision and Incremental Pricing Provision as set forth in section 16 and 17, respectively, of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 2. The proposed effective date of these tendered tariff sheets and the rates thereon is April 1, 1987.

Pacific Interstate also states that the above-tendered tariff sheets reflect a proposed April 1, 1987, Pacific Interstate Rate Schedule S-G-1 commodity rate of 415.09¢ per decatherm, a decrease of 6.61¢ per decatherm from the 421.70¢ per decatherm rate effective October 1, 1986, the date of the last S-G-1 commodity rate change, and that such increase reflects a current Gas Cost Adjustment and a change in the Surcharge Adjustment.

Pacific Interstate states that the current Gas Cost Adjustment is based on an annualized gas cost increase of $11,256.00 and that the Surcharge Adjustment is designed to collect, over a six-month period beginning April 1, 1987, an amount of $160,754.86 which is the amount of Pacific Interstate's Unrecovered Purchased Gas Cost Account at December 31, 1986. Furthermore, Pacific Interstate states that there is no incremental pricing surcharge adjustment applicable to this filing, since its only customer, SoCalGas, has informed Pacific Interstate that it has no surcharge absorption capability.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 12, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Coppies of this filing are on file with the Commission and are available for public inspection.

Kennth F. Plumb,

Secretary.

[FR Doc. 87-5150 Filed 3-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI85-1-001 and CI87-311-000]

Seagull Energy E & P Inc., et al.; Application for Abandonment Authorization and Blanket Certificate of Public Convenience and Necessity

March 6, 1987.

Take notice that on February 17, 1987, Seagull Energy E & P Inc. ("Applicant" or "Seagull E & P"), 1700 First City Tower, 1001 Fannin Houston, Texas 77002, on behalf of itself and the non-operating working interest owners in Mustang Island Area Block 831, Offshore Texas ("MI 831"), filed an application pursuant to sections 4, 7(b), and 7(c) of the Natural Gas Act and 18 CFR 2.77 and 157.30 of the Commission's Regulations thereunder, for (i) partial, limited-term authorization, for a period of two years, to abandon the sale to Northern Natural Gas Company ("Northern") of gas produced from MI 831; (ii) limited-term blanket certificate authorization to make sales for resale in interstate commerce of such gas, also for two years; (iii) blanket pre-granted authorization to abandon such sales; and (iv) waiver of the regulations under Parts 154 and 271 as to the establishment and maintenance of rate schedules and filing requirements for collection of monthly adjustments and any section 110 allowances, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Seagull E & P is a producer and seller of natural gas. It received a certificate of public convenience and necessity in Docket No. CI85-1 governing sales of natural gas to Northern pursuant to a sales contract dated March 23, 1984, and letter agreements dated March 21, 1984, April 24, 1984, and November 25, 1986, between Northern and Seagull E & P, Walter Oil and Gas Corporation, Columbus Mills, Inc., Marine Exploration Company, and Ed A. Smith, on file as Seagull Energy E & P Inc. (Operator), *et al.* FERC Gas Rate Schedule No. 1 and Supplement Nos. 1, 2, and 3 thereto, respectively.

Applicant states that it has made no sales to Northern under this rate schedule. Sales have been made, however, pursuant to Applicant's blanket LTA authority granted in Docket No. CI86-7-001 and to a release agreement. Applicant estimates that approximately 3,700 Mcf per day of the MI 831 deliverability qualifies for NGPA section 109, and the remaining deliverability of approximately 29,000 Mcf per day is attributable to wells for which Seagull E & P has applied or will apply for a jurisdictional agency determination under NGPA section 102(d). Applicant seeks limited-term authorization to abandon the sale to Northern of all gas produced from MI 831 in order to be able to sell to other, willing purchasers. Applicant states that it expects that all or a portion of the gas will be sold on the spot market to one or more purchasers. These purchasers may include end users, local distribution companies, marketing companies, and others. For this reason, Applicant seeks a limited-term blanket certificate authorizing sales of the gas for resale in interstate commerce, along with blanket pre-granted authorization to abandon such sales. Applicant requests expedited consideration of its application pursuant to Docket No. RM85-1 and § 2.77 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said application should, on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered in determining the appropriate actions to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5151 Filed 3-10-87; 9:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-7-000, 001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 5, 1987.

Take notice that Southern Natural Gas Company (Southern) on February 27, 1987, tendered for filing proposed changes in its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective April 1, 1987. Such filing is pursuant to section 17 (Purchased Gas Adjustment) of the General Terms and Conditions of Southern's FERC Gas Tariff, Sixth Revised Volume No. 1. The proposed changes reflect a net decrease in Southern's rates of approximately 10.475¢ per Mcf as a result of the following items:

(1) A Current Adjustment pursuant to section 17.3 of the General Terms and Conditions of Southern's tariff, reflecting an annual decrease in the cost of purchased gas to jurisdictional customers of $64,960,814 or approximately 29.128¢ per Mcf.

(2) A Surcharge Adjustment for unrecovered purchased gas costs of $11,084,649 or 19.232¢ per Mcf, which is an increase of 18.663¢ per Mcf from the present Surcharge Adjustment.

(3) A Surcharge Adjustment for estimated Demand Charge Credits pursuant to section 9.6(3) of the General Terms and Conditions of Southern's tariff of (.040¢) per Mcf, which reflects a decrease of .009¢ per Mcf from the present DCC Surcharge Adjustment.

Pursuant to § 282.601(a)(1)(ii) of the Commission's Regulations, Southern is also filing Fifteenth Revised Sheet No. 45R with a proposed effective date of April 1, 1987. Such tariff sheet reflects Southern's projected incremental pricing surcharge for the six-month period beginning April 1, 1987, to be zero.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before March 12, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5152 Filed 3-10-87; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket Nos. CI86-370-002 and CI86-373-3002]

Texas Gas Transmission Corp.; Application on Behalf of Producer-Suppliers of Texas Gas Transmission Corporation To Amend Certificate of Public Convenience and Necessity

March 5, 1987.

Take notice that on February 26, 1987, Texas Gas Transmission Corporation (Applicant), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in this proceeding an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act and §§ 2.77 and 157.30 of the Commission's regulations. Applicant states that it meets the standard of § 2.77 with substantially reduced takes without payment.

Applicant states that it applies to amend the certificate of public convenience and necessity issued in these dockets by Commission Order dated January 21, 1987, for the purpose of expanding the authority issued therein to all of Texas Gas producer-suppliers. The Commission's January 21 Order authorized blanket limited-term abandonment together with blanket sale for resale authority with pre-granted abandonment thereof to enable the producer-suppliers identified by Applicant in its original application, as well as parties owning an interest in the same producer, to abandon, upon release by Applicant, sales of gas to Applicant under contracts which had a weighted average contract price in excess of Applicant's currently effective market-out price of $1.85 per MMBtu and to enable such supplies of gas to be released and sold on the spot market at competitive prices. The contracts meeting those qualifications were identified by Applicant in Exhibit A to its original application.

Applicant states that since the filing of its original application in April 1986, the supply-demand imbalance on Applicant's system has worsened and that all of Applicant's producer-suppliers are now subject to substantially reduced takes without payment by Applicant. In addition, Applicant states that upon further review of all of its contracts, Applicant has identified certain contracts which cover NGPA section 102(d) and 108 gas that are currently eligible for limited term abandonment under its certificate issued in Docket No. CP86-67 (allowing abandonment of all gas with the mazimum lawful price above the NGPA section 109 Rate) but which are not eligible for abandonment under the authority issued in the Commission's January 21 Order in these dockets, because the weighted average contract price in those contracts does not exceed $1.85 per MMBtu. Applicant states that the benefits realized thus far by the release and sale of that gas will cease as of April 1, 1987 when the authority granted in Docket No. CP86-67 expires, unless the amendment applied for is granted before that date. Accordingly, Applicant requests expedited treatment of this amendment to avoid the unnecessary shutting-in of released gas on April 1, 1987. Applicant further requests and agrees that the authority applied for in the application to amend the existing certificates, if extended to Applicants' remaining producer-suppliers, would be subject to the same terms and conditions and be for the same term authorized by the Commission's January 21 Order. Finally, Applicant states that the granting of the amendment will further the public convenience and necessity because it will help alleviate the surplus deliverability situation existing on Applicant's system, facilitate the movement of gas suppliers which would otherwise be shut in to consumers at market-sensitive prices; and assist Applicant in obtaining relief from potential take-or-pay liabilities which are accruing at an alarming rate. Applicant further states that the authority applied for in the application is substantially similar to the authority issued previously by the Commission in *Transcontinental Gas Pipe Line Corp.*, 36 FERC (CCH) ¶ 61,403 (1986).

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before March 12, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the

requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it wil be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5153 Filed 3-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-42-000]

Texas Gas Transmission Corp.; Proposed Changes In FERC Gas Tariff Sheets

March 5, 1987.

Take notice that on February 27, 1987, Texas Gas Transmission Corporation (Texas Gas) tendered for filing First Revised Sheet Nos. 6, 26, 76, 79, 96, 108-110, 112, 116, 178-184, and 194-196, and Second Revised Sheet Nos. 113 and 115 to its FERC Gas Tariff, Original Volume No. 1.

The revised tariff sheets are being filed to:

(1) Update the Table of Contents;

(2) Update the Index of Purchasers;

(3) Update the Index of Annual D-2 Billing Demand Quantities;

(4) Update the Index of Quantity Entitlements;

(5) Change the ending dates of the PGA deferral periods to September 30 and March 31;

(6) Revise the PGA current adjustment methodology applicable to D-1 and D-2 demand rates; and

(7) Correct miscellaneous typographical errors.

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 2.11 and 2.14 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 12, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5154 Filed 3-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-45-000]

Transcontinental Gas Pipe Line Corp.; Tariff Revision

March 5, 1987.

Take notice that on February 27, 1987, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing Original Sheet Nos. 250-E and 250-F to Transco's FERC Gas Tariff, Second Revised Volume No. 1, to become effective 4-1-87. These sheets reflect revisions to the Purchased Gas Adjustment (PGA) clause in section 22 of the General Terms and Conditions of Transco's tariff.

Transco is proposing a new § 22.9 which will enable Transco to file, upon at least a ten day notice, an increase or decrease in its Base Purchase Gas Cost, As Adjusted, to reflect known and measurable changes in Purchase Gas Costs.

Transco reports that it has mailed copies of the proposed tariff sheets to its affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before March 12, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-5155 Filed 3-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PL87-3-000]

Recovery of Take-or-Pay Buy-Out and Buy-Down Costs by Interstate Natural Gas Pipelines; Notice of Issuance of Proposed Policy Statement and Opportunity for Public Comment

March 5, 1987.

Take notice that on March 5, 1987, the Commission issued the attached proposed statement of policy concerning recovery of take-or-pay buy-out and buy-down costs by interstate natural gas pipelines. This statement articulates the Commission's proposed policy. It does not have the force or effect of law. The Commission has received numerous requests by interested persons for an opportunity to comment on the Commission's proposed take-or-pay policy. Therefore, although not required by section 553(b) of the Administrative Procedure Act (5 U.S.C. § 553(b) (1982)), the Commission has determined that public notice and comment procedures should be adopted so that all interested persons may have the opportunity to inform the Commission of their views. Commissioner Stalon submitted a proposed alternative statement of policy which is also attached to this notice for comment. The Commission will consider all comments filed.

All comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before April 10, 1987, and should refer to Docket No. PL87-3-000. An original and fourteen copies should be filed. Written submissions will be placed in the public file established in this docket and will be available for public inspection during regular business hours in the Division of Public Information, Rooom 100, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

Summary: The Federal Energy Regulatory Commission proposes to establish guidelines for recovery by pipelines of costs incurred in buying out or reforming existing contracts in a manner designed to spread the impact of those costs in a responsible, fair and equitable manner. The proposed policy statement establishes an exception to the Commission's general policy that take-or-pay buy-out and buy-down costs must be recovered through the pipelines' commodity sales rates. Specifically, in cases where pipelines assume an

equitable share of buy-out and buy-down costs, the Commission proposes to permit the pipelines to recover the remaining costs through their demand rates.

For Further Information Contact: Richard V. Mattingly, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8274.

I. Introduction

On April 10, 1985, the Commission issued in Docket No. PL85–1 a policy statement dealing with the regulatory treatment of payments made in lieu of pipeline take-or-pay obligations.[1] The Commission concluded that payments made by jurisdictional pipelines to first sellers of natural gas for the purpose of waiving or revising contractual purchase obligations did not violate the maximum lawful ceiling prices established by the Natural Gas Policy Act of 1978 (NGPA). The Commission declined, however, to address the question of how such payments would be recovered by pipelines or apportioned among their customers. The Commission held that these issues would be considered on a case-by-case basis in the context of individual rate proceedings. Based on experience gained under the April 1985 policy statement and in light of further, significant developments affecting the natural gas industry, the Commission concludes that it has become necessary to address the issue of pipeline recovery of take-or-pay costs. The purpose of this policy statement is to encourage and guide the timely resolution of take-or-pay contractual disputes which appear to be impeding the industry's transition to a more competitive environment as envisioned by the NGPA.

This policy statement establishes guidelines for recovery by pipelines of costs incurred in buying out or reforming existing contracts in a manner designed to spread the impact of those costs in a responsible, fair and equitable manner. The policy statement establishes an exception to the Commission's general policy that take-or-pay buy-out and buy-down costs [2] must be recovered through the pipelines' commodity sales rates. Specifically, in cases where pipelines assume an equitable share of buy-out and buy-down costs, the Commission will permit the pipelines to recovery the remaining costs through their demand rates.

The Commission is fully aware of the importance as well as the complexity of the take-or-pay problem which now exists and recognizes that there is no solution which will meet the expectations of all potentially affected parties. The Commission is convinced, however, that the policy here proposed is as reasonable and equitable as possible as well as consistent with the Commission's statutory responsibility to establish just and reasonable rates and protect the public interest.

II. Background

The causes of the current take-or-pay problems affecting the natural gas industry have been previously discussed by the Commission and will only be summarized here.[3] At the time of enactment of the NGPA in November 1978, there was a shortage of natural gas available to the interstate market. In the years immediately following enactment of the NGPA, pipelines sought to obtain additional supplies, much of which were purchased under contracts incorporating substantial take-or-pay obligations. However, at the same time prices were being driven up, demand for natural gas began to soften. The result was a marked increase in pipelines' take-or-pay obligations to producers.

As competition for sales intensified, pipelines began to adopt various gas purchasing strategies designed to keep their prices competitive. Among other things pipelines reduced their purchases under high-price, high take-or-pay contracts and, consequently, began to incur increasing take-or-pay obligations. In many cases, pipelines refused to pay these claims. In response, some producers sued the pipelines for breach of contract; in other cases, producers and pipelines began renegotiating their contracts to better reflect current markets.

As contemplated by the April 1985 policy statement, pipelines have endeavored to buy out take-or-pay claims or renegotiate their problem contracts, or both, and have filed with the Commission to recover the related costs from their customers. In these cases the Commission has required that take-or-pay costs be recovered through the pipeline's commodity sales rate.[4] While these costs do not constitute purchased gas costs as such, but rather costs incurred to buy-out take-or-pay liability or reform uneconomic contracts, they have been treated by the Commission as being associated with the acquisition of gas supply and accordingly have been treated as production-related.[5] However, pipelines have claimed an inability to recover take-or-pay buy-out costs on the grounds the inclusion of such costs in their commodity rates would render their gas unmarketable in the face of available, lower-cost alternative supplies.

While pipelines are continuing to renegotiate or buy-out of problem take-or/pay contracts, the issue of pipeline recovery of the related costs remains a matter of unresolved controversy. Significant amounts actually paid by interstate pipelines to buy-out and buy-down problem contracts have not as yet been recovered by them. A number of proceedings are currently pending before the Commission in which pipelines are seeking to recover buy-out and buy-down costs other than through their commodity rates.[6]

Meanwhile the potential take-or-pay liability of pipelines continues to be a major impediment to market-responsive gas pricing, notwithstanding buy-outs and buy-downs which have been effected. While the total accrued take-or-pay liability of pipelines cannot be determined precisely, it is estimated to be in the range of approximately $6 billion or more.[7] This figure is somewhat misleading because experience has demonstrated that pipeline take-or-pay obligations have been bought out for a fraction of total liability. There can be no doubt, however, that the amounts at stake are significant and substantial. It should also be noted that the $9 billion figure reflects, almost exclusively, accrued take-or-pay liability of pipelines and does not include any significant

[1] 50 FR 16,076 (April 24, 1985).

[2] As used herein, buy-out and buy-down costs refer to payments made by pipelines to producers to extinguish outstanding take-or-pay liability under existing contracts, or to terminate the contracts, or to reform the price, volume or other pertinent economic terms of the contracts.

[3] *See, e.g.*, Notice of Inquiry, Docket No. RM85–1–000, 50 FR 114 (January 2, 1985); Notice of Proposed Rulemaking, Docket No. RM83–71–000, 48 FR 39,238 (August 30, 1983); Statement of Policy, Docket No. PL83–1–000, 47 FR 57,268 (December 23, 1982).

[4] Transcontinental Gas Pipe Line Corp., 37 FERC ¶ 61, 089 (1986); Trunkline Gas Company, 37 FERC ¶ 61,201 (1986). *See also* Natural Gas Pipeline Co. of America, 25 FERC ¶ 61,176 (1983).

[5] Buy-out and buy-down costs are included in account 813 of the Commission's uniform system of accounts (other gas supply expenses).

[6] Transco and Trunkline cases, *supra* note 4. Also Tennessee Gas Pipeline Company, 36 FERC ¶ 61,032 (1986); Transwestern Pipeline Company, 36 FERC ¶ 61,048 (1986); Southern Natural Gas Company, 35 FERC § 61,141 (1986); United States Gas Pipe Line Company, 33 FERC ¶ 33 FERC ¶ 61,100 (1985); ANR Pipeline Company, 37 FERC ¶ 61,080 (1986); El Paso Natural Gas Company, 37 FERC ¶ 61,202 (1986); Mountain Fuel Resources, Inc., 36 FERC ¶ 61,150 (1986).

[7] Form 10–K and 10–Q reports filed by major pipelines with the SEC show total potential liability of $2.88 billion as of year-end 1984; $5.85 billion as of year-end 1985; and $7.85 billion as of September 30, 1986. It is not clear whether these figures include take-or-pay obligations incurred by pipelines but not actually billed by producers.

amount of estimated or potential costs which may be incurred by pipelines in reforming their existing contracts.

III. Recent Developments

Concurrently with the problem of pipeline take-or-pay liability over the last several years, the Commission has issued a series of orders designed to affect substantially the actions of all segments of the natural gas industry and the economic environemnt in which it operates. On May 25, 1984, the Commission issued Order No. 380,[8] which required the elimination of variable costs from pipeline minimum commodity bills. The Commission concluded that the inclusion of variable (primarily purchased gas) costs in minimum commodity bills insulated pipelines and producers from market risk, inhibited the effect of market forces in determining gas prices, and operated as a restraint on competition.[9] Among the Commission's principal objectives in issuing Order No. 380 was to encourage the development of a price responsive market for natural gas. The order also had the effect of focusing the attention of the industry on the existence of uneconomic and inefficient high-take and high-price contracts between pipelines and producers.[10]

On October 9, 1985, the Commission issued Order No. 426,[11] adopting regulations designed to encourage pipelines to open their systems to non-discriminatory transportation of natural gas so that local distribution companies and end users could purchase gas directly from diverse sources under competitive market conditions. In this order, the Commission rejected pipeline requests that producers be required to waive their contractual rights under the take-or-pay provisions of their existing contracts as a condition to obtaining non-discriminatory transportation.[12] The Commission instead provided for expedited review of take-or-pay buy-outs and producer abvandonment applications resulting from renegotiated take-or-pay contracts.[13]

On June 6, 1986, the Commission issued Order No. 451,[14] revising the price structure of old gas to reflect more accurately the commodity value of gas in a competitive market and requiring producers seeking to renegotiate prices for old gas to agree to renegotiate all new gas sold under contracts containing any old gas. The Commission also found that this price renegotiation process would have the effect of further exposing all new gas to market forces.

The take-or-pay problem currently affecting the natural gas industry appears to be the vestige of an era of non-competitive conditions in wellhead markets. Many problem take-or-pay contracts were negotiated in the years immediately following enactment of the NGPA (roughly 1979 through Mid-1982), which were characterized by pervasive market disorders including high prices for new and unregulated gas reserves and indequate supplies in relation to pipeline demand for new reserves. The large and growing take-or-pay liability of pipelines is a source of continuing market disorder which is at odds which the establishment of market-responsive prices and the unbundling of natural gas services which the Commission has endeavored to foster through Order Nos. 380, 436, and 451. The take-or-pay problem also appears to be impeding the acceptance by pipelines of the open access provisions of Order No. 436. Many pipelines apparently are unwilling to commit themselves to open access, and thereby stand obligated to transport third party gas to their existing customers, without regulatory certainty concerning the recovery in rates of prudently incurred take-or-pay costs under contractual obligations originally incurred to serve the demands of those same customers.

In our judgment, it has become imperative for the Commission to take further, decisive action on the take-or-pay problem facing the natural gas industry. Take-or-pay represents possibly the last and most significant deterrent to the realization of the Commission's goal of removing, as far as possible, obstacles to the establishment of orderly, competitive markets for natural gas sales and services. The existence of potential pipeline liability amounting to billions of dollars has created concern and uncertainty in the industry about the ultimate economic consequences of the take-or-pay problem. In addition, the Commission believes it is reasonable and necessary in light of the large number of pipeline rate proceedings involving the take-or-pay issue, both pending and likely to be filed in the future, to set forth its views about how the Commission wishes to see the conflicting equities resolved.

IV. Recovery of Take-or-pay Costs

A. Overview

A primary objective of any policy dealing with the take-or-pay problem should be to encourage pipelines and their customers to re-evaluate and adjust their contractual relationships so that pipelines can balance their purchase obligations with their future sales obligations in response to competitive conditions in natural gas markets. Therefore, it is both necessary and desirable that interstate pipeline companies confer with their sales customers for the purpose of reviewing and, if necessary, adjusting their contractual obligations to reflect accurately the level of service which the pipelines will be required to provide to their customers in the future.

The second basic objective of a sound take-or-pay policy is to provide for the apportionment of costs associated with extinguishing accrued take-or-pay obligations and reforming or terminating contracts between pipelines and producers to reflect the pipeline's future service obligations. To the extent take-or-pay liability is extinguished and current gas purchase contracts of pipelines reformed or terminated to reflect future needs, a means must be established for apportioning the prudently-incurred costs associated with such actions in a fair and equitable manner.

B. Apportionment of Costs

The cornerstone of the Commission's policy for cost recovery is a recognition that take-or-pay buy-out and buy-down costs must be apportioned equitably. There is no scientific or precise mathematical formula which can produce perfect equity in every case. The causes of the take-or-pay problem are many and complex and there appears no reasonable basis to ascribe culpability for the current take-of-pay problem solely to a particular segment of the industry. It is undoubtedly true that some pipelines unwisely and even imprudently entered into contracts incorporating both high prices and high take-or-pay levels. At the same time, many purchases appear to have been made based on the anticipated demands of the pipelines' customers and reflected terms which producers were able to obtain under prevailing market conditions. In many instances pipeline

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[8] 49 FR 22,778 (June 1, 1984); Order No. 380–A, 49 FR 31,259 (Aug. 6, 1984); Order No. 380–B, 49 FR 43,635 (October 31, 1984); Order No. 380–C, 49 FR 43,625 (October 31, 1984).

[9] Order No. 380, 49 FR at 22,782–83.

[10] The Commission observed in Order No. 380 that certain customers could be required in individual rate cases to pay carrying costs on take-or-pay prepayments if it were demonstrated that their cutbacks caused the pipeline to incur the prepayments. 49 FR at 22,787–88.

[11] 50 FR 42,408 (October 18, 1985); Order No. 436–A, 50 FR 52,217 (December 23, 1985); Order No. 436–B, 51 FR 6,398 (Feb. 24, 1986); Order No. 436–C, 51 FR 11,566 (April 4, 1986).

[12] 50 FR at 42,433–34.

[13] 50 FR at 52,217.

[14] 51 FR 22,168 (June 18, 1986); Order No. 451–A, 51 FR 46,762 (December 24, 1986).

take-or-pay obligations mounted because of reduced purchases by their customers due to purchases from alternative suppliers, fuel switching by industrial users due to lower fuel oil prices, reduced levels of economic activity, and conservation.

In fully deregulated wellhead gas markets, accurate price signals between burner-tip and wellhead should assure that take-or-pay costs are responsive to supply and demand for the gas commodity itself in the marketplace. For this reason, generally we have not allowed recovery through the demand charge of take-or-pay buy-put and buy-down costs. However, the Commission recognizes that the NGPA has mandated a transition toward market-based pricing for natural gas at the wellhead, and that the accumulation of uneconomic take-or-pay costs is in part a result of this transition period. For this reason, therefore, where a pipeline has agreed to equitable sharing of these costs, the Commission intends to allow demand charge recovery. The Commission believes a 50–50 cost sharing approach is equitable based on the nature, extent and causes of the take-or-pay problem. It seems clear that for purposes of establishing a general policy, neither pipelines nor their customers should be required to shoulder the entire burden associated with take-or-pay buy-out and buy-down costs. The Commission likewise believes that no reasonable or adequate basis exists to establish a cost sharing formula of general applicability that would assign a proportionately greater share of those costs to either pipelines or their customers. Accordingly, as a matter of judgment, the Commission finds that the equal sharing approach is reasonable in relation to the overall objective of providing for a fair and equitable apportionment of costs.

The Commission recognizes that a policy guideline based on general principles of equity and equal sharing cannot be expected to result in the allocation of cost responsibility except in a general sense. The Commission's ultimate goal is one of equitable sharing of costs in order to assure market-responsive purchasing practices, not the chimera of mathematical exactness. Where a pipeline is willing to absorb an equitable share of the costs of buying out or buying down its uneconomic contracts, it is reasonable to conclude that the pipeline will bargain "hard" and prudently in renegotiating such contracts.

C. Method of Recovery

Once a pipeline has demonstrated that it will assume an equitable share of take-or-pay buy-out and buy-down costs, the Commission will authorize that pipeline to recover the customer-allocated share of such costs by means of a demand surcharge. The Commission will not attempt to prescribe a specific cost formula for determining each customer's surcharge but will describe general principles which the Commission believes should be followed.

The objective of a sound costing method is to determine each customer's liability based on a reasonable measure of the extent to which that customer's demand for gas can be matched with the costs which are to be allocated. In the Commission's judgment, a reasonable method of allocating take-or-pay buy-out and buy-down costs is to base each customer's demand surcharge on its cumulative deficiency of purchases in recent years (during which the current take-or-pay liabilities of pipelines were incurred) measured in relation to that customer's purchases during a representative prior period during which take-or-pay liabilities were not incurred. It will be the Commission's general policy that customer demand surcharges should be determined by a formula incorporating the following guidelines:

1. Select a representative base period. The base period should reflect a representative level of purchases by the pipeline's firm customers during a period preceding the onset of changed conditions which resulted in reduced purchases and growth of the take-or-pay problem.

2. Determine firm purchases by each customer during the base year.

3. Determine firm sales purchase deficiency volumes for each subsequent year.

4. Derive demand surcharge based on each customer's cumulative deficiencies as compared to total cumulative deficiencies.

The filing pipeline will be free to select for rate calculation and filing purposes a reasonable amortization period for buy-out and buy-down costs being recovered through the demand surcharge. The pipeline will be entitled to carrying charges on unamortized amounts.

D. Implementing Procedures

Pipelines acting pursuant to the policy statement may submit a non-PGA rate filing under section 4(e) of the Natural Gas Act. As part of its filing the pipeline may claim demand surcharges reflecting buy-out and buy-down costs actually paid as of the date of filing plus similar costs which are known and measurable within the following nine months.[15] As in any case involving a change in rates, detailed support for the amounts claimed and for the calculation of customer surcharges must be provided. In addition the pipeline must disclose and describe all consideration, both cash and non-cash, given to producers in exchange for take-or-pay relief.

Alternatively, the Commission will permit and encourages pipelines to base any filings under this policy statement on an estimate of the total costs of buying out and reforming their existing contracts with producers consistent with their future service obligations. Detailed support for this estimate of total costs would be required. The Commission anticipates that in this way it may be possible to establish on a one-time basis the total responsibility of the pipeliner's customers for both past and future take-or-pay buy-out and buy-down costs. The take-or-pay problem could thereby be resolved quickly, efficiently, and in a way which allows the ultimate economic consequences to be known with reasonable certainty in advance.

In any filings based on the policy statement guidelines, pipelines should include proposals for periodic (preferably annual) adjustments to customer demand surcharges, together with any necessary accounting procedures, designed to assure that revenues recovered by the pipeline through the demand surcharge remain in balance with buy-out and buy-down costs covered by the filing and actually incurred by the pipeline. If a pipeline chooses to file only for recovery of buy-down costs under existing contracts rather than for buying out of such contracts altogether, the Commission does not intend to apply this policy statement to subsequent filings to recover future buy-down or buy-out costs under the same contracts.

Commission action on each such filing will be based on a review of the individual rate application and will take into consideration the degree to which the application conforms to the principles set forth in this policy statement. In cases where the application substantially or fully complies with the policy statement guidelines, the Commission anticipates that the proposed rates will be accepted for filing and permitted to become effective following suspension, subject to refund and hearing. However, it bears repeating that this policy statement sets forth principles which the Commission believes are reasonable as a matter of

[15] *See* § 154.63(e)(2) of the Commission's regulations.

general policy. These principles will be applied on a case-by-case basis and the Commission's final decision will be based on the record of each particular case.

The Commission has consistently advocated the settlement process as a means of resolving complex and cumbersome issues. It is to be hoped that much of the controversy presently surrounding the take-or-pay issue can be settled in accordance with the principles set forth in this policy statement. In cases where uncontested settlement is not possible, however, the Commission will rule on the merits based on the record developed in each particular case. In doing so, the Commission will take into account the policy statement guidelines and will follow them to the extent justified by the facts, evidence and arguments of the parties in each case.

E. Prudence Issue

The issue of prudence is likely to arise in proceedings involving pipeline take-or-pay claims. Parties may argue that a pipeline's take-or-pay obligations or buy-out and buy-down costs are the consequences of imprudent purchasing practices and that the pipeline should therefore be solely or principally liable for resulting take-or-pay costs. The Commission seeks to avoid, to the extent possible, lengthy hearings in which various parties attempt to ascribe blame to the pipeline, and the pipeline attempts to demonstrate the prudence of its gas acquisition practices. As we have pointed out, there appears to be ample evidence indicating that, taking the industry as a whole, there is much responsibility to be shared.

The Commission considers, as a matter of policy, that a pipeline's agreement to assume an equitable share of take-or-pay costs is sufficient to take account of any imprudence on the part of that pipeline in incurring take-or-pay liability. Additionally, where an equitable share of the costs of any bargain struck by a pipeline and its suppliers is to be borne by the pipeline's shareholders, the Commission considers it reasonable to assume that the pipeline will bargain "hard" and prudently. The Commission will, of course, examine the issue of prudence if it is raised by a party in a proceeding, but we believe that the sharing of responsibility for take-or-pay costs provided for under the policy statement will make a showing of further imprudence difficult.

V. Related Issues

A. Transportation Customers

Transportation customers which were not firm sales customers during the proposed base period would not be responsible for pipeline take-or-pay costs under this policy statement. It appears that in virtually all instances of which the Commission is aware, pipeline firm sales customers who will be responsible for take-or-pay costs based on past purchase deficiencies remain customers of the pipeline and can be billed for their share of costs through the demand surcharge. These customers may have reduced their level of purchase obligations and be receiving a portion of their requirements through alternative purchase and transportation arrangements. However, as long as they remain firm customers of the pipeline for even a portion of their requirements, they are liable for their share of costs through the demand surcharge. In any case where a former sales customer is now solely a transportation customer (or no longer a customer at all) demand surcharge billing would not be available. In such cases the pipeline may propose to directly bill the customer, subject to justifying the amount proposed to be billed.

B. Interruptible Customers

Interruptible customers would likewise not be charged take-or-pay costs under this policy statement. The Commission believes there is no basis to conclude that long-term gas supplies should have been or were in fact acquired by interstate pipelines for the purpose of providing service to interrruptable customers. We believe, therefore, there is no basis to connect pipeline take-or-pay costs with service provided to interruptible customers in any way which would justify the imposition of take-or-pay costs on such customers.

C. Small Volume Customers

Most interstate pipelines have small general service (SGS) type rate schedules which establish one-part rates for serving small, full requirements customers such as small municipalities. These customers account for about five percent of pipeline sales on an industry-wide basis. It appears that these customers have in recent years continued by and large to purchase at reasonably steady levels and therfore have not contributed significantly to the take-or-pay problem. Consequently the Commission believes that SGS customers should be exempt from take-or-pay demand surcharges.

D. Flowthrough By Downstream Pipelines and Local Distribution Companies

Downstream pipelines will have the right to flow through approved take-or-pay demand surcharges on an as-billed basis, that is, they would flow such charges through to their customers as demand surcharges. However, customers of downstream pipelines have the right in either PGA or general rate filings to challenge the purchasing practices of such pipeline. Any remedies for purchasing practices ultimately found by the Commission to be imprudent will be determined on a case-by-case basis. The method and extent of flowthrough by local distribution companies will be determiend by the responsible state regulatory agencies consistent with applicable law.[16]

E. Ongoing Proceedings

As previously noted, a number of pipeline rate proceedings currently pending before the Commission involve take-or-pay issues. The question arises as to whether these proceedings should be permitted to be used as vehicles for implementing the principles set forth in this policy statement. The Commission finds that ongoing proceedings may be utilized as a form for implementing the policy statement if a pipeline so chooses, subject to approval of the presiding judge. Approval should be granted in cases where implementation of the policy statement in ongoing proceedings appears practically feasible, will not result in inordinate delay, or can be expected to obviate unnecessary or cumulative rate filings with the Commission. In the event approval is granted the presiding judge(s) shall permit pipelines to supplement their filings to the extent necessary to assure compliance with the filing and data requirements set forth herein. However, no new rate filings will be made with the Commission in such cases. Any rates established pursuant to the policy statement guidelines will be permitted to become effective only prospectively upon Commission approval. Presiding judges should decide the matter based on arguments presented by the pipelines and any participants desiring to be heard.

VI. Future Gas Sales Tariffs

This policy statement is designed to deal primarily with costs incurred by interstate pipelines to buy out or buy down accrued take-or-pay obligations under existing contracts. The

[16] *See* Nantahala Power & Light Co. v. Thornburg, 106 S. Ct. 2349 (1986).

Commission emphasizes that piplines should endeavor to restructure their service obligations to customers and their purchase obligation from producers so as to reflect the realities of anticipated further operations. The Commission strongly emphasizes that this policy statement is for yesterday not tomorrow. If this process is successful, future take-or-pay costs should be at least substantially reduced and hopefully eliminated. The Commission intends to consider the design of gas sales rates in more detail in the near future. In the meantime, the Commission encourages all parties and our staff to consider methods of collecting future costs of reserving or contractually committing gas on a current basis so that the charges (1) are known to the customer in advance, (2) are based at least in part on the amount of service the customer has requested, and (3) reflect their pipeline's cost of acquiring firm gas supplies to meet the requested service. The Commission envisions that such costs will be imposed as a separate charge in each customer's monthly bill.

VIII. Scope of Policy Statement

This policy statement does not go beyond the Commission's determination in the April 1985 policy statement that take-or-pay buy-out and buy-down costs do not violate the pricing provision of the NGPA. The policy statement, like that in PL85–1, is not intended to affect take-or-pay prepayments made by pipelines and included in account 165 and in their rate basis. Not would the policy statement decide the issue of whether take-or-pay prepayment to a producer for gas not taken and which cannot be be made up violate the Title I pricing provisions of the NGPA. This policy statement applies only to buy-out and buy-down costs paid by pipelines under existing contracts and is not intended to disturb in any way take-or-pay settlements previously entered into between pipelines and their producer suppliers.

VIII. Public Procedure

This statement articulates the Commission's proposed policy. It does not have the force or effect of law. The Commission has received numerous requests by interested persons for an opportunity to comment on the Commission's proposed take-or-pay policy. Therefore, although not required by section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b) (1982)), the Commission has determined that public notice and comment procedures should be adopted so that all interested persons may have the opportunity to inform the Commission of their views and has by separate notice provided for the filing of such comments. The Commission will consider all comments filed.

By the Commission. Commissioner Sousa concurred with a separate statement attached.

Kenneth F. Plumb,

Secretary.

Sousa, Anthony G., Commissioner, *concurring:*

I concur with and fully support the Commission's decision to issue a proposed statement of policy on recovery of take-or-pay buy-out and buy-down costs by interstate natural gas pipeline companies. I commend my colleagues on their willingness to address this issue.

Almost three years have passed since recognized the existence of the take-or-pay problem as a hindrance to competition in the natural gas industry, in my concurring statement to Order No. 380, Docket No. RM83–71–000, issued May 25, 1984. I suggested there that the Commission adopt a more logical and comprehensive approach to problems besetting the industry by promulgating a rule dealing with take-or-pay concurrently with issuance of Order No. 380. It was clear then that elimination of variable cost minimum bills from pipeline tariffs would exacerbate take-or-pay problems. Elimination of minimum bills would have left certain pipelines with excess gas supplies, which would trigger take-or-pay contracts with their producer-suppliers.

Similarly adoption of Order No. 436 on October 9, 1985, and Order No. 451, issued June 18, 1986, have had similar impacts on take-or-pay provisions. On the issuance of each of these orders I urged the Commission to address the take-or-pay issue. The cumulative impact of Commission actions now makes it imperative that we attempt to resolve the problem.

I wish to reiterate my belief in the sanctity of contracts entered into in good faith at arms length. If however the Commission embarks on an endeavor to establish "guidelines for recovery by pipelines of costs incurred in buying out or reforming existing contracts in a manner designed to spread the impact of these costs in a responsible, fair and equitable manner," [1] then it behooves the Commission to look at the basic or underlying transactions. The 50/50 sharing concept would be meaningless unless the Commission finds that the underlying transaction or bargain is itself reasonable. In the *Transco* case [2] the Commission approved a 50/50 sharing on the assumption that the underlying buy-out/buy-down of approximately an average of $.10 per dollar was reasonable. The policy statement is totally devoid of any reference to assumptions of reasonableness of underlying transactions.

There are other concerns and questions which I articulated at the Commission meeting at which the policy statement was discussed. These include the equitable allocation of buy-out/buy-down costs on the broadest possible basis, including other than just the firm sales customers. I also expressed a concern about the legal sustainability of the 50/50 sharing as an arbitrary allocation in spite of prudent business decisions. I am confident that these and other concerns will be addressed by affected parties in their comments.

Anthony G. Sousa,

Commissioner.

Proposed Alternate Statement of Policy

I support the issuance of the proposed policy statement only because I believe the debate should be broadened. For that reason I also include an alternative policy I believe superior to that proposed.

1. Introduction

There are two grounds upon which the Commission can establish guidelines for cost recovery associated with resolving past take-or-pay contract disputes—equity grounds and efficiency grounds. These grounds are not necessarily contradictory, but may conflict depending on one's view of equity. Under the equity approach, the Commission reviews past practices, behavior, and mistakes to determine who "caused" the take-or-pay problem, and then attempts to construct a remedy that is "fair" to all industry participants. Under the efficiency approach, the Commission looks forward to the competitive market structure it seeks to create, and then attempts to formulate a remedy that induces the industry to move in that direction. The second approach is not only the proper approach for the Commission to follow, it is also an approach that can be defended better on equity grounds than can the approach proposed.

2. The Proposed Statement of Policy

In its proposed Statement of Policy, the Commission has emphasized that the primary objective of the policy is to

[1] Policy Statement p. 2.

[2] 38 FERC ¶ 61,165 (1987).

encourage the timely resolution of take-or-pay contractual disputes in a "reasonable, fair and equitable manner." When reviewing the proposal to determine if it conforms to one's sense of equity, certain facts must be kept in mind.

First, pipelines did not purchase gas only for their firm sales customers. In fact, many pipelines seem to have structured their systems and gas supply arrangements so that interruptible sales customers could always be assured of gas and would be actually interrupted only for transportation capacity contraints. Consequently, such pipelines could not expect to meet the take-or-pay obligations in their gas supply contracts without a large interruptible load.

Second, by authorizing pipelines to recover the customer-allocated shares of take-or-pay buy-out and buy-down costs through a demand surcharge, the Commission is finding that the pipelines have a right to recover those costs outside normal market channels. This finding seems to suggest that the parties have agreed upon terms the market will not accept, and, therefore, the Commission should satisfy those terms by by-passing market discipline. The finding seems contrary to the Natural Gas Policy Act (NGPA), which put pipelines on notice that they are responsible for their own gas supply arrangements *and* the marketability of their gas supply. The NGPA encouraged pipelines to develop their own gas supply portfolios, but at the same time held them accountable for the corresponding risks and responsibilities with respect to the marketability of their gas purchases, including any take-or-pay liabilities associated with such purchases.

Third, it must be recognized that the residential and commercial customers behind local distribution companies (LCD's) have been the only major customer classes which have, by and large, continued to purchase the pipelines' high-priced system-supply gas through this period of mounting take-or-pay liabilities.

From the standpoint of efficiency, a new set of guidelines must be kept in mind. First, Commission policy should attempt to further competitive markets for gas at wellheads and at city gates. Congress concluded in the NGPA that a competitive market was the best way to assure the nation an adequate supply of natural gas at the lowest reasonable cost.

Second, Commission policy should strive to establish competitively-determined prices which are known to contracting parties at the time of contract, and which cannot be changed after the fact by regulatory agencies. Retroactive price setting should not be tolerated. No market can be expected to function efficiently if prices in the market are not known to the contracting parties.

Third, efficiency requires that no firm or group of firms be placed at a competitive disadvantage by regulatory actions when dealing with present or potential future customers. For example, if LDC's are held responsible for all past, present, and future take-or-pay liability resuting from old contracts and are direct billed for such costs, industrial customers behind LDC's will find it extremely advantageous to avoid any surcharge LDCs might put on rates by going directly to pipelines or producers for their gas. Consequently, direct billing presents LDC's and state commissions with the difficult choice of allocating passed-through costs between residential and industrial users and risking the departure of fuel-sensitive industrial users from the system, or allocating most or all such costs to captive users.

Finally, differing cost recovery mechanisms should not be encouraged, preferably not allowed, among competing pipelines. The market should be the mechanism through which pipelines determine what prices they can charge for their gas supplies. Differing regulation-approved cost recovery mechanisms for competitive pipelines inevitably means a regulation-imposed competitive disadvantage for some pipelines. If the market is to be permitted and encouraged to determine the prices that pipelines can charge for gas, the Commission must attempt to ensure that pipelines compete with one another, LDC's, marketers and producers based on real economic forces and managerial skills, not on and for competitive advantages gained in FERC hearing rooms.

3. Alternate Statement of Policy

In crafting an approach that satisfies both equity and efficiency standards, it is desirable to create a two-phased cost recovery program. The first phase of the program is designed to satisfy the "equity" standards, while minimizing the inefficiencies. The second phase of the program is designed to satisfy long-term efficiency considerations once the Phase One "transition period" has been completed.

Specifically, Phase One of the program would consist of the following features:

- The Commission would authorize pipelines, during a 3 (or 4) year transition period, to recover their take-or-pay buy-out and buy-down costs over all units of gas moving through their systems; i.e., pipelines would be allowed to place a per unit surcharge on both transportation and gas volumetric units.
- The Commission would further authorize pipelines to determine when and at what rate they wished to establish the surcharge. The only limitation would be that the surcharge could not be changed more than once a year.
- The pipelines would be authorized to receive a return on their unamortized take-or-pay buy-out/buy-down balances equal to their weighted average cost of capital for the 3 (or 4) year transition period.

The policy would be viewed as transitional, specifically designed to provide pipelines with time to reoptimize their gas supply portfolio.

After the transitional period the Commission would revert to its original policy of attributing take-or-pay to the pipeline's system gas supply. At a later date, the Commission could consider establishing some alternative form of collecting future costs of reserving or contractually committing gas on a current basis.

Charles G. Stalon,

Commissioner.

[FR Doc. 87-5176 Filed 3-10-87; 8:45 am]

BILLING CODE 6717-1-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30276; FRL-3166-5]

Safer, Inc.; Applications To Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by April 10, 1987.

ADDRESS: By mail submit comments identified by the document control number [OPP-30276] and the file symbol to:

Information Services Section (TS-757C), Program Management and Support Division, Attn: Product Manager (PM) 23, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

In person, bring comments to:

Rm. 236, CM#2, Attn: PM 23, Registration Division (TS–767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, PM 23, Rm.237, CM#2, (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing an Active Ingredient Not Included in Any Previously Registered Product

1. *File Symbol: 42697–EE.* Applicant: Safer, Inc., 60 Williams St., Wellesley, MA 02181. Product name: Safer™ Spot Weed And Grass Killer Ready To Use. Herbicide. Active ingredients: Saturated fatty acids 3%. Proposed classification/Use: General. For weed control in walks, driveways, parking areas, and other similar areas. (PM 23)

2. *File Symbol: 42697–ER.* Applicant: Safer, Inc. Product name: Safer™ Weed And Grass Killer Concentrate. Herbicide. Active ingredients: Saturated fatty acids 60%. Proposed classification/Use: General. For weed control in walks, driveways, parking areas, fence lines, right-of-ways, roadsides, and gardens. (PM 23)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: February 19, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87–4975 Filed 3–10–87; 8:45 am]

BILLING CODE 6560–50–M

[SW-FRL-3166-6]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Versar, Inc. (Springfield, VA), and Versar's subcontractors: Radian Corp. (McLean, Va); Jacobs Engineering Group, Inc. (Washington, DC); and Science Applications International Corp. (McLean, VA), information which has been, or will be, submitted to the EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). Some of the information may have a claim of business confidentiality. These firms are working on the collection of data to assist EPA in the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. These firms will need access to the data submitted to EPA under section 3007 of RCRA for the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products, wood preserving rubber processing and chlorinated organics manufacturing industries.

DATE: The transfer of the confidential data submitted to EPA will occur no sooner than March 18, 1987.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data".

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4670. For technical information contact Ms. Cynthia Collins, Office of Solid Waste, Waste Treatment Branch (WH–565A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–7917.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

In November, 1984, Congress enacted amendments to the Resource Conservation and Recovery Act (RCRA) requiring the Agency to establish standards for treatment of hazardous wastes prior to land disposal. A major portion of this program involves identifying generators and treaters of these wastes and collection performance data from existing full-scale technologies.

Under EPA Contract No. 68–01–7053, Versar, Inc. and its subcontractors: Radian Corp.; Jacobs Engineering Group, Inc.; and Science Application International Corp., will assist in conducting studies within the organic chemicals, inorganic chemicals, petroleum refining plastics, pesticides, dyes & pigments, coke by-products, wood preserving, rubber processing, and chlorinated organics manufacturing industries.

The information being transferred to Versar and its subcontractors was previously collected by other agency contractors and is specific to the above-noted industries. Some of the information being transferred may have been claimed as confidential business information (CBI).

In accordance with 40 CFR 2.305(h), EPA has determined that Versar and its subcontractors' employees require access to CBI submitted to EPA under section 3007 of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of information under Section 3007 of RCRA that EPA may transfer to these firms, on a need-to-know basis, CBI specific to the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes & pigments, coke by-products,

wood preserving, rubber processing, and chlorinated organics manufacturing industries. Upon completing their review of materials submitted for these industries, Versar and its subcontractors will return all such materials to EPA.

Versar and its subcontractors have been authorized to have access to RCRA CBI under the the EPA "Contractors Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA has approved the security plan of its contractors and will inspect the facilities and approve them prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contract Requirements Manual.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of information, Confidential business information.

Dated March 2, 1987.

J.W. McGraw, Jr.,

Acting Assistant Administrator.

[FR Doc. 87-5115 Filed 3-10-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. 87-229]

Application To Withdraw Securities From Listing and Registration on the National Association of Securities Division Automatic Quotation System and Opportunity for Hearing; Carteret Savings Bank, FA; Technical Correction

March 5, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice; technical correction.

SUMMARY: The Federal Home Loan Bank Board ("Board") adopted on January 16, 1987, a Notice of Application to Withdraw Securities From Listing and Registration on the National Association of Securities Divison Automatic Quotation System and Opportunity for Hearing; Carteret Savings Bank, FA. This notice was published on pp. 2605-2606 of the **Federal Register** of Friday, January 23, 1987. Inadvertently the Resolution Number of the notice was incorrectly reported. This technical amendment corrects that error. This correction is needed in order for the Board's Office of the Secretariat to keep its records consistent and correct.

Accordingly, the Board corrects on page 2605, third column, by changing "[No. 87-74]" to read "[No. 87-72]".

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-5077 Filed 3-10-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Commission Order No. 1, Amdt. No. 10]

Organization and Functions

As a result of the recent reorganization of the Commission staff, the Bureau of Agreements and Trade Monitoring has become the Bureau of Trade Monitoring and the Bureau of Tariffs has become the Bureau of Domestic Regulation. In addition, the function of processing marine terminal agreements has been transferred from the former Bureau of Agreements and Trade Monitoring to the newly formed Bureau of Domestic Regulation.

The Commission is contemplating a complete revision to Commission Order No. 1. However, in order to reflect, on an interim basis, the changes effected by the recent reorganization and avoid any administrative problems, Commission Order No. 1 is amended to reflect the organizational changes and transfer of functions as follows:

(1) All references in Commission Order No. 1 to the Bureau of Agreements and Trade Monitoring are deleted and amended to read the Bureau of Trade Monitoring;

(2) All references in Commission Order No. 1 to the Bureau of Tariffs are deleted and amended to read the Bureau of Domestic Regulation; and

(3) All delegations of authority in section 8 of Commission Order No. 1 pertaining to marine terminal agreements are redelegated to the Director, Bureau of Domestic Regulation, in addition to the other delegations to the Director, Bureau of Domestic Regulation in section 9 of Commission Order No. 1.

Dated: March 5, 1987.

Edward V. Hickey, Jr.

Chairman.

[FR Doc. 87-5070 Filed 3-10-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Larry Collins et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 25, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Larry Collins,* Portland, Tennessee; to acquire up to 51 percent of the voting shares of Volunteer State Bancshares, Inc., Portland, Tennesee, and thereby indirectly acquire Volunteer State Bank, Portland, Tennessee.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Alvin J. Siteman,* St. Louis, Missouri; to retain ownership of 14.29 percent of the voting shares of Mark Twain Bancshares, Inc., St. Louis, Missouri, and thereby indirectly acquire Mark Twain Bank, National Association, St. Louis, Missouri, and Mark Twain Kansas City Bank, Kansas City, Missouri.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Commercial Landmark Corporation Employee Stock Ownership Plan for Commercial Bank & Trust Co.,* Muskogee, Oklahoma; Commercial Landmark Corporation Employee Stock Ownership Plan for Commercial National Bank, Tulsa, Oklahoma; Commercial Landmark Corporation Employee Stock Ownership Plan for First National Bank, Tahlequah, Oklahoma; and Commercial Landmark Corporation Employee Stock Ownership Plan for First National Bank, Ft. Gibson, Oklahoma; acting in concert under the

direction of the co-trustees, Bert O. Baker, Jerry B. Baker, and Dave L. Blakeburn, to retain 12.19 percent of the voting shares of Commercial Landmark Corporation, Muskogee, Oklahoma, and thereby indirectly acquire First National Bank, Fort Gibson, Fort Gibson, Oklahoma; Commercial Bank and Trust Company, Muskogee, Oklahoma; First National Bank, Tahlequah, Oklahoma; and Commercial National Bank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, March 5, 1987.

James McAfee,

Associate Secretary of the Board

[FR Doc. 87-5085 Filed 3-10-87; 8:45 am]

BILLING CODE 6210-01-M

Hartford National Corp. et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 30, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Hartford National Corporation,* Hartford, Connecticut; to acquire 100 percent of the voting shares of the stock savings bank successor to Savings and Loan Association of Southington, Inc., Southington, Connecticut. Comments on this application must be received by March 27, 1987.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Raritan Bancorp, Inc.,* Raritan, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of The Raritan Savings Bank, Raritan, New Jersey. Comments on this application must be received by March 31, 1987.

2. *Washington Bancorp, Inc.,* Hoboken, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Washington Savings Bank, Hoboken, New Jersey.

C. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Citizens & Northern Corporation,* Ralston, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens & Northern Bank, Ralston, Pennsylvania.

2. *Dime Financial Corp.,* West Chester, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Dime Savings Bank of Chester County, West Chester, Pennsylvania.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Putnam-Greene Financial Corporation,* Eatonton, Georgia; to become a bank holding company by acquiring 51 percent of the voting shares of both The Farmers Bank, Union Point, Georgia, and The Farmers and Merchants Bank, Eatonton, Georgia..

2. *SunTrust Banks, Inc.,* Atlanta, Georgia, and Sun Banks, Inc., Orlando, Florida; to acquire 15 percent of the voting shares of Florida West Coast Banks, Inc., Venice, Florida, and thereby indirectly acquire First National Bank of Venice, Venice, Florida.

E. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Alliance Financial Corp.,* Dearborn, Michigan; to acquire 100 percent of the voting shares of Michigan Bank-Huron, East Tawas, Michigan. Comments on this application must be received by March 27, 1987.

2. *Greater Chicago Financial Corp.,* Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Austin Bank of Chicago, Chicago, Illinois. Comments on this application must be received by March 31, 1987.

F. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Community Bancorp, Inc.* and First Banks, Inc., Manchester, Missouri; to acquire at least 51 percent of the voting shares of The First National Bank of Pittsfield, Pittsfield, Illinois. Comments on this application must be received by March 26, 1987.

2. *Mercantile Bancorporation, Inc.,* St. Louis, Missouri; to acquire 100 percent of the voting shares of Mercantile Bank of Delaware, New Castle, Delaware, a *de novo* bank. Comments on this application must be received by March 31, 1987.

3. *West Tennessee Bancorp, Inc.,* Lexington, Tennessee; to become a bank holding company by acquiring at least 86.36 percent of the voting shares of Henderson County Bank, Lexington, Tennessee. Comments on this application must be received by March 31, 1987.

G. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *State Bank of Lake Elmo Employee Stock Ownership Plan and Trust,* Lake Elmo, Minnesota; to become a bank holding company by acquiring 45.3 percent of the voting shares of Lake Elmo Bancorp, Inc., Lake Elmo, Minnesota, and thereby indirectly acquire State Bank of Lake Elmo, Lake Elmo, Minnesota. Comments on this application must be received by March 27, 1987.

H. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Richmark Bancshares, Inc.,* Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Richmark Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Spring Woods Bank, Houston, Texas, and Richmark Bank, N.A., Houston, Texas. Comments on this application must be received by March 31, 1987.

Board of Governors of the Federal Reserve System, March 5, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-5086 Filed 3-10-87; 8:45 am]

BILLING CODE 6210-01-M

National Westminster Bank PLC et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation

Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 27, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *National Westminster Bank PLC*, London, England, and NatWest Holdings, Inc., New York, New York; to engage *de novo* through its subsidiary, County NatWest Capital Markets, Inc., New York, New York, in making, acquiring, or servicing loans or other extensions of credit for the Company's account or for the account of others, such as would be made by a commercial finance company pursuant to section 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to engage *de novo* through its subsidiary, Sovran Life Insurance Company, Phoenix, Arizona, in underwriting, as reinsurer, credit life and credit disability insurance which is directly related to extensions of credit by the credit extending affiliates of Sovran Financial Corporation pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Alabama, Arkansas, District of Columbia, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, Ohio, South Carolina, Tennessee, and West Virginia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Associated Banc-Corp.*, Green Bay, Wisconsin; to engage *de novo* through its subsidiary, Associated Mortgage, Inc., Green Bay, Wisconsin, in mortgage banking pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in the State of Illinois.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Dean Holbein and Associates, Inc.*, Lincoln, Nebraska; to engage *de novo* through its subsidiary, Security State Insurance Agency, Holbrook, Nebraska, in the sale of insurance in a community of less than 5,000 in population pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. This activity will be conducted in the community of Holbrook, Nebraska.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Ammex Holding Company*, Los Angeles, California; to engage *de novo* in the issuance and sale of consumer-type payment instruments denominated in Mexican pesos pursuant to § 225.25(b)(12) of the Board's Regulation Y. Comments on this application must be received by March 31, 1987.

2. *The Mitsubishi Bank, Limited*, Tokyo, Japan; to engage *de novo* through its subsidiary, Mitsubishi Bank Trust of New York, New York, New York, in underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16) of the Board's Regulation Y. Comments on this application must be received by March 30, 1987.

Board of Governors of the Federal Reserve System, March 5, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-5087 Filed 3-10-87; 8:45 am]

BILLING CODE 6210-01-M

United Financial Banking Companies, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under section 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 31, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *United Financial Banking Companies, Inc.*, Vienna, Virginia; to acquire Potomac Mortgage Bankers Corporation, Alexandria, Virginia, and thereby engage in making and servicing mortgage loans; and arranging commercial real estate equity financing pursuant to §§ 225.25(b)(1)(iii) and (b)(14) of the Board's Regulation Y.

2. *United Financial Banking Companies, Inc.*, Vienna, Virginia; to acquire Gerard F. Holcomb & Company, Inc., Washington, D.C., and thereby engage in making and servicing mortgage loans; and arranging commercial real estate equity financing pursuant to §§ 225.25(b)(1)(iii) and (b)(14) of the Board's Regulation Y.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Independent Bankers Financial Corporation*, Irving, Texas; to acquire T I H Company, Irving, Texas, and thereby engage, through T I H's subidiary, Southland Trust Company, Dallas, Texas, in activities of a trust company of a fiduciary, agency or custodial nature pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in the State of Texas. Comments on this application must be received by March 27, 1987.

Board of Governors of the Federal Reserve System, March 5, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-5088 Filed 3-10-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Safe Exposure Levels to Agent XV; Meeting

ACTION: Notice of Meeting—Safe Exposure Levels to Agent VX.

Time and date:
8:30 a.m.–5:00 p.m.—April 2, 1987
8:30 a.m.–1:00 p.m.—April 3, 1987
Place: Presidential Hotel, 4001 Presidential Parkway, Atlanta, Georgia 30340-3708
Status: Open

Matters to be Discussed: This meeting is being convened to discuss issues related to safe exposure levels to chemical warfare agent VX (CAS 50782-69-9). The purpose of the meeting is to enable the Surgeon General to make sound recommendations for the protection of the general public and of workers engaged in transportation or destruction of VX.

The meeting will be open to the public limited only by the space available. The meeting room accommodates approximately 50 people.

Contact person for more information: Additional information concerning the meeting may be obtained from: Ginny Jones, Program Specialist, Special Programs Group, CEH, CDC, 1600 Clifton Road NE., Atlanta GA 30333. Telephones: FTS: 236-4595.
Commercial: 404/454-4595.

Dated: March 5, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-5078 Filed 3-10-87; 8:45 am]

BILLING CODE 4160-18-M

Vessel Sanitation Inspection Program

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice of resumption of sanitation inspections of international cruise ships by agency inspectors.

SUMMARY: The Centers for Disease Control (CDC) is taking immediate steps to resume periodic sanitation inspections by agency inspectors of cruise ships that have international itineraries and call at U.S. ports.

EFFECTIVE DATE: March 6, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Laurence S. Farer, Director, Division of Quarantine, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333.

SUPPLEMENTARY INFORMATION: The CDC Vessel Sanitation Inspection Program is conducted under the authority of sections 361(a) and 366(c) of the Public Health Service Act (42 U.S.C. 264(a) and 269(c)). Regulations governing this program are Title 42, Part 71, of the Code of Federal Regulations.

A notice of program restructuring of the Vessel Sanitation Inspection Program for cruise ships that have international itineraries and call at U.S. ports was published in the **Federal Register** (51 FR 13560) on April 21, 1986. Effective April 30, 1986, periodic sanitation inspections of such vessels by agency inspectors and publication of inspection results were discontinued.

The restructuring action elicited interest and concern from consumers, State and local health officials, and the media, as well as Congress, which directed CDC to resume its prior cruise ship sanitation inspection activities.

As announed in the **Federal Register** (52 FR 2870) on January 28, 1987, a meeting of technical consultants was held on January 30, 1987, and a public meeting was held on February 18, 1987, to comment on a draft of the operations manual of the Vessel Sanitation Program. A revised manual has since been developed and distributed to the cruise line industry and other interested parties. A copy of the manual is available upon request.

The Centers of Disease Control (CDC) is resuming sanitation inspections of cruise ships as part of the Vessel Sanitation Program during the first week of March and is also resuming publication of inspection results. The Vessel Sanitation Program is a cooperative activity between the cruise ship industry and the U.S. Public Health Service, carried out under the authorities of the Public Health Service Act and Public Health Service regulations. The program contains two elements:

- An ongoing sanitation program conducted by industry, and;
- CDC oversight, including complete, unannounced, periodic inspections of all vessels in the Vessel Sanitation Program, conducted by CDC, to ensure that the industry's own sanitation programs are working properly.

The goal of the Vessel Sanitation Program is to achieve and maintain a level of sanitation aboard ships that will minimize the risk of outbreaks of gastrointestinal disease and provide a healthful environment for passengers and crew.

CDC is responsible for oversight of the Vessel Sanitation Program. CDC's oversight, in addition to technical assistance and consultation to the cruise ship industry, will consist of periodic inspections, and, when necessary, reinspections, followup and other inspections, conducted independently by CDC inspectors on all vessels in the Vessel Sanitation Program; technical consultation on new construction and on major refitting of older ships; investigation of disease outbreaks when they occur; publication of inspection results; and provision of inspection reports on individual vessels to the public on request.

Contractors with cruise lines can perform sanitation inspections as a supplement to, but not in lieu of, the routine periodic inspections by CDC. If the owner/operator of a vessel so wishes, the results of such inspections can be published by CDC and made available to the public, along with those of CDC-conducted inspections, provided that certain requirements are met. Among these are that the inspections must strictly adhere to the procedures in the CDC operations manual, be unannounced, and be performed by qualified inspectors.

Dated: March 5, 1987.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87-5079 Filed 3-10-87; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 87M-0042]

CTL, Inc.; Premarket Approval of Customeyes™-42 L (Tetrafilcon A) Tinted Hydrophilic Contact Lens and CTL-M (Tetrafilcon A) Tinted Hydrophilic Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CTL, Inc., Raleigh, NC, for premarket approval, under the Medical Device Amendments of 1976, of the spherical CustomsEyes™-42 L (tetrafilcon A) Tinted Hydrophilic Contact Lens and CTL-M (tetrafilcon A) Tinted Hydrophilic Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by April 10, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On August 12, 1985, CTL, Inc., Raleigh, NC 27612, submitted to CDRH an application for premarket approval of the CustomEyes™-42 L (tetrafilcon A) Tinted Hydrophilic Contact Lens and CTL-M (tetrafilcon A) Tinted Hydrophilic Contact Lens. These tinted lenses are indicated for daily wear in a power range of −9.75 diopters (D) to +6.50 D for persons who have spherical ametropias, corneal astigmatism of 2.50 D or less, and/or refractive astigmatism of 2.00 D. Ciba Vision Care, Atlanta, GA, is to supply the clear (untinted) finished lenses to CTL, Inc. The CustomEyes™-42 L (tetrafilcon A) Tinted Hydrophilic Contact Lenses are indicated for color enhancement of the eye, altering the apparent color of the eye, or ocular masking. The CTL-M (tetrafilcon A) Tinted Hydrophilic Contact Lenses are indicated for ocular masking. CTL, Inc., will tint the lenses blue, green, aqua, brown, or yellow with one or more of the four color additives (Permatint™ lens colors) in accordance with the color additive listing provisions of 21 CFR 73.3117, 73.3118, 73.3119, and 73.3120. The lenses are to be disinfected using either a heat or chemical lens care system.

On October 17, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 30, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved lebeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the approved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 10, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 27, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87-5080 Filed 3-10-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87M-0031]

Intermedics, Inc.; Premarket Approval of the Intertach™ Model 262-12 Pulse Generator, Model 522-06 Programmer, Model 531-09 Program Module, and Model 540-02 Decoder

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its

approval of the application by Intermedics, Inc., Freeport , TX, for premarket approval, under the Medical Device Amendments of 1976, of the Intertach™ Model 262–12 Pulse Generator Model 522–06 Programmer, Model 531–09 Program Module, and Model 540–02 Decoder. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for Administrative review by April 10, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald F. Dahms, Center for devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

SUPPLEMENTARY INFORMATION: On March 3, 1986, Intermedics, Inc., Freeport, TX 77541–0617, submitted to CDRH an application for premarket approval of the Intertach™ Model 262–12 Pulse Generator, Model 522–06 Programmer, Model 531–09 Program Module, and Model 540–02 Decoder. The device is indicated for cardiac pacing as specified in the approved labeling, but principally in the prevention of recurrent sustained episodes of tachycardia for atrial applications which include, but are not limited to the following pace-terminable conditions: Episodes of recurrent supraventricular tachycardia, e.g., atrial flutter, recurrent atrioventricular reciprocating tachyarrhythmias, as in Wolff-Parkinson-White syndrome, and other atrioventricular accessory pathway tachyarrhythmias. Evaluation of appropriate electrophysiologic data must always precede the use of a tachycardia response mode of the Intertach™ Model 262–12 Pulse Generator for treatment of supraventricular tachyarrhythmias. It is also indicated for long-term atrial pacing as detailed in the approved labeling.

On October 24, 1986, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 31, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Donald F. Dahms (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 10, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 27, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87–5081 Filed 3–10–87; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Availability of Funds for the Establishment of Native Hawaiian Child Development Centers in the State of Hawaii

AGENCY: Health Resources and Services Administration.

ACTION: Notice of Potential Availability of Funds.

SUMMARY: The Administration is requesting a rescission of the categorical funding appropriated for Native Hawaiian child development centers. This notice regarding applications does not reflect any change in this policy. However, should the rescission not be approved by the Congress, this solicitation of applications will assure that grants can be awarded in a timely fashion as well as provide for even distribution of funds throughout the fiscal year.

Up to $1 million may be available to provide one-time funding for the establishment of a series of child development community-based centers in the State of Hawaii to address the health care needs of Native Hawaiian children and their families.

DATE: To receive consideration competing applications for a grant under this authority must be received by the close of business on May 1, 1987.

ADDRESS: Application for grants is made on PHS form 5161–1 (approved under OMB #0348–0006). Specific grant application guidelines, application forms and additional information regarding business, administration or fiscal issues related to the awarding of grants under this notice may be obtained from: Mr. Waddell Avery, Chief, Grants Management Branch, Bureau of Health Care Delivery and Assistance (BHCDA), HRSA, Room 6–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Office of the Director, Division of Maternal and Child Health, BHCDA, HRSA, Room 6–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2170.

SUPPLEMENTARY INFORMATION: Pub. L. 99–591 appropriated $1 million to support the establishment of a series of

community-based child development centers in the State of Hawaii. It is anticipated that the full amount appropriated will be awarded to one successful applicant. The Conference Report accompanying the passage of the appropriations bill specified that a successful applicant under this program must provide a match of the grant of at least the amount of the grant, i.e., a 50–50 match.

Also in accordance with language included in the Conference Report to the bill appropriating these funds, we intend to make these funds available to an applicant organization which has demonstrated a commitment to serving the needs of Native Hawaiians, especially in the area of early childhood health care needs. HRSA intends to make these funds available to be expended over a two-year period of support. The program should have two major components: a comprehensive needs assessment of the Hawaiian/part-Hawaiian population and available services for this population and the development and implementation of model family educational and service centers for the same population. Preference will be given to the applicants that demonstrate a commitment to using third-party reimbursements to continue the level of effort established through this grant. The purpose of the family educational and health service center is to provide a health educational component to families with children and to serve children from the prenatal period through the age of five when kindergarten begins.

Applicants for funding under this announcement will be considered if they are a public or private organization which: (a) has demonstrated a commitment to provide services to Native Hawaiians; and (b) has the ability to provide the required matching funds.

General regulations of the Department relating to the management of grants (45 CFR Part 74) will apply to this grant.

Executive Order 12372: This program is considered to be subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The State of Hawaii has chosen to set up such a review system and has named Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804, as the point of contact in the State for this review. For information contact: Hawaii State Clearinghouse, telephone: 808–548–3016 or 808–548–3085. Since States are allowed 60 days for this review, applicants are advised to discuss projects with, and provide copies of their applications to, the State contact point as early as possible. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to the Grants Management Branch, BHCDA.

OMB Catalog of Federal Domestic Assistance: Funding for this program is available for one-time-only grant support of a very specific activity and is not included in the OMB Catalog of Federal Domestic Assistance.

Dated: March 4, 1987.

David N. Sundwall,

Administrator.

[FR Doc. 87–5082 Filed 3–10–87; 8:45 am]

BILLING CODE 4160–15–M

Availability of Funds for Projects To Provide Health Services in the Pacific Basin

AGENCY: Health Resources and Services Administration.

ACTION: Notice of Potential Availability of Funds.

SUMMARY: The Administration is requesting a rescission of the categorical funding appropriated for health services in the Pacific Basin. This notice regarding applications does not reflect any change in this policy. However, should the rescission not be approved by Congress, this solicitation of applications will assure that grants can be awarded in a timely fashion as well as provide for even distribution of funds throughout the fiscal year.

Up to $1.5 million may be available under Section 301 of the Public Health Service Act, 42 U.S.C. 241, to provide one-time funding for a two-year project period: (1) To build capacity and improve health services and systems, particularly preventive health services, in the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau, and (2) to provide technical assistance relative to such projects.

DATE: To receive consideration, mailed applications must be received no later than 3:30 P.M. Pacific Daylight time on June 15, 1987.

ADDRESS: Application for grants is made on PHS form 5161–1 (approved under OMB #0348–0006). Grant application guidelines, applications forms and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be obtained from: Mr. Alan S. Harris, Chief, Office of Grants Management, Public Health Service, Region IX, Room 335, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–2595.

FOR FURTHER INFORMATION CONTACT: Sheridan L. Weinstein, M.D., Regional Health Administrator, Region IX, U.S. Public Health Service, Room 327, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–5810.

SUPPLEMENTARY INFORMATION: The Continuing Resolution making appropriations for the Department of Health and Human Services for Federal fiscal year 1987 (Pub. L. 99–591) provided $1.5 million under the authority of section 301 of the Public Health Service Act, for projects to provide health services in the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau. The provision of technical assistance relating to such projects is also authorized under the appropriation.

The funds were appropriated in order to begin implementation of recommendations of a report of the U.S. Public Health Service entitled "A Report to the Congress on Health Services in the United States Pacific Island Jurisdictions." Copies of this report are available by writing to the Regional Health Administrator at the address stated above. In regard to this funding, the Senate Appropriations Committee Report (S. Rept. 99–408, August 15, 1986) stated its expectation that priority would be given to health service projects that are preventive in nature, including sanitation, childhood immunization, mental health, maternal and child health initiatives and development of an infrastructure for supporting effective local public health programs. HRSA intends (considering the number and quality of applications and the relative needs of the respective populations to be served) to make awards in accord with these priorities. Funds will be made available to be expended by grantees over a 2-year period of support for Pacific Basin projects. Priority will also be given to two-year health projects that will become self-sufficient after two years. In recognition of these priorities and the amount of funding available, applications which propose project costs

related to construction, acquisition or renovation of health facilities and costs of health care which otherwise would be the legal responsibility of the local jurisdiction will not receive favorable consideration.

The Senate Committee Report recognized that the expertise to develop appropriate priorities for the expenditure of these funds exists within the Public Health Service in the San Francisco Regional Office (Region IX).

Therefore, the Regional Health Administrator, Region IX, will be responsible for appointing a project officer, supervising and monitoring any grants made from these funds and maintaining official grant files on any such awards. An objective review of applications will be conducted by the Bureau of Health Care Delivery and Assistance, HRSA, with representation from the regional office. The grant awards will be issued by the Bureau.

General regulations of the Department relating to the management of grants (45 CFR Part 74) will apply to this grant.

Executive Order 12372

This program is considered to be subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100. Executive Order 12372 allows States/territories the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Guam and the Commonwealth of the Northern Mariana Islands have established such contact points for this review and application packages to be made available under this notice will provide information on the point of contact in these jurisdictions. Since 60 days is allowed for this review, applicants are advised to discuss projects with, and provide copies of their applications to, contact points as early as possible. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to the Grants Management Branch, Region IX.

OMB Catalog of Federal Domestic Assistance: Funding for this program is available for the one-time-only grant support of a very specific activity and is not included in the OMB Catalog of Federal Domestic Assistance.

Dated: March 4, 1987.

David N. Sundwall,

Administrator.

[FR Doc. 87-5083 Filed 3-10-87; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

President's Council on Physical Fitness and Sports; Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act.

DATE: March 26, 1987, 9:00 a.m. to 2:00 p.m.

ADDRESS: Rayburn House Office Building, Room B-318, Independence Avenue & South Capitol Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ash Hayes, Ed.D., Executive Director, President's Council on Physical Fitness and Sports, 450 Fifth Street, NW., Suite 7103, Washington, DC 20001, Telephone: (202) 272-3421.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order 12345, as amended, extended by Executive Order 12534 dated September 30, 1985, further amended by Executive Order 12539 dated December 3, 1985. The functions of the Council are: (1) To advise the President and Secretary concerning progress made in carrying out the provision of the Executive Order and recommending to the President and Secretary, as necessary actions to accelerate progress; (2) advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports activities; (3) advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the Council members of the national program of physical fitness and sports, to report on on-going Council programs, and to plan for future directions.

Dated: March 5, 1987.

Ash Hayes,

Executive Director, President's Council on Physical Fitness and Sports.

[FR. Doc. 87-5119 Filed 3-10-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska State Office; Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48635-AP has been received covering the following lands:

Copper River Meridian, Alaska

T. 12 N., R. 7 W.,
Sec. 10, SW¼.
(160 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from June 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48635-AP as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1986, subject to the terms and conditions cited above.

Dated: March 2, 1987.

Sue A. Faught,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 87-5130 Filed 3-10-87; 8:45 am]

BILLING CODE 4310-JA-M

[WY-920-07-4111-15-7001; W-63021]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-63021 for lands in Western County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral

Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–63021 effective May 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87–5131 Filed 3–10–87; 8:45 am]

BILLING CODE 4310–22–M

Minerals Management Service

[Des 87–8]

Availability of Draft Environmental Impact Statement and Locations and Dates of Public Hearings on the Proposed Chukchi Sea Lease Sale 109, Alaska

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1988 Outer Continental Shelf oil and gas lease sale of available unleased blocks in the Chukchi Sea. The proposed Chukchi Sea Sale 109 will offer for lease approximately 29.5 million acres. The draft EIS contains, among other things, an evaluation pursuant to section 810, Alaska National Interest Lands Conservation Act (ANILCA).

Single copies of the draft EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4302, Attention: Public Information. Copies can also be requested by telephone, (907) 261–4435.

Copies of the draft EIS will also be available for inspection in the following public libraries: Arctic Environmental Information and Data Center, University of Alaska, 707 A Street, Anchorage, Alaska; Army Corps of Engineers Library, U.S. Department of Defense, Anchorage, Alaska; Alaska Resources Library, U.S. Department of the Interior, Anchorage, Alaska; University of Alaska, Anchorage Consortium Library, 3211 Providence Drive, Anchorage Alaska; Fairbanks North Star Borough Public Library (Noel Wien Library), 1215 Cowles Street, Fairbanks, Alaska; Elmer E. Rasmuson Library, 310 Tanana Drive, Fairbanks, Alaska; Alaska State Library, Juneau, Alaska; Alaska Field Operation Center Library, U.S. Department of Interior, Bureau of Mines, Juneau, Alaska; Juneau Memorial Library, 114–4th Street, Anchorage, Alaska; Kenai Community Library, 163 Main Street Loop, Kenai, Alaska; University of Alaska-Juneau, Library, 11120 Glacier Highway, Juneau, Alaska; Kettleson Memorial Library, Sitka, Alaska; Soldotna Public Library, 235 Binkley Street, Soldotna, Alaska; Alakanuk Public Library, Alakanuk, Alaska; North Slope Borough School District Library/Media Center, Barrow, Alaska; Brevig Mission Community Library, Brevig Mission, Alaska; Buckland Public Library, Buckland Alaska; Davis Menadelook Memorial H.S. Library, Diomede, Alaska; Elim Community Library, Elim, Alaska; Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska; University of Alaska, Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska; Gambell Community Library/Learning Center, Gambell, Alaska; Golovin Community Library, Golovin, Alaska; Kaveolook School Library, Kaktovik, Alaska; Kiana Elementary School Library, Kiana, Alaska; McQueen School Library, Kivalina, Alaska; George Francis Memorial Library, Kotzebue, Alaska; Koyuk City Library, Koyuk, Alaska; Kegoayah Kozga Public Library, Nome, Alaska; Noorvik Elementary/High School Library, Noorvik Alaska; Tikigaq Library, Point Hope, Alaska; Savoonga Community Library, Savoonga, Alaska; Shaktoolik School Library, Shaktoolik, Alaska; Nellie Weyiouanna Ilisaavik Library, Shishmaref, Alaska; Stebbins Community Library, Stebbins, Alaska; Ticasuk Library, Unalakleet, Alaska; Kingikme Public Library, Wales, Alaska; and Nuiqsut Library, Nuiqsut, Alaska.

In accordance with 30 CFR 256.26, the MMS will hold public hearings to receive comments and suggestions relating to the EIS. The hearings are also being held for the purpose of receiving comments and suggestions regardings subsistence pursuant to ANILCA.

The hearings will be held on the following dates and times indicated:

April 10, 1987

North Slope Borough Assembly Chambers, Barrow, Alaska, 7:00 p.m.

April 13, 1987

Community Center, Point Hope, Alaska, 7:00 p.m.

April 14, 1987

Community Center, Point Lay Alaska, 7:00 p.m.

April 15, 1987

City Office Building, Wainwright, Alaska, 7:00 p.m.

April 22, 1987

University Plaza Building, 949 East 36th Avenue, Room 601, Anchorage Alaska, 12 noon.

The hearings will provide the Secretary of the Interior with information from Government Agencies and the public which will help in the evaluation of the potential effects, including effects on subsistence, uses, of the proposed lease sale.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearings are asked to contact the Regional Director at the above address or Laura Yoesting by telephone, (907) 261–4659, by Wednesday, April 8, 1987.

Time limitations may make it necessary to limit the length of oral presentations to 10 minutes. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentation or by mail until May 5, 1987. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Comments concerning the draft EIS will be accepted until May 5, 1987, and should be addressed to the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4302.

William D. Bettenberg,

Director, Minerals Management Service.

Approved: March 6, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87–5174 Filed 3–10–87; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[332–244]

Impact Investigation; Use and Economic Impact of TSUS Items 806.30 and 807.00

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: The Commission instituted the investigation, No. 332–244, under section 332(b)a of the Tariff Act of 1930, (19 U.S.C. 1332(b)) following the receipt of a letter from the Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of

Representatives, requesting that the Commission conduct an investigation concerning the use and economic impact of TSUS items 806.30 and 807.00.

EFFECTIVE DATE: March 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Watkins or Ms. Pamela McGuyer, General Manufacturers Division, Office of Industries, U.S. International Trade Commission, Washington, D.C. 20436 (telephone 202-724-0976 or 202-724-1746, respectively).

SUPPLEMENTARY INFORMATION: As requested by the Subcommittee on Trade, the Commission report will analyze and address: (1) The legislative history and background of TSUS items 806.30 and 807.00; (2) trends in imports under these provisions during the period 1980–86 as compared with 1969; (3) the extent to which foreign-owned rather than U.S.-owned entitles control offshore processing and/or assembly operations using items 806.30 and 807.00, and the degree to which foreign-rather than U.S.-origin materials and components are incorporated in these operations; (4) the interrelationships and relative importance of items 806.30 and 807.00 and preferential duty-free entry under the provisions of the Generalized System of Preferences and the Caribbean Basin Economic Recovery Act; (5) the relative importance of duty savings under items 806.30 and 807.00 compared with various cost factors; (6) the influence of non-cost factors on the selection of production, processing, and assembly locations; (7) the impact of these tariff provisions on the domestic and international competitiveness of industries in the United States during 1980–86; and (8) estimates of the impact of items 806.30 and 807.00 on various aspects of U.S. employment during that period.

Where applicable, the analysis will provide details regarding industry groupings involved and foreign sources of the imports under items 806.30 and 807.00. Import data will be presented biennially for the period 1980–86. Where appropriate, comparisons will be made with the situation in 1969, the last year of the period covered by the Commission's previous comprehensive study of these issues.

The Commission expects to transmit its report to the Subcommittee on or before October 5, 1987.

Written Submissions

No public hearing is planned. However, interested persons are invited to submit written statements concerning the investigation. Such submissions should be received by the close of business on June 10, 1987. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6) All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 701 E Street NW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002. Persons with mobility impairments who will need special asistance in gaining access to the Commission should contact the Office of the Secretary at (202) 523–0161.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 5, 1987

[FR Doc. 87-5194 Filed 3-10-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-259]

Certain Battery-Powered Smoke Detectors; Termination of Investigation as to Two Respondents on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination granting a motion to terminate the investigation as to two respondents on the basis of a settlement agreement.

SUMMARY: On January 13, 1987, complainants Pittway Corporation and BRK/Colorado, Inc. and respondents Emhart Corporation and Notifier Company filed a joint motion to terminate the investigation on the basis of a settlement agreement. On February 4, 1987, the presiding administrative law judge issued an initial determination (ID) granting the motion to terminate the investigation. The Commission determined not to review the ID.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202–523–1693.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202–724–0002.

Issued: March 2, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-5187 Filed 3-10-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-242]

Certain Dynamic Random Access Memories, Components Thereof, and Products Containing Same; Commission Determination Not To Review Initial Determination Terminating Two Respondents on the Basis of a Settlement and License Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Termination of two respondents, Toshiba Corporation and Toshiba America, Inc., on the basis of a settlement and license agreement.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 275) terminating respondents Toshiba Corporation and Toshiba America, Inc. (the Toshiba respondents) in the above-captioned investigation on the basis of a settlement and license agreement.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

SUPPLEMENTARY INFORMATION: On January 28, 1987, complainant Texas Instruments Incorporated (TI) and the

Toshiba respondents filed a joint motion to terminate this investigation as to the Toshiba respondents on the basis of a license and settlement agreement. The Commission investigative attorney filed a response supporting the motion. The presiding administrative law judge issued an ID on February 5, 1987, terminating the Toshiba respondents on the basis of the settlement and license agreement. No petitions for review or comments from Government agencies or the public concerning the ID were received.

The authority for the Commission's action is found in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Rules of Practice and Procedure (19 CFR 210.53).

Copies of the nonconfidential ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: March 2, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–5188 Filed 3–10–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–242]

Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same; Commission Decision to Deny an Application for Interlocutory Review of the Presiding Administrative Law Judge's Denial of Two Motions for Summary Determination

AGENCY: U.S. International Trade Commission.

ACTION: Denial of an application for interlocutory review of the presiding administrative law judge's denial of two motions for summary determination.

SUMMARY: On October 27, 1986, respondents NEC Corp. and NEC Electronics, Inc., (collectively "NEC") filed an application for interlocutory review of an order by the presiding administrative law judge (ALJ) which denied NEC's motions for summary determination (Order No. 149). On November 3, complainant Texas Instruments, Inc. (TI) filed a response in opposition to NEC's application for interlocutory review. The Commission has determined to deny NEC's application for interlocutory review of Order No. 149.

FOR FURTHER INFORMATION CONTACT: Kristian E. Anderson, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, DC 20436, telephone 202–523–0074.

SUPPLEMENTARY INFORMATION:

Authority—This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.70 (19 CFR 210.70).

Background—On September 3, 1986, NEC filed a motion for summary determination (Motion No. 242–170) and NEC Electronics filed an alternative motion for summary determination in the above-referenced investigation (Motion No. 242–171). At the September 22, 1986, evidentiary hearing in this investigation, the ALJ denied those motions. The ALJ stated that the motions were denied because they were filed after the evidentiary hearing commenced on August 18 and therefore were not filed at least 30 days before commencement of the evidentiary hearing as required by Commission rule 210–50 (19 CFR 210.50).

On September 24, 1986, NEC filed a motion for reconsideration of the ALJ's denial of its motions (Motion No. 242–195). At the evidentiary hearing on October 6, the ALJ denied the motion for reconsideration. On October 9, NEC filed a request for leave to file an application for interlocutory review of the ALJ's ruling (Motion No. 242–231). The ALJ granted that motion on October 22 (Order No. 149).

Public Inspection—Copies of Order No. 149 and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:14 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–7224–0002.

Issued: March 6, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–5189 Filed 3–10–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–253]

Certain Electrically Resistive Monocomponent Toner and "Black Powder" Preparations Therefor; Commission Decision To Review and Modify an Initial Determination Amending the Notice of Investigation; Amendment of Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Review and modification of an initial determination (ID) amending the notice of investigation; amendment of the notice of investigation.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and to modify the ID (Order No. 11), issued on January 26, 1987, in the above-captioned investigation granting complainant Aunyx Corp.'s motion to amend the notice of investigation. The Commission has also determined to amend the notice of investigation to cover "Certain Electrically Resistive Monocomponent Toner and 'Black Powder' Preparations Therefor."

FOR FURTHER INFORMATION CONTACT: Edwin J. Madaj, Jr., Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0148.

SUPPLEMENTARY INFORMATION: On January 5, 1987, complainant Aunyx Corp. (Aunyx) filed a motion to amend the notice of investigation to cover "Certain Electrically Resistive Monocomponent Toner and Components Thereof," thus adding "components" to the notice in light of evidence that respondents have ceased importation of the toner itself and instead a subsidiary of one of the respondents is importing a certain "black powder" used to manufacture the toner in the United States.

On January 12, 1987, respondents, Canon, Inc. and Canon U.S.A., Inc. (respondents), filed an opposition to the motion that objected to the motion on four grounds: (1) The lateness of the motion, (2) the vagueness of the term "components" and the potential for too broad a scope of investigation with far reaching effects on remedy, (3) procedural objections to the lack of any specific allegations with respect to the components, such as specific instances of allegated unfair acts, and (4) that amendment would be contrary to the public interest because the vagueness of the allegations fails to give adequate notice to respondents and potential respondents of the nature and substance

of the allegations and the scope of relief to be afforded.

The Commission investigative attorney (IA) filed a response on January 15, 1987, supporting the motion to amend. The Commission has not received any petitions for review or Government agency comments.

On January 26, 1987, the ALJ issued an ID granting Aunyx's motion to amend the notice of investigation, adding "and components thereof" to the title of this investigation.

The Commission determined to review the ID on the ground that the ID's amendment of the notice of investigation to include all "components" is excessively broad, and its conclusion that it was appropriate to so amend the notice of investigation constitutes an erroneous conclusion of law. The Commission also determined to modify the ID to amend the notice of investigation to cover "Certain Electrically Resistive Monocomponent Toner and 'Black Power' Preparations Therefor."

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.53–.56 (19 CFR 210.53–.56).

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: March 2, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–5190 Filed 3–10–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–338 through 340 (Final)]

Urea From the German Democratic Republic, Romania, and the Union of Soviet Socialist Republics

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: Tedford C. Briggs (202–523–4612), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contracting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION: On January 2, 1987, the Commission instituted the subject investigations and established a schedule for their conduct (52 FR 2623, January 23, 1987). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from March 9, 1987, to May 18, 1987 (52 FR 5322, February 20, 1987). The Commission, therefore, is revising its schedule in the investigations to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than May 13, 1987; the prehearing conference will be held at 9:30 a.m. in room 117 of the U.S. International Trade Commission Building on May 20, 1987; the public version of the prehearing staff report will be placed on the public record on May 12, 1987; the deadline for filing prehearing briefs is May 22, 1987; the hearing will be held, beginning at 9:30 a.m., in room 331 of the U.S. International Trade Commission Building on May 28, 1987; and the deadline for filing all other written submissions, including posthearing briefs, is June 4, 1987.

For further information concerning these investigations see the Commission's notice of investigations cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: March 6, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–5191 Filed 3–10–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–250]

Certain Ventilated Motorcycle Helmets; Review and Remand of One Initial Determination to Administrative Law Judge; Notice of Decision Not To Review Another Initial Determination Terminating Two Respondents on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTIONS: Review of an initial determination (ID) (Order No. 31) and remand of it to the presiding administrative law judge (ALJ) to allow renegotiation of a settlement agreement and nonreview of another ID (Order No. 32) terminating the investigation as to two respondents on the basis of a settlement agreement.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an ID (Order No. 31) and to remand it to the ALJ to permit complainant Bell Helmets, Inc. (Bell), and respondents Shoei Kako Co., Ltd., and Shoei Safety Helmets Corp. (the Shoei respondents) to renegotiate their settlement agreement to modify or replace an ineffective dispute settlement procedure.

Notice is also given that the Commission has determined not to review an ID (Order No. 32) granting a motion to terminate the investigation as to respondents Marushin Kogyo Co., Ltd. (Marushin), and Hoppe Associates, Inc. (Hoppe), on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0079.

SUPPLEMENTARY INFORMATION: On May 28, 1986, Bell Helmets, Inc. (Bell), filed a complaint pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) with the Commission alleging unfair acts in the importation and sale of certain ventilated motorcycle helmets. The unfair acts alleged were infringement of Bell's U.S. Letters Patent 4,054,963. On January 16, 1987, Bell and the Shoei respondents filed a joint motion, pursuant to § 210.51 of the Commission's rules, to terminate the investigation as to the Shoei respondents on the basis of a settlement agreement. On January 29, 1987, the ALJ issued an ID (Order No. 31) granting the motion and terminating the investigation as to the Shoei respondents on the basis of the settlement agreement. No petitions for review or comments from Government agencies or the public were received

concerning the ID. One of the provisions of the settlement agreement establishes a procedure for the settlement of future disputes by relying on the issuance of Commission advisory opinions. Since the Commission's rule governing the issuance of advisory opinions does not apply to settlement agreement terminations, the dispute settlement procedure in the agreement is ineffective. The ID has been remanded to the ALJ to allow an opportunity for the parties to renegotiate the dispute settlement procedure.

On January 31, 1987, Bell and respondents Marushin and Hoppe filed a joint motion, pursuant to section 210.51 of the Commission's rules, to terminate the investigation as to Marushin and Hoppe on the basis of a settlement agreement. On January 29, 1987, the ALJ issued an ID (Order No. 32) terminating the investigation based on the settlement agreement. No petitions for review or comments from Government agencies or the public were received concerning the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 and Commission rules 210.53–210.56 (19 CFR §§ 210.53–.56).

Copies of the ID's and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-imparied persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: March 2, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–5192 Filed 3–10–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–174]

Certain Woodworking Machines; Denial of Petition for Reconsideration

AGENCY: U.S. International Trade Commission.

ACTION: Denial of petition for reconsideration of the Commissioners' final opinions concerning the violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation.

SUMMARY: The petition in question was filed by domestic respondent Equipment Importers, Inc., d/b/a Jet Equipment and Tools (Jet). The petition requested: (1) That all substantive references to Jet be deleted from the Commissioners' final opinions, and (2) that the Commissions grant injunctive relief for complainant Delta International Machinery Corp.'s alleged post-investigation misconduct.

The petition was denied in its entirety. The Commission declined to reconsider the opinions and make the requested deletions because the petition failed to meet the requirements of 19 CFR 219.60—i.e., the request for reconsideration was not based on a new question raised by the contested opinions, a question upon which the petitioner had no previous opportunity to submit arguments. The Commission also declined to consider granting Jet any type of relief for complainant Delta's alleged post-investigation misconduct. The Commission's denial was based on the fact that the petition did not allege that Delta's actions had caused injury to Jet or that Delta's actions constituted a breach of Delta's settlement agreement with Jet.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202–523–0350.

SUPPLEMENTARY INFORMATION: The subject investigation was conducted to determine whether there was a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of various woodworking machines from Taiwan. Respondent Jet was accused of importing the Taiwanese machines and marketing them in the United States. (*See* 48 F.R. 55786 (Dec. 15, 1983); Order No. 12 and Erratum (Apr. 4, 1984); Verified Revised Amended Complaint of Delta International Machinery Corp. (Apr. 6, 1984); 49 F.R. 20767 (May 16, 1984); 49 FR 23463 (June 6, 1984).)

Jet denied violating section 337, but reached a settlement with complainant Delta shortly before the evidentiary hearing. Although a motion to terminate Jet was filed before the hearing, Jet and Delta's initial failure to fully comply with the Commission's consent order procedure (19 C.F.R. § 211.20(b)) resulted in Jet not being dismissed until five weeks before the investigation ended. (*See* Commission Action and Order of Feb. 25, 1985, 50 FR 9142 (Mar. 6, 1985); Commission Action and Order of May 9, 1985, 50 FR 20303 (May 15, 1985).)

On the basis of arguments and evidence presented at the hearing by Delta and the Commission investigative attorney, the initial determination and the Commissioners final opinions concerning the violation of section 337 each indicated that Jet had defaulted by failing to appear at the hearing, and that Jet had engaged in unfair acts and unfair methods of competition. (*See* Initial Determination of Feb. 7, 1985; 50 FR 14172 (Apr. 10, 1985); Opinion of Vice Chairman Liebeler, Commissioner Eckes, Commissioner Lodwick, and Commissioner Rohr (Oct. 2, 1985); Opinion of Chairwoman Stern (Oct. 2, 1985).)

Jet petitioned for reconsideration of the Commissioners' final opinions, citing the settlement with Delta and related policy considerations. The petition requested that all substantive references to Jet be deleted from the opinions. The petition also requested injunctive relief for complainant Delta's alleged post-investigation misconduct—i.e., Delta's distribution of an allegedly unfair threatening, and misleading patent and trademark "policing" letter. The petition requested an order directing Delta: (1) To cease and desist distribution of misleading communications like the "policing" letter, and (2) to send suitable "clarifying" letters to all "policies" letter recipients. Delta and the other parties did not respond to Jet's petition. After considering Jet's arguments and reviewing the record of the investigation, by a 5–1 vote (Commissioner Eckes dissenting), the Commission denied the petition in its entirety.

The Commission Action and Order issued in this matter, the accompanying Opinion of Chairman Liebeler et al., and all other nonconfidential documents on the record of Investigation No. 337–TA–174 are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0471. Hearing impaired individuals are advised that information concerning this investigation can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: March 5, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–5193 Filed 3–10–87; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

March 9, 1987.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form/supporting documents is available); (2) the office of the agency issuing the form; (3) the title of the form; (4) the agency form number, if applicable; (5) how often the form must be filled out; (6) who will be required or asked to report; an estimate of the number of responses; (7) an estimate of the total number of respondents; (8) an estimate of the total number of hours needed to fill out the form; (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies; and, (10) the name and the telephone number of the person or office responsible for the OMB review. Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *And* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer *And* the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse 202/633–4312

Revision of a Currently Approved Collection

(1) Larry E. Miesse, 202/633–4312
(2) Office of Justice Programs, Department of Justice
(3) Crime Victim Assistance Grants; Revised Program Guidelines
(4) No form number
(5) Semi-annually
(6) State and local governments. Information is necessary to submit a statutorily required report to the Congress on the effectiveness of the Victims of Crime Act of 1984 and to assure grantees' compliance with statutory criteria.
(7) 56 respondents
(8) 11,200 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395–7340

New Collections

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application For Status as a Temporary Resident
(4) I–687
(5) One time
(6) Individuals or households. Used to apply for temporary resident status, and under certain conditions, permanent resident status.
(7) 4,113,333 respondents
(8) 4,113,333 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395–7340

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Notice of Appeal
(4) I–694
(5) One time
(6) Individuals or households. Used in considering appeals of denials of temporary resident status by legalization applicants and special agricultural workers.
(7) 381,562 respondents
(8) 24,114 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395–7340

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application for Status as a Temporary Resident, Special Agricultural Worker (SAW)
(4) I–700
(5) One time
(6) Individuals or households, farms. Used to apply for adjustment of status of special agricultural workers to that of permanent residents.
(7) 1,362,666 respondents
(8) 1,021,999 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395–7340

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Change of Address Notice
(4) I–697
(5) On occasion
(6) Individuals or households. Used to keep current the addresses legalization and special agricultural workers applicants.
(7) 2,877,708 respondents
(8) 238,849 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395–7340

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Medical Examination of Aliens Seeking Adjustment of Status
(4) I–693
(5) Other—One time
(6) Individuals or households. Pub. L. 99–603 requires specific language regarding the medical examination required of applicants who apply for temporary resident status. This examination is different from that required of adjustment or immigrant visa cases and subsequently necessitates this new form.
(7) 4,113,500 respondents
(8) 2,056,750 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395–7340

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application for Temporary Replacement Card (Residence)
(4) I–695
(5) On occasion
(6) Individuals or households. Pub. L. 99–603 provides for the procedures to be used for the application for replacement of the Temporary Residence Card (I–688)
(7) 362,791 respondents
(8) 60,223 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395–7340

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Waiver of Exclusion
(4) I–690
(5) One time
(6) Individuals or households. Pub. L. 99–603 contains specific language regarding grounds for exclusion. Because of the specifics, the existing waiver application—used in other applications—cannot be utilized and this new form is necessary.
(7) 415,791 respondents
(8) 103,947 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395–7340

Larry E. Miesse,

Clearance Officer, Department of Justice.

[FR Doc. 87–5122 Filed 3–10–87; 8:45 am]

BILLING CODE 4410–10–M

Lodging of Consent Decree; Chemplate Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 19, 1987, a proposed Consent Decree in *United States* v. *Chemplate Corporation*, CV 85–7868 WJR was lodged with the United States District Court for the Central District of California. The

proposed Consent Decree concerns the prevention of the discharge of pollutants in violation of the Clean Water Act and the limits set forth in the general pretreatment regulations (40 CFR Part 403) and the electroplating categorical pretreatment regulations (40 CFR Part 413). The proposed Consent Decree requires Chemplate Corporation to make the necessary modifications to achieve compliance with the Act and regulations and to pay a civil penalty of $23,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Chemplate Corporation, D.J. Ref. 90–5–1–1–2461.

The proposed Consent Decree may be examined at the office of the United States Attorney, Central District of California, 312 N. Spring Street, Los Angeles, California 90012, and at the Region 9 Office of the Environmental Protection Agency. 215 Fremont Street, San Francisco, California 90415. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please refer to the referenced case.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–5133 Filed 3–10–87; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent; Geppert Bros., et al.

In accordance with Departmental policy, 28 C.F.R § 50.7, notice is hereby given that on February 27, 1987 a proposed Consent Decree in *United States v. Geppert Bros., et al.*, Civil Action No. 85–1338, was lodged with the United States District Court for the Eastern District of Pennsylvania. The Consent Decree requires the defendant to pay a civil penalty of sixty seven thousand five hundred dollars ($67,500) and to comply with all aspects of asbestos NESHAPS provisions, adhere to strict notification requirements under the asbestos NESHAP and develop an asbestos training and monitoring program.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Geppert Bros., et al.*, D.J. Ref. #90–5–2–1–774A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 601 Market Street, Philadelphia, PA 19107 and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Rm. 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. To request a copy of the Consent Decree, please enclose a check in the amount of $1.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–5134 Filed 3–10–87; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; Grand Rapids MI, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 25, 1987, a proposed consent decree in *United States v. City of Grand Rapids, et al.*, Civil Action No. G–87–206–CV–1 was lodged with the United States District Court for the Western District of Michigan. The proposed Consent Decree concerns the Butterworth Landfill, a hazardous waste disposal site in Grand Rapids, Michigan, and resolves certain claims of the United States against the defendants under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601, *et seq.*

The proposed decree requires defendants to conduct an investigation of the extent of contamination of the Butterworth Landfill and of possible alternatives for remedyin or mitigating the contamination.

The Department of Justice will receive comments relating to the proposed consent decree for a thirty (30) day period from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Grand Rapids, et al.*, with the applicable D.J. reference No. 90–11–2–145 (W.D. Michigan).

The proposed consent decree may be examined at the office of the United States Attorney, for the Western District of Michigan, 399 Federal Building and U.S. Courthouse, 110 Michigan Street NW., Grand Rapids, Michigan 49503–2364, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago Illinois 60604. Copies of the consent decree and attachments may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Tenth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check n the amount of $9.90 (ten cents per page reproduction cost), payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–5135 Filed 3–10–87; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 86–75]

Mehdi Sheikholeslam, Lafayette, Georgia; Hearing

Notice is hereby given that on September 2, 1986, the Drug Enforcement Administration, Department of Justice, issued to Mehdi Sheikholeslam, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application for a DEA Certificate of Registration, executed on April 17, 1986, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed dince the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in

this matter will be held, commencing at 10:00 a.m. on Tuesday, March 31, 1987, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: March 5, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-5162 Filed 3-10-87; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Program Plan for Fiscal Year 1987

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Publication of the Office of Juvenile Justice and Delinquency Prevention Program Plan for Fiscal Year 1987.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing its Program Plan for Fiscal Year 1987 in order to inform the public and potential fund recipients of the program priorities that the Office will pursue during the current fiscal year.

FOR FURTHER INFORMATION CONTACT: D. Elen Grigg, Information Specialist, Office of Juvenile Justice and Delinquency Prevention, Telephone: (202) 724-7751.

SUPPLEMENTARY INFORMATION:

Overview

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is the Federal government's primary agency for addressing the issue of juvenile crime in a systematic, comprehensive manner. Congress passed the Juvenile Justice and Delinquency Prevention Act of 1974 in response to the rising national concern about juvenile crime and the attendant problems of the juvenile justice system. The OJJDP was established to administer a broad range of Title II programs authorized by the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (JJDP Act).

The Office provides financial and technical assistance to state and localities in order to improve juvenile justice and reduce delinquency. It is also responsible for developing, testing, demonstrating and disseminating programs to prevent delinquency, improve the juvenile justice system, and combat crime committed by juveniles. In addition, OJJDP is responsible for coordinating Federal programs related to juvenile delinquency and implementing the title IV Missing Children's Assistance Act.

Major Program Themes

The 1984 amendments to the JJDP Act reflect the increasing national concern regarding serious juvenile crime and the continuing concern regarding the appropriate handling of less serious and non-offenders. To address these problems, the OJJDP program plan emphasizes four major themes: serious juvenile offenders, the statutory mandates, statistics and missing and exploited children.

—Develop programs aimed at controlling serious juvenile crime. These programs will emphasize prevention and control of drug abuse; control of youth gangs and prosecution of youth gang members involved in illegal activities; improved coordination of the juvenile justice system for processing serious offenders, as well as for providing better services to juvenile victims. Improvement of the correctional system will be emphasized through the involvement of the private sector and the development of a wider array of supervision alternatives. Programs focused on delinquency prevention or reintegration of juvenile offenders emphasize the critical role of the family.

—Assist states in achieving compliance with the statutory mandates by providing information, training and technical assistance.

—Develop accurate and useful national and local statistical information as a planning tool for monitoring the extent and nature of juvenile crime, and assessing the effects of juvenile justice policies and programs.

—Initiate activities aimed at locating and returning missing children and assisting children who have been missing and exploited.

Program and Budget Information

The following pages delineate within broad program areas: Prevention, Law Enforcement/Prosecution, Adjudication, Supervision and Missing Children, the specific programs which emphasize the major program themes the Office intends to fund during the current fiscal year. Individual solicitations for new programs are scheduled to be published in the Federal Register during the next two months. The dollar allocations for the program areas represent approximate amounts which may be adjusted pursuant to the formulation of the specific grant award documents and the program initiative packages. In addition to the program listing there is a corresponding brief description of each program contained in the plan.

Supervision

Total Allocation $10,017,283

Continuation Programs

Evaluation Private Sector Corrections

The purpose of this program is to evaluate the capability of private organizations to operate effective correction programs for chronic serious juvenile offenders.

Management Training and Technical Assistance for Private Non Profit Organizations

This project provides training in all aspects of organizational leadership and management to managers and directors of private, not-for-profit youth serving agencies.

Private Sector Corrections for the Chronic Serious Juvenile Offender

This research and development program is designed to test whether the private sector can effectively implement effective programs to rehabilitate chronic, serious juvenile offenders.

Restitution Education, Specialized Training and Technical Assistance

This program promotes and improves the use of restitution as a disposition by providing training and technical assistance and information about restitution.

Technical Assistance to States

This project provides assistance to States in developing and implementing comprehensive plans for the use of JJDP formula grant funds; including assistance in achieving compliance with the DSO and jail removal mandates.

Private Sector Probation Initiative

The purpose of this program is to demonstrate the feasibility of private sector involvement in the delivery of probation services, currently provided by the public sector.

Children in Custody

The purpose of this statistical program is to provide information on characteristics and populations of the nation's juvenile detention, correctional and shelter care facilities by focusing on the completion of analytical reports based on the 1984/85 census; the fielding of the 1986/87 census; and the completion of necessary feasibility and pilot tests relating to a survey of juveniles in custody.

Training and Technical Assistance for Juvenile Detention and Correction

This program provides training and technical assistance to State and local juvenile detention and corrections programs.

Insular Area Support

The purpose of this program is to provide supplemental financial support to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana

Islands in accord with section 224(e) of the JJDP Act, as amended.

Non-Participating States Program

The purpose of this program is to make funds available to non-participating states in accord with section 223(d) of the JJDP Act, as amended.

Special Emphasis and Formula Grant Reverted Funds Program

The purpose of this program is to provide supplemental funds to the States in full compliance with sections 223(a)(12)(A) deinstitutionalization of status offenders, and 223(a)(13) separation of juveniles from adults in lockups of the JJDPA, as amended.

New Programs

Assessment of Effectiveness of Post Adjudicatory Programs

The purpose of this program is to develop a catalogue of promising supervision program strategies currently being implemented in States and localities for post adjudicatory juvenile offenders.

Deinstitutionalization of Status Offender Research

The purpose of this research is to evaluate the effects of deinstitutionalization on the juvenile justice system, other youth-serving agencies, and on youth involved in status offenses.

Intensive Community Based-Care

The purpose of the initial phase of this demonstration program is to assess existing programs and subsequently develop model policies and procedures regarding effective community based residential and non residential care for serious juvenile offenders.

Juvenile Corrections/Industries Ventures

This program will promote and demonstrate the development of public/private industrial ventures within juvenile correctional institutions. The first phase consists of an assessment of existing programs and the development of policies and procedures, training curriculum and related technical assistance and information as well as corresponding dissemination activities.

Replication of Promising Drug and Alcohol Abuse Programs

The purpose of this demonstration program will be to encourage a select number of communities to initiate specific drug and alcohol prevention, intervention and treatment programs that have been identified as effective with youth.

Specialized Services for the Chronic Status Offender

The purpose of this program will be to develop model policies and procedures based on an assessment of effective pre and post adjudicatory care programs that handle the habitual status offender.

Adjudication

Total Alocation: $3,179,580

Continuation Programs

Juvenile Justice Date Archive

The purpose of this program is to collect, process, analyze, and disseminate available data concerning cases handled by the nation's juvenile courts through the maintenance of a National Juvenile Court Data Archive.

Court Appointed Special Advocates

This program provides training and technical assistance to local juvenile courts to promote the development and use of adult volunteers as court appointed special advocates for youth under the jurisdiction of the court.

Juvenile Court Management Training

The purpose of this program is to provide management training to juvenile justice personnel.

Techincal Assistance for Juvenile Courts

This program provides technical assistance to the nation's juvenile courts and court-related agencies.

Juvenile Court Training and Technical Assistance

This program provides training and technical assistance for juvenile and family court judges and other court related personnel; providing them with current information in pertinent case law, sentencing and treatment options.

New Programs

National Center for Data Collection

The purpose of this program is to establish a national center for juvenile justice statistics that will serve as a focal point for information on national and local trends in juvenile delinquency, on justice system processing of juveniles and for the development of model information systems for local juvenile justice agencies. In addition it will conduct an assessment, draft model policies and procedures and develop related training, technical assistance and information materials pertaining to the decision making practices of the various components of the juvenile justice system in the processing of juvenile offenders and non offenders.

Minorities in the Juvenile Justice System

This program will review recent research focused on the processing of minority juveniles in the juvenile justice system to determine under what conditions and at what points in the system these youth are treated differently, and to identify potential solutions.

Juvenile Offender Drug Testing

The purpose of this research and development program is to test the effect of drug monitoring on drug use and recidivism among juvenile offenders.

Victims In the Juvenile Justice System

The purpose of this program is to document existing approaches to juvenile justice handling of victims, and to develop model policies and procedures and training curriculum victim satisfaction.

Prevention

Total Allocation: $8,542,173

Continuation Programs

Delinquency in a Birth Cohort

The purpose of this project is expand the knowledge of factors which contribute to involvement in crime and to the transition from juvenile to adult criminal activities. A sample of the 1958 Philadelphia birth cohort will be interviewed to obtain information on a variety of relevant life experiences.

Cities in Schools

The purpose of this program is to develop State and local public/private partnerships designed to establish and/or replicate programs which provide comprehensive services to at-risk youth in school settings.

Printing and Dissemination

The purpose of this activity is to provide clearinghouse and information services for collecting and disseminating results of OJJDP's programs to States and localities.

Law Enforcement Juvenile Explorers

The purpose of this program is to support an annual conference and related activities to acquaint youth interested in law enforcement as a career with various aspects of the juvenile justice system and delinquent activity.

Juvenile Justice Resource Center

The purpose of this program is to provide quality responses to the information needs of the juvenile justice community, OJJDP's grantees and contractors, logistical support to conferences, and to prepare reports, bulletins, etc. for publication.

Law Related Education

This program provides national training, technical assistance and information to stimulate broad implementation of quality law related education programs in grades kindergarten through 12.

Prevention of Teen Victimization

This demonstration and training program seeks to reduce teen victimization and utilize teens as crime prevention resources in the school and the community.

Sports Drug Awareness

The purpose of this program is to provide training to a select group of secondary school athletic personnel regarding effective methods of preventing, detecting and intervening with youth involved substance abuse.

National School Safety Center

This program provides a national focus on school safety, identifies methods to diminish crime and violence in schools and on campuses, while developing innovative crime prevention and school discipline programs.

Reduction of School Crime

The purposes of this research program is to test promising disciplinary and crime control policies and procedures designed to reduce school crime and disorder.

Juvenile Justice Reference Service

The purpose of this project is to expand and improve the services of the Juvenile Justice Clearinghouse through a specialized service unit which involves the provision, maintenance and development of high quality individualized information services.

State Advisory Group Conference

Section 241(f) of the Juvenile Justice Act provides for a national conference of member representatives from State advisory groups.

New Programs

Drug Use Among Juveniles

This research program will involve the development of information on the risk factors for drug use among youth, and on the effectiveness of interventions for the prevention and control of illegal drug use through the secondary analysis of existing data bases.

Juvenile Drug Abuse Among Minority Populations

The purpose of this research program is to increase understanding of the etiology and patterns of drug abuse among ethnic minority populations in order to improve prevention programming for these populations.

Family Strengthening

To assess existing policy and programs related to the family and delinquency and develop effective strategies for enhancing the role of the family in delinquency prevention.

Technical Transfer of Effective Juvenile Justice Programs

The purpose of this program will be to identify and disseminate information and provide training regarding specific types of juvenile justice programs currently operating at the State or local level that are determined to be effective and replicable.

Support Contract

The purpose of this contract will be to provide technical assistance and support to OJJDP/NIJJDP, grantees, the Coordinating Council on Juvenile Justice and Delinquency Prevention, the Missing Children's Program and the Advisory Board on Missing Children in all research, program development, evaluation, training, and research utilization activities.

Missing and Exploited Children

Total Allocation: $4,713,660

Continuation Programs

National Center for Missing and Exploited Children

The Center serves as a national clearinghouse and technical assistance and information resource for missing and exploited children. It assists the criminal justice system, other public and private agencies families, parents and guardians to better coordinate information and activities related to missing and exploited children.

Management Training and Technical Assistance for Private Voluntary Organizations

The purpose of this program is to provide training and technical assistance in administration and management to private voluntary organizations which assist missing and exploited children and their families.

New Programs

National Study of the Incidence of Missing Children

The purpose of this study is to respond to the need for more accurate information on both the number of missing children and the characteristics of the events.

The Child Victim as a Witness

The purpose of this research program is to test different techniques for improving the handling of child victim witnesses during court proceedings.

Assistance to Private Voluntary Organizations

The purpose of this program is to provide one time financial assitance to private voluntary organizations involved in locating and providing services to missing children and their families.

Psychological Consequences of Abduction

The purpose of this research program is to increase knowledge of and provide the basis for the development of effective treatment alternatives for the psychological consequences of families with missing and sexually exploited children.

Public Awareness

The purpose of this program is to promote effective strategies to deal with the problem of missing and exploited children.

Law Enforcement/Prosecution

Total Allocation: $3,825,000

Continuation Programs

National Center for the Prosecution of Child Abuse

This demonstration program provides training, technical assistance and information to promote more informed and vigorous prosecution of child abusers while minimizing the trauma experienced by children handled in the criminal justice system.

Habitual, Serious and Violent Juvenile Offender Program

This demonstration program targets youth who exhibit a repetitive pattern of serious delinquent behavior for more intensive prosecutorial and correctional intervention.

Serious Habitual Offender Comprehensive Assistance Program

The purpose of this demonstration program is to provide intensive training and technical assistance to a select number of communities in order to promote specific policies and practices among and between the primary components of the juvenile justice system to more efficiently identify, incarcerate, adjudicate and supervise the serious habitual juvenile offender.

Juvenile Justice Training and Technical Assistance to Law Enforement Agencies

The purpose of this program is to provide management and investigative training to national, State, and local law enforcement agencies in order to promote more effective investigations of child abuse cases.

Juvenile Justice Training for State and Local Law Enforcement, School Administration, Prosecution and Probation Personnel

This program trains school, law enforcement, prosecution and probation personnel in how to share information, to cooperate and coordinate between and among their respective agencies in order to improve school safety, and to provide effective supervision and delinquency prevention services.

New Programs

Juvenile Arson Prevention, Intervention and Rehabilitation

The purpose of this program is to assess the problem of juvenile arson nationally and to identify and transfer information to States and localities regarding effective prevention, intervention and rehabilitation strategies.

Use of Juveniles in Narcotic Trafficking

This is the initial phase of a demonstration program which will assess the prevalence of and conditions under which juveniles are being used by adult criminals and juvenile gangs to regularly engaged in the sale and distribution of drugs.

Jail Removal Assistance

This program will provide training to localities in the development of policies and procedcures to prevent and correct the practice of holding juveniles in adult jails and lockups.

Juvenile Gang Repression and Intervention Program

The purpose of this demonstration program will be to promote effective policies and practices among the juvenile law enforcement, adjudicational, and corrections agencies to jointly respond to juvenile gang activity.

Law Enforcment Handling of Drug Offenders

The purpose of this research and development program will be the identification, development, dissemination and testing of effective policies and procedures for identifying and handling juvenile drug offenders in the preadjudicatory law enforcement system.

Jail Survey Supplement

This program will provide resources for the annual Bureau of Justice Statistics survey to determine the number and types of juveniles being held in adult jails and lockups.

Replication of the Serious Habitual Offender Drug Involved Program

The purpose of this project is to replicate the SHO/DI program in approximately six jurisdictions. The SHO/DI program is designed to assist law enforcement agencies to organize their services to identify and handle the serious habitual juvenile offender.

Dated: March 6, 1987.

Verne L. Speirs,

Acting Administrator, OJJDP.

[FR Doc. 87-5197 Filed 3-10-87; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Expansion Arts Advisory Panel (Challenge Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Challenge Section) to the National Council on the Arts will be held on March 27, 1987, from 9:00 a.m.-4:15 p.m., in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 27, 1987, from 9:00 a.m.-9:30 a.m. on a space available basis for a discussion of general program overview.

The remaining sessions of this meeting on March 27, 1987, from 9:30 a.m.-4:15 p.m., are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: March 4, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-5136 Filed 3-10-87; 8:45 am]

BILLING CODE 7537-01-M

Literature Advisory Panel (Overview/Professional Development Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Overview/Professional Development Section) to the National Council on the Arts will be held on March 27, 1987, from 9:00 a.m.-6:00 p.m., and on March 28, 1987, from 9:00 a.m.-5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 28, 1987, from 9:00 a.m.-3:30 p.m. on a space available basis for a discussion of guidelines, five-year plan update, and other policy issues.

The remaining sessions of this meeting on March 27, 1987, from 9:00 a.m.-6:00 p.m., and on March 28, 1987, from 3:30 p.m.-5:30 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552(b) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: March 4, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-5137 Filed 3-10-87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-440, 50-441]

Cleveland Electric Illuminating Company, et. al. (Perry Nuclear Power Plant, Units 1 & 2); Receipt of Petition for Director's Decision

Notice is hereby given that, by a Petition pursuant to 10 CFR 2.206 dated January 9, 1987, Energy Probe and Western Reserve Alliance (Petitioners) requested that the Perry Nuclear Power Plant of the Cleveland Electric Illuminating Company, et al. (Licensees) be shut down for alleged safety violations. The Petition alleged deficiencies with certain plant components, specifically pipe clamps, and sought an independent design review of this component for the Perry facility. The Petition further alleged programmatic deficiencies in Design Control and Quality Assurance/Quality Control at the General Electric facility in San Jose, California. The Petition alleged that such programmatic deficiencies potentially impact upon General Electric components supplied to the Perry facility.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations, and accordingly, appropriate action will be taken on the request within a reasonable time. A copy of the Petitioner is available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Local Public Document Room for the Perry Nuclear Power Plant located at the Perry Public Library 3753 Main Street, Perry, Ohio 44081.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland this 5th day of March, 1987.

[FR Doc. 87-5201 Filed 3-10-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Company of New York, Inc. (Indian Point Nuclear Generating Unit No. 2); Exemption

I

Consolidated Edison Company of New York (the licensee) is the holder of Facility Operating License No. DPR-26 which authorizes operation of the Indian Point Nuclear Generating Unit No. 2 (IP-2). This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility consists of one pressurized water reactor at the licensee's site located in Westchester County, New York.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and new Appendix R to 10 CFR Part 50 regarding the fire protection

features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for particular aspects of the fire protection features at a nuclear power plant. One of the fifteen subsections, III.G, is the subject of this exemption request.

By letter dated July 13, 1983, the licensee requested an exemption from Section III.G.2 of Appendix R to the extent that it requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

(1) Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier;

(2) Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; or

(3) Enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

1.0 Charging Pump Rooms (Fire Zone 5, 6, 7); RHR Pump Rooms (Fire Zone 3 and 4); Auxiliary Boiler Feed Pump Room (Fire Zone 23) 1.1 Exemption Requested

The licensee requested an exemption from Section III.G.2 of Appendix R to 10 CFR 50 to the extent that it requires separation of redundant HVAC exhaust fans by 20 feet, 3-hour fire barriers, or enclosing one train in a fire barrier having a 1-hour rating.

1.2 Discussion and Evaluation

In lieu of providing separation or fire barriers for the redundant HVAC exhaust fans required to support safe shutdown in the charging pump rooms and RHR pump rooms, the licensee has proposed providing a portable exhaust unit as an alternate room cooling method. Initiation of the exhaust fan would not be required for approximately two hours or longer following a reactor trip. The exhaust fan is stored onsite and operating procedures have been revised to incorporate its use. The procedures are including in the operator training/retraining program.

Similarly, in lieu of providing separation or fire protection for cabling to the auxiliary boiler feed pump (ABFP) room exhaust fans, the licensee proposed to open a rollup door as an alternative for ensuring the necessary cooling for safe shutdown equipment in the event the exhaust fans are lost. The licensee provided the room temperature profile for 48 hours following the loss of the ventilation exhaust fans with the rollup door both open and closed. The analysis indicated that the ABFP room temperature does not exceed 106°F with the rollup door open. A temperature of 120°F can be tolerated without damage to safe shutdown equipment. Plant operating procedures have been revised to instruct the operators on when to open the ABFP room rollup door. These procedures are included in the operator training/retraining program.

1.3 Conclusions

Based on our review of the licensee's proposed alternative cooling methods, we conclude that the level of fire safety in the Charging Pump Rooms, the RHR Pump Rooms and the Auxiliary Boiler Feed Pump Room is equivalent to that achieved by compliance with the technical requirements of Appendix R; and, therefore, the licensee's request for exemption in these areas should be granted.

By letter dated December 17, 1986, the licensee provided information relevant to the "special circumstances" finding required by revised 10 CFR 50.12(a) (see 50 FR 50764). The licensee stated that providing alternate cooling methods accomplishes the underlying purpose of the rule. Implementing additional modifications to provide more suppression systems, detection systems, physical separation and/or fire barriers would require expenditures of engineering and construction resources as well as the associated capital costs which would represent an unwarranted burden on the licensee. In many of the rooms under consideration, exemptions have already been granted from Section III.G.2 or III.G.3 requirements for the safe shutdown equipment itself by letter dated October 16, 1984. This exemption involves a support system for this equipment. The licensee stated the implementation of additional modifications would result in expenditures that are significantly in excess of those contemplated when the regulation was adopted and those required to meet the underlying purpose of the rule. The staff concludes that "special circumstances" exist for the licensee's requested exemption in that the application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50 (See 10 CFR 50.12(a)(2)(ii)).

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), (1) these exemption as described in Section II are authorized by law and will not present an undue risk to the public health and safety, and are consistent with the common defense and security and (2) special circumstances are present for the exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the following exemption from the requirements of Section III.G of Appendix R to 10 CFR Part 50:

Charging Pump Rooms (Fire Zone's 5, 6 ,7); RHR Pump Rooms (Fire Zones 3, 4) and Auxiliary Boiler Feed Pump Room (Fire Zone 23) to the extent that redundant HVAC exhaust fans are not separated by 20 Feet, 3-hour fire barriers pursuant to III.G.2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the environment (52 FR 5509).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland this 4th day of March, 1987.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director, Division of PWR Licensing-A.

[FR Doc. 87-5202 Filed 3-10-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 27-39-SC; ASLBP No. 78-374-01-OT]

U.S. Ecology Inc. (Sheffield, IL, Low-Level Radioactive Waste Disposal Site); Hearing

March 5, 1987.

Before Administrative Judge B. Paul Cotter, Jr., Chairman, Dr. Jerry R. Kline, Dr. Emmeth A. Luebke.

Please take notice that an evidentiary hearing will be held in the Sheffield proceeding as follows:

March 24 through March 27, 1987

U.S. Court of Appeals, Dirkson Building, Room 2721, (27th Floor), 219 S.

Dearborn Street, Chicago, Illinois 60604

March 30 through April 3, 1987

National Labor Relations Board, Dirkson Building, 219 S. Dearborn Street, Room 1269, Chicago, Illinois 60604

For the Atomic Safety and Licensing Board.

B. Paul Cotter, Jr.,

Chairman, Administrative Judge.

[FR Doc. 87-5169 Filed 3-10-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Metal Components; Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on March 26, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, March 26, 1987—8:30 A.M. until the conclusion of business

The Subcommittee will discuss: (1) Beaver Valley, Unit 2 Whipjet Program, first application of GDC 4 broad scope rule, (2) NUREG-0313, Revision 2 with public comments, (3) other related matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634-1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 6, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87-5168 Filed 3-10-87; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2268]

California; Declaration of Disaster Loan Area

The City of Hayward, California, constitutes a disaster area because of damage from a major fire in the downtown district which occurred on January 11, 1987. Applications for loans for physical damage may be filed until the close of business on May 4, 1987, and for economic injury until the close of business on December 7, 1987, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, California 95853

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with Credit Available Elsewhere	8.000
Homeowners Without Credit Available	4.000
Elsewhere Business With Credit Available Elsewhere	7.500
Business Without Credit Available Elsewhere	4.000
Business (Eidl) Without Credit Avaialble Elsewhere	4.000
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.500

The number assigned to this disaster is 226805 for physical damage and for economic injury the number is 650800.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: March 5, 1987.

Charles L. Heatherly,

Deputy Administrator.

[FR Doc. 87-5092 Filed 3-10-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1058]

Shipping Coordinating Committee; Subcommittee on Ocean Dumping; Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on Friday, March 27, 1987. The meeting will convene at 1:00 p.m. in the South Conference Center, Room 4, U.S. Environmental Protection Agency, Waterside Mall, 401 M Street, SW., Washington, DC. The Conference Center is reached through the building's commercial mall, southeast corner.

The purpose of the meeting is to review and discuss: (1) The U.S. positions for the April 6-10 meeting of the Scientific Group on Dumping, an advisory group of the London Dumping Convention (LDC); (2) the U.S. submission to the April 27-May 1 meeting of the LDC Group of Experts on Incineration at Sea; and (3) the outcome of the Tenth Consultative Meeting of Contracting Parties to the LDC.

The Chairman will entertain comments from the public as time permits.

For further information, contact Ms. Norma A. Hughes, Executive Secretary, Subcommittee on Ocean Dumping (WH-556F), Environmental Protection Agency, Washington, DC 20460. Telephone (202) 475-7113.

Publication of this notice was unavoidably delayed due to late receipt of documents from IMO Headquarters, London.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

March 6, 1987.

[FR Doc. 87-5250 Filed 3-10-87; 8:45 am]

BILLING CODE 4710-09-M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; New Exempt System of Records

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of new exempt Privacy Act system of records.

SUMMARY: Notice is hereby given of a new exempt Privacy Act system of records established by TVA for materials compiled by TVA's Office of the Inspector General in the course of investigations of reports of fraud, waste, abuse, and other misconduct and concerns. TVA published a notice of proposed new Privacy Act system of

records for this system on December 5, 1986 (51 FR 44001). No comments were received. The final rule exempting the system is published in the Rules and Regulations Section of today's **Federal Register.**

EFFECTIVE DATES: March 11, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cressler II, (615) 632–2170.

SUPPLEMENTARY INFORMATION: Subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), (f) and (k)(2) of 5 U.S.C. 552a were cited incorrectly in the notice of proposed new Privacy Act system of records published on December 5, 1986 (51 FR 44001); however, they are cited correctly herein. The information appearing under this data element Authority for maintenance of the system has been updated to reflect an addition to the TVA Code approved by the TVA Board of Directors since the publication of the notice of proposed new Privacy Act system of records. The text of the system is set forth below.

TVA–31

SYSTEM NAME:

OIG Investigative Records—TVA.

SYSTEM LOCATION:

Office of the Inspector General, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902. Duplicate copies of certain documents may also be located in the files of other offices and divisions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subjects of investigations by the Office of the Inspector General (OIG) or who provide information in connection with such investigations, including but not limited to: Employees, former employees, current or former contractors and subcontractors and their employees, consultants, and other individuals and entities which have or are seeking to obtain business or other relations with TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including information provided by known or anonymous complainants; information provided by the subjects of investigations; information provided by individuals or entities with whom the subjects are associated (e.g., coworkers, business associates, relatives); information provided by Federal, State, or local investigatory, law enforcement, or other Government or non-Government agencies; information provided by witnesses and confidential sources; information from public source materials; information from commercial data bsses or information resources; investigative notes; summaries of telephone calls; correspondence; investigative reports or prosecutive referrals; and information about referrals for criminal prosecutions, civil proceedings, and administrative actions taken with respect to the subjects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

TVA Act, 16 U.S.C. 831b; Executive Order 10450; Executive Order 11222; Hatch Act, 5 U.S.C. 7324–7327; 28 U.S.C. 535; Proposed Plan for the Creation, Structure, Authority and Function of the Office of Inspector General, Tennessee Valley Authority, approved by the TVA Board of Directors on October 18, 1985; and TVA Code XIII INSPECTOR GENERAL, approved by the TVA Board of Directors on February 19, 1987.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal, State, or local entity (1) in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant to a decision on such matters or (2) in connection with any other matter properly within the jurisdiction of such other entity and related to its prosecutive, investigatory, regulatory, administrative, or other responsibilities.

To the appropriate entity, whether Federal, State, or local, in connection with its oversight or review responsibilities or authorized law enforcement activities.

To respond to a request from a Member of Congress regarding an individual, or to report to a Member on the results of investigations, audits, or other activities of OIG.

To the parties or complainants, their representatives, and impartial referees, examiners, or administrative judges in proceedings under the TVA grievance adjustment procedures, TVA Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the subjects of an investigation and their representatives in the course of a TVA investigation of misconduct; to any other person or entity that has or may have information relevant to the investigation to the extent necessary to assist in the conduct of the investigation, such as to request information.

In litigation, including presentation of evidence and disclosures to opposing counsel in the course of discovery.

To a consultant, private firm, or individual who contracts or subcontracts with TVA, to the extent necessary to the performance of the contract.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant or potentially relevant information and to request information from private individuals or entities, if necessary, to acquire information pertinent to the hiring, retention, or promotion of an employee, the issuance of a security clearance, the conduct of a background or other investigation, or other matter within the purposes of this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by individual name or case file number.

SAFEGUARDS:

Access to and use of records is limited to authorized staff in OIG and to other authorized officials and employees of TVA on a need-to-know basis as determined by OIG management. Security will be provided by physical, administrative, and computer system safeguards. Files will be kept in secured facilities not accessible to unauthorized individuals.

RETENTION AND DISPOSAL:

These records are retained in accordance with TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD ACCESS PROCEDURE:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD SOURCE CATEGORIES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

W.F. Willis,

General Manager.

[FR Doc. 87-5139 Filed 3-10-87; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87-3-16; Docket 40310]

Aviation Proceedings; Proposed Revocation of Section 401 Certificate of Best Airlines, Inc.

AGENCY: DOT.

ACTION: Notice of order to show cause (Order 87-3-16, Docket 40310).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the certificate of Best Airlines, Inc., issued under section 401 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than March 23, 1987.

ADDRESSES: Responses should be filed in Docket 40310 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Kathy A. Lusby, Air Carrier Fitness Division, P-56, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: March 5, 1987.

Vance Fort,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-5075 Filed 3-10-87; 8:45 am]

BILLING CODE 4910-62-M

[Order 87-3-15; Docket 44716]

Aviation Proceedings; Order Instituting Seattle-Vancouver Service Case

AGENCY: DOT.

ACTION: Institution of Seattle-Vancouver Service Case (Order 87-3-15, Docket 44716).

SUMMARY: The Department has decided to institute the *Seattle-Vancouver Service Case*, Docket 44716, to select a U.S. air carrier application to be transmitted to the Government of Canada with the United States' endorsement for approval to engage in foreign air transportation of persons, property and mail between Seattle (Seattle-Tacoma International Airport), Washington, and Vancouver (Vancouver International Airport), British Columbia, Canada, using aircraft with no more than 60 seats. The case will be decided using written, nonoral evidentiary hearing procedures under Rule 1750 of the Department's Regulations. The Department is inviting interested air carriers to file applications for authority to serve the market at issue.

DATES: Applications for Seattle-Vancouver authority, motions to consolidate, petitions for leave to intervene, and petitions for reconsideration of Order 87-3-15 should be filed by March 16, 1987.

ADDRESSES: Applications, motions to consolidate, petitions for leave to intervene, and petitions for reconsideration should be filed in Docket 44716, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 44716.

Dated: March 5, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-5076 Filed 3-10-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Carbon Monoxide Detector Instruments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO-C48a prescribes the minimum performance standards that carbon monoxide detector instruments must meet to be identified with the marking "TSO-C48a".

DATE: Comments must identify the TSO file number and be received on or before June 26, 1987.

ADDRESS: Send all comments on the proposed technical standard order to:

Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C48a, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591

Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue SW., Washington, DC 20591

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Telephone (202) 267-9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO-C48a will include revised Marking and Data Requirements for carbon monoxide instruments. Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document No. DO-178A, "Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

How to Obtain Copies

A copy of the proposed TSO–C48a may be obtained by contacting the person under "**FOR FURTHER INFORMATION CONTACT.**" TSO–C48a references SAE AS 412A, reaffirmed October 1984, for the minimum performance standards, and RTCA/DO–178A for the computer software requirements. SAE AS 412A may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO–178A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street NW., Washington, DC 20005.

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

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87–5094 Filed 3–10–87; 8:45 am]

BILLING CODE 4910–13–M

Electric Tachometer: Magnetic Drag (Indicator and Generator)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C49b prescribes the minimum performance standards that electric tachometer: magnetic drag (indicator and generator) must meet to be identified with the marking "TSO–C49b."

DATE: Comments must identify the TSO file number and be received on or before June 26, 1987.

ADDRESS: Send all comments on the proposed technical standard order to:

Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C49b, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591

or deliver comments to:

Federal Aviation Administration, Room 335, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO–C49b will include revised Marking and Data Requirements for electric tachometer: magnetic drag (indicator and generator). Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document No. DO–178, "Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

How To Obtain Copies

A copy of the proposed TSO–C49b may be obtained by contacting the person under "**FOR FURTHER INFORMATION CONTACT.**" TSO–C49b references SAE AS 404B, reaffirmed October 1984, for minimum performance standards, and RTCA/DO–178A for the computer software requirements; SAE AS 404B may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO–178A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street NW., Washington, DC 20005.

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

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87–5095 Filed 3–10–87; 8:45 am]

BILLING CODE 4910–13–M

Fuel Flowmeters; Availability of Technical Standard Order (TSO) and Request for Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C44b prescribes the minimum performance standards that fuel flowmeters must meet to be identified with the marking "TSO–C44b."

DATE: Comments must identify the TSO file number and be received on or before June 26, 1987.

ADDRESS: Send all comments on the proposed technical standard order to:

Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C44b, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591

Or Deliver Comments to:

Federal Aviation Administration, Room 335, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO–C44b will include revised Marking and Data Requirements for fuel flowmeters. Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document No DO–178, "Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

How to Obtain Copies

A copy of the proposed TSO–C44b may be obtained by contacting the person under **"FOR FURTHER INFORMATION CONTACT."** TSO–C44b references SAE AS 407B, reaffirmed October 1984, for minimun performance standards, RTCA/DO–1650B for the environmental standard, and RTCA/DO–178A for the computer software requirements, SAE AS 407B may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO–178A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street NW., Washington, DC 20005.

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

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87–5093 Filed 3–10–87; 8:45 am]

BILLING CODE 4910–13–M

Vertical Velocity Instrument (Rate-Of-Climb)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C8d prescribes the minimum performance standards that vertical velocity instruments (rate-of-climb) must meet to be identified with the marking "TSO–C8d."

DATE: Comments must identify the TSO file number and be received on or before June 26, 1987.

ADDRESS: Send all comments on the proposed technical standard order to:

Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C8d, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591

Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue SW., Washington, DC 20591

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independance Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communicaticns received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO–C8d will include revised Marking and Data Requirenents for vertical velocity instruments (rate of climb). Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document Nos. DO–160B, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 1984, for the environmental standards, and DO–178, Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

How to Obtain Copies

A copy of the proposed TSO–C8d may be obtained by contacting the person under **"FOR FURTHER INFORMATION CONTACT."** TSO–C8d references SAE AS 8016, reaffirmed October 1984, for minimum performance standards, RTCA/DO–160B for the environmental standard, and RTCA/DO–178A for the computer software requirements. SAE AS 8016 may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO–160B and DO–178A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street NW., Washington, DC 20005.

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

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87–5096 Filed 3–10–87; 8:45 am]

BILLING CODE 4910–13–M

Technical Standard Order; Flight Director Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C52b prescribes the minimum performance standards that flight director equipment must meet to be identified with the marking "TSO–C52b."

DATE: Comments must identify the TSO file number and be received on or before June 26, 1987.

ADDRESS: Send all comments on the proposed technical standard order to:

Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C52b, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591

OR Deliver Comments To:

Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO–C52b will include revised Marking and Data Requirements for flight director equipment. Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document Nos. DO–160B,

"Environmental Conditions and Test Procedures for Airborne Equipment," dated July 1984, for the environmental standards, and DO–178A, "Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

How to Obtain Copies

A copy of the proposed TSO–C52b may be obtained by contacting the person under "For Further Information Contact." TSO–C52b references SAE AS 8008, dated September 1984, for minimum performance standards, RTCA/DO–160B for the environmental standard, and RTCA/DO–178A for the computer software requirements; SAE AS 8008 may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO–160B and DO–178A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

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

Thomas E. McSweeney,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87–5097 Filed 3–10–87; 8:45 am]

BILLING CODE 4910–13–M

Technical Standard Order; Manifold Pressure Instruments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C45a prescribes the minimum performance standards that manifold pressure instruments must meet to be identified with the marking "TSO–C45a."

DATE: Comments must identify the TSO file number and be received on or before June 26, 1987.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C45a, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or Deliver Comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building, (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO–C45a will include revised Marking and Data Requirements for manifold pressure instruments. Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Documents No. DO–160B, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 1984, for the environmental standards, and DO–178A, "Software Consideration in Airborne Systems, and Equipment Certification," dated March 1985, for the computer software requirements.

How To Obtain Copies

A copy of the proposed TSO–C45a may be obtained by contacting the person under "For Further Information Contact." TSO–C45a references SAE AS 8042, reaffirmed October 1984, for the minimum performance standards, RTCA/DO–160B for the environmental standard, and RTCA/DO–178A for the computer software requirements. SAE AS 8042 may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO–160B and DO–178A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

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

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87–5098 Filed 3–10–87; 8:45 am]

BILLING CODE 4910–13–M

Technical Standard Orders; Pressure Instruments—Fuel, Oil and Hydraulic (Reciprocating Engine Powered Aircraft)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C47a prescribes the minimum performance standards that Pressure Instruments—Fuel, Oil and Hydraulic (Reciprocating Engine Powered Aircraft) must meet to be identified with the marking "TSO–C47a."

DATE: Comments must identify the TSO file number and be received on or before June 26, 1987.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C47a, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or Deliver Comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All

communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO–C47a will include revised Marking and Data Requirements Pressure Instruments—Fuel, Oil and Hydraulic (Reciprocating Engine Powered Aircraft). Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Documents No. DO–178A, "Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

How to Obtain Copies

A copy of the proposed TSO–C27a may be obtained by contacting the person under "For Further Information Contact." TSO–C47a references SAE as 408B, reaffirmed October 1984, for the minimum performance standards, and RTCA/DO–178A for the computer software requirements. SAE AS 408B may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale PA 15096. RTCA/DO–178A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

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

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87–5099 Filed 3–10–87; 8:45 am]

BILLING CODE 4910–13–M

Technical Standard Orders; Temperature Instruments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C43b prescribes the minimum performance standards that temperature instruments must meet to be identified with the marking "TSO–C43b."

DATE: Comments must identify the TSO file number and be received on or before June 26, 1987.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C43b, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or Deliver Comments To: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW. Washington, DC 20591 Telephone (202) 267–9546

Comments on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO–C43d will include revised Marking and Data Requirements for temperature instruments. Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document Nos. DO–160B, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 1984, for the environmental standards, and DO–178, "Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

How to Obtain Copies

A copy of the proposed TSO–C43b may be obtained by contacting the person under "For Further Information Contact." TSO–43b references SAE AS 8005, reaffirmed October 1984, for minimum performance standards, RTCA/DO–160B for the environmental standard, and RTCA/DO–178A for the computer software requirements; SAE AS 8005 may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO–160B and DO–178A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

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

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87–5100 Filed 3–10–87; 8:45 am]

BILLING CODE 4910–3–M

Federal Highway Administration

National Motor Carrier Advisory Committee; Working Group on Safety; Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the Working Group on Safety of the National Motor Carrier Advisory Committee will hold a meeting on April 3, 1987, in Washington, DC, at the U.S. Department of Transportation headquarters, 400 Seventh Street SW., Washington, DC 20590. The meeting will begin at 9 a.m. in Room 4234 and it is open to the public. The agenda will focus on the implementation of the commercial driver's license program which was created as a result of the Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99–570 enacted on October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HOA–1, Room 4218, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2238. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

Issued on: February 27, 1987.

Robert E. Farris,

Deputy Administrator.

VETERANS ADMINISTRATION

Agency Form Under OMB, Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the

form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

DATED: March 5, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Report of Medical Examination for Disability Evaluation
3. VA Form 21–2545
4. On occasion
5. Individuals or households
6. 260,000 responses
7. 65,000 hours
8. Not applicable

Extension

1. Department of Veterans Benefits
2. Claim for One Sum Payment
3. VA Form 29–4125
4. On occasion
5. Individuals or households
6. 87,821 responses
7. 8,872 hours
8. Not applicable

[FR Doc. 87–5102 Filed 3–10–87; 8:45 am]

BILLING CODE 8320–01–M

Evaluations by the Veterans Administration of Scientific Studies Related to the Effects of Exposure to Herbicides Containing Dioxin or to Ionizing Radiation

AGENCY: Veterans Administration.

ACTION: Notice of evaluations.

SUMMARY: "Veterans Dioxin and Radiation Exposure Compensation Standards Act" (Pub. L. 98–542) and implementing regulations, 38 CFR 1.17, require that there be published from time to time in the **Federal Register** evaluations by the Veterans Administration (VA) of scientific or medical studies relating to the adverse health effects of exposure to herbicides containing dioxin (specifically 2,3,7,8-Tetrachlorodibenzo-p-dioxin) or to ionizing radiation. This "Notice of Evaluations" contained in Appendix A is concerned with the scientific studies previously reviewed by the Scientific Council of the Veterans' Advisory Committee on Environmental Harards, a committee established under the legislative authority of Pub. L. 98–542. A summary of the review of these studies by the Committee is provided as Appendix B.

FOR FURTHER INFORMATION CONTACT: Dr. Barclay M. Shepard, Director, Agent Orange Projects Office (10X2), Department of Medicine & Surgery, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 653–5047.

SUPPLEMENTAL INFORMATION: A. The Studies reviewed in Appendix A are:

1. Hardell and Sandstrom, "Case-control study: Soft tissue sarcomas and exposure to phenoxyacetic acids or chlorophenols." *Br. J. Cancer* 39: 711–717. 1979
2. Eriksson, Hardell, et al., "Soft tissue sarcomas and exposure to chemical substances: A case-referrent study." *Br. J. Ind. Med.* 38: 27–33. 1981
3. Smith et al., "Soft-tissue sarcoma and exposure to phenoxy herbicides and chlorophenols in New Zealand." (Journal of National Cancer Institute) *JNCI* 73: 1111–1117. 1984
4. Greenwald et al., "Sarcomas of Soft Tissues after Vietnam Service." *JNCI* 73: 1107–1109. 1984
5. Lawrence et al., "Mortality Patterns of New York State Vietnam Veterans." (American Journal of Public Health) AJPH 75: 277–279. 1985
6. Kogan & Clapp, "Mortality Among Vietnam Veterans in Massachusetts, 1979–1983." 1985
7. Holmes et al., "West Virginia Vietnam-era Veterans Mortality Study." 1986
8. Anderson, et al., "Wisconsin Vietnam Veteran Mortality Study." 1985
9. Wendt, "Iowa Agent Orange Survey of Vietnam Veterans." 1985
10. Robinette, Jablon, & Preston, "Mortality of Nuclear Weapons Test Participants." National Research Council of the National Academy of Sciences. 1985

B. The following evaluation factors were used:

(1) Whether the study's findings are statistically significant and replicable,

(2) Whether the study and its findings have withstood peer review,

(3) Whether the study's methodology has been sufficiently described to permit replication,

(4) Whether the findings of the study are applicable to the veteran population of interest; and

(5) Views of the Veterans Advisory Committee on Environmental Hazards.

Dated: March 3, 1987.

Thomas K. Turnage,

Administrator.

APPENDIX A—"Analysis of Studies" Relating to the Effects of Exposure to Herbicides Containing Dioxin or to Ionizing Radiation

1. Hardell and Sandstrom, "Case-control study: Soft tissue sarcomas and exposure to phenoxyacetic acids or chlorophenols." Br. J. Cancer 39: 711–717. 1979

Description of Study

In this report the authors present a case-control study in an effort to determine the association between exposure to phenoxyacetic acid herbicides and/or chlorophenols and the appearance of soft tissue sarcoma (STS). The study consists of 52 males cases (21 living, 31 deceased) between 26 and 80 years of age who were admitted to the University Hospital in Umea, Sweden, during 1970–1977. The controls, also males (4 for each case for a total 208) were selected from the general population and matched for age and place of residence. Deceased controls were selected for decreased cases. Exposure to the chemicals of interest was determined by a variety of methods including self-administered questionnaires, follow-up interviews and employers' responses to letters requesting exposure data. Time and duration of exposure among the cases and controls varied from 2 days in a 10-year period to 49 months in a 13-year period of time. Similarly the time interval between initial exposure and the time of diagnosis ranged up to 27 years. In the total group of those exposed to phenoxy herbicides and/or chlorophenols the relative risk for STS was 5.7 and in those believed to be exposured to phenoxy herbicides alone the relative risk was 5.3. From these data the authors concluded that occupational exposure to these chemical compounds and/or their contaminants, such as 2,3,7,8-TCDD, significantly increases the risk of developing soft tissue sarcoma.

Commentary

The case-control study methodology is appropriate in evaluating the risk for rare and unusual diseases and the selection of cases and controls is in accordance with scientifically accepted standards. The study design has been described in sufficient detail to permit replication. Studies by other investigators using a similar design, however, have not resulted in similar findings. In examining the conduct and conclusions of this study, several serious questions are raised:

(a) It appears that there exists considerable opportunity for recall bias in that study subjects (or their next of kin in the case of deceased subjects) having a serious illness such as a life-threatening malignancy (cases) are more likely to recall exposure to a perceived or potentially cancer-causing chemical than are study subjects who are free of such a disease (controls). The precise details and use of the questionnaire as well as the criteria for follow-up interviews are not carefully described and consequently add to the concerns related to recall bias.

(b) The criteria for assigning exposure lacks precision and there is no discussion of an analysis of data to determine the presence of a dose-response relationship.

(c) Among the study subjects categorized as being exposed to phenoxy herbicides alone, there were only 13 cases and 14 controls who were deemed to have been exposed to these compounds. In this group there was a total of only 46 cases of STS. These are relatively small numbers, and consequently, study conclusions must be drawn with caution.

(d) For the most part, the outcome of interest, soft tissue sarcoma was treated as though it were a single entity. It is well-known that soft tissue sarcomas represent a wide variety of tumors arising from many different types of tissue and having a wide variation in biological behavior. There is no evidence to suggest that these tumors have a common etiology. The authors do not indicate the distribution of the various types of soft tissue sarcomas in the case group in order to check for any deviation of such a distribution from what is seen in the general population. Although the histology was reviewed by a single pathologist, the details and results of this review are not mentioned. Furthermore, if there is a causual relationship between phenoxyacetic acid exposure and soft tissue sarcomas, it is highly unlikely that this relationship exists equally for each of the many cell types in this group of cancers. Therefore, if a casual relationship exists for any of the cell types, it should manifest itself by revealing a variation from the usual distribution of such tumor types. Failure to describe and compare this distribution among the exposed and unexposed cases represents a serious omission on the part of the authors.

(e) This study, which should be considered more of a hypothesis-seeking than a hypothesis-testing effort certainly raises the possibility of a casual connection between phenoxy herbicide exposure among males and one or more of the soft tissue sarcomas. Although the overall age range of the study subjects is given, the ages of the individual subjects or even their age distribution are unfortunately omitted from the table describing the various exposure features for each of the exposed cases and controls. This represents an unfortunate omission of information which would have been easy to provide. The applicability of this study to the Vietnam veteran population is remote since the age range of the subjects, the mode and duration of exposure and the time interval between exposure and onset of disease are not comparable in many instances.

2. Eriksson, Hardell, et all., "Soft tissue sarcomas and exposure to chemical substances: A case-referrent study," *Br. J. Ind. Med.* 38: 27–33. 1981.

Description of Study

This study, similar in design and purpose to the Hardell report described above, is also a case-control study. It consists of 110 cases and 220 controls, presumably males, although the sex of the subjects is not given. Also missing in the description are the age ranges of cases and controls as well as the details relating to duration of exposure and time interval between initial exposure and time of diagnosis for the cases. In this study the authors report a relative risk for STS of 5.1 for the overall exposed group and 6.8 for those deemed to be exposed to phenoxy herbicides alone.

Commentary

Since this study's methodology is essentially the same as the Hardell study, most of the same concerns and criticisms apply. In addition to those described above, the following should be noted:

(a) Unlike the Hardell study, the Eriksson study provides the distribution of the various cell types of the 110 case tumors. It is most unfortunate, however, that the authors fail to show the same distribution for the exposed and unexposed groups, in other words, to show how many of each cell type were seen among the exposed and the unexposed subjects. Surely the information was available, and it would have been a simple matter to add two more columns in Table I to show if the increased risk was attributable to any one of the 13 cell types shown. Failure to provide this information seems a serious omission on the part of the authors.

(b) Unlike the Hardell study, the Eriksson study addresses the dose-response issue, as seen in Table IV. Thirty days of exposure is taken as the dividing point and the number of cases above and below this exposure time is the same, suggesting that there is no dose-response relationship. This in turn raises serious doubt as to the likelihood of any causal relationship between exposure to these chemicals and soft tissue sarcomas.

As in the Hardell study and for many of the same reasons this study cannot be considered directly applicable to the Vietnam veteran population.

3. Smith et al., "Soft-tissue sarcoma and exposure to phenoxy herbicides and chlorophenols is New Zealand." *JNCI 73: 1111–1117. 1984.*

Description of Study

This is a case-control study to examine the association between soft tissue sarcomas and occupational exposure to phenoxy herbicides in New Zealand where these chemicals have been used extensively since the late 1940's. The 82 cases of soft tissue sarcoma were all males selected from a National Cancer Registry and had all been reported from public hospitals between 1976 and 1980 inclusive. The histology was confirmed by a single pathologist. The 92 controls, also males, were selected from the same source and had another type of cancer. The use of cancer controls is thought to significantly reduce the likelihood of recall bias. The authors found that among the study subjects who were deemed to be probably or definitely exposed for more than 1 day and more than 5 years prior to entry into the cancer registry (17 cases vs. 13 controls) the relative risk for soft tissue sarcoma was 1.6 These were the same exposure criteria used in the Swedish studies, but unlike the Swedish studies, the increased risk in this study was not statistically significant. In a second analysis of subjects classified as probably or definitely exposed for at least 5 days and 10 or more years prior to entry int o the cancer registry, the relative risk fell to 1.3, again not statistically significant. This suggests

the absence of a dose-response relationship and is contrary to what one would expect if there is a causal relationship between exposure to these chemicals and soft tissue sarcomas.

Commentary

The design, methodology, and findings of this study are clearly outlined and can be readily compared to other studies of this type. This study does not support the conclusions reached in the Swedish studies described previously. The failure to show a dose-response effect and the use of cancer controls to minimize recall bias are seen as strengths of this study. There are, however, some aspects of the study which should be noted:

(a) The numbers of exposed and unexposed cases and controls are relatively small and therefore conclusions must be drawn cautiously.

(b) The cases and controls were selected from among individuals reported to the National cancer Registry from public hospitals only. The authors suggest that reporting from other hospitals was more recent and/or less complete. There is no discussion, however, as to how representative the public hospital patient population is with regard to the population of exposed workers and whether or not limiting the selection of study subjects to this group alone introduces any bias.

(c) There was no distribution of cancers by cell type to determine any variation from the usual distribution in the general population. The authors thereby seem to treat soft tissue sarcomas as a single entity. Concerns related to this issue are previously described.

(d) The exposure criteria are somewhat imprecise. This may in part be due to the intention of the authors to mimic the Swedish studies for the purpose of comparison.

(e) This study does not examine a population analogous in age to Vietnam veterans. For this reason and the lack of similarity of exposure characteristics, the study cannot be considered directly applicable to the Vietnam veteran population.

4. Greenwald et al., "Sarcomas of Soft Tissues after Vietnam Service." *JNCI* **73: 1107–1109. 1984**

Description of Study

The authors present a case-control study to examine the relationship between military service in Vietnam and the occurrence of soft tissue sarcoma among male residents of New York State (excluding New York City) who were of draftable age during the Vietnam conflict. The study consists of 281 cases (151 living and 130 deceased) of soft tissue sarcomas selected from the New York State Cancer Registry diagnosed between 1962 and 1980 and between the ages of 18 and 29 during the years 1962 to 1971. Two control groups were chosen as follows:

(a) 281 live male controls selected from drivers' license registration files from the New York State Department of Motor Vehicles matched by age (within 5 years of birth date), race and place of residence;

(b) 130 deceased males selected from New York State death certificates and similarly matched to deceased cases. No cancer deaths were included among the controls. Of the 281 cases, 10 had military service in Vietnam as compared to 18 of 281 live controls and 9 of 129 deceased controls. From these data the authors concluded that military service in Vietnam does not increase the risk of developing soft tissue sarcoma. This same conclusion applies to military service in general. In addition to questions relating to military service, considerable data relating to non-military occupations and exposure to herbicides were obtained. Analyses of these data showed no statistically significant association between soft tissue sarcomas and occupational exposure to herbicides or other pesticides.

Commentary

This study is described with sufficient clarity and detail to be readily replicated given the availability of comparable data bases. The relatively large number of cases and the two groups of carefully matched controls make this a strong study. A moderate-sized sample (108 of 281 cases) of pathology specimens were reviewed by a single pathologist who was "blinded" as to the military service status of these cases. In reviewing this study, the following concerns are raised:

(a) The reason for reviewing only 108 pathology specimens is not given, and the accuracy of this review relative to the coded diagnoses in the cancer registry is not described. These are unfortunately omissions especially in view of the difficulty in classifying these tumors. The distribution by cell type among the cases is not provided in sufficient detail to make comparisons between the various subsets of study subjects.

(b) The results of the interviews are not provided in sufficient detail as to be readily understood, although the outcome of the analyses of these data are stated as not showing a statistically significant association with a number of occupational exposures as noted above.

(c) As stated by the autors, the average latency period is only about 12 years, which is relatively short for chemical carcinogens but approximates what is claimed by concerned individuals.

This is primarily a study to determine the risk for soft tissue sarcoma among Vietnam veterans and other veterans of the Vietnam era. It is therefore directly applicable to the Vietnam veteran population and makes a strong case for the lack of such an increased risk. There is less adequate data, however, to make an equally strong statement as regards the risk of developing soft tissue sarcoma among veterans exposed to Agent Orange, other herbicides and contaminants such as 2,3,7,8–TCDD.

5. Lawrence et al., "Mortality Patterns of New York State Vietnam Veterans." AJPH 75: 277–279. 1985

Description of Study

This is a mortality study comparing case of death patterns among verious groups of males of the age group eligible for military duty during the Vietnam conflict and whose deaths were recorded in the New York State Vital Records. The selection of subjects included males between the ages of 18 and 29 inclusive during the time period 1965 to 1971 who had died during 1965 to 1967 and 1970 to 1980 in New York State, excluding New York City. There were 22,494 deaths which included 4,558 Vietnam era veterans. Veteran status and Vietnam service status were more accurately determined using a combination of Defense Department and Veterans Administration data files which when matched with New York State files resulted in a total of 1,496 deceased Vietnam era veterans of whom 555 had served in Vietnam. In comparing the two groups, the authors found no remarkable disease differences between Vietnam veterans and other veterans of the Vietnam era. There was, however, an increase in deaths due to non-motor vehicular injuries of transport.

Commentary

This study was based on linkage of data files and therefore conclusions must be drawn cautiously since the accuracy of the records was not checked in detail. As pointed ut by the authors, this type of study is most useful in seeking hypotheses to be tested by other epidemiological techniques. In addition, this study has no ability to determine the health risks of exposure to phenoxy herbicides or other chemicals of concern

in military or other occupational settings. Being a study of New York State Veterans of the Vietnam era, this has direct applicability to this group of veterans as a whole.

6. Kogan & Clapp, "Mortality Among Vietnam Veterans in Massachusetts, 1979–1983." 1985.

Description of Study

This is a state report of a mortality study of white males of the Vietnam veteran age group who died in Massachusetts between 1972 and 1983 and whose death certificate information was recorded in a data base compiled by the Massachusetts Department of Public Health. This was linked to a data base of veterans awarded a state bonus which consisted of $300 for service in Vietnam and $200 for service elsewhere between 1958 and 1973. This linkage provided 840 deceased veterans presumed to have served in Vietnam and 2,515 veterans classified as non-Vietnam veterans. Among the more striking conclusions were an approximately 9-fold increased risk for connective tissue cancers and a slightly less than 2-fold increased risk of kidney cancer when comparing Vietnam veterans to non-Vietnam veterans. When comparing these two groups, there was a moderately increased risk of "estimated suicides" which included unknown causes of death and poisonings in addition to recorded suicides. Deaths from all external causes including motor vehicle accidents were also moderately increased.

Commentary

This study utilizes an interesting and imaginative technique of data base linking which has the advantage of producing rapid results. Its principal value lies in seeking out hypotheses to be tested through the use of more precise epidemiological techniques. These factors are well described by the authors who point out the limitations and cautions which should be applied to such a study. Of particular concern are the following:

(a) Death certificate information needs validation especially when dealing with a diagnosis of the complexity of connective tissue (soft tissue) cancers. These diagnoses need confirmation by a pathologist expert in this field.

(b) Any Vietnam veterans' bonus list needs validation particularly with regard to actual in-country service. Many of the state bonuses were awarded on the basis of information on the veteran's discharge certificate which usually does not discriminate between in-country service and service in the general vicinity of Southeast Asia during the time of the Vietnam conflict.

(c) There exists a number of opportunities for bias being introduced with the use of the Massachusetts bonus list. Such bias may result from excluding Vietnam veterans who failed to apply for the bonus or who were ineligible for the bonus by virtue of the six-month residence requirement or a less than honorable discharge.

As in the other studies using Vietnam veterans as study subjects, the Massachusetts mortality study is considered directly applicable to this veteran population as a whole. The results, however, must be interpreted with caution, and since no attempt was made to analyze for Agent Orange exposure, no conclusions can be drawn with regard to the possible effects of such exposure.

7. Holmes et al., "West Virginia Vietnam-era Veterans Mortality Study." 1986.

Description of Study

This is a report by the West Virginia Department of Health of a mortality study of veterans of the Vietnam era who died in that state between 1968 and 1983 inclusive. This study is similar in design to the Massachusetts study, i.e., subjects were identified by linking a state death records data file with a computer file containing the names of all applicants for a state military service bonus given to veterans who were on active duty between 1964 and 1973. There was a differential payment based on in-country vs. non-in-country service, and to be eligible the veteran must have been a resident of West Virginia for at least six months prior to entry into active duty and have received an honorable discharge. The study subjects included 615 deceased in-country Vietnam veterans and 610 deceased Vietnam era veterans who had not served in the Southeast Asia theatre of operations. Results of a detailed series of analyses comparing causes of death among the Vietnam and non-Vietnam veterans as well as all veterans and non-veterans are presented clearly and in a manner which would permit replication given the availability of comparable data bases. Among the more striking results were the following:

(a) When comparing Vietnam to non-Vietnam veterans, statistically significant increases were found in three groups of malignancies: lymphoma, including Hodgkin's disease (7 cases); testicular cancer (3 cases), and soft tissue sarcoma (3 cases). In each instance, however, the numbers of cases were small and interpretation of results must be made with caution.

(b) In comparing all Vietnam era veterans to non-veterans, there was a relatively small but statistically significant increase in the overall category of deaths due to accidents, poisoning, and violence. In the specific subcategories of motor vehicle and non-motor vehicle fatalities, suicides, and all other external causes, however, there were no statistically significant increases.

Commentary

This study closely resembles the Massachusetts study and consequently many of the same observations apply to both studies, in particular, the need for caution in drawing conclusions from the results of the statistical analyses and the possibility of selection bias with regard to actual in-country service. Also, as noted previously, there was no attempt to analyze for herbicide exposure and, consequently, no conclusions can be drawn from this study regarding the effects of exposure to Agent Orange or its dioxin contaminant. This study also has direct applicability to the Vietnam veteran population, but as pointed out by the authors, interpretations and conclusions must be made with caution.

8. Anderson, et al., "Wisconsin Vietnam Veteran Mortality Study." 1985.

Description of Study

This is a detailed report of a very extensive mortality study which was conducted in three phases, each of which makes comparisons of mortality patterns among different groups of veterans in the State of Wisconsin. It is the fourth state mortality study included in this review. The three phases provide comparisons among the following groups:

Phase 1—All Wisconsin veteran deaths for the years 1960 through 1979 were compared to non-veteran deaths.

Phase 2—All Wisconsin Vietnam and non-Vietnam veteran deaths for the years 1964 through July 1983 were compared to each other and to non-veteran.

Phase 3—A large cohort mortality study based on 122,238 Vietnam era veterans of whom 2,698 had died and for whom 2,590 (96%) death records were obtained. Of these 927 (35.8%) had served in Vietnam (Vietnam veterans) and 1,663 had served elsewhere (non-Vietnam veterans). The distribution of Vietnam versus non-Vietnam veterans among deceased veterans was almost

identical to the same distribution in the entire cohort.

Since Phase 1 did not focus specifically on Vietnam veterans, this review will deal with Phases 2 and 3 which are directly applicable to the Vietnam veteran population as a whole.

Study Conclusions

When comparing causes of death among Vietnam versus non-Vietnam veterans, significant findings in Phase 2 include the following:

(a) Cancer of the pancreas, diseases of the genito-urinary system when combined, and all pneumonias were the only conditions for which there was a statistical significant increased risk.

(b) There was a small excess of soft tissue sarcoma and cancer of the digestive organs and peritoneum but these were not statistically significant.

(c) There was no increased risk for any other malignancy. In comparing cause of death patterns among Vietnam and non-Vietnam veterans, Phase 3 findings included the following:

(a) There were statistically significant increased rates of death due to motor vehicle accidents, all accidents and all external causes.

(b) There was a small, not statistically significant increase in deaths recorded as suicide.

(c) There were no statistically significant increases in deaths due to any malignancy including soft tissue sarcoma.

Commentary

Of the four state mortality studies presented in this review, the Wisconsin study is the most detailed and most comprehensive. In addition it encompasses the two most widely accepted analytical techniques used in conducting mortality studies, i.e., a proportional mortality ratio (Phases 1 and 2) and a calculation of actual death rates derived from a cohort of Vietnam and a cohort of non-Vietnam veterans (Phase 3). The latter provides the basis for a standardized mortality ratio analysis. As with the other Vietnam veteran mortality studies, the Wisconsin study has direct applicability to the Vietnam veteran population and again as in the other mortality studies, no attempt was made to analyze for herbicide exposure.

It is of interest that these four studies failed to demonstrate any consistent pattern for Vietnam veterans having an increased risk for a particular disease or category of disease as a cause of death which compared to non-Vietnam veterans. There is, however, a suggestion of an increase in deaths due to motor vehicle and non-motor vehicle accidents as well as deaths due to external causes such as trauma and poisoning. Deaths recorded as suicides are not consistently elevated, but some of the deaths due to external causes may result from suicide, which, is often under-reported as a cause of death.

9. Wendt, "Iowa Agent Orange Survey of Vietnam Veterans." 1985.

Description of Study

The Iowa Agent Orange Survey is a state report which includes a very detailed description of the whole Agent Orange issue including an historical overview of the military use of herbicides by U.S. Armed Forces in Vietnam and highlights of a variety of subsequent events. It focuses primarily on the concerns of Vietnam veterans and the response to these concerns on the part of the Congress, various federal agencies and state governments.

A central purpose of the report is to present the results of a survey of Iowa Vietnam veterans as mandated by the State Legislature in May 1983. The survey was initiated by mailing a questionnaire to 45,181 Iowa Vietnam veterans. 10,846 responses met the criteria and formed the basis of the survey. The report gives a detailed listing and analysis of the responses in a number of areas including military and post-military occupations as well as personal and family health-related questions. The final section of the report includes a statement that "no definitive evidence exists to establish any link between exposure to Agent Orange and subsequent long-term adverse health effects. At present, there is no convincing evidence that the rates of birth abnormalities, physical disorders, and mortality are significantly increased among Vietnam veterans."

Commentary

This report represents a very responsible and comprehensive effort on the part of the Iowa State Department of Health, to provide a most useful guide and source of information for Vietnam veterans concerned about the possible adverse health effects of exposure to Agent Orange. The survey instrument is well designed and the information derived from it is carefully analyzed and clearly depicted. The findings and conclusions, as noted above should provide some measure of reassurance to Vietnam veterans in the State of Iowa as well as to all Vietnam veterans and their families. Unlike the studies described above, there was no intent to compare the results of the survey with data derived from a non-Vietnam veteran group and therefore does not constitute an "epidemiological study" in the usual sense of the term. It does, however, as with other carefully designed and conducted health surveys, provide a basis for seeking possible adverse health effects for further study.

10. Robinette, Jablon, & Preston, "Mortality of Nuclear Weapons Test Participants." National Research Council of the National Academy of Sciences. 1985.

Description of Study

This is a cohort mortality study of the 46,186 active duty military participants of a series of five nuclear weapons tests conducted between 1951 and 1957 at either the Nevada Test Site or the Pacific Proving Ground. The study included an analysis of the cause of death pattern among 5,113 deceased veterans compared to cause and age-specific mortality rates in the U.S. population. The overall death rate was somewhat less than expected in the general population reflecting the commonly observed "healthy veteran" effect. When comparing the rates for deaths due to accidents, acts of war and other external causes, there was a small (6%) increase among the veterans. On the other hand, there were fewer than expected deaths from all malignancies combined, including leukemia. When analyzing the deaths among the participants in the test named SMOKY, there were 10 deaths due to leukemia, 2.5 times greater than the expected number. The analysis revealed that this was a statistically significant increase in this group. When analyzing the leukemia deaths among all other test participants, however, there were slightly fewer than expected deaths (not statistically significant).

Commentary

A statistically significant elevation of deaths due to a disease process was seen for leukemia in only one of the tests. This was based on only 10 deaths from this cause, a relatively small number. As stated by the authors, these results can neither confirm nor deny that the increase in leukemia was due to radiation exposure. This is especially so since there was no increase in leukemia or other malignant disease among the nuclear test participants when the data from all tests were combined.

Summary Conclusions of the Research Studies Reviewed to Date

Based on the reviews of the research studies noted above, there does not appear to be sufficient evidence to establish a causal relationship between possible exposure of veterans to

phenoxy herbicides in Vietnam and adverse health effects, including soft tissue sarcomas, other cancers or other systemic diseases. It should be noted, however, that among the studies of veterans noted above, none has attempted to correlate the degree or intensity of exposure to herbicides/dioxins, with adverse health effects. Rather, the correlation has been with military service in Vietnam. Even in this matter actual "in-country" service has not been conclusively established in each instance. Furthermore, it should be noted that verified "in-country" service in Vietnam cannot be equated to herbicide/dioxin exposure for the purpose of drawing scientifically valid conclusions regarding the possible adverse health effects of such exposure. Many veterans with actual service in Vietnam had little or no opportunity for herbicide/dioxin exposure.

Several additional studies dealing with health effects of Vietnam service and/or herbicide exposure are currently underway and nearing completion. The conclusions drawn from these studies will be the subject of future notices in the **Federal Register**.

As regards the effects of veterans' exposure to ionizing radiation, the single study in this area as noted above suggests the possibility of an increased risk of leukemia in one group and prostate cancer in another group. These findings were limited to one nuclear test in each case and hence must be viewed as inconclusive. Further research in this area is being contemplated.

Future Scientific Evaluations

In accordance with the provisions of Pub. L. 98–542 and implementing regulations, additional evaluations will be published from time to time in the **Federal Register**. The nature of such evaluations and the scope of research to be reviewed is contingent on the number of completed research studies published following the date of this notice. A number of such studies are currently in progress and will be the subject of future reports.

Appendix B—Summary of Review of Studies by the Scientific Council of the Veterans' Advisory Committee on Environmental Hazard

Studies:

1. Hardell and Sandstorm, "Case-control study: Soft tissue sarcoma and exposure to phenoxyacetic acids or chlorophenols," Br. J. Cancer 39: 711–717. 1979.

This is a retrospective case-control study which attempted to determine a causal relationship between phenoxyacetic acids or other chlorine-containing organic compounds and the development of soft tissue sarcoma. The study's authors calculated the relative risk of developing a soft tissue sarcoma as 5.3 times greater in the "phenoxyacetic exposed" population and concluded that their investigation showed an increased risk.

2. Erikson, Hardell, et al., "Soft tissue sarcomas and exposure to chemical substances: a case-referrent study." Br. J. Ind. Med. 38: 27–33. 1981.

This study utilized the same design as the 1979 Hardell study. A relative risk of 6.8. for soft tissue sarcoma was calculated for persons exposed to phenoxyacetic acids.

3. Smith et al., "Soft-tissue sarcoma and exposure to phenoxy herbicides and chlorophenols in New Zealand." JNCI 73: 1111–1117. 1984.

The data in this case-control study showed no relationship of soft tissue sarcoma with occupational exposure to phenoxy herbicides and chlorophenols. The relative risk was 1.3. and was not statistically significant.

4. Greenwald et al., "Sarcomas of Soft Tissue After Vietnam Service." JNCI 73: 1107–1109. 1984.

This case-control study looked at the Vietnam service and military service experiences of men with soft tissue sarcomas and compared them to a control group matched on the basis of dates of birth and places of residence. The study failed to show an association of soft tissue sarcoma with exposure to Agent Orange or with service in Vietnam. The study also compared those or with service in Vietnam. The study also compared those who died with a second control group derived from death certificates. No relationship to service in Vietnam was detected.

Commentary: The Committee noted that the methods of the Hardell and Erikson studies had been criticized as to the statistical methods employed. Criticism had also been expressed about the possibility of selective recall in answering the mail and telephone questionnaires.

Specifically, the observation was made that a person reporting an illness would be more likely to recall the supposed causal event than would a well person to recall the same type of event. Concern was also expressed about the reliance upon the Ninth Revision of the International Classification of Disease (ICD 9) code 171 for the selection of the soft tissue sarcoma cases in the New Zealand study as this would not include a variety of other soft tissues sarcomas involving various organ sites. The Committee expressed its conclusion that these studies did not resolve the issue in either direction. The early positive studies were considered to have had such serious methodological flaws that the evidence linking soft tissue sarcoma to herbide exposure is not credible.

5. Lawrence et al., "Mortality Patterns of New York State Vietnam Veterans." AJPH 75: 277–279. 1985.

This cohort study compared deceased New York State veterans with Vietnam service to veterans of the Vietnam era with no Vietnam service and found no remarkable disease differences between the two groups. To the extent that Vietnam service was indicative of dioxin-contaminated herbicide exposure, no association of it with cause of death was found.

6. Kogan & Clapp, "Mortality Among Vietnam Veterans in Massachusetts, 1979–1983." 1985.

This study analyzed the mortality patterns of Vietnam veterans compared to non-Vietnam veterans and to other male who died during the period 1972 to 1983. The study found elevated risks of death due to motor vehicle accidents and suicide and excess cancers of the connective tissue and kidney.

Commentary: The committee believed that these two studies were well-conducted and that the authors properly stated their limitations. With respect to the Massachusetts study, it was noted that there was no attempt to correlate the findings with the amount of exposure to Agent Orange a veteran may have had in Vietnam and that the number of cases identified was low, although statistically significant. Concerning the New York study, it was thought that the study may have been conducted too soon to reveal any conditions which may have a long latent period.

7. Holmes et al., "West Virginia Vietnam-era Veterans Mortality Study." 1986.

This study compared the causes of death among Vietnam veterans, Vietnam-era veterans who did not serve in Vietnam, and male non-veterans and found no difference for all causes of death but did note higher incidences of Lymphoma (Hodgkins Disease), testicular cancer, and soft tissue sarcoma among Vietnam veterans. The Study's authors noted that the findings must be interpreted cautiously and set forth the basis for this caution.

8. Anderson, et al., "Wisconsin Vietnam Veteran Mortality Study." 1985.

This proportionate mortality study compared the causes of deaths among Vietnam veterans, Vietnam-era veterans, non-veterans and all other veterans (phases 1 and 2; phase 3 compared the death rates of Wisconsin Vietnam veterans to a cohort of non-Vietnam veterans). The study found statistically significant increases in pancreatic cancer, all diseases of the genito-urinary system and all pneumonias.

Commentary: The Committee agreed with the West Virginia study's authors as to the limitations of the study. Among these were that there was no basis for determining the completeness of the data based used and that there had not been a vertification of the service data to prevent possible misclassification. Neither study presented any information concerning significant confounding factors such as smoking and alcohol consumption. Also, these studies were relatively small with few deaths being studies. The Committee believed that the findings left open the question of whether soft tissue sarcoma may be associated with Vietnam Service.

9. Wendt, "Iowa Agent Orange Survey of Vietnam Veterans." 1985.

The data were collected from a self-administered questionnaire. The results found no definitive evidence to establish any link between exposure to Agent Orange and subsequent long-term adverse health effects. The study also concluded that there was no convincing evidence that the rates of birth abnormalities, physical disorders, and mortality were significantly increased among Vietnam veterans.

Commentary: The Committee noted with interest the study's findings but cautioned that they were based upon a self-administered, uncorroborated questionnaire. The weaknesses of such a study, the Committee noted, are many and well-known.

10. Robinette, Jablon, & Preston, "'Mortality of Nuclear Weapons Test Participants." National Research Council of the National Academy of Sciences. 1985

This investigation involved a review of the death certificates of the approximately 46,200 veterans who participated in one or more of five series of atomic weapons tests in Nevada or the Pacific Islands. About 5,000 of these men were known to have increased deaths from cancer or other diseases for the veterans overall. The study did, however, confirm an excess of leukemia among veterans of one nucelar test (Short SMOKY) and a slight increase in the number of prostate cancers among veterans of another test. The lack of consistent evidence of increased cancer incidence led the study's authors to proffer two explanations: that the observed high incidence of leukemia among the Shot SMOKY participants is simply a "chance aberration" or the actual radiation exposure of these men was several times the dose recorded at the time.

Commentary: The Committee believed that this study was well designed and executed. The Committee agreed with the study's investigators' description of the study's findings and limitations.

[FR Doc. 87-5103 Filed 3-10-87; 8:45 am]
BILLING CODE 8320-01-M

Cooperative Studies Evaluation Committee Notice of Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the The Children's Inn, 342 Longwood Avenue, Boston, Massachusetts 02115 on April 8, 1987. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 7:30 to 8:00 a.m., on April 8, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping C. Huang, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202-233-2861), prior to March 20, 1987.

The meeting will be closed from 8:00 a.m. to 3:30 p.m. on April 8, for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Pub. L. 92-463, as amended by section 5(c) of Pub. L. 94-409, and subsection (c)(6) and (c)(9)(B) of section 552b, title 5, United States Code. During this portion of the meeting, discussions and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of the Committee's recommendations would likely frustrate implementation of final proposed actions.

Dated: February 26, 1987.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-5141 Filed 3-10-87; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 47
Wednesday, March 11, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 5887.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETINGS: 11:00 a.m., March 20, 1987.

CHANGE IN THE MEETING: The market surveillance meeting has been changed to Tuesday, March 17, 1987 at 11:00 a.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-5252 Filed 3-9-87; 11:19 am]

BILLING CODE 6351-01-M

FEDERAL COMMUNICATIONS COMMISSION

March 5, 1987.

The Federal-State Joint Board will hold an Open Meeting on the subjects listed below on Thursday, March 12, 1987, which is scheduled to commence at 2:00 p.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Common Carrier—1—Title: Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, Recommended Decision and Order. Summary: The Federal-State Joint Board will consider whether to adopt a Recommended Decision and Order recommending revision of the separation procedures, Part 67 of the Commission's Rules, applicable to Central Office Equipment, including Categories 6 and 8.

Common Carrier—2—Title: Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, Recommended Decision and Order. Summary: The Federal-State Joint Board will consider whether to adopt a Recommended Decision and Order recommending revision of the separations procedures, Part 67 of the Commission's Rules, applicable to the Revenue Accounting Expenses in Account 662.

Common Carrier—3—Title: MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules. Summary: The Federal/State Joint Board will consider adopting recommendations concerning revisions to the subscriber line charge, lifelife assistance measures, high cost assistance measures, and carrier common line pooling issues.

Additional information concerning this meeting may be obtained from Cindy Schonhaut, of the Common Carrier Bureau, telephone number (202) 632-7500.

Issued: March 5, 1987.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-5233 Filed 3-9-87; 10:25 am]

BILLING CODE 6712-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Tuesday, March 10, 1987.

PLACE: Courtroom 20, (open); U.S. District Court Building, 3rd Street and Constitution Avenue, NW., Washington, DC 2001-2801. Room 540 (closed) Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions Open to Public:

(1) Oral Argument in R.J. Reynolds Tobacco Company Inc., Docket No. 9206.

Portions Closed to the Public:

(2) Executive Session to follow Oral Argument in R.J. Reynolds Tobacco Company Inc., Docket No. 9206.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326-2179; Recorded Message: (202) 326-2711.

Emily H. Rock,

Secretary.

[FR Doc. 87-5199 Filed 3-6-87; 5:06 pm]

BILLING CODE 6750-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-87-08]

TIME AND DATE: Wednesday, March 11, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW, Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints: Certain 2-stage microwave ovens (Docket Number 1377).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Dated: February 27, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-5185 Filed 3-6-87; 5:01 pm]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-87-09]

TIME AND DATE: Tuesday, March 17, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW, Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731-TA-373 (Preliminary) (Certain copier toner from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Dated: February 27, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-5186 Filed 3-6-87; 5:01 pm]

BILLING CODE 7020-02-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, March 17, 1987.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report:* Grand Canyon Airlines DHC-6, N76GC, and Helitech, Inc., Bell 206B, N6TC, Midair Collision, Grand Canyon National Park, Arizona, June 18, 1986.
2. *Aircraft Accident Report:* Nabisco Brands, Inc, DA50, N784B, and Air Pegasus Corporation PA28, N1977H, Fairview, New Jersey, November 10, 1985.

FOR MORE INFORMATION, CONTACT: Ray Smith (202) 382-6525.

Dated: March 6, 1987.

Ray Smith,

Federal Register Liaison Officer.

[FR Doc. 87-5282 Filed 3-9-87; 1:47 pm]

BILLING CODE 75333-01-M

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on March 18, 1987, 10:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Reorganization of the Division of Legal and Administration Services
(2) Proposed Disability Regulations
(3) Final Rule Regulations on Primary Insurance Amount Determinations
(4) Proposed Legislation Regarding Administration Fund Appropriations
(5) Proposed Amendments of Parts 320 and 340 of the Board's Regulations
(6) Amendment of Consolidated Board Order 75-5
(7) Request for Board Consideration of Decision Denying Benefits to Mr. Vincent C. Rinaldi under Section 701 of Title VII of the Regional Rail Reorganization Act
(8) Appeal of Alexander Zelinsky of the Service and Compensation Credited Under the Railroad Retirement and Railroad Unemployment Insurance Acts
(9) Appeal of Nonwaiver of Overpayments, Bernice Smith
(10) Appeal of Computation of Widow's Annuity, Arlene I. White.
(11) Partial Repayment of the Unemployment Insurance Loan
(12) Retirement Claims Processing System Cost Audit
(13) Board Order 75-3

Portion Closed to the Public

(A) Appeal from Referee's Denial of Disability Annuity, Charles Smallwood.
(B) Appeal from Referee's Denial of Disability Annuity, Walter O. Mann, Jr.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 387-4920.

Dated: March 6, 1987.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 87-5303 Filed 3-9-87; 3:14 pm]

BILLING CODE 7905-01-M

federal register

Wednesday
March 11, 1987

Part II

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Proposed Action Under Guidelines; Notice

Digitized by Google

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Proposed Action Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of proposed action under NIH guidelines for research involving recombinant DNA molecules.

SUMMARY: This notice sets forth a proposed action to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning this proposal. This proposal will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on June 15, 1987. After consideration of this proposal and comments by the RAC, the Director of the National Institutes of Health will issue a decision on this proposal in accord with the NIH Guidelines.

DATES: Comments received by May 29, 1987, will be reproduced and distributed to the RAC for consideration at its June 15, 1987, meeting.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, 12441 Parklawn Drive, Room 58, Rockville, MD 20852. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, 12441 Parklawn Drive, Room 58, Rockville, Maryland 20852, (301) 770–0131.

SUPPLEMENTARY INFORMATION: The NIH will consider the following action under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

Proposed Amendment of Section I–C

Section I–C of the NIH Guidelines currently reads as follows:

I–C General Applicability

The Guidelines are applicable to all recombinant DNA research within the United States or its territories which is conducted at or sponsored by an institution that receives any support for recombinant DNA research from the National Institutes of Health (NIH). This includes research performed by the NIH directly.

An individual receiving support for research involving recombinant DNA must be associated with or sponsored by an institution that can and does assume the responsibilities assigned in these Guidelines.

The Guidelines are also applicable to projects done abroad if they are supported by NIH funds. If the host country, however, has established rules for the conduct of recombinant DNA projects, then a certificate of compliance with those rules may be submitted to NIH in lieu of compliance with the NIH Guidelines. The NIH reserves the right to withhold funding if the safety practices to be employed abroad are not reasonably consistent with the NIH Guidelines.

In a letter dated January 9, 1987, Mr. Edward Lee Rogers of Washington, DC, Counsel for the Foundation on Economic Trends and Jeremy Rifkin, has proposed that the following text be inserted after the first sentence of the third paragraph of Section I–C:

For the purposes of the preceding sentence, the term 'project' includes any research or development of the recombinant organism or other product or process in question, including all such work that is reasonably foreseeable when the NIH support is received. NIH support includes both money grants and any type of in-kind support, including research conducted directly by NIH, supplies, equipment, the use of facilities, and biological research materials. NIH support has been given where the source of funds or in-kind support is, directly or indirectly, the NIH.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: March 3, 1987.

Bernard Talbot,

Acting Director, National Institute of Allergy and Infectious Diseases.

[FR Doc. 87–4904 Filed 3–10–87; 8:45 am]

BILLING CODE 4140–01–M

federal register

Wednesday
March 11, 1987

Part III

Department of State
Department of Commerce

National Oceanic and Atmospheric Administration

22 CFR Part 33
50 CFR Part 258
Fisherman's Protective Act Procedures; Final Rules

DEPARTMENT OF STATE

22 CFR Part 33

[108.856]

Fisherman's Protective Act Procedures

AGENCY: Department of State.

ACTION: Interim rule.

SUMMARY: The Department of State (the "Department") issues this interim rule revising the administration of the Fishermen's Guaranty Fund (the "Fund") under section 7 of the Fishermen's Protective Act of 1967, as amended, (the "Act"). This revision is needed because there have been major changes in the characteristics of seizures covered by the Act and it is necessary to standardize and clarify compensation methods.

This revision will provide consistent and specific guidelines for compensation. The Fishermen's Guaranty Fund regulations formerly appeared as Department of Commerce regulations at 50 CFR Part 258. However, the administration of section 7 of the Act has been transferred from the Department of Commerce to the Department pursuant to section 408 of Pub. L. No. 99–659, November 14, 1986.

EFFECTIVE DATE: March 11, 1987.

ADDRESS: Bureau of Oceans and International Environmental and Scientific Affairs, Office of Fisheries Affairs, Room 5806, Department of State, Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT: Stetson Tinkham, Office of Fisheries Affairs, 202–647–2009.

SUPPLEMENTARY INFORMATION: Section 7 of the Act established the Fund which through fiscal year 1986 has been administered by the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), of the Department of Commerce. Pursuant to section 408 of Pub. L. No. 99–659, November 14, 1986, the administration of the Fund was transferred to the Department effective October 1, 1986. The Fund compensates U.S. fishing vessel owners, who have entered into guaranty agreements for certain losses caused by the seizure and detention of their vessels by foreign countries. Losses covered by the Fund include: confiscation, spoilage, damage, lost fishing time, and other incidental costs. Fees for these agreements historically have paid about 60 percent of these claims and about 40 percent have been paid from direct appropriations. The Secretary of State also has a separate program under section 3 of the Act which covers fines, license fees, registration fees, or any other direct charge imposed in addition to the fines or fees. Claims for these amounts are paid from direct appropriations. This revision clarifies both the submission and the processing of guaranty agreement applications and claims against the Fund. This clarification is necessitated by major changes in seizures, including longer detentions and more frequent and costlier confiscations, and the realization that the rules were not specific enough in some areas (particularly, the computation of lost fishing income). On January 14, 1985 (FR Doc. 85–888), NOAA published an Interim Rule with a request for comments. The Final Rule was prepared for publication on December 16, 1985, but not published apparently due to the pendency of S. 991 which became Pub. L. No. 99–659. The Department has chosen to adopt and publish the Commerce Department Final Rule now as a Department Interim Rule in order to begin operating the Fund without further delay. These regulations may be further revised particularly in connection with the reauthorization of section 7 in October, 1987.

The following Table shows how the Commerce Department regulations will be numbered as revised State Department regulations.

Commerce Department, section (50 CFR Part 258)	State Department, section (22 CFR Part 33)
258.1	33.1
258.2	33.2
258.3	33.3
258.4	33.4
258.5	33.5
258.6	33.6
258.7	33.7
258.8	33.8
258.9	33.9
258.10	33.10
258.11	33.11
258.12	33.12

The method for computing compensation for lost fishing time is standardized. Provision is made to exclude vessels' normal "downtime" when no income would be lost. Depreciated replacement cost is made the standard compensation basis for capital equipment other than vessels. The standard for vessels remains market value.

On January 7, 1985 (FR Doc. 85–888), NOAA published an interim rule with request for comments. The following summarizes the comments received and that Agency's responses, which for the present the Department of State adopts as its own:

Section 258.2

Subject: Definition of the term "market value".

Comment: The term "market value" should be defined.

Response: We agree.

Section 258.2(b)

Subject: Definition of the term "capital equipment", which was proposed as: "Equipment or other property which is depreciated for income tax purposes."

Comment: The definition should be amended to read "Equipment or other property which may be depreciated for income tax purposes."

Response: We agree.

Section 258.2(c)

Subject: Definition of the term "citizen", which was proposed as: "Any person who is a United States citizen, any State, or any corporation, partnership, or association organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade."

Comment: This definition is unnecessary.

Response: We agree to delete this definition.

Section 258.2(e)

Subject: Definition of the term "downtime", which was proposed as: "The time a vessel normally would be in port or transmitting to and from the fishing grounds."

Comments: For ease of computation, downtime should be considered to be nine percent of total fishing time lost for seizure/detention periods exceeding 10 days. No downtime should be included for seizure/detention periods of 10 days or less.

Response: We disagree. The regulations provide for fair and equitable calculation of estimated vessel downtime based on actual experience. The commentor's proposal is arbitrary.

Section 258.2(f)

Subject: Definition of the term "expendable items", which was proposed as: "Any property which is maintained in inventory or expensed for tax purposes."

Comment: The definition should be expanded to exclude those items which may be depreciated for income tax purposes.

Response: We agree.

Section 258.6(a)

Subject: Fees being based on administrative costs and at least one-third of projected claims.

Comment: Fees should also take into account amounts appropriated from the general fund of the Treasury.

Response: We disagree. The Department of State view is that the statute does not require that amounts appropriated from the general fund be considered in establishing fees. This matter is the subject of litigation in *Jolene v. United States,* No. 860961 E (IEG), (U.S.D.C. So. Dist. of Calif. filed April 15, 1986).

Section 258.6(c)

Subject: Adjustment of fees from time to time to reflect actual seizure and detention experience for which claims are anticipated.

Comment: Once an annual fee is established for an agreement year, it should not be changed for that agreement year.

Response: We disagree. The statute provides that the Secretary shall from time to time establish fees. No time constraints or annual limitation on fee adjustment is included in the statute. Actual experience may require mid year adjustment.

Section 258.8(b)(2)

Subject: Certified copies of charges, hearings, and findings by the government seizing the vessel.

Comment: The costs of obtaining certified copies and translating them should be reimbursable from the Fund.

Response: We agree.

Section 258.8(b)(4)(iii)

Subject: Lack of specificity in determining lost fishing time where gear is confiscated or damaged.

Comment: The rules should specify how lost fishing time is determined in cases where gear is confiscated or damaged.

Response: We disagree. The regulations allow the claimant to specifically address all circumstances causing lost fishing time. The suggestion that computations in cases involving confiscation or damage be specifically addressed would unnecessarily complicate the regulations and ignores the many other circumstances causing lost fishing time. Therefore, no modification of the regulations is made.

Section 258.8(b)(4)(vii)

Subject: Basing compensation on fish prices maintaining on the first day a vessel returns to port after the seizure and detention.

Comment: Ex-vessel prices for the tuna industry often have been negotiated prior to vessel departure. In such cases, compensation should be based on the negotiated price, rather than on the price otherwise maintaining on the first day the vessel returns after seizure and detention.

Response: We agree.

Section 258.8(c)

Subject: The claimant's burden of proof.

Comment: The claimant should not have to prove the facts of the seizure unless there is clear and convincing credible evidence that the seizure did not meet the eligibility requirements of the statute as amended.

Response: We agree.

Section 258.9(a)

Subject: Requirement for tuna claimants to use IATTC's catch statistics.

Comment: IATTC catch statistics do not contain data from the Central, Western, and South Pacific Ocean. For seizures in this area, catch and effort statistics should be furnished by the claimant to IATTC for certification, and accepted in calculation of compensation.

Response: We agree.

Section 258.9(a)(2)

Subject: Calculation of lost fishing time method for tuna seizures.

Comment: The method is complicated and varies from the previous method of using a fixed downtime factor.

Response: We disagree. Use of a fixed downtime factor was an interim compromise method used in some past claims in the absence of a fair and reasonable computational formula for computing lost fishing time. The computational method in the regulations is fair and reasonable, although somewhat involved.

Section 258.9(b)

Subject: Value of catch.

Comment: Catch value determination should consider catch *grade* as well as weight class.

Response: We agree.

Section 258.9(c)(3)

Subject: Compensation for expendable items at 50 percent of their replacement cost.

Comment: Compensation for expendable items should be set at 60 percent in accordance with recent Financial Services Division practice.

Response: We disagree. The recent practice of compensating for expendable items based on 60 percent of replacement cost resulted from a negotiated settlement of a group of claims. We believe 50 percent is a more reasonable and customary level.

Classification

The Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs determined that this interim rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. It is not major within that context because it does not significantly affect the economy, costs or prices, competition, employment, investment or productivity.

This rule is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553, because it relates to benefits or contracts. Matters "relating to . . . benefits, or contracts" are excepted from the Act, 5 U.S.C. 553(a)(2).

The Regulatory Flexibility Act does not apply to this rule because the rule was not required to be promulgated as a proposed rule before issuance as an interim rule by Section 553 of the Administrative Procedure Act or by any other law. Neither an initial nor a final regulatory flexibility analysis was prepared.

The rule imposes no new collection of information requirement for the purposes of the Paperwork Reduction Act. It continues existing requirements which have been approved by the Office of Management and Budget under control number 0648–0095.

This action does not require an environmental impact analysis because it is categorically excluded from the requirement to prepare an environmental assessment by 22 CFR Part 161.7(b)(3).

List of Subjects in 22 CFR Part 33

Administrative practice and procedure, Claims, Fisheries, Fishing vessels, Penalties, Seizures and forfeitures.

Accordingly, 22 CFR Part 33 is added to Subchapter D to read as follows:

PART 33—FISHERMEN'S PROTECTIVE ACT PROCEDURES UNDER SECTION 7

Seizures of U.S. Commercial Fishing Vessels

Sec.

Authority: 22 U.S.C. 1977.

Seizure of U.S. Commercial Fishing Vessels

§ 33.1 Purpose.

These rules clarify procedures for the administration of section 7 of the Fishermen's Protective Act of 1967. Section 7 establishes a Fishermen's Guaranty Fund to reimburse owners and charterers of United States commercial fishing vessels for certain losses and costs caused by the seizure and detention of their vessels by foreign countries under certain rights or claims not recognized by the United States.

§ 33.2 Definitions.

For the purpose of this part, the following terms mean:

(a) *Act.* The Fishermen's Protective Act of 1967, as amended [22 U.S.C. 1977 *et seq.*].

(b) *Capital equipment.* Equipment or other property which may be depreciated for income tax purposes.

(c) *Depreciated replacement cost.* The present replacement cost of capital equipment after being depreciated on a straight line basis over the equipment's depreciable life, which is standardized at ten years.

(d) *Downtime.* The time a vessel normally would be in port or transiting to and from the fishing grounds.

(e) *Expendable items.* Any property, excluding that which may be depreciated for income tax purposes, which is maintained in inventory or expensed for tax purposes.

(f) *Fund.* The Fishermen's Guaranty Fund established in the U.S. Treasury under section 7(c) of the Act (22 U.S.C. 1977(c)).

(g) *IATTC.* Inter-American Tropical Tuna Commission.

(h) *Market value.* The price property would command in a market, at the time of property loss, assuming a seller willing to sell and buyer willing to buy.

(i) *Other direct charge.* Any levy which is imposed in addition to, or in lieu of any fine, license fee, registration fee, or other charge.

(j) *Owner.* The owner or charterer of a commercial fishing vessel.

(k) *Secretary.* The Secretary of State or his designee.

(l) *Seizure.* Arrest of a fishing vessel by a foreign country for allegedly illegal fishing.

(m) *U.S. fishing vessel.* Any private vessel documented or certified under the laws of the United States as a commercial fishing vessel.

§ 33.3 Eligibility.

Any owner or charterer of a U.S. fishing vessel is eligible to apply for an agreement with the Secretary providing for a guarantee in accordance with section 7(a) of the Act.

§ 33.4 Applications.

(a) *Applicant.* An eligible applicant for a guaranty agreement must:

(1) Own or charter a U.S. fishing vessel, and

(2) Submit with his application the fee specified in § 33.6 below.

(b) *Application forms.* Application forms may be obtained by writing to the Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Room 5806, Department of State, Washington, DC 20520 or by calling (202) 647–2009.

(c) *Where to apply.* Applications must be submitted to the Office Director, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Room 5806, Department of State, Washington, DC 20520.

(d) *Application approval.* Application approval will be by the Secretary's execution of the guaranty agreement.

(Approved by the Office of Management and Budget under control number 0648–0095)

§ 33.5 Guaranty agreement.

(a) *Period in effect.* Agreements are effective for a fiscal year beginning October 1 and ending on the next September 30. Applications submitted after October 1 are effective from the date the application was mailed (determined by the postmark) through September 30.

(b) *Guaranty agreement transfer.* A guaranty agreement may, with the Secretary's prior consent, be transferred when a vessel which is the subject of a guaranty agreement is transferred to a new owner if the transfer occurs during the agreement period.

(c) *Guaranty agreement renewal.* A guaranty agreement may be renewed for the next agreement year without resubmitting an application form if the appropriate fee for the next year is submitted in accordance with the Secretary's annually published requirements regarding fees. Renewals are subject to the Secretary's approval.

(d) *Provisions of the agreement.* The agreement will provide for reimbursement for certain losses caused by foreign countries' seizure and detention of U.S. fishing vessels on the basis of claims to jurisdiction which are not recognized by the United States; on the basis of claims to jurisdiction which are recognized by the United States, but exercised in a manner inconsistent with international law as recognized by the United States; or, in the case where a general claim of exclusive fishery management authority is recognized by the United States and a U.S. fishing vessel is seized on the basis of conditions and restrictions which:

(1) Are unrelated to fishery conservation and management,

(2) Fail to consider traditional practices of U.S. fishing vessels,

(3) Are more onerous than those applied to foreign fishing vessels by the United States in its exclusive economic zone, or

(4) Fail to allow U.S. fishing vessels equitable access to fishery resources under the foreign countries' exclusive management authority.

§ 33.6 Fees.

(a) *General.* Fees provide for administrative costs and at least one third of the contribution by the U.S. Government, if any. Fees are set annually on the basis of past and anticipated claim experience. The annual agreement year for which fees are payable starts on October 1 and ends on the following September 30.

(b) *Amount and payment.* The amount of each annual fee or adjusted fee will be established by the Office Director of the Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs by publication of a notice in the **Federal Register.** Each notice will establish the amount of the fee, when the fee is due, when the fee is payable, and any special conditions surrounding extention of prior agreements or execution of new agreements. Unless otherwise specified in such notices, agreement coverage will commence with the date of fee payment.

(c) *Adjustment and refund.* Fees may be adjusted at any time to reflect actual seizure and detention experience for which claims are anticipated. Failure to submit adjusted fees will result in agreement termination as of the date the adjusted fee is payable. No fees will be refunded after an agreement is executed by the Secretary.

(d) *Disposition.* All fees will be deposited in the Fishermen's Guaranty Fund. They will remain available without fiscal year limitation to carry out Section 7 of the Act. Claims will be paid first from fees and then from appropriated funds. Fees not required to pay administrative costs or claims may be invested in U.S. obligations. All earnings will be credited to the Fishermen's Guaranty Fund.

§ 33.7 Conditions for claims.

(a) Unless there is clear and convincing credible evidence that the seizure did not meet the requirements of

the Act, payment of claims will be made when:

(1) A covered vessel is seized by a foreign country under conditions specified in the Act and the guaranty agreement, and

(2) The incident occurred during the period the guaranty agreement was in force for the vessel involved.

(b) Payments will be made to the owner for:

(1) All actual costs (except those covered by section 3 of the Act or reimbursable from some other source) incurred by the owner during the seizure or detention period as a direct result thereof, including:

(i) Damage to, or destruction of, the vessel or its equipment, or

(ii) Loss or confiscation of the vessel or its equipment, and

(iii) Dockage fees or utilities;

(2) The market value of fish or shellfish caught before seizure of the vessel and confiscated or spoiled during the period of detention; and

(3) Up to 50 percent of the vessel's gross income lost because of the seizure and detention.

(c) *Exceptions.* No payment will be made from the Fund for a seizure which is:

(1) Covered by any other provision of law (for example, fines, license fees, registration fees, or other direct charges payable under Section 3 of the Act),

(2) Made by a country at war with the United States,

(3) In accordance with any applicable convention or treaty, if that treaty or convention was made with the advice and consent of the Senate and was in force and effect for the United States and the seizing country at the time of the seizure,

(4) Which occurs before the guaranty agreement's effective date or after its termination,

(5) For which other possible sources of alternative reimbursement have not first been fully pursued (for example, the insurance coverage required by the agreement and valid claims under any law), or

(6) For which material requirements of the guaranty agreement, the Act, or the program regulations have not been fully fulfilled.

§ 33.8 Claim procedure.

(a) *Where and when to apply.* Claims must be submitted to the Office Director, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Room 5806, Department of State, Washington, D.C. 20520. They must be submitted within 90 days after the vessel's release. Requests for extension of the filing deadline must be in writing and approved by the Office Director, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs.

(b) *Contents of claim.* All material allegations of a claim must be supported by documentary evidence. Foreign language documents must be accompanied by an authenticated English translation. Claims must include the following:

(1) The captain's sworn statement about the exact location and activity of the vessel when seized;

(2) Certified copies of charges, hearings, and findings by the government seizing the vessel;

(3) A detailed computation of all actual costs directly resulting from the seizure and detention, supported by receipts, affidavits, or other documentation acceptable to the Office Director, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs;

(4) A detailed computation of lost income claimed, including

(i) The date and time seized and released,

(ii) The number of miles and running time from the point of seizure to the point of detention,

(iii) The total fishing time lost (explain in detail if lost fishing time claimed is any greater than the elapsed time from seizure to the time required after release to return to the point of seizure),

(iv) The tonnage of catch on board at the time of seizure,

(v) The vessel's average catch-per-day's fishing for the three calendar years preceding the seizure,

(vi) The vessel's average downtime between fishing trips for the three calendar years preceding the seizure, and

(vii) The price-per-pound for the catch on the first day the vessel returns to port after the seizure and detention, unless there is a pre-negotiated price-per-pound with a processor, in which case the pre-negotiated price must be documented; and

(5) Documentation for confiscated, damaged, destroyed, or stolen equipment, including:

(i) The date and cost of acquisition, supported by invoices or other acceptable proof of ownership, and

(ii) An estimate from a commercial source of the replacement or repair cost.

(c) *Burden of proof.* The claimant has the burden of proving all aspects of the claim, except in cases of dispute over the facts of the seizure where the claimant shall have the presumption that the seizure was eligible unless there is clear and convincing credible evidence that the seizure did not meet the eligibility standards of the statute.

§ 33.9 Amount of award.

(a) *Lost fishing time.* Compensation is limited to 50 percent of the gross income lost as a direct result of the seizure and detention, based on the value of the average catch-per-day's fishing during the three most recent calendar years immediately preceding the seizure. The compensable period for cases of seizure and detention not resulting in vessel confiscation is limited to the elapsed time from seizure to the time after release when the vessel could reasonably be expected to return to the point of seizure. The compensable period in cases where the vessel is confiscated is limited to the elapsed time from seizure through the date of confiscation, plus an additional period to purchase a replacement vessel and return to the point of seizure. In no case can the additional period exceed 120 days.

(1) First method (this method must use annual catch divided by 365 days to calculate catch-per-day):

(i) Multiply days lost as a direct result of seizure and detention by average catch-per-day during last three calendar years,

(ii) Multiply amount in paragraph (a)(1)(i) of this section by market price, and

(iii) Divide by two to get the maximum compensable amount, or,

(2) Second method (always use IATTC statistics for *all* calculations):

(i) Subtract tonnage aboard at time of seizure from highest trip tonnage during last three calendar years,

(ii) Divide amount in paragraph (a)(2)(i) of this section by average catch-per-day during last three calendar years to get remaining fishing days required to fill vessel,

(iii) Subtract amount in (a)(2)(ii) of this section from number of days detained,

(iv) If amount in (a)(2)(iii) of this section is negative or zero, multiply number of days detained by average catch-per-day during last three calendar years (if not go on to (v)),

(v) If amount in (a)(2)(iii) in this section is positive and is equal to or less than average downtime, multiply amount in (a)(2)(ii) of this section by average catch-per-day during last three calendar years (if not, go on to (vi)),

(vi) If amount in (a)(2)(iii) in this section is positive and is greater than average downtime, subtract average downtime and multiply the sum of this amount and the amount in (a)(2)(ii) of this section by the average catch-per-

day during last three calendar years (subtract additional downtime each time the sum computed in this manner exceeds average trip time during last three calendar years),

(vii) Multiply amount in (a)(2) (iv), (v), or (vi) of this section, whichever is applicable, by market price, and

(viii) Divide by two to get the maximum compensable amount.

(b) *Value of catch loss by weight class and grade.* Each seizure claim submitted must contain a copy of the catch landing receipt for the trip preceding the seizure. This document provides a detailed size and species mix and the price paid per weight class for each grade (e.g., standard grade yellowfin over 7½ lbs @ $1,200/ton, and standard grade yellowfin under 7½ lbs @ $1,100/ton, plus $30/ton for premium grade or less $60/ton for minimum grade). The Secretary will determine from the catch landing receipt an average by weight and grade class of the amount of catch on the trip prior to the seizure, apply this percentage to the average catch per day's fishing (IATTC's figure), and arrive at a figure relating to the approximate catch for each applicable species. The following method will be used:

(1) The relative percentage for each weight and grade class will be determined by dividing each weight and grade class by the sum of them all, and

(2) IATTC's catch rate will be multiplied by each weight and grade class percentage to arrive at an average for each weight and grade class. The average for each weight and grade class will be multiplied by the relative price per pound (for each class) to determine the value per weight and grade class.

(c) *Stolen or confiscated property.* Confiscation of property which the claimant was required to buy from the confiscator is reimbursable by the Department under Section 3 of the Act. Any other property confiscated is reimbursable from this Guaranty Fund. Confiscated property is divided into the following categories:

(1) Compensation for confiscation of vessels, where no buy-back has occurred, will be based on market value which will be determined by averaging estimates of market value obtained from as many vessel surveyors or brokers as the Secretary deems practicable;

(2) Compensation for capital equipment other than vessel, will be based on depreciated replacement cost;

(3) Compensation for expendable items and crew's belongings will be 50 percent of their replacement costs; and

(4) Compensation for confiscated catch will be for full value, based on the price-per-pound;

(d) *Fuel expense.* Compensation for fuel expenses will be based on the purchase price, the time required to run to and from the fishing grounds, the detention time in port, and the documented fuel consumption of the vessel.

(e) *Insurance proceeds.* No payments will be made from the Fund for losses covered by any policy of insurance or other provisions of law.

(f) *Appeals.* All determinations under this section are final and are not subject to arbitration or appeal.

§ 33.10 Payments.

The Office Director, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs will pay the claimant the amount calculated under § 33.9. Payment will be made as promptly as practicable, but may be delayed pending the appropriation of sufficient funds. The Director shall notify the claimant of the amount approved for payment as promptly as practicable and the same shall thereafter constitute a valid, but non-interest bearing obligation of the Government. Delays in payments are not a direct consequence of seizure and detention and cannot therefore be construed as increasing the compensable period for lost fishing time. If there is a dispute about who should be paid what, the Director will settle it after requesting proof of interest from all parties.

§ 33.11 Records.

The Office Director, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs will have the right to inspect claimants' books and records as a precondition to approving claims. All claims must contain written authorization of the guaranteed party for any international, federal, state, or local governmental agencies to provide the Office Director, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs any data or information pertinent to a claim.

§ 33.12 Penalties.

Persons who willfully make any false or misleading statement or representation to obtain compensation from the Fund are subject to criminal prosecution under 22 U.S.C. 1980(g). This provides penalties up to $25,000 or imprisonment for up to one year, or both. Any evidence of criminal conduct will be promptly forwarded to the United States Department of Justice for action. Additionally, misrepresentation, concealment, and fraud, or acts intentionally designed to result in seizure, may void the guaranty agreement.

Dated: March 4, 1987.

Richard J. Smith,

Acting Assistant Secretary for Oceans, and International Environmental and Scientific Affairs.

[FR Doc. 87-5062 Filed 3-10-87; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 258

[Docket No. 70224-7024]

Fishermen's Protective Fund; Transfer of Administration

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of transfer and removal of regulations.

SUMMARY: This notice announces that under section 408 of Public Law No. 99-659, November 14, 1986, the administration of the Fishermen's Protective Fund is transferred from the Department of Commerce to the Department of State. Rules governing the Fund's administration, which appeared at 50 CFR Part 258, will now appear at 22 CFR Part 33 and Part 258 will be removed.

EFFECTIVE DATE: March 11, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Stetson Tinkham, Office of Fisheries Affairs, Room 5806, Department of State, Washington, DC 20520, telephone No. [202] 647-2009.

SUPPLEMENTARY INFORMATION: Section 7 of the Fishermen's Protective Act (22 U.S.C. 1971-1980) compensates fishermen whose vessels have been seized and detained by a foreign country based on oceanic rights not recognized by the United States.

As a "matter relating to Agency * * * contracts," this notice is exempt from the notice and comment provisions of the Administrative Procedure Act. This means analysis under the Regulatory Flexibility Act is not required.

This notice conforms with Executive Order 12291. No regulatory impact analysis is required.

No additional information collection will be required. Existing information collection has been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget.

The Assistant Administrator has also determined that this notice does not require the preparation of an environmental impact statement under the National Environmental Policy Act.

Dated: February 27, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator.

PART 258—[REMOVED]

Accordingly, 50 CFR Part 258 is removed.

[FR Doc. 87-5063 Filed 3-10-87; 8:45 am]

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federal register

Wednesday
March 11, 1987

Part IV

Department of the Interior

Minerals Management Service

Outer Continental Shelf; Central Gulf of Mexico; Oil and Gas Lease Sale 110; Notices

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Central Gulf of Mexico
Oil and Gas Lease Sale 110

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356, (1982)), as amended by the OCS Lands Act Amendments of 1985 (100 Stat. 147), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m., c.s.t.) until the Bid Submission Deadline at 10 a.m., April 21, 1987. Hereinafter, all times cited in this Notice refer to Central Standard Time (c.s.t.) unless otherwise stated. Bids will not be accepted the day of Bid Opening, April 22, 1987. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to 10 a.m., April 21, 1987. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m., April 22, 1987. Bid Opening Time will be 9 a.m., April 22, 1987, at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 51 FR 37088, published on October 17, 1986.

3. Method of Bidding. A separate bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 110, insert (map number, map name, and block number(s)), not to be opened until 9 a.m., c.s.t., April 22, 1987," must be submitted for each block or prescribed bidding unit bid upon. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 110, NG 16-1, Atwater Valley, Block 701, not to be opened until 9 a.m., c.s.t., April 22, 1987." For those blocks which must be bid upon as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portions of a block or bidding unit as described in paragraph 12 will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only aliquot portions currently available for leasing.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico Regional Office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places after the decimal point; e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. The bidding systems to be used for this sale apply to blocks or biddinig units as shown on Map 2 (see paragraph 12). All leases awarded will provide for a yearly rental payment of $3 per acre or fraction thereof. All leases will provide for a minimum royalty of $3 per acre or fraction thereof. The following bidding systems will be used:

(a) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis in the amount of $25 or more per acre or fraction thereof with a fixed royalty of 12-1/2 percent.

(b) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis in the amount of $150 or more per acre or fraction thereof with a fixed royalty of 16-2/3 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Representation Form, Form MMS-2032 (June 1985). See paragraph 14(e).

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $150 or more per acre or fraction thereof for blocks subject to a 16-2/3 percent royalty, and in the amount of $25 or more per acre or fraction thereof for blocks subject to a 12-1/2 percent royalty (see paragraph 4). Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below and satisfy the bonding requirements of 30 CFR 256, Subpart I. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment, for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155.

11. OCS Leasing Maps and Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following OCS Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico Regional Office (see paragraph 14(a)):

(a) Outer Continental Shelf Leasing Maps--Louisiana Nos. 1 through 12. This is a set of 27 maps which sells for $17.

(b) Outer Continental Shelf Official Protraction Diagrams:

NH 16-4	Mobile	(revised April 19, 1983).
NH 16-7	Viosca Knoll	(revised December 2, 1976).
NH 15-12	Ewing Bank	(revised December 2, 1976).
NH 16-10	Mississippi Canyon	(revised December 2, 1976).
NG 15-3	Green Canyon	(revised December 2, 1976).
NG 15-6	Walker Ridge	(revised December 2, 1976).
NG 16-1	Atwater Valley	(revised November 10, 1983).
NG 16-4	(No Name)	(approved December 2, 1976).

These sell for $2 each.

12. Description of the Areas Offered for Bids.

(a) Acreages of blocks are shown on OCS Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line. In these cases, the following supplemental documents to this Notice are available from the Gulf of Mexico Regional Office (see paragraph 14(a)).

(1) Central Gulf of Mexico Lease Sale 110 - Final. Unleased Split Blocks.

(2) Central Gulf of Mexico Lease Sale 110 - Final. Unleased Acreage of Blocks with Aliquots Under Lease.

(b) References to Maps 1, 2, and 3 in this Notice refer to the following maps which are available on request from the Gulf of Mexico Regional Office.

Map 1 entitled "Central Gulf of Mexico Lease Sale 110 - Final. Stipulations, Lease Terms, and Warning Areas."

Map 2 entitled "Central Gulf of Mexico Lease Sale 110 - Final. Bidding Systems and Bidding Units," refers largely to Royalty Rates and Bidding Units.

Map 3 entitled "Central Gulf of Mexico Lease Sale 110 - Final. Detailed Maps of Biologically Sensitive Areas," pertains to areas referenced in Stipulation No. 2.

(c) In several instances two or more blocks have been joined together into bidding units totaling less than 5,760 acres. Any bid submitted for a bidding unit having two or more blocks must be for all of the unleased Federal acreage within all of the blocks in that bidding unit. The list of those bidding units with their total acreages appears on Map 2.

(d) The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11(a) and (b), except for those blocks or partial blocks described as follows:

February 20, 1987

(1) Descriptions of blocks listed represent all Federal acreage leased unless otherwise noted.

Sabine Pass	West Cameron (continued)	West Cameron (continued)	West Cameron (continued)	West Cameron, West Addition (continued)	West Cameron, South Addtion
3	69 (N½)	173	250	336	445
7	71	174	252	338	447
9	72	175	253	341	448
10	73	176	254	343	450
11	75	177	255	345	451
13	77	178	261	346	455
	91	180	264	352	456
West Cameron	92	181	265	353	457
	93	184	266	363	458
17	95	185	277	364	459
18-	98	186	278	365	461
(SW¼)	100	187	279	366	463
20	101	188	280	367	464
21-	102	192	281	368	468
(SW¼SW¼)	108	193	282	369	470
22	109	195	283	370	472
23	110	196	284	379	476
24	111 (SE¼)	197		380	477
26	112	198	West Cameron,	382	478
28-	115	201	West Addition	383	479
(N½;	116	202		384	480
N½N½S½)	117	204	161	389	483
33	118	205	163	391	485
34	130	206	288	401	487
35	131	208	289	402	488
39	132	211	290	405	493
40	134	212	291	409	494
41 (E½)	135	215	292	413	498
43	138	216	293	414	499
44-	141	217	294	416	500
(NW¼NW¼;	142	220	295	417	501
Portion seaward	143	222	299	420	502
of 8g Line)	144	225	304	421	504
45	145	226	306	424	505
47 (NW¼)	146	227	311	425	506
48	149	228	312	426	507
49	150	229	313	427	509
53	151	230	314	433	510
55	152	231	315	436	512
56	153	236	317	437	515
57	165	237	322	440	516
64	168	238	323	442	518
65	169	239	329		522
66	170	248	331		523
67	171	249	332		524
68 (S½)	172		333		

West Cameron, South Addition (continued)

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West Cameron, South Addition (continued)

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East Cameron,

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(Portion landward of 8g line)
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(Portion landward of 8g line)
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(Portion seaward of 8g line)
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East Cameron (continued)

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82 (E½)
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118 (N½)
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160 (E½)
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194-
(E½E½SE¼)
195 (S½)
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East Cameron (continued)

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204-
(N½N½)
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East Cameron, South Addition

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East Cameron South Addition (continued)

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East Cameron South Addition (continued)

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Vermilion

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34-
(W½NW¼)
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36-
(E½NE¼)
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46 (N½)
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Vermilion (continued)

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101 (S½)
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159
161
162
164

Vermilion (continued)

165
166
167
171
172
175
176
178
179-
(NE¼NE¼;
E½SE¼NE¼;
NE¼NE¼SE¼)
182
185
186
187
190
191
196
198
201
203
204
207
214
215
216
217-
(SW¼;
W½W½SE¼)
218-
(E½SE¼;
E½NW¼SE¼;
NE¼SW¼SE¼)
219
220
221
223
224
225-
(E½NE¼;
NE¼SE¼)
226
227
232
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237
241
242
245

Vermilion (continued)

246
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Vermilion, South Addition

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Vermilion South Addition (continued)

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S. Marsh Island, North Addition

207
208
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210
211
212
213
214
215

S. Marsh Island, North Addition (continued)

216
217
218
219
220-
(Landward of lease 0310 stip. line)
221-
(Landward of lease 0310 stip. line)
222
223
224
225
226
227
228
229
230-
(Landward of lease 0310 stip. line)
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237
238
239
240
241-
(Landward of lease 0310 stip. line)
242-
(Landward of lease 0310 stip. line)
243
244
249
250
252
253-
(Landward of lease 0310 stip. line)

S. Marsh Island, North Addition (continued)

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S. Marsh Island

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S. Marsh Island (continued)

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S. Marsh Island, South Addition

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S. Marsh Island, South Addition (continued)

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Eugene Island

Eugene Island (continued)

30
31-
(Landward of 8g Line)
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48
49
50*
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89
90
93 (E½)
94
95
97

Eugene Island (continued)

98
99
100
101
102
105
106*
107
108
109
110
111
112
113A
116 (E½)
119
120
125
126
128
128A
129
133
136
138
147
150
158
159
161
164*
171
172
173
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Eugene Island (continued)

198
199
202
204
205
206
208
210
211
212
214-
(W½W½E½; W½)
215
217
218
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221
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231
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237
238
240
241
242
243
245
246
247
248
249
251
252
253-
(E½; E½W½; E½W½W½; W½NW¼NW¼; W½W½SW¼)
254(S½)
255(S½)
256
257
258
259

*Blocks added since the proposed Notice of Sale. Primary term extended by drilling activity.

Eugene Island (continued)

260
261
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Eugene Island, South Addition

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301 (S½)
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Eugene Island, South Addition (continued)

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Eugene Island, South Addition (continued)

391
392
393
394
395
397

Ship Shoal

11
13-
(S½SE¼)
14-
(S½S½)
15
16
25-
(Seaward of Zone 2)
26
27
28
29
30
31
32
33
34
36
37
38
49
52
55
58
59
62-
(Landward of 8g Line)
63
64 (W½)
65
66
68
69
70
71 (W½)
72
78

Ship Shoal (continued)

79
80
82
84
85
86
87 (N½)
89
90
91
92
93
94-
(S½SE¼)
97
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Ship Shoal (continued)

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211
214
215
216
217
218
219
220
222
223
224
225 (N½)
229
230
232
233
235

Ship Shoal, South Addition

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238
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264
266
268
269
270
271
274
275
276
278
280
281
282
283
285
288
290
291-
(N½; SE¼)
292
293
295
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307
313

Ship Shoal South Addition (continued)	South Timbalier (continued)	South Timbalier (continued)	South Timbalier, South Addition	South Timbalier, South Addition (continued)	Grand Isle
316	33-	144	211	290	15
317	(Portion seaward	145	212	291	16
321	of 8g Line)	146	214	292	17
322	34	147	219	295	18
323	35	148	221	296	19
325	36	149	224	297	20
326	37	150	225	298	21
327	44	151	226	299	22
328	50	152	229	300	23
330	51	156	230	301	24
331	52	159	231	302	25
332	53	160	233	303	26
333	54	161	235	304	27
336	55	162	236	306	29 (N½)
339	63	163	238	309	30-
341	64	164	239	310	(Portion in
343	66	165	240	311	Zone 2)
345	67	166	242	312	31
346	69	167	243	314	32
347	71*	169	244	316	33
348	72	170	245	317	37
351	75	171	246	319	38
352	76	172	247	320	39
353	77	173	248		40
354	84	175	251	South Pelto	41
355	85	176	252		42
356	86	177	258	1	43
357	90	182*	259	2	44
358	97	184	260	8	45
359	98	185	261	9	46
362	99	186	262	10	47
363	100	188 (NW¼)	263	11	48
364	106	189	264	12	49
365	107	190	265	13	51
366	111	192	267	14	52
367	112	193	268	18	53
368	128	194	269	19 (W½)	63
	129	195	270	20	72
South Timbalier	130	196	274	23	75
	131	197	275	24	76
21	132	198	276	25	78-
22	133	200	277		(N½; SE¼)
23	134	203	279	Bay Marchand	79
24	135	205	280		81-
26	143	206	282	2	(NE¼; S½)
27-		208	283	3	82-
(N½; N½SW¼)			285	5	(NW¼; S½)
28 (NE¼)			289		83
29					85

*Blocks added since the proposed Notice of Sale. Primary term extended by drilling activity.

Grand Isle, South Addition

86
90
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West Delta

16
17
18
19
20
21-
(S½N½S½; S½S½)
22 (E½)
23
24
27
28
29
30
31
32
33
34 (N½)
35
36
38
39
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43
44

West Delta (continued)

45
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71
72
73
74
75
76
78
79
80-
(N½; N½S½; SW¼SW¼)
85
86
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West Delta, South Addition

112
117
121
122
129
132
133
134
137
138
140
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144
148
149
152

South Pass

6
17-
(Seaward of the 4th Supp. Decree to 1 ft. seaward of 3rd Supp. Decree)
18
19
27
28
33
34
37
45
46*
48
49
52
53
54
55
56-
(Seaward of line 3 miles seaward of 3rd Supp. Decree)
57
58
59
60
61

South Pass, South and East Addition

62
63
64
65
66-
(Seaward of 1965 Decree Line)
67
70
71
72
74
75
76-
(Portion landward of 8g Line)
77
78
80
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93
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Main Pass

6
7-
(N½; N½S½, in Zone 2)
18 (S½)
19
27*
28*
29
30
37
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41
42
43

Main Pass (continued)

44
56*
57
58
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62
63
64
65
68
69
72
73
74-
(Portion landward of 3rd Supp. Decree)
77
78
87
89
91
92
93-
(Seaward of the 8g Line)
94
95
96
98
99
100-
(N½; N½N½S½; SE¼NE¼SE¼; E½SE¼SE¼)
101
102
103
105
106-
(S½SW¼NE¼; SW¼SE¼NE¼; S½S½NW¼; SW¼; W½E½SE¼; W½SE¼)

Main Pass (continued)

107-
(NE¼NE¼NE¼; S½NE¼NE¼; SE¼NE¼; SE¼NW¼NE¼; E½SW¼NE¼; E½SE¼; E½W½SE¼)
108
109
111
113-
(W½E½E½; W½E½; W½; E½SE¼SE¼)
114
116
117
118
120
122
123
124
125*
126
127 (N½)
128
129
131
132
133
136
138
139
140
141*
142
144
145
146
148
149
151
152-
(Seaward of 1965 Decree Line)
153

*Blocks added since the proposed Notice of Sale. Primary term extended by drilling activity.

Main Pass, South and East Addition

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163
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Main Pass, South and East Addition (continued)

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311

Main Pass, South and East Addition (continued)

312
313
314
315
316

Breton Sound

53-
(W½ Portion
Seaward of
75 Decree Line)
54
55
56

Chandeleur

11
12
14
15
17
18
19
20
21
22
24
25
28
29
30-
(Seaward of
the 8g Line)
31
34

Chandeleur,
East Addition

37
38
39
40
41

Mobile

778
779
821
822
823
824
826
827
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830
857
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Mobile (continued)

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Viosca Knoll

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Viosca Knoll (continued)

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Viosca Knoll (continued)	Viosca Knoll (continued)	Ewing Bank (continued)	Ewing Bank (continued)	Mississippi Canyon (continued)	Mississippi Canyon (continued)
736	957	878	996		386
737	983	879	997	208	397
738	984	903	999	238	398
739	985	907	1000	239	399
740	986	908	1001	240	400
772	987	909	1003	241	401
773	989	910	1004	243	402
774	990	912	1005	252	405
778	993	913	1006	267	407
779	995	914	1009	268	408
780	996	915	1010	280	409
782	1000	916	1011	281	410
783	1001	919		282	411
784		920	Mississippi	283	412
813	Ewing Bank	932	Canyon	284	414
814		933		285	426
815	305	937	20	286	427
818	306	938	21	287	429
822	438	940	22	310	441
823	525	944	23	311	443
825	526	945	24	312	444
826	658	946	25	316	445
827	743	947	27	317	454
858	744	949	39	320	455
861	746	951	63	321	456
862	781	952	65	322	459
867	782	953	66	323	460
869	783	954	67	324	461
870	784	957	72	325	485
871	785	958	84	329	486
872	787	959	103	330	487
873	788	960	104	331	490
899	789	962	109	338	493
900	790	963	110	339	494
901	824	964	118	353	495
903	825	966	128	354	502
905	826	975	148	355	503
911	827	976	149	356	504
912	828*	977	150	357	505
915	829	978	151	358	506
916	867	980	157	360	507
917	868	984	162	361	530
944	869	986	191	363	533
945	870	988	192	365	538
951	871	989	193	366	539
952	872	990	194	370	542
955	873	991	195	382	543
956	874	994	197	383	545
	875	995	201	385	546

*Blocks added since the proposed Notice of Sale. Primary term extended by drilling activity.

Mississippi Canyon (continued)	Mississippi Canyon (continued)	Green Canyon (continued)	Green Canyon (continued)	Green Canyon (continued)	Green Canyon (continued)	Atwater Valley (continued)
573	806	22	98	188	301	311
575	807	23	102	190	313	363
576	808	24	103	191	320	387
582	809	25	104	198	329	388
583	837	26	105	199	330	401
584	838	27	108	200	333	405
589	839	29	109	202	334	406
612	840	30	110	204	340	407
613	843	31	111	205	342	408
617	852	32	112	206	354	413
618	853	34	113	207	355	414
620	881	35	114	209	372	427
621	884	38	115	210	377	428
627	885	39	116	212	385	429
635	890	40	117	213	386	430
636	893	41	118	224	398	431
642	925	45	120	225	403	444
656	928	46	121	227	404	445
657	929	48	122	228	428	446
661	931	49	123	230	429	450
663	933	50	135	232	430	451
665	934	52	136	233	431	455
673	935	53	140	234	446	456
674	936	54	141	235	448	457
686	937	55	142	236	471	458
687	940	58	144	237	472	471
705	941	59	145	245	473	472
707	971	60	146	246	475	488
709	972	61	147	247	517	489
710	975	64	149	248	647	490
711	978	65	152	249	691	573
713		66	153	250	871	574
714	Green Canyon	67	154	251	872	575
717		68	155	252	873	617
718	4	69	156	253		618
728	5	70	158	254	Atwater Valley	
730	6	71	160	256		
731	7	72	161	257	1	
751	8	73	162	258	18	
755	9	74	163	271	19	
756	10	75	165	272	50	
762	11	76	166	285	62	
763	13	78	167	286	133	
772	14	79	168	287	134	
793	15	80	180	288	177	
794	16	81	182	290	178	
795	18	92	184	294	179	
798	19	96	185	295	266	
799	20	97	186	296	267	
801	21			298	310	

Although currently unleased and shown on the OCS Official Protraction Diagram Mobile NH 16-4 (Approved October 10, 1972; Revised December 21, 1977; Revised April 19, 1983), no bids will be accepted on the following blocks:

Mobile -- Blocks 765 through 768
809 through 816
818 through 820

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms as shown on Map 1 and will be on Form MMS-2005 (March 1986). Copies of the lease form are available from the Gulf of Mexico Regional Office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on Map 1 and Map 3 and as supplemented by references in this Notice.

Stipulation No. 1--Protection of Archaeological Resources.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (Section 301(5), National Historic Preservation Act, as amended, 16 U.S.C. 470). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote- sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

Stipulation No. 2--Topographic Features.

(This stipulation will be included in leases located in the areas so indicated on Maps 1 and 3 described in paragraph 12.)

The banks which cause this stipulation to be applied to blocks of the Central Gulf are:

Bank Name	Isobath (meters)	Bank Name	Isobath (meters)
McGrail Bank	85	Parker Bank	85
Bouma Bank	85	Fishnet Bank**	76
Rezak Bank	85	Jakkula Bank	85
Sidner Bank	85	Sweet Bank*	85
Sonnier Bank	55	Rankin Bank	85
Sackett Bank**	85	29 Fathom Bank	64
Ewing Bank	85	Bright Bank	85
Diaphus Bank**	85	Geyer Bank***	85
Alderdice Bank	80	MacNeil Bank***	82

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown on Map 3) of the banks as listed above.

(b) Operations within the area shown as "1,000-Meter Zone" shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "1-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1-Mile Zone" designated, the "1,000-Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 3--Live Bottoms Areas.

(To be included in leases on the following blocks: Main Pass Area, South and East Addition Blocks 219-226, 244-266, 276-288; Viosca Knoll Blocks 521, 522, 564-566, 609, 610, 654, 692-698.)

For the purpose of this stipulation, "live bottom areas" are defined as seagrass communities or those areas which contain biological assemblages consisting of such sessile invertebrates as sea fans, sea whips, hydroids, anemones, ascidians, sponges, bryozoans, or corals living upon and attached to naturally occurring hard or rocky formations with rough, broken, or smooth topography; or areas whose lithotope favors the accumulation of turtles, fishes, and other fauna.

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* Only paragraph (a) of the stipulation applies.

** Only paragraphs (a) and (b) apply.

*** Western Gulf of Mexico bank with a portion of its "3-Mile Zone" in Central Gulf of Mexico.

Prior to any drilling activities or the construction or placement of any structure for exploration or development on this lease, including, but not limited to, anchoring, well drilling, and pipeline and platform placement, the lessee will submit to the Regional Director (RD) a live bottom survey report containing a bathymetry map prepared utilizing remote sensing techniques. The bathymetry map shall be prepared for the purpose of determining the presence or absence of live bottoms which could be impacted by the proposed activity. This map shall encompass such an area of the seafloor where surface disturbing activities, including anchoring, may occur.

If it is determined that the live bottom areas might be adversely impacted by the proposed activity, the RD will require the lessee to undertake any measure deemed economically, environmentally, and technically feasible to protect the live bottom (pinnacle) area. These measures may include, but are not limited to, the following:

(a) the relocation of operations; and

(b) monitoring of operations to assess the impact of the activity on the live bottoms.

Stipulation No. 4--Military Areas.

(This stipulation will be included in leases located within Warning Areas and Eglin Water Test Areas 1 and 3, as shown on Map 1 described in paragraph 12.)

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf, to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U. S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the table below.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the appropriate military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing or operational activities conducted within individual designated warning areas. Necessary monitoring control and coordination with the lessee, its agents, employees, invitees, independent contractors, or subcontractors will be affected by the commander of the appropriate onshore military installation conducting operations in the particular warning area, provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic in the individual designated warning areas, shall enter into an agreement with the commander of the individual command headquarters listed in the following table, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating in the warning areas at all times.

Warning Area Command Headquarters

Warning Areas	Command Headquarters
W-155 (For Agreement)	Chief, Naval Air Training Naval Air Station ATTN: Lt. Col. T. M. Aiton, USMC or Lt. J. L. Keith Corpus Christi, Texas 78419-5100 Telephone: (512) 939-3927/3902
W-155 (For Operational Control)	Fleet Area Control & Surveillance Facility (FACSFAC) Naval Air Station ATTN: ACC Gannaway Pensacola, Florida 32508 Telephone: (904) 452-2735/4671
W-92	Naval Air Station Air Operations Dept. Air Traffic Division/Code 52 ATTN: Chief Wheeler New Orleans, La. 70146-5000 Telephone: (504) 393-3100/ 3208/3106
W-453	159th Tactical Fighter Group (ANG) NAS NOLA ATTN: Major John Posey or Major Bob Lemoine New Orleans, Louisiana 70143 Telephone: (504) 393-3376/3377
Eglin Water Test Areas 1 and 3	Commander Armament Division ATTN: Howard Dimmig/CCN Eglin AFB, Florida 32542 Telephone: (904) 882-5558

14. Information to Lessees.

(a) Supplemental Documents. For copies of the various documents identified as available from the Gulf of Mexico Regional Office, prospective bidders should contact the Public Information Unit, MMS, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, either in writing or by telephone (504) 736-2519. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736-2755.

(b) Navigation Safety. Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. U.S. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with Section 4(e) of the OCS Lands Act, as amended.

(c) Offshore Pipelines. Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) Exploration Plans for 10-Year Leases. For those blocks identified as having lease terms with an initial period of 10 years, bidders are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to the MMS either an exploration plan or a general statement of exploration intention prior to the end of the ninth lease year.

(e) Affirmative Action. Revision of the Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) Ordnance Disposal Areas. Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Mississippi Canyon area, shown on Map 1 described in paragraph 12 of this Notice. These areas were used to dispose of ordnance of unknown composition and quantity. Water depths in these areas range from approximately 750 to 1,525 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development

activities in these areas require precautions commensurate with the potential hazards.

The U.S. Air Force has released an indeterminable amount of unexploded ordnance throughout Eglin Water Test Areas 1 and 3. The exact location of the unexploded ordnance is unknown, and lessees are advised that all lease blocks included in this sale within these water test areas should be considered potentially hazardous to drilling and platform and pipeline placement.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico OCS Orders, as of their effective dates, and any other applicable OCS Order as it becomes effective.

Director, Minerals Management Service

Wm. D. Bettenberg

Approved:

Secretary of the Interior

Donald Paul Hodel

March 6, 1987

Date

[FR Doc. 87-5209 Filed 3-10-87; 8:45 am]

BILLING CODE 4310-MR-C

Billing Code: 4310-MR

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf
Central Gulf of Mexico

Notice of Leasing Systems, Sale 110

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding systems to be used. In the Outer Continental Shelf (OCS) Sale 110, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16 2/3-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12 1/2-percent royalty on all remaining unleased blocks.

a. Bonus Bidding with a 16 2/3-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments, but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. Bonus Bidding with a 12 1/2-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Central Gulf of Mexico (Sale 110) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12 1/2-percent royalty system would be less than for the same blocks under a 16 2/3-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks. The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12 1/2-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Central Gulf of Mexico Lease Sale 110 - Final, Bidding Systems and Bidding Units." This map is available from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

Wm. D. Bettenberg
Director, Minerals Management Service

Approved:

Donald Paul Hodel
Secretary of the Interior

Donald Paul Hodel

[FR Doc. 87-5210 Filed 3-10-87; 8:45 am]
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federal register

Wednesday
March 11, 1987

Part V

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, and 278

Food Stamp Program; Purchase of Prepared Meals by Homeless Food Stamp Recipients

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, and 278

[Amendment No. 286]

Food Stamp Program: Purchase of Prepared Meals by Homeless Food Stamp Recipients

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This rulemaking implements the provisions of the Homeless Eligibility Clarification Act, Pub. L. No. 99–570, Title XI, 100 Stat. 3207–167 (1986) (hereinafter, "Pub. L. 99–570"). That law provides that effective not later than April 1, 1987, homeless food stamp recipients (including newly eligible residents of temporary shelters for the homeless) may use their food stamps to purchase prepared meals served by an authorized public or private nonprofit establishment, approved by an appropriate State or local agency, that feeds homeless persons.

DATES: Comments must be received by June 9, 1987. Homeless meal providers may submit applications for authorization to accept food stamps upon publication of this rule. All other provisions of this rule are effective on April 1, 1987. The provisions of this rule shall cease to be effective after September 30, 1990. No later than September 30, 1988, FNS will submit the reports to Congress mandated by Pub. L. 99–570, s11002(f)(2).

ADDRESS: Comments should be addressed to Ms. Patricia Warner, Food and Nutrition Service, Chief, Administration and Design Branch, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Ms. Patricia Warner at the above address or by telephone at (703) 756–3383.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this action as non-major. The effect of this action on the economy will be less than $100 million, and it will have an insignificant effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Public Participation

Pursuant to 5 U.S.C. 553(b)(A), public comment on this rulemaking prior to implementation is not required because this is an interpretive rule. In addition, the Administrator of the Food and Nutrition Service has determined that, pursuant to 5 U.S.C. 553(b)(B), public comment prior to implementation would be impracticable and contrary to the public interest; this rule is effective no later than April 1, 1987, because Pub. L. 99–570 mandates that effective date. However, because the Department believes that the administration of the rule may be improved and simplified by public comment, comments are solicited on this rule for 90 days. All comments received will be analyzed and any apapropriate changes in the rule will be incorporated in the subsequent publication of a final rule. In addition, this rule will be effective less than 30 days following its publication, again, because it is an interpretative rule, and because of the statutorily mandated effective date. (See 5 U.S.C. 553(d)(2), (3)).

Regulatory Flexibility Act

This interim rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies are affected to the extent they administer the program. Public or private nonprofit meal providers will be affected because of changes to allow them to accept food stamps in payment for meals served to homeless food stamp recipients. The rule will also affect retail food stores and wholesale food concerns which accept and redeem food stamps. Thus, while the rule may affect a substantial number of small entities, the effect on any one entity will not be significant.

Paperwork Reduction Act

The reporting and recordkeeping requirements contained in Part 278 of this rule which permit homeless meal providers to accept food stamps and to redeem such stamps through wholesale food concerns have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB approval number for these requirements are 0584–0008 (§ 278.1(b) and (h), § 278.3(a)), and 0584–0085 (§ 278.4(c)).

Background

During the past several years, problems of the homeless have gained national attention. It is of concern to USDA and the Congress that many homeless persons who qualify for and receive food stamps may be unable to take maximum advantage of the available benefits.

Current Food Stamp Program rules generally prohibit the use of food stamp coupons for the purchase of hot foods or hot food products prepared for immediate consumption. Additionally, under current regulations, food stamp recipients are unable to use their food stamp benefits to purchase low-cost, nutritious, prepared meals from meal providers.

Given the operation of these current rules, and the fact that the homeless often have no cooking or storage facilities, their ability to obtain nutritious meals is limited.

In response to the concerns for and problems of the homeless, the Congress, through enactment of the Homeless Eligibility Clarification Act, further amended the Food Stamp Act of 1977, as amended, to provide that homeless food stamp recipients may voluntarily use their food stamps to purchase prepared meals served by a public or private nonprofit establishment, approved by an appropriate State or local agency, that feeds homeless persons.

Definitions (§ 271.2)

To implement the provisions of Pub. L. 99–570, this rulemaking adds definitions for "Homeless food stamp household", and "Homeless meal provider". In addition, the current definitions of "Eligible foods" and "Retail food store" are amended to include homeless meal providers.

Participation of Homeless Food Stamp Households (§§ 273.1, 273.11, 274.10)

Pub. L. 99–570 permits homeless food stamp households to use their food stamps, on a voluntary basis, to purchase prepared meals from authorized homeless meal providers

(§273.11(h)). Under current law, the homeless may be certified to receive food stamps if otherwise eligible. This includes rights to expedited service, if appropriate, and to use food stamps in authorized stores. This rulemaking is designed to implement the provisions of Pub. L. 99–570 which expand the ways in which the homeless may use their food stamps. Under the statute, a food stamp household shall be considered "homeless" if such household does not have a fixed mailing address or reside in a permanent dwelling (§ 271.2). Residents of temporary shelters for the homeless shall no longer be categorized as residents of institutions (§ 273.1(e)(5)).

State Agency Responsibilities (§ 272.9)

State agencies shall certify homeless food stamp applicants in accordance with applicable procedures.

To facilitate the changemaking process for homeless food stamp households and homeless meal providers, States may wish to consider the option of issuing all or a large part of the household's monthly allotment in $1.00 coupons. States choosing to exercise this option should ensure that coupon inventories are adequate to meet this demand by ordering additional $2 books as appropriate.

In general, the State food stamp agency would be an appropriate agency to approve establishments and shelters for the homeless, as provided in the statute. However, the State agency may identify a different State or local governmental agency, provided that the responsibilities of that agency are related to establishments and shelters that feed the homeless. Such an agency could be, for example, a State or local health authority responsible for licensing or inspecting establishments and shelters serving the homeless (§ 272.9).

The State or local agency responsible for approval of homeless establishments and shelters would grant approval to the establishment or shelter when it is satisfied that the establishment or shelter does in fact serve meals to the homeless. The approval requirement is not meant to impose any significant burden on the establishment or shelter or on the responsible State or local agency. For example, the responsible agency could reasonably determine that a single, on-site visit to the establishment or shelter would provide sufficient evidence that the establishment or shelter is serving meals to the homeless. The responsible agency could further determine that approval, once granted, could be continued without further inspections, unless it receives evidence that the establishment or shelter is no longer serving meals to the homeless.

Implementation Dates (§§ 272.1, 278.9)

Upon publication of this rulemaking, homeless meal providers may submit applications for authorization to accept food stamps from homeless food stamp recipients. All other provisions of this rule will become effective April 1, 1987 (§§ 272.1(g)(85) (i) and (ii), 278.9(e)).

Recognizing that this implementation schedule may cause some difficulties with Quality Control (QC) reviews, for QC purposes only, we are allowing State agencies additional time to come into compliance with the provisions of this rule. For the period between publication and the first of the month following 30 days after publication, State QC reviews need not identify variances resulting solely from the State agency's implementation or non-implementation of this rule.

Participation of Homeless Meal Providers (§§ 271.2, 278.1, 278.2, 278.3, 278.4, 278.6)

For purposes of this rulemaking, the term "Homeless meal provider" shall mean public or private nonprofit establishments (e.g., soup kitchens, temporary shelters), approved by an appropriate State or local agency, that feed homeless food stamp households. The Homeless Eligibility Clarification Act adds a new provision applicable to homeless meal providers to Section 9 of the Food Stamp Act, which section addresses the approval of retailers. The new provision states that, in an area in which FNS, in consultation with the Department's Office of Inspector General, finds evidence that the authorization of a homeless meal provider would damage the Food Stamp Program's integrity, FNS shall limit the participation of that homeless meal provider, unless FNS determines that the establishment or shelter is the only one of its kind serving the area. When authorized by FNS, such establishments are considered retailers for purposes of the Food Stamp Program, and, except as provided for in this rule, must comply with the requirements applicable to retail food stores. Like other retailers, all homeless meal providers will be subject to disciplinary action for program violations, as provided in Section 12 of the Food Stamp Act, and will have the same rights of appeal, etc., as other retailers.

To be eligible for authorization to accept food stamps, a meal provider must meet the requirements set forth in § 278.1 (a), (b) and (h), and must serve meals that include food purchased by the establishment. A meal provider serving only meals which consist wholly of donated foods will not be eligible for authorization. In addition, a meal provider must be approved by an appropriate State or local agency, as discussed below.

Only those food stamp households determined to be homeless shall be permitted to use food stamp benefits to purchase prepared meals served by authorized homeless meal providers. To ensure that the use of food stamps for prepared meals is restricted to homeless persons, homeless meal providers shall establish that person's right to use coupons to purchase meals (§ 278.2(l)).

Applicant meal providers shall be responsible for acquiring approval from an appropriate State or local agency prior to final approval of their applications. Written documentation of such approval must be provided to the FNS Officer-in-Charge.

Under Pub. L. 99–570, homeless meal providers may not redeem food stamps through financial institutions for cash. Meal providers will therefore be restricted to redeeming food stamps received from homeless persons through authorized wholesale food outlets and through authorized retail food stores for food only. Retail food stores will be permitted to accept detached (and undetached) coupons, in all denominations, from homeless meal providers (§§ 278.1(c), 278.2(c), 278.2(g), 278.3(a), 278.4(c)). Homeless meal providers redeeming coupons through retail food stores shall present their retailer authorization card as proof of their eligibility to redeem coupons through retail food stores (§ 278.2(h)). (Establishments redeeming coupons through wholesale food concerns will use the redemption certificate system already established.) Although current regulations prohibit the redemption of food stamps by retailers through other retailers, the Department recognizes that requiring meal providers to use coupons for the purchase of eligible food only from wholesalers could impose serious hardships on meal providers in areas with limited or in access to wholesale food concerns.

Pub. L. 99–570 amended the Food Stamp Act to provide that the use of food stamps to purchase meals from homeless meal providers would be voluntary of the part of food stamp recipients. Food stamp recipients must continue to be given the option of using cash if payment for a meal is required. In addition, if others have the option of eating free or making a monetary donation, homeless food stamp recipients must be given the same option

(eat free, or donate money or food stamps). The amount requested from homeless food stamp recipients using food stamps to purchase meals may not exceed the average cost to the homeless meal provider of the food contained in a meal served to the patrons of the meal provider. If a homeless recipient voluntarily pays more than the average cost of food contained in a meal served, such payment may be accepted by the meal provider. The statutory language, "average cost of the food contained in a meal served" Pub. L. 99-570, section 11002(a)(3) refers to direct costs, through purchases of food used in preparation of meals. It does not include the value of donated foods such as USDA-donated food or foods donated by private individuals or companies. It would also exclude the costs incurred by meal providers in the acquisition, storage, or preparation of the foods used in the meals. The legislative history confirms this interpretation. 132 Cong. Rec. S15347 (daily ed. October 6, 1986) (statements of Sen. Helms and Sen Domenici). For purposes of this rule, "average cost" shall be determined by averaging costs over a period of up to one calendar month (§ 278.2(b)).

Under current rules, for stamp recipients using their food stamp benefits at authorized retailers receive change in amounts less than $1.00 in cash. The legislative history shows Congressional intent that homeless food stamp recipients purchasing prepared meals would not receive cash change in any amount. (123 Cong. Rec., *supra.*). Moreover, requiring homeless meal providers to make cash change would not be practicable, because, unlike all other retailers, homeless meal providers may not redeem coupons for cash and may have no other source of cash to use in making change. Therefore, meal providers will be prohibited from providing cash change to homeless persons for food stamps received in exchange for prepared meals. In addition, FNS shall not approve the use of credit slip systems for purposes of providing change (§§ 274.10(i), 278.2(d)). Such systems are not used in the Food Stamp Program.

Homeless meal providers will not be permitted to serve as "Authorized Representatives" for homeless food stamp households (§ 273.1(f)(4)(iv)). Because of the transitory nature of most homeless food stamp households, and the meal pricing restrictions of Pub. L. 99-570, Sec. 11002(a)(3), the Department believes that permitting homeless meal providers to serve as authorized representatives would not be in the best interest of homeless recipients or the Food Stamp Program, overall. To allow such providers to be authorized representatives would increase the potential for violation of provisions of the law which provide that the use of food stamps for prepared meals must be voluntary on the part of homeless food stamp households and that the amount requested of food stamp recipients by meal providers may not exceed the average cost of the food used in a meal served. The use of meal providers as authorized representatives would also impose additional accountability requirements on such meal providers who would be required to establish a fully documentable system for accounting for benefits used by a given person at any given point in time, and returning any unused portion of a person's allotment upon request. In addition, the use of homeless meal providers as authorized representatives could restrict homeless recipients to one source of food and could prevent such recipients from exercising a choice of where to purchase meals or other eligible foods from other sources.

Participation of Wholesale Food Concerns (§§ 278.1, 278.3)

Wholesale food concerns may be authorized to accept food stamps from one or more specified authorized meal providers in exchange for food (§ 278.3(a)). To be authorized to accept food stamps from homeless meal providers, a wholesaler must demonstrate to FNS that its services are required as a redemption outlet for each specified meal provider in the area in which it operates (§ 278.1(c)).

Redemption Process (§ 274.10)

This rulemaking will broaden the scope of Part 274 of the Food Stamp Regulations to specifically state that homeless food stamp recipients may use their benefits for prepared meals served by authorized homeless meal providers. (§ 274.10(e)(1)). In addition, Part 274 specifically prohibits the return of cash change or issuance of credit slips by homeless meal providers to homeless food stamp clients using coupons to purchase prepared meals (§ 274.10(i)).

Evaluation

Pub. L. 99-570 requires FNS to submit a report to both the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry, no later than September 30, 1988. The report must evaluate the program established by the homeless provisions of Pub. L. 99-570 (section 11002), and include any proposed legislative recommendations.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 278

Administrative practice and procedure, Banks, banking, Claims, Food Stamps, Groceries—retail, Groceries, general line—wholesaler, Penalties.

Accordingly, 7 CFR Parts 271, 272, 273, 274, and 278 are amended as follows:

1. The authority citation for Parts, 271, 272, 273, 274, and 278 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2:

a. Definitions for *"Homeless food stamp household"*, and *"Homeless meal provider"* are added in alphabetical order.

b. The definition of *"Eligible foods"* is amended by removing the word "and" before paragraph (7), replacing the period after (7) with "; and", and by adding a new paragraph (8).

c. The definition of *"Retail food store"* is amended by inserting "public or private nonprofit establishments, approved by an appropriate State or local agency, that feed homeless persons;" at the end of paragraph (2).

The additions read as follows:

§ 271.2 Definitions.

* * * * *

"Eligible foods" * * * (8) in the case of homeless food stamp households, meals prepared for and served by an authorized public or private nonprofit establishment (e.g. soup kitchen, temporary shelter), approved by an

appropriate State or local agency, that feeds homeless persons.

* * * * *

"Homeless food stamp household" means an eligible food stamp household which has no fixed mailing address or does not reside in a permanent dwelling.

"Homeless meal provider" means a public or private nonprofit establishment (e.g. soup kitchen, temporary shelter), approved by an appropriate State or local agency as defined in § 278.1(h), that feeds homeless persons.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (g)(85) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation * * *

(85) *Amendment No. 286.* (i) The provisions of Amendment No. 286 which permit homeless meal providers to apply for authorization to accept food stamps shall be effective March 11, 1987.

(ii) All other provisions of this amendment are effective April 1, 1987.

4. In Part 272, a new § 272.9 is added to read as follows:

§ 272.9 Approval of homeless meal providers.

The State food stamp agency, or another appropriate State or local governmental agency identified by the State food stamp agency, shall approve establishments and shelters serving the homeless upon sufficient evidence, as determined by the agency, that the establishment or shelter does in fact serve meals to homeless persons. Where the State food stamp agency identifies another appropriate State or local agency for the purpose of approving establishments or shelters serving the homeless, the State food stamp agency will remain responsible for insuring that the provisions of the preceding sentence are effectively carried out.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

5. In § 273.1:

a. A new paragraph (e)(5) is added.

b. A new paragraph (f)(4)(iv) is added.

The additions read as follows:

§ 273.1 Household concept.

* * * * *

(e) *Residents of Institutions* * * *

(5) Residents of public or private nonprofit shelters for homeless persons.

(f) *Authorized Representatives.*

(4) * * *

(iv) Homeless meal providers, as defined in § 271.2, may not act as authorized representatives for homeless food stamp recipients.

* * * * *

6. In § 273.11, paragraphs (h), (i), and (j) are redesignated as paragraphs (i), (j), and (k), respectively, and a new paragraph (h) is added to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(h) *Homeless food stamp households.* Homeless food stamp households shall be permitted to use their food stamp benefits to purchase prepared meals from homeless meal providers authorized by FNS under § 278.1(h).

* * * * *

PART 274—ISSUANCE AND USE OF FOOD COUPONS

7. In § 274.10:

a. Paragraphs (e), (f), (g), and (h) are redesignated (f), (g), (h), and (i), respectively, and a new paragraph (e) is added.

b. Newly redesignated paragraph (i) is amended by adding a new sentence at the end of the paragraph.

The additions read as follows:

§ 274.10 Use or redemption of coupons by eligible households.

* * * * *

(e) *Homeless food stamp households.* Homeless food stamp households may use their food stamp benefits to purchase prepared meals from authorized homeless meal providers.

* * * * *

(i) * * * However, in the case of homeless food stamp households, neither cash change nor credit slips shall be returned for coupons used for the purchase of prepared meals from authorized homeless meal providers. Such meal providers may use uncancelled and unmarked $1 coupons which were previously accepted for meals served to food stamp recipients when change is required for $5 and $10 coupons.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

8. In section 278.1:

a. Paragraph (c) is amended by removing the word "or" from the end of (c)(4), by redesignating (c)(5) as (c)(6) and adding a new (c)(5).

b. Paragraphs (h) through (q) are redesignated as paragraphs (i) through (r), respectively, and a new paragraph (h) is added.

The revisions and additions are as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

(c) *Wholesalers.* * * * (5) for one or more specified authorized homeless meal providers, or * * *

* * * * *

(h) *Homeless Meal Providers.* FNS shall authorize as retail food stores, those homeless meal providers which apply and qualify for authorization to accept food stamps from homeless food stamp recipients. Such meal providers must be public or private nonprofit organizations as defined by the Internal Revenue Service (I.R.C. 501(c)(3)), must serve meals that include food *purchased* by the meal provider, must meet the requirements of paragraphs (a) and (b) of this section, and must be approved by an appropriate State or local agency, pursuant to § 272.9.

Homeless meal providers shall be responsible for obtaining approval from an appropriate State or local agency and shall provide written documentation of such approval to FNS prior to approval of the meal provider's application for authorization. (If such approval is subsequently withdrawn, FNS authorization shall be withdrawn). Homeless meal providers serving meals which consist wholly of donated foods shall not be eligible for authorization. In an area in which FNS, in consultation with the Department's Office of Inspector General, finds evidence that the authorization of a homeless meal provider would damage the Food Stamp Program's integrity, FNS shall limit the participation of that homeless meal provider, unless FNS determines that the establishment or shelter is the only one of its kind serving the area.

* * * * *

9. In § 278.2:

a. Paragraph (a) is amended by adding the phrase, "except that homeless meal providers may redeem coupons for eligible food through authorized retail food stores" before the period of the last sentence of the paragraph.

b. Paragraph (b) is amended by adding six new sentences between the second and third sentences of the paragraph.

c. Paragraph (c) is amended by adding a new sentence before the last sentence of the paragraph.

d. Paragraph (d) is amended by adding a new sentence following the second sentence of the paragraph.

e. Paragraph (g) is amended by adding a new sentence between the third and fourth sentences of the paragraph.

f. The last sentence of paragraph (g) is amended by removing the word "and" after "group living arrangements", and by adding the phrase "and, homeless meal providers for homeless food stamp households" after the word "children".

g. Paragraph (h) is amended by adding a new sentence to the end of the paragraph.

h. A new paragraph (l) is added.

§ 278.2 Participation of retail food stores.

* * * * *

(b) *Equal treatment for coupon customers.* * * * However, homeless meal providers may only request *voluntary* use of food stamps from homeless food stamp recipients and may not request such households using food stamps to pay more than the average cost of the food *purchased* by the homeless meal provider contained in a meal served to the patrons of the meal service. For purposes of this section, "average cost" is determined by averaging food costs over a period of up to one calendar month. Voluntary payments by food stamp recipients in excess of such costs may be accepted by the meal providers. The value of donated foods from any source shall not be considered in determining the amount to be requested from food stamp recipients. All indirect costs, such as those incurred in the acquisition, storage, or preparation of the foods used in meals shall also be excluded. In addition, if others have the opinion of eating free or making a monetary donation, food stamp recipients must be provided the same option of eating free or making a donation in money or food stamps. * * *

(c) *Accepting coupons.* * * * However, in the case of homeless meal providers retail food stores may accept detached coupons which have been accepted by the homeless meal provider. * * *

(d) *Making change.* * * * However, in the case of homeless meal providers, neither cash change nor credit slips shall be provided under any circumstances when food stamps are used to purchase meals. * * *

* * * * *

(g) *Redeeming coupons.* * * * Homeless meal providers may purchase food in authorized retail food stores and through authorized wholesale food concerns. * * *

(h) * * * Homeless meal providers redeeming detached coupons through retail food stores shall present their retailer authorization card as proof of their eligibility to redeem coupons through retail food stores.

* * * * *

(l) *Checking homeless meal provider recipients.* Homeless meal providers shall establish a food stamp patron's right to purchase meals with coupons.

§ 278.3 [Amended]

10. In § 278.3, paragraph (a) is amended by (1) removing the word "or" in the first sentence following the phrase "drug addict or alcoholic treatment programs", and adding the phrase "or, from one or more specified homeless meal providers" after "battered women and children", and (2) by adding the phrase "or from one or more homeless meal providers" after the first and second phrases reading "battered women and children," in the second sentence.

§ 278.4 [Amended]

11. In § 278.4, the second sentence of paragraph (c) is amended by adding the phrase "and homeless meal providers," after the phrase "rehabilitation programs,".

§ 278.6 [Amended]

12. In § 278.6:

a. Paragraphs (e)(2) (iii) and (iv) are amended by adding the phrase "homeless meal providers" following the phrase "drug addict and alcoholic treatment programs."

b. Paragraph (e)(3)(iii) is amended by adding the phrase "homeless meal provider," after the phrase "group living arrangement".

c. Paragraph (e)(3)(v) is amended by adding the phrase "homeless meal providers," after the phrase "group living arrangements".

13. Section 278.9 is amended by adding a new paragraph (e) as follows:

§ 278.9 Implementation of amendments relating to participation of retail food stores, wholesale food concerns and insured financial institutions.

(e) *Amendment No. 286.* The provisions for Part 278 of *Amendment No. 286* are effective March 11, 1987 for purposes of submitting applications for authorization to accept food stamps. For all other purposes the effective date is April 1, 1987.

Dated: March 9, 1987.

Robert E. Leard,

Administrator.

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