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# federal register

Monday
June 29, 1987

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## 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.

### CHICAGO, IL

**WHEN:** July 8, at 9 a.m.
**WHERE:** Room 204A,
Everett McKinley Dirksen Federal Building,
219 S. Dearborn Street,
Chicago, IL.
**RESERVATIONS:** Call the Chicago Federal Information Center, 312-353-0339.

### BOSTON, MA

**WHEN:** July 15, at 9 a.m.
**WHERE:** Main Auditorium, Federal Building,
10 Causeway Street,
Boston, MA.
**RESERVATIONS:** Call the Boston Federal Information Center, 617-565-8129

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**Separate Parts In This Issue**



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**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

## Proclamation 5672 of June 25, 1987

## National Catfish Day, 1987

By the President of the United States of America

A Proclamation

More and more Americans are discovering a uniquely American food delicacy—farm-raised catfish. In 1986, catfish comprised the third highest volume of finned fish consumed in the United States. Ninety-nine percent of all these catfish were farm-raised. Between 1975 and 1985, production of farm-raised catfish increased by 1200 percent. Most observers expect that production will continue to increase in 1987. Production costs of catfish farming, which have averaged only 65 cents per pound over the past 8 years, have resulted in a stable income for growers and an economical food product for consumers. The accompanying growth of the catfish processing industry also has created thousands of permanent jobs.

Farm-raised catfish have come a long way from their bottom-feeding ancestors. The catfish that are available today, fresh or frozen in markets nationwide, are products of state-of-the-art methods of aquaculture. They thrive in clean freshwater ponds on many American farms, where they are surface-fed soybean meal, corn, fish meal, vitamins, and minerals. Farm-raised catfish not only furnish American consumers with a tasty delicacy but also provide a nutritious, low-calorie source of protein that is also low in cholesterol.

In recognition of the value of farm-raised catfish, the Congress, by House Joint Resolution 178, has designated June 25, 1987, as "National Catfish Day" and authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim June 25, 1987, as National Catfish Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of June, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-14836
Filed 6-25-87; 4:13 pm]
Billing code 3195-01-M

# Presidential Documents

**Executive Order 12601 of June 24, 1987**

## Presidential Commission on the Human Immunodeficiency Virus Epidemic

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to create an advisory commission to investigate the spread of the human immunodeficiency virus (HIV) and the resultant acquired immune deficiency syndrome (AIDS) in the United States, it is hereby ordered as follows:

**Section 1.** *Establishment.* (a) There is established the Presidential Commission on the Human Immunodeficiency Virus Epidemic to investigate the spread of the HIV and the resultant AIDS. The Commission shall be composed of 11 members appointed or designated by the President. The members shall be distinguished individuals who have experience in such relevant disciplines as medicine, epidemiology, virology, law, insurance, education, and public health.

(b) The President shall designate a Chairman from among the members of the Commission.

**Sec. 2.** *Functions.* (a) The Commission shall advise the President, the Secretary of Health and Human Services, and other relevant Cabinet heads on the public health dangers including the medical, legal, ethical, social, and economic impact, from the spread of the HIV and resulting illnesses including AIDS, AIDS-related complex, and other related conditions.

(b) The primary focus of the Commission shall be to recommend measures that Federal, State, and local officials can take to (1) protect the public from contracting the HIV; (2) assist in finding a cure for AIDS; and (3) care for those who already have the disease.

(c) In particular, the Commission shall (1) evaluate efforts by educational institutions and other public and private entities to provide education and information concerning AIDS; (2) analyze the efforts currently underway by Federal, State, and local authorities to combat AIDS; (3) examine long-term impact of AIDS treatment needs on the health care delivery system, including the effect on non-AIDS patients in need of medical care; (4) review the United States history of dealing with communicable disease epidemics; (5) evaluate research activities relating to the prevention and treatment of AIDS; (6) identify future areas of research that might be needed to address the AIDS epidemic; (7) examine policies for development and release of drugs and vaccines to combat AIDS; (8) assess the progression of AIDS among the general population and among specific risk groups; (9) study legal and ethical issues relating to AIDS; and (10) review the role of the United States in the international AIDS pandemic.

(d) The Commission shall make a preliminary report to the President not later than 90 days after the date the members of the Commission are first appointed or designated. The Commission shall submit its final report no later than 1 year from the date of this Order.

**Sec. 3.** *Administration.* (a) The heads of Executive departments and agencies, to the extent permitted by law, shall provide the Commission, upon request, with such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission may receive compensation for their work on the Commission at the daily rate specified for GS–18 of the General Schedule. While engaged in the work of the Commission, members appointed from among private citizens of the United States, to the extent funds are available, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(c) The Office of the Secretary of Health and Human Services, subject to the availability of appropriations, shall provide the Commission with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions. The heads of other Executive departments and agencies, to the extent permitted by law, shall cooperate with the Commission and provide such personnel and administrative support as may be necessary for the performance of its functions.

**Sec. 4.** *General Provisions.* (a) The functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Commission, shall be performed by the Secretary of Health and Human Services, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission, unless sooner extended, shall terminate 30 days after submitting its final report to the President.

Ronald Reagan

THE WHITE HOUSE,
*June 24, 1987.*

[FR Doc. 87–14837
Filed 6–25–87; 4:14 pm]
Billing code 3195–01–M

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 2

### Delegations of Authority

**AGENCY:** Office of the Secretary, USDA.
**ACTION:** Final rule.

**SUMMARY:** This document delegates authority to the Assistant Secretary for Natural Resources and Environment and to the Chief of the Forest Service to enter into contracts, grants, cooperative agreements, and cost-reimbursable agreements relating to the conduct of agricultural research, extension, or teaching activities. In addition, it corrects certain citations and updates descriptions of program responsibilities delegated to the Assistant Secretary for Natural Resources and Environment and the Chief of the Forest Service resulting from statutory changes.

**EFFECTIVE DATE:** This rule is effective June 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** For information on the contract, grant and agreement delegations, contact Douglas B. Lee, Property and Procurement Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 (703) 235–8165. For information on the other revisions, contact Marian P. Connolly, Regulatory Coordinator, (703) 235–1488.

**SUPPLEMENTARY INFORMATION:** Section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318) authorizes use of contracts, grants and cooperative agreements to further the research, extension, and teaching programs of the Department. Notwithstanding the provisions of 31 U.S.C. 6301–6308, the Act specifically authorizes use of a cooperative agreement as the legal instrument reflecting a relationship between the Department of Agriculture and other parties when the objective of the agreement will serve a mutual interest in agricultural research, extension, or teaching activities, including statistical reporting, and when all parties will contribute resources to the accomplishment of those objectives. Such cooperating parties include State cooperative institutions, State departments of agriculture, colleges, universities, other research or educational institutional or organizations, Federal, or private agencies, organizations, or individuals, or any other party that meets the criteria for cooperation in the Act.

Section 1473A of the Act (7 U.S.C. 3319a) authorizes, notwithstanding any other provisions of law, use of cost-reimbursable agreements with State cooperative institutions without regard to any requirement for competition, for the acquisition of goods or services, including personal services, to carry out agricultural research, extension, or teaching activities or mutual interest.

This rule delegates authority from the Secretary of Agriculture to the Assistant Secretary for Natural Resources and Environment and further to the Chief of the Forest Service to enter into grants, contracts and cooperative agreements, for periods not to exceed five years, to further research, extension, or teaching programs of the Department of Agriculture in the food and agricultural sciences.

In addition, based on routine review of delegations of authority related to the mission of the Forest Service, this rule corrects several citations, updates several existing authorities, and adds one new authority to reflect legislation enacted over the past decade which through inadvertence were not incorporated at the time the laws were enacted. Specifically, the delegations to the Assistant Secretary and the Chief are revised to:

1. Include planning and administration of fish and wildlife conservation rehabilitation and habitat management programs under the Sikes Act (Pub. L. 93–452);

2. Correct the citation related to administration of forest highways resulting from amendment of the Federal Highway Act.

3. Correct the citation to the administrative appeal regulations of the Forest Service, 36 CFR 211.18, which were recodified several years ago; and

4. Change the reference to forest pest control and eradication to forest pest management to reflect the broader scope of these activities that has evolved over the years.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.**

Further, since this rule relates to internal management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

### List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Part 2, Subtitle A, of Title 7 of the Code of Federal Regulations is amended as follows:

## PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

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

**Authority:** 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

### Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Amend paragraph (d) of § 2.19 by revising paragraphs (5), (6), and (18), and by adding paragraphs (24) through (26) to read as follows:

**§ 2.19 Assistant Secretary for Natural Resources and Environment.**

* * * * *

(d) * * *

(5) Administer forest insect, disease, and other pest management programs.

(6) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125(a)–(c), 138, 202(a)–(b),

203, 204(a)–(h), 205(a)–(d), 211, 317, 402(a)).

* * * * *

(18) Exercise the administrative appeal functions of the Secretary of Agriculture in review of decisions of the Chief of the Forest Service pursuant to 36 CFR 211.18.

* * * * *

(24) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

(25) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(26) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands pursuant to 16 U.S.C. 670g, 670h, and 670o.

* * * * *

**Subpart G—Delegations of Authority by the Assistant Secretary for Natural Resources and Environment**

3. Amend paragraph (a) of § 2.60 by revising paragraphs (5) and (6) and adding paragraphs (26) through (28) to read as follows:

**§ 2.60 Chief, Forest Service.**

(a) * * *

(5) Administer forest insect, disease, and other pest management programs.

(6) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125(a)–(c), 138, 202(a)–(b), 203, 204(a)–(h), 205(a)–(d), 211, 317, 402(a)).

* * * * *

(26) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

(27) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(28) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands pursuant to 16 U.S.C. 670g, 670h, and 670o.

* * * * *

Dated: June 23, 1987.

For Subpart C:

**Richard E. Lyng,**

*Secretary.*

Dated: June 23, 1987.

For Subpart G:

**Douglas W. MacCleery,**

*Deputy Assistant Secretary for Natural Resources and Environment.*

[FR Doc. 87–14695 Filed 6–26–87; 8:45 am]

BILLING CODE 3410–11–M

**7 CFR Part 12**

## Highly Erodible Land and Wetland Conservation; Request for Comments

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule amends the interim rule for highly erodible land and wetland conservation which was published June 27, 1986 (51 FR 23496). This amendment pertains to the terms and conditions under which a person who has produced an agricultural commodity on highly erodible land may be declared ineligible for certain benefits provided by the United States Department of Agriculture, as provided by Subtitle B of Title XII of the Food Security Act of 1985 (Pub. L. 99–198). The amendment provides that conservation plans and conservation systems are to be based upon the Soil Conservation Service (SCS) technical guides with regard to acceptable levels of soil erosion.

**DATES:** Effective June 29, 1987. Comments must be received on or before August 28, 1987 to be assured of consideration.

**ADDRESS:** Comments should be mailed to Director, Cotton, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sherman L. Lewis, Director, Conservation Planning and Application Division, Soil Conservation Service, United States Department of Agriculture, P.O. Box 2890, Washington, DC 20013. Phone: (202) 382–1845.

**SUPPLEMENTARY INFORMATION:** This amendment to the interim rule has been reviewed under United States Department of Agriculture ("Department") procedures established in accordance with provisions of Departmental Regulation 1512–2 and Executive Order 12291 and has been classified as "nonmajor." It has been determined that an annual effect on the economy of $100 million or more will not result from implementation of the provisions of this amendment to the interim rule. This amendment is to the interim rule published on June 27, 1986 (51 FR 23496) for which a regulatory impact analysis was prepared.

The Secretary of Agriculture has determined that this action will not have a significant economic impact on a substantial number of small entities. The analysis prepared for the interim regulations mentioned above includes a regulatory flexibility analysis.

This program activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The environmental consequences associated with implementing the Highly Erodible Land Conservation provison of the Food Security Act of 1985 are addressed in the environmental assessment, dated June 1986, which was made available through the notice for the amended interim rule. The Environmental assessment recognized the uncertainty about the level of erosion reduction necessary for producers to achieve and maintain their eligibility for program benefits. Consequently environmental effects were presented that included the likely range of treatment levels. The range of levels of conservation treatment provided for in this amendment to the interim rule are within those contemplated by the assessment. Accordingly, supplementation of the environmental assessment is not required.

Because many producers of agricultural commodities for the 1987 crop year and the near future are in the process of developing or implementing their conservation plans and systems, it has been determined that the need for certainty requires this amendment to § 12.5 be effective upon publication in the **Federal Register.**

**Discussion**

Title XII of the Food Security Act of 1985 (the "Act"). Pub. L. 99–198, 16 U.S.C. 3801, *et seq.*, establishes conservation programs to abate soil erosion on highly erodible land and to protect wetlands from cultivation. The basic principles of the conservation provisions of the Act are to withhold certain federal agricultural program benefits from any person placing into agricultural commodity production highly erodible lands or wetlands. These principles are set forth in greater detail in regulations of the Department published as an interim rule on June 27, 1986 (51 FR 23496).

The Act provides exceptions to the program ineligibility provisions. For

example, section 1212(b) exempts production of agricultural commodities on highly erodible lands if such production is in compliance with a conservation plan or conservation system approved by a conservation district as being in conformity with the technical standards set forth in the Soil Conseration Service field office technical guide, or approved by the Soil Conservation Service (acting for the Secretary of Agriculture) if no local conservation district exists.

The interim rule, at 7 CFR 12.5, addresses the issue of exemptions and provides that conservation plans and conservation systems must provide for reduction of soil loss to levels not in excess of the soil loss tolerance level for the soils involved. This level is commonly referred to as "T" value. The interim rule also permits, under certain circumstances, reductions to a level not in excess of two times the soil loss tolerance level, or "2T." Many of the over 2,600 letters of comment received on the interim rule addressed the standards for soil loss. As might be expected, some comments supported the "T" standard while others felt the rigidity of the rule precluded practical solutions which might not achieve the "T" standard. Because of the importance of this matter to the implementation of the Act this year, we are hereby amending the interim rule on this issue. All other provisions of the interim rule shall remain in effect until the final rule is issued.

The Act does not prescribe "T" value standards for soil loss reductions for conservation plans and systems. Rather, it promotes a scientific and professional approach to solving soil erosion problems. The lack of specific standards in the Act itself, in addition to relevant legislative history, suggests that the Department should have the latitude to adopt and apply locally developed standards to implement the Act. *See* H.R. Rep. No. 447, 99th Cong., 1st Sess. 454, *reprinted in* 1985 U.S. Code Cong. & Ad. News 1103, 2385. To achieve the practical goals of soil loss reductions as contemplated by the Act, and in a manner which effects fair and reasonable determinations of ineligibility, this amendment to the interim rule substitutes the use of required conservation systems as provided for in the Soil Conservation Service (SCS) field office technical guides as opposed to reliance on soil loss tolerance levels characterized by "T" values.

The field office technical guides are being revised, as needed, to contain critera and required conservation systems necessary for producers to maintain eligibility for USDA program benefits. These systems will take into consideration soil erodibility, conservation system effectiveness, economics, and other factors related to local areas. These revisions will have the effect of eliminating a rigid "T" standard for soil and crop situations where is it not economically or technically feasible or practical to achieve "T". These conservation compliance systems will achieve a substantial reduction in existing erosion rates. The acceptable conservation systems included in the SCS field office technical guides will be reviewed by the SCS National Technical Centers and concurred in by the SCS state conservationist. This review and concurrence requirement will ensure that the maximum feasible amount of erosion reduction will be achieved while permitting necessary flexibility.

In proposing this change away from the rigid standards for soil loss, the Department recognizes that the ideal goal of any conservation plan or system would be to reduce soil loss to the soil loss tolerance level. This approach will remain as a goal and an option, but not as a requirement. However, the Department believes that the Act's ultimate objectives will be more effectively achieved through reliance on the professional soil conservationist's ability to apply judgment based on the field office technical guides. The Department believes that a majority of the highly erodible cropland treated under this provision will achieve erosion reduction approaching the allowable soil loss tolerance level (T value). Comments on any other approaches such as establishing maximum allowable soil loss levels or requiring a minimum percentage of erosion reduction to be achieved may be submitted to USDA.

**List of Subjects in 7 CFR Part 12**

Highly erodible land, Wetland, Conservation, Price support programs, Federal Crop insurance, Farmers Home Administration loans, Incorporation, Loan programs—Agriculture, Environmental protection.

For the reasons set forth in the discussion, Part 12 of Title 7 of the Code of Federal Regulations is amended as follows:

## PART 12—HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

1. The authority citation for Part 12 continues to read as follows:

**Authority:** Secs. 1201–1223, 1241–1244 of Pub. L. 99–198 (99 Stat. 1504 *et seq.*; 16 U.S.C. 3801–3823, 3841–3844).

**§ 12.5 [Amended]**

2. In § 12.5 paragraph (b)(2) is revised to read as follows:

* * * * *

(2) A conservation plan, or a conservation system developed for the purposes of paragraph (c) of this section, will be based upon the SCS field office technical guide, addressing considerations of economic and technical feasibility and other related factors.

3. In § 12.5 paragraph (b)(3) is removed.

**George S. Dunlop,**

*Assistant Secretary, Natural Resources and Environment.*

June 24, 1987.

[FR Doc. 87–14694 Filed 6–26–87; 8:45 am]

BILLING CODE 3410–01–M

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**Agricultural Marketing Service**

**7 CFR Part 911**

**[Amdt. No. 6]**

## Limes Grown in Florida; Amendment to Rules and Regulations; Daily Pack-Out Reports

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule requires lime handlers to report to the Florida Lime Administration Committee the daily pack-out of selected sizes of limes during the entire twelve-month season. Handlers already are required to report this information to the committee during the March through June period of each season. The collection and dissemination of such information is necessary to assist growers and handlers in making better harvesting and marketing decisions.

**EFFECTIVE DATE:** July 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250. Telephone: (202) 475–3914.

**SUPPLEMENTARY INFORMATION:** This 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.

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1220) which implement the Paperwork Reduction Act

of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information and collection and recordkeeping requirements contained in this rule have been approved by OMB under OMB No. 0581–0091.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service 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 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, as amended (the Act, 7 U.S.C. 601 through 674), and rules promulgated 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.

The production area of Marketing Order No. 911 consists of all of the State of Florida except the area west of the Suwannee River. Production for the 1985–86 season totaled about 64,000 tons or 2.3 million bushels, of which 39,000 tons or 1.4 million bushels went to fresh market. The remaining 25,000 tons were processed for juice. Total production value was $21 million. It is estimated that 26 handlers of Florida limes under the marketing order for limes grown in Florida will be subject to regulation during the course of the current season. In addition, there are approximately 263 lime 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 and agricultural service firms which would include handlers are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Pursuant to the requirements set forth in the RFA the Administrator of AMS has considered the economic impact on small entities. This rule will require lime handlers to report to the committee the daily pack-out of certain sizes of limes for the entire twelve-month season. The current rule requires daily reports for March through June of each year. The collection and dissemination of such information for the entire season should assist growers and handlers in making better harvesting and marketing decisions. This action was unanimously recommended by the committee which is composed of representatives of growers and handlers.

Florida lime handlers already keep daily pack-out information for the entire season for use in paying growers. Extension of the reporting requirements for the entire season is expected to have little effect on handler costs or their reporting burdens under the program. The added benefits of disseminating this additional information throughout the industry are expected to outweigh any increased costs experienced by handlers. Committee administrative personnel gather this information by telephone from individual handlers. In addition, many handlers are currently supplying such information voluntarily to the committee. The total time expenditure required of handlers to report this information should not exceed a few minutes per day.

Based on available information, it has been determined that this rule will have no significant economic impact on a substantial number of small entities and will be of benefit to both growers and handlers.

This rule amends § 911.111 of Subpart—Rules and Regulations, requiring handlers to report specific pack-out information on a daily basis to the committee during the entire twelve-month season. This action will help growers make better harvesting decisions and handlers to make better marketing decisions. A final rule requiring handlers to report daily pack-out information of selected sizes during March through June each season was published in the **Federal Register** on January 9, 1987 (52 FR 758). This rule is issued pursuant to the marketing agreement and Order No. 911, both as amended, regulating the handling of limes grown in Florida. The order is effective under the Act. The committee, established under the order, is responsible for its local administration.

Weekly pack-out information is tabulated by size of the fruit on a total industry basis and disseminated along with the volume shipped and price report distributed to growers and handlers by the committee. It has been and will continue to be helpful to producers in planning harvesting to obtain the sizes desired in the marketplace. This helps assure packers and shippers of the desired sizes and helps them tailor shipments to market needs. By harvesting the sizes desired in the marketplace growers should be able to improve their returns. At the same time, shippers and packers should be able to maximize shipments with the sizes desired in the marketplace.

Notice of proposed rulemaking was given in the March 30, 1987, **Federal Register** (52 FR 10108) affording interested persons until April 29, 1987, to file written comments. None were filed.

After consideration of all available information including the proposal set forth in the notice, it is hereby found and determined that this amendment, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 911**

Marketing agreements and orders, Limes, Florida.

For the reasons set forth in the preamble, 7 CFR Part 911 is amended as follows:

## PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 911 continues to read as follows:

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

2. Section 911.111 is revised to read as follows:

**§ 911.111 Pack-out reports.**

Each handler shall, at the end of each day's operation, report to the committee the percent of that day's pack-out in the following five size categories:

(a) Sizes 28 and 36,
(b) Size 42,
(c) Size 48,
(d) Size 54, and
(e) Sizes 63 and 72.

Dated: June 22, 1987.

**Ronald L. Cioffi,**

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

[FR Doc. 87–14586 Filed 6–26–87 8:45 am]

BILLING CODE 3410-02-M

## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Part 545

**[No. 87–684]**

### Trust Account Disclosure Requirement

Dated: June 19, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Home Loan Bank Board ("Board") is amending its regulations concerning the mandatory disclosure of insurance coverage applicable to trust accounts. The amendment will make the disclosure requirement inapplicable to any Federal association to the extent that it (1) acts

as the trustee or custodian of an Individual Retirement Account ("IRA"), Keogh Plan account, or passive trust, and (2) is bound by the terms of the trust agreement to invest such funds only in "insured accounts," as that term is defined in 12 CFR 561.3, of insured institutions.

**EFFECTIVE DATE:** June 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Frances Gagliardo, Attorney, Regulations and Legislation Division, Office of the General Counsel, (202) 377-6559, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** Section 545.102(a) of the Board's regulations provides that a Federal association may act as the trustee or custodian of an IRA or Keogh Plan account provided that the association invests the funds in its own accounts, deposits, obligations, or securities, or in such other assets as the customer may direct. Board Res. No. 86-227, 51 FR 9177, 9178 (March 18, 1986) (to be codified at 12 CFR 545.102). Subject to the same proviso, § 545.102(a) also permits a Federal association to act as trustee with no active fiduciary duties if state law authorizes a financial institution to act in such capacity ("passive trust"). Section 545.102(b) further provides that a Federal association acting as trustee or custodian for IRAs, Keogh Plan accounts or passive trusts must notify such accountholders that the Federal Savings and Loan Insurance Corporation ("FSLIC") insures their funds only to the extent that they are invested in the accounts of an insured institution.

Although § 545.102(b) was intended to guard against the misconception that funds in IRAs, Keogh Plan accounts, or passive trusts are insured merely because the trustee is an insured institution, the Board has concluded that application of the disclosure requirement is not always necessary to achieve the regulatory purpose for which it was promulgated. The Board is therefore amending § 545.102(b) to specifically exclude from the disclosure requirement any Federal association to the extent that it must, in its capacity as trustee or custodian, invest the funds of an IRA, Keogh Plan account, or passive trust only in the "insured accounts," as that term is defined at 12 CFR 561.3, of insured institutions.

The Board has determined that because this amendment relieves a restriction by reducing the number of disclosures made by Federal associations, it should become effective immediately upon publication in the **Federal Register**. In order to facilitate implementation of this amendment and to decrease confusion on the part of accountholders, the Board has determined that the disclosure requirement is only applicable to IRAs, Keogh Plan accounts, or passive trusts opened on or after March 18, 1986, the funds of which, according to the terms of the trust agreement, may be invested in assets other than insured accounts. March 18, 1986, is the date on which the notification requirement found in § 545.102(b) became effective.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the minor, technical, and liberalizing nature of this amendment, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

**List of Subjects in 12 CFR Part 545**

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 545, Subchapter C, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

**SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM**

**PART 545—OPERATIONS**

1. The authority citation for Part 545 continues to read as follows:

**Authority:** Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402-403, 407, 48 Stat. 1256-1257, 1260, as amended (12 U.S.C. 1725-1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

2. Amend § 545.102 by revising paragraph (b) to read as follows:

**§ 545.102 Trustee.**

* * * * *

(b) Unless trust investments are limited to "insured accounts," as defined in § 561.3 of this Chapter, a Federal association acting as trustee or custodian pursuant to paragraph (a) of this section shall include in bold type on the first page of any contract documents the following language:

"Funds invested pursuant to this agreement are not insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") merely because the trustee or custodian is an institution the accounts of which are covered by such insurance. Only investments *in the accounts* of such an institution are insured by the FSLIC, subject to its rules and regulations."

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-14710 Filed 6-26-87; 8:45 am]

BILLING CODE 6720-01-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 86-ASW-10; Amdt. 39-5626]**

## Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 47 Series et al.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment amends an existing airworthiness directive (AD) which currently requires a 300-hour repetitive inspection of the main rotor (M/R) blade grips on the BHTI Model 47 series; Texas Helicopter Corporation, U.S. Army Model OH-13E and U.S. Army Model OH-13H; Hawkeye Rotor and Wing, U.S. Army Model OH-13E; Teryjon Aviation, Inc., Model Fast Kat I (U.S. Army Model OH-13S); and Continental Copters, Inc., U.S. Army Model OH-13H helicopters. This amendment is needed to provide a current inspection document and to clarify that the retirement life of the M/R blade grip has not changed.

**EFFECTIVE DATE:** July 10, 1987.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 10, 1987.

Compliance: As prescribed in body of AD.

**ADDRESSES:** The applicable Military Standard may be obtained from the Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120. Reference should be made to MIL-STD-6866, listed in D.O.D. Index Specifications and Standards.

Copies of the Military Standard are contained in the Rules Docket, Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Gary B. Roach, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5179.

**SUPPLEMENTARY INFORMATION:** This amendment amends Amendment 39–5260, AD No. 86–06–08 (51 FR 11300, dated April 2, 1986), which currently requires a 300-hour repetitive inspection beginning at 1,200 hours' time in service of the M/R blade grips on the BHTI Model 47 series; Texas Helicopter Corporation, U.S. Army Model OH–13E and U.S. Army Model OH–13H; Hawkeye Rotor and Wing, U.S. Army Model OH–13E; Teryjon Aviation, Inc., Model Fast Kat I (U.S. Army Model OH–13S); and Continental Copters, Inc., U.S. Army Model OH–13H helicopters. After issuing Amendment 39–5260, the FAA became aware that the Military Specification which was incorporated by reference had been superseded by a Military Standard. The FAA also determined that there is some confusion as to whether the life limit of the main rotor blade grip had changed. Therefore, the FAA is amending Amendment 39–5260 to require inspection of the main rotor blade grip be done in accordance with a later revision of the originally referenced Military Specification and clarify the fact that the time in service life limit of the main rotor blade grip has not changed on the BHTI Model 47 series; Texas Helicopter Corporation, U.S. Army Model OH–13E and U.S. Army Model OH–13H; Hawkeye Rotor and Wing, U.S. Army Model OH–13E; Teryjon Aviation, Inc., Model Fast Kat I (U.S. Army Model OH–13S); and Continental Copters, Inc., U.S. Army Model OH–13H helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

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, Safety, Incorporation by reference.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviaton Administration amends § 39.13 of Part 39 of the 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.

**§ 39.13 [Amended]**

2. By amending Amendment 39–5260 (51 FR 11300), AD No. 86–06–08, by revising paragraphs (c) and (d) and by adding a new paragraph (e) as follows:

**Bell Helicopter Textron, Inc.; Texas Helicopter Corporation; Hawkeye Rotor and Wing; Teryjoin Aviation, Inc.; Continental Copter, Inc.:** Applies to Model 47 series, U.S. Army Model OH–13E, U.S. Army Model OH–13H, and Model Fast Kat I (U.S. Army Model OH–13S) helicopters certified in any category equipped with main rotor blade grips, BHTI Part Numbers (P/N) 47–120–135–2, 47–120–135–3, 47–120–135–5, and 47–120–252–1; Main Rotor Grip Assembly BHTI P/N's 47–120–252–7 and 47–120–252–11; and Texas Helicopters, Inc., Parts Manufacturer Approval (PMA) P/N's 74–120–252–11 and 74–120–135–5. (AD Docket No. 86–ASW–10).

Compliance is required as indicated, unless already accomplished.

To prevent failure of the main rotor blade grip, accomplish the following:

* * * * * * *

(c) Perform a fluorescent dye penetrant inspection of the main rotor blade threads in accordance with Military Standard No. MIL–STD–6866, dated November 29, 1985. The penetrant inspection requirements of MIL–STD–6866 paragraph 4.3 are not required.

(d) Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Helicopter Certification Branch, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. Inspections performed in accordance with MIL–I–6866B through Amendment 3 provide an equivalent level of safety with paragraph (c) of this AD. The inspection requirements of paragraph 5.8 of MIL–I–6866B are not required.

* * * * * * *

(e) This AD does not alter the time in service life limit of the main rotor blade grips. This procedure shall be done in accordance with Military Standard MIL–STD–6866, dated November 29, 1985. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. (a) and 1 CFR Part 51. Copies may be obtained upon request to the Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120, by referencing MIL–STD–6866 listed in D.O.D. Index of Specifications and Standards.

Copies may be inspected at the Office of Regional Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment becomes effective July 10, 1987.

This amendment amends Amendment 39–5260 (51 FR 11300), AD No. 86–06–08.

Issued in Forth Worth, Texas, on May 12, 1987.

**C.R. Melugin, Jr.,**

*Director, Southwest Region.*

[FR Doc. 87–14613 Filed 6–26–87; 8:45 am]

**BILLING CODE 4910–13–M**

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**14 CFR Part 39**

**[Docket No. 87–58–NM–AD; Amdt. 39–5663]**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (Embraer) Model EMB–120 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Embraer Model EMB–120 series airplanes by individual letters. This AD requires an interim change to the Airplane Flight Manual (AFM) concerning procedures for emergency/abnormal operations, an inspection of the flap actuator, and replacement of the flap actuator, if necessary. This AD was prompted by a report of an uncommanded extension of the outboard actuator. This condition, if not corrected, could lead to loss of control of the airplane.

**DATES:** Effective July 14, 1987.

This AD was effective earlier to all recipients of Priority Letter AD 87–11–03, dated May 20, 1987.

**ADDRESSES:** The applicable service information may be obtained from Parker Hannifin Corporation, 16666 Von Karman Avenue, Irvine, California 92714. This information may be examined at the FAA, Northwest

Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Mr. William H. Trammell, Systems Branch, FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991-3020.

**SUPPLEMENTARY INFORMATION:** On May 20, 1987, the FAA issued Priority Letter AD 87-11-03, applicable to Embraer Model EMB-120 series airplanes, which requires an interim change to the Airplane Flight Manual (AFM) regarding operations during emergency/abnormal procedures for flap control faults, flap disagreement, and flap asymmetry; inspection of the flap actuator; and replacement of the flap actuator, if necessary.

The AD was prompted by a report of a full outboard flap panel asymmetry condition occurring on a Model EMB-120 airplane, which resulted in a severe rolling maneuver. Asymmetry was caused in part by a leaking extend solenoid valve of the right outboard flap actuator, Bertea part number (P/N) 320300-1003, and was further aggravated when the crew attempted to resolve the asymmetry through the use of presently approved emergency/abnormal procedures described in the AFM. This condition, if not corrected, could lead to loss of control of the airplane.

Parker-Hannifin, the manufacturer of the flap actuators used on the Model EMB-120, has issued Service Bulletins 320300-27-128 and 308200-27-127, both dated May 7, 1987, which describe procedures for inspecting the flap actuators (outboard, inboard, and nacelle) for leakage, measuring the actuators for proper velocity, and replacing the flap actuators, if necessary.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration 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 document 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).

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

## PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations 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.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Empresa Brasileira de Aeronautica S.A. (Embraer):** Applicable to all Model EMB-120 series airplanes, certificated in any category. Compliance is required as indicated, unless already accomplished.

To prevent flap asymmetry, accomplish the following:

A. Prior to further flight, replace the FAA-approved Airplane Flight Manual (AFM) emergency/abnormal procedures for flap control faults, flap disagreement, and flap asymmetry as follows. This may be accomplished by inserting a copy of this AD in the AFM.

*Flap Control Fault*–Electronic fault not involving disagreement or asymmetry.

Indication:

1. FLAP–Indicated on multiple alarm panel.

2. ADVANCED SWS–Indicated on multiple alarm panel.

3. *CORRESPONDING LIGHT BARS*–Flashing on annunciator panel.

*Flap Disagreement*–Pairs disagree with *other* pairs.

Indication:

1. FLAP–Indicated on multiple alarm panel.

2. ALL LIGHT BARS–Flashing on annunciator panel.

3. Slight roll tendency.

*Flap Asymmetry*–A disagreement within the *same* pair.

Indication:

1. FLAP–Indicated on multiple alarm panel.

2. *CORRESPONDING LIGHT BARS*–Flashing on annunciator panel.

3. Positive roll tendency.

*Corrective Action:*

**CAUTION**

RESET BUTTON IS ONLY RECOMMENDED IN CASE OF A FLAP CONTROL FAULT. DO NOT USE RESET BUTTON FOR FLAP DISAGREEMENT OR ASYMMETRY.

1. Maintain airplane control using aileron, rudder, and asymmetric engine power, as required.

2. If airplane is controllable, leave flap controls in the selected position, and land as soon as possible using recommended $V_{ref}$ for flap position.

**CAUTION**

DO NOT USE FLAP OVERRIDE FOR FLAP DISAGREEMENT.

3. If control forces are excessive or airplane is marginally controllable, the flap override switch may be used to drive the good flap toward the malfunctioning flap and land as soon as possible using recommended $V_{ref}$ for flap position. Correct direction for flap movement is toward the panel that did not respond correctly to the last command. Keep the override switch pressed until the asymmetry is completely eliminated. Flap selector may then be used to select desired position of other flap pairs.

**NOTE**

Do not exceed the $V_{fe}$ for the most extended pair of flaps. Use next higher $V_{fe}$ for intermediate flap positions. Compute $V_{fe}$ as follows:

| Flap position indicator | $V_{fe}$ correction |
|---|---|
| 0 to 14° | "35 KIAS |
| 15 to 24° | "10 KIAS |
| 25 to 44° | "5 KIAS |

**CAUTION**

WITH THE FLAPS UP, THE UNFACTORED LANDING DISTANCE WILL BE INCREASED BY 85%.

B. For airplanes having flap actuator serial numbers as listed in Parker Service Bulletin 320300-27-128 and 308200-27-127, both dated May 7, 1987, except for those actuators that have been modified by the manufacturer and reidentified with a modification record plate showing Service Bulletin Number 27-127 for the nacelle actuators or Number 27-128 for the inboard and outboard actuators, within 75 hours time-in-service after receipt of this AD, accomplish the following:

1. Check proper flap actuator velocity by measuring extend and retract times using the override switches. The following maximum actuation times shall be noted:

a. Actuator P/N 308200-1005 (Nacelle Flaps Actuators)

—Extend time: 15 seconds

—Retraction time: 16 seconds

b. Actuator P/N 320300-1001 (Inboard Flaps Actuators)

—Extend time: 14 seconds

—Retraction time: 22 seconds

c. Actuator P/N 320300-1003 (Outboard Flaps Actuators)

—Extend time: 11.1 seconds

—Retraction time: 19.8 seconds

2. Actuators showing time or times in excess of the maximum values indicated above must be replaced prior to further flight with a serviceable part.

C. An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

All persons affected by this directive who have not already received the appropriate service bulletins, may obtain copies upon request to Parker-Hannifin Corporation, 16666 Von Karman Avenue, Irvine, California 92714. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Sutie 210, Atlanta, Georgia.

This amendment becomes effective July 14, 1987, as to all persons, except those persons to whom it was made immediately effective by Priority Letter AD 87-11-03, issued May 20, 1987.

Issued in Seattle, Washington, on June 19, 1987.

**Frederick M. Issac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-14610 Filed 6-26-87; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

**[Docket No. 79-NE-18; Amdt. 39-5641]**

## Airworthiness Directives; Pratt & Whitney (PW) JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, and -17 Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires inspection of second stage fan blades on certain PW JT8D engines. The AD requires initial and repetitive ultrasonic inspections of second stage fan blade root attachment straps, and supersedes AD 80-11-03 R1, Amendment 39-3773 (45 FR 34259) as amended by Amendment 39-4148 (46 FR 33228). The AD is needed to detect cracks in the second stage fan blade root attachment straps which could result in fracture of the blade and subsequent cowl penetration, fire, and/or aircraft damage.

**DATE:** Effective—July 27, 1987.

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

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

**ADDRESSES:** The applicable alert service bulletin (ASB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457

A copy of the ASB is contained in Rules Docket Number 79-NE-18, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jim Jones, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7121.

**SUPPLEMENTARY INFORMATION:** AD 80-11-03, Amendment 39-3773 (45 FR 34259), which was issued May 12, 1980, required inspection of second stage fan blades on PW JT8D-1 through -7 engines. The inspection was required to detect cracks on the inner and outer surfaces of the attachment straps on second stage fan blades. AD 80-11-03 R1, Amendment 39-4148 (46 FR 33228), which was issued June 17, 1981, expanded the compliance requirements to include an additional fan blade part number. Since issuing AD 80-11-03 R1, 27 blade fractures have occurred on higher rated engine models (JT8D-9 through JT8D-17) not covered by that AD, and 20 blade fractures on lower rated models that had been previously ultrasonically inspected in accordance with the provisions of AD 80-11-03-R1. There have been a total of 18 second stage fan blade fracture events that have penetrated the engine cowl since issuance of AD 80-11-03 R1.

A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD that would supersede AD 80-11-03 R1 by including second stage fan blades of higher rated engine models, and by requiring initial and repetitive inspection intervals with improved inspection equipment and procedures, was published in the **Federal Register** on March 5, 1987, (52 FR 6804). This AD was prompted by additional blade fractures on higher rated models not covered by AD 80-11-03 R1, and by additional blade fractures on lower rated models that had been previously inspected in accordance with the requirements of that AD.

The manufacturer has developed a new immersion ultrasonic inspection procedure that is more sensitive and reliable than the previous procedure.

The provisions of this final rule are identical to those of the notice of proposed rulemaking (NPRM), except for minor editorial clarifications, and the addition of a reporting requirement as requested by a commenter. A reporting requirement has been added to this AD to determine the effectiveness of the inspection procedure and equipment.

Since this condition is likely to exist or develop in other engines of the same type design, this AD supersedes AD 80-11-03 R1, Amendment 39-3773 (45 FR 34259) as amended by Amendment 39-4148 (46 FR 33228), and requires initial and repetitive ultrasonic inspections of the second stage fan blades on certain PW JT8D engines in accordance with PW ASB 5729, dated January 29, 1987.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Several comments were received concerning the proposed rule.

### Discussion of Comments

One commenter recommended adding a reporting requirement to the proposed AD to determine the effectiveness of the immersion ultrasonic inspection procedure.

The FAA agrees and has added a reporting requirement to this AD.

One commenter indicated that the NPRM did not address proposed fan blade/fan case containment design improvements. The commenter also expected any such improvements to be mandated by the FAA.

A more durable fan blade is not currently available, however the manufacturer has released a new fan case with improved containment features. Pending further study, the FAA may consider additional action regarding fan case replacement. However, its incorporation would not negate the need for continued blade inspection.

One commenter stated that the phrase "unless already accomplished" described both the initial and repetitive compliance periods and was concerned that credit would not be given for inspections accomplished prior to the effective date of the final rule. The commenter suggested adding the phrase to paragraph (a) to clearly describe its applicability to the initial inspection only.

The "unless already accomplished" phrase clearly provides credit for those initial inspections accomplished prior to the effective date of this AD. Paragraph (a) will remain unchanged.

One commenter stated that PW ASB 5729 contained an eddy current inspection which is considered equivalent to the ultrasonic inspection. The commenter requested removal of the word "ultrasonically" from the compliance paragraph. Operators would then only be required to "inspect" in accordance with the ASB. The commenter also stated that he found 29 blades with cracks in an area of the pin hole not addressed by the AD, using an eddy current inspection procedure.

The FAA disagrees. While the ASB states in paragraph 1.C. that eddy current inspection procedures may be used for inspection of the pinhole, it provides no instructions, criteria, or equipment to accomplish that task. Therefore, the AD will allow only ultrasonic inspection as described in the ASB. Operators with specific eddy current equipment and procedures may request approval of an equivalent means as provided for in the AD. It should be noted that eddy current inspection of the pinhole alone would not be adequate for inspection of JT8D–1 and –7 series engine fan blades since they are susceptible to cracking on the strap outer diameter.

The FAA is investigating the commenter's report of blades cracked in an area not addressed by the AD. The AD may be amended depending on the findings of that investigation.

Several operators requested that the definition of a "shop visit" should be changed to require compliance only where a second stage compressor disk is removed. The operators are concerned that the proposed shop visit definition will require a much greater frequency of inspection.

The FAA disagrees. The criteria used to develop the analytical model for determining the inspection requirements included crack propagation rates based on data and analysis correlated to field service history. The service experience accounted for shop visit rates as defined in the proposal, observed events, part time/cycles, blade population, and crack depth detectability. The shop visit requirement, as proposed in the NPRM, is consistent with the risk analysis, and is essential in maintaining an acceptable level of safety, and will remain unchanged.

One commenter requested a change in the compliance schedule by requiring inspection at the first engine shop visit or 3,000 cycles in service (CIS) since last inspection (SLI), whichever occurs later. The reason for the request is concern that each shop visit, as proposed in the NPRM, would force an inspection.

The FAA disagrees. The proposed compliance schedule requires inspection at the first engine shop visit because of the lower crack detection sensitivity of the previously used inspection equipment. The risk analysis included the improved crack detection capability of the immersion ultrasonic inspection procedure. The commenter's 3,000 CIS SLI recommendation would continue to allow blades in service that were inspected to the previous inspection procedure, thereby compromising the acceptable level of safety. As previously stated, there have been numerous failures of blades that were inspected to the previous inspection procedure. The compliance requirements of this AD will establish a baseline for blades inspected to the improved procedure. If an operator has been inspecting with the procedures and equipment specified in PW ASB 5729, then the stipulation "unless otherwise accomplished" applies and an engine shop visit does not require an initial inspection. In that case, the reinspection criteria becomes the controlling consideration.

One commenter expressed concern about PW's ability to support an increased need for replacement fan blades.

The FAA has assessed the supply of replacement blades, based on historical blade rejection and failure rates, and considers the supply adequate to support this program. However, the lack of replacement parts, if a shortage should occur, is not sufficient justification to compromise the safety of flight concerns addressed by this AD.

## Conclusion

The FAA has determined that this regulation involves approximately 9,437 engines worldwide, of which 2,770 engines (domestic fleet) will require forced inspections at an approximate total cost of 2.6 million dollars. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using aircraft in which PW JT8D 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; Febraury 26, 1979); and (3) 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 final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person 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.

## Adoption of the Amendment

## PART 39–[AMENDED]

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.

### § 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD) which supersedes AD 80–11–03 R1, Amendment 39–3773 (45 FR 34259) as amended by Amendment 39–4148 (46 FR 33228):

**Pratt & Whitney:** Applies to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, and –17 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent uncontained second stage fan blade failure, ultrasonically inspect for cracks, second stage fan blade Part Numbers (P/N) 433802, 645902, 759902, 695932, 678102, and 746402, in accordance with PW Alert Service Bulletin (ASB) 5729, dated January 29, 1987, as follows:

(a) Inspect at the first engine shop visit after the effective date of this AD.

(b) Reinspect at each second stage fan rotor disassembly from the low pressure compressor (LPC) after accumulation of 3,000 cycles in service since last inspection (SLI), but not to exceed 10,000 cycles in service SLI.

(c) Remove from service, prior to further flight, second stage fan blades that exhibit crack indications beyond the requirements of PW ASB 5729, dated January 29, 1987, and replace with serviceable blades.

(d) Report the following information in writing, if a blade is found to be cracked, within 30 days of the inspection to the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; Telex Number 949301 FAANE BURL. Reporting approved by the Office of Management and Budget (OMB) under OMB Number 2120–0056:

(1) Engine serial number (S/N).

(2) Inspection date.

(3) Blade P/N and S/N.

(4) Blade total time and cycles (if estimate, so note).

(5) Blade time and cycles SLI.

(6) Crack location and size.

**Note:** Shop visit is defined as the input of an engine to a repair shop with LPC rotor overhaul capability where the subsequent engine maintenance entails the following:

(1) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle or reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "shop visit".

(2) Removal of a disk, hub, or spool.

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 the AD.

PW ASB 5729, dated January 29, 1987, identified and described in this document, is 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 this document from the manufacturer may obtain copies upon request to Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 79-NE-18, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on July 27, 1987.

This amendment supersedes Amendment 39-3773 (45 FR 34259) as amended by Amendment 39-4148 (46 FR 33228).

Issued in Burlington, Massachusetts, on June 2, 1987.

**Robert E. Whittington,**

*Director, New England Region.*

[FR Doc. 87-14615 Filed 6-26-87; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 85-ANE-17; Amdt. 39-5638]**

## Airworthiness Directives; Rolls-Royce plc (R-R) (formerly Rolls-Royce Limited) RB211-22B, -535C, and -524 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; Request for comments.

**SUMMARY:** This amendment amends an existing airworthiness directive (AD) which requires removal from service of stage 1 and 2 high pressure compressor (HPC) disk assemblies installed on certain R-R RB211 series turbofan engines. The amendment is needed to require removal of additional stage 1 and 2 disk assemblies that could be subject to material property deviations incurred during the manufacturing process and could result in uncontained engine failure.

**DATES:** Effective—July 1, 1987.

Compliance Schedule—As prescribed in the body of the AD. Comments for inclusion in the docket must be received on or before August 14, 1987.

Incorporation by Reference—Approved by the Director of the Federal Register on July 1, 1987.

**ADDRESSES:** Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 85-ANE-17, 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 85-ANE-17".

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 alert service bulletin (ASB) may be obtained from Rolls-Royce plc, Technical Publication Department, P.O. Box 31, Derby DE2 8BJ, England.

A copy of the ASB is contained in Rules Docket Number 85-ANE-17, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01083, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7084.

**SUPPLEMENTARY INFORMATION:** On June 20, 1986, AD 86-15-01, Amendment 39-5346, was issued requiring removal from service of stage 1 and 2 HPC disk assemblies identified by serial number in Appendix 3 of R-R ASB RB.211-72-A7774, Revision 1, dated March 21, 1986. Issuance of AD 86-15-01 was prompted by an uncontained stage 1 disk failure precipitated by manufacturing process deviations which contributed to a reduction of the low cycle fatigue life of the disk.

On April 8, 1987, AD 86-15-01 R1, Amendment 39-5346 as amended by Amendment 39-5608, was issued requiring removal from service of additional stage 1 and 2 HPC disk assemblies identified by serial number in Appendix 4 of R-R ASB RB.211-72-A7774, Revision 1, dated March 21, 1986.

After issuing Amendment 39-5608, the FAA determined that, as a result of continued engineering analytical evaluation, additional stage 1 and 2 HPC disk assemblies listed in Appendix 3 and Appendix 4 of the ASB should be removed from service. The FAA has determined that an extension to the removal requirement for HPC disks listed in Appendix 3 of the ASB, relative to the previous requirement, is essential to accommodate operators without adversely affecting safety. This extension is necessary due to the short compliance time required for the removal of the HPC disk assemblies. Therefore, all disk assemblies listed in Appendix 3 must be removed from service by July 20, 1987.

This amendment further amends AD 86-15-01 R1, Amendment 39-5346 as amended by Amendment 39-5608, to require removal of additional stage 1 and 2 HPC disk assemblies identified by serial number in both Appendices 3 and 4 of R-R ASB RB.211-72-A7774, Revision 2, dated February 6, 1987. It also modifies the criteria for removal of disk assemblies listed in Appendix 4, from a calendar deadline to a cyclic life limit or the same calendar deadline, whichever occurs later. 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 the amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this 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. This

rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available for examination in the Rules Docket at the address given above. A report summarizing each FAA-public contact, concerned with the substance of this 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 85-ANE-17". The postcard will be date/time stamped and returned to the commenter.

**Conclusion**

The FAA has determined that this regulation is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is negligible.

**List of Subjects in 14 CFR Part 39**

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by Reference.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

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.

**§ 39.13 [Amended]**

2. By amending § 39.13, Amendment 39-5346 (51 FR 25192) as amended by Amendment 39-5608 (52 FR 12519), Airworthiness Directive (AD) 86-15-01 R1, as follows:

(a) By replacing paragraph (a) with the following:

(a) Remove from service stage 1 and 2 HPC disk assemblies identified by serial number in Appendix 3 of Rolls-Royce Alert Service Bulletin (ASB) RB.211-72-A7774, Revision 2, dated February 6, 1987, at the next 04 module rework, but not later than July 20, 1987.

(b) By replacing paragraph (b) with the following:

(b) Remove from service stage 1 and 2 HPC disk assemblies identified by serial number in Appendix 4 of the Rolls-Royce (R-R) Alert Service Bulletin (ASB) RB.211-72-A7774, Revision 2, dated February 6, 1987, in accordance with the following criteria:

(1) For stage 1 and 2 HPC disk assemblies installed in R-R RB211-524 engines, prior to accumulating a total part life of 4,050 cycles in service or before May 31, 1988, whichever occurs later.

(2) For stage 1 and 2 HPC disk assemblies installed in R-R RB211-22B engines, prior to accumulating total part life of 4,350 cycles in service or before May 31, 1988, whichever occurs later.

(3) For stage 1 and 2 HPC disk assemblies installed in R-R RB211-535C engines, prior to accumulating total part life of 5,150 cycles in service or before May 31, 1988, whichever occurs later.

Rolls-Royce ASB RB.211-72-A7774, Revision 2, dated February 6, 1987, identified and described in this document, is 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 this document from the manufacturer may obtain copies upon request to Rolls-Royce plc, Technical Publications Department, P.O. Box 31, Derby DE2 8BJ, England. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 85-ANE-17, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on July 1, 1987.

This amendment amends Amendment 39-5346 as amended by Amendment 39-5608, AD 86-15-01 R1.

Issued in Burlington, Massachusetts, on May 27, 1987.

**Robert E. Whittington,**

*Director, New England Region.*

[FR Doc. 87-14614 Filed 6-26-87; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 87-ASW-18; Amdt. 39-5651]**

## Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS 355 Series Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which provides for repetitive inspections, checks, and replacement, as necessary, of main gearbox suspension bars on Aerospatiale Model AS 335 series helicopters. The AD is prompted by reports of failures of end fitting bonds and end fitting bearing displacements within suspension bars which could result in suspension bar failure and consequent loss of control of the helicopter.

**DATES:** Effective July 10, 1987.

Compliance: As indicated in the body of the AD.

**ADDRESSES:** The applicable service bulletins may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

A copy of the service bulletin is contained in the Rules Docket at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** John Varoli, Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone No. 513.38.30 or R.T. Weaver, Rotorcraft Standards Staff, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193-0111, telephone (817) 624-5122.

**SUPPLEMENTARY INFORMATION:** There have been recent reports of end fitting bond failures in suspension bars with consequent displacement of the end fittings. This end fitting displacement could result in suspension bar failure which could, in turn, cause loss of control. Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires inspections and checks of the main gearbox suspension bars and replacement, as necessary, on these aircraft. French AD 87-038-032(B) covers this same subject.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

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 Executive 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, Safety.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the 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.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Societe Nationale Industrielle Aerospatiale (SNIAS):** Applies to Aerospatiale Model As 355 series helicopters, certificated in any category which are equipped with main gearbox suspension bars with Part Numbers 355A-38-0040-02, -03, -04, -05.

Compliance is required as indicated (unless already accomplished).

To detect possible unbonding of main gearbox suspension bar end fittings and to prevent failure of the bars, accomplish the following:

(a) Within the next 10 hours' time in service after the effective date of this AD:

(1) Visually inspect the ends of each suspension bar for displacement of the spherical bearings relative to the tube and for cracking or protrusion of the PR compound as shown in figure No. 1. If this inspection is conducted without disassembly, use a light and inspection mirror as needed to inspect both ends of each bar.

(2) If no bearing displacement or PR compound discrepancies are found, affix an adhesive tape such as POLYPENCO A 2007 around each end of each bar. Locate the edge of the tape nearest the end of the bar so that it is in line with (and tangent to) the surface of the anchoring lug as shown in figure No. 2. This will provide an aid for use in repetitive checks.

(b) After the initial inspection of paragraph (a)(1) and modification of paragraph (a)(2), conduct a visual check or the marking tapes on the suspension bars thereafter at intervals not to exceed 10 hours' time in service:

(1) Check that the edge of the tape is in line with the anchoring lug surface as shown in figure No. 2.

(2) If the tape edge is no longer in line with the anchoring lug surface, remove the bar for a closer inspection for bearing displacement of PR compound protrusion as shown in figure No. 1.

(c) Replace all bars found to be faulty with serviceable parts.

(d) An alternate method of compliance with this AD, which provides an equivalent level of safety, may be used when approved by the Manager, Aircraft Certification Division, Department of Transportation, Federal Aviation Administration, Forth Worth, Texas 76193-5100, or by the Manager, Brussels Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium.

(e) In accordance with §§ 21.197 and 21.199, flight is permitted to a base where the inspections required by this AD may be accomplished.

(f) Aerospatiale Service Bulletin No. 05.16 pertains to the inspections and checks of this AD.

This amendment becomes effective July 10, 1987.

Issued in Fort Worth, Texas, on June 11, 1987.

**Don P. Watson,**

*Acting Director, Southwest Region.*

BILLING CODE 4910-13-M

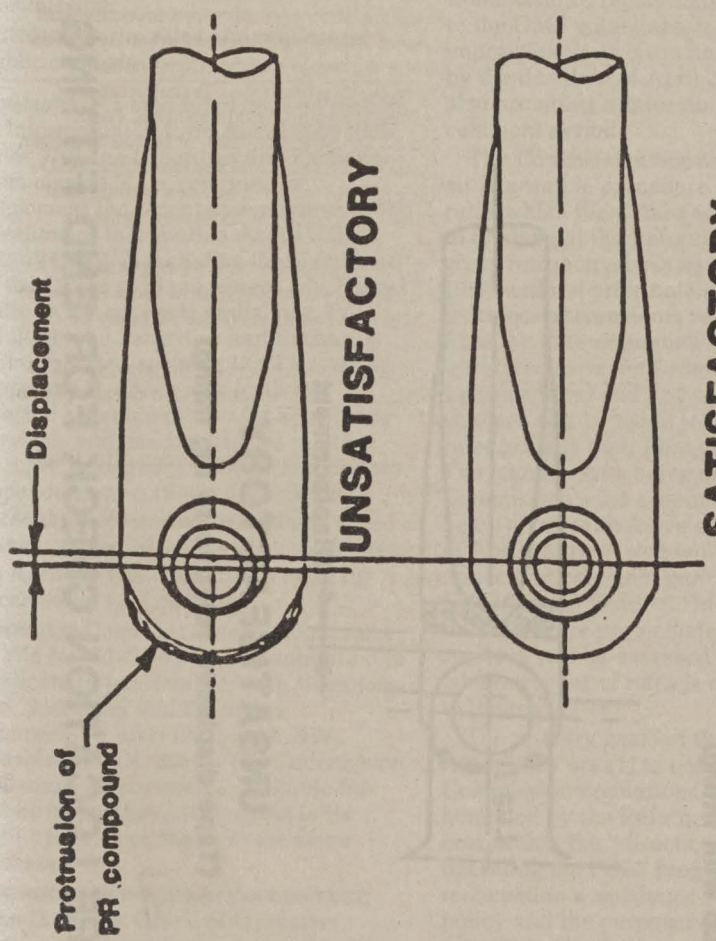


FIGURE NO. 1 BASIC CHECK FOR END FITTING DISPLACEMENT

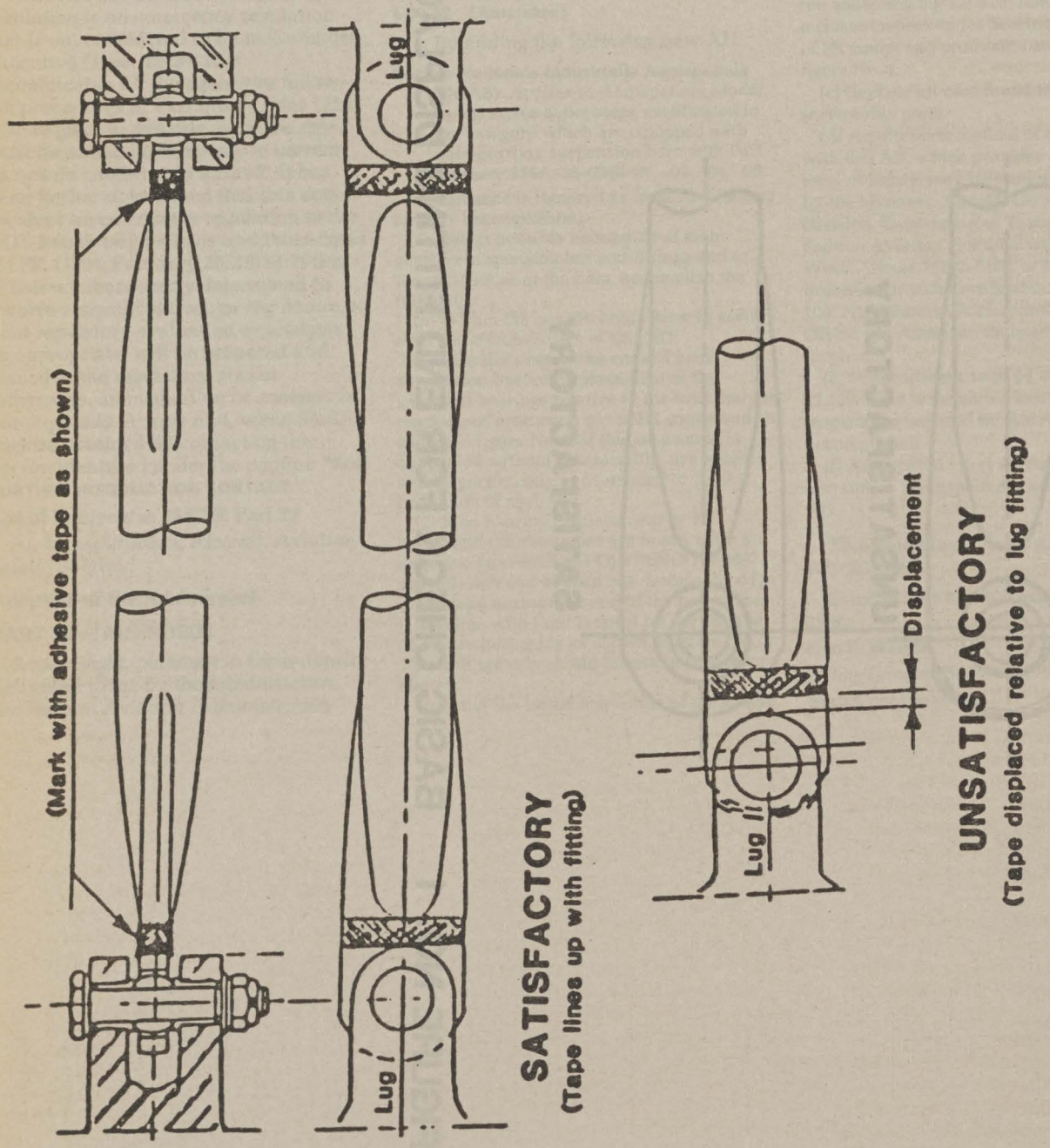


FIGURE NO. 2 TAPE LOCATION CHECK FOR END FITTING DISPLACEMENT

[FR Doc. 87-14611 Filed 6-26-87; 8:45 am]
BILLING CODE 4910-13-C

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 200

[Release Nos. 33-6721; 34-24615; 35-24416; 39-2099; IC-15819; IA-1072; File No. S7-26-87]

### The Freedom of Information Reform Act of 1986; Interim Publication of Regulations; Revisions to Fee Schedule for Records Services

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interim rules and request for public comment.

**SUMMARY:** As mandated by the Freedom of Information Reform Act of 1986 (Pub. L. 99-570), the Securities and Exchange Commission is issuing rules to implement the recent amendments to the Freedom of Information Act (5 U.S.C. 552(a)(4)(A)(i)), including those outlined in the Office of Management and Budget uniform fee schedule guidelines. In addition, the Securities and Exchange Commission is revising 17 CFR 200.80e, Appendix E, which sets forth the specific schedule of fees for all records services, and making various minor changes throughout § 200.80 and certain appendices to conform the rules with present practices and conditions.

**DATES:** These amendments are effective on April 25, 1987. Comments must be received by July 29, 1987.

**ADDRESS:** Comment letters should refer to File No. S7-26-87 and be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room at the same address.

**FOR FURTHER INFORMATION CONTACT:** John D. Heine, Office of Consumer Affairs and Information Services, at the above address or by telephone at (202) 272-7444.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) ("Reform Act") amended the Freedom of Information Act ("FOIA") by modifying the terms of Exemption 7 and by supplying new provisions relating to the charging of fees for document retrieval and copying. The Reform Act specifically required the Office of Management and Budget ("OMB") to develop and issue, pursuant to notice-and-comment procedure, guidelines governing the uniform treatment of FOIA fees by all federal agencies. Further, the Reform Act required all Federal agencies to promulgate regulations implementing fee provisions of the Act, conforming to OMB guidelines, pursuant to notice and comment procedures. The regulations were to be effective 180 days after the effective date of the Reform Act, October 27, 1986.

On January 16, 1987 OMB issued for comment its "Proposed Fee Schedule and Administrative Guidelines" and issued a "Final Fee Schedule and Guidelines" on March 27, 1987. Since the Commission's regulations must conform to the OMB guidelines, it was impracticable to issue final regulations by the due date of April 25, 1987, while also providing a prior notice and comment period.

The Commission has chosen to follow an alternative procedure. The interim rules which the Commission is adopting to implement the Reform Act will be given retroactiveness as of April 25, 1987, without prior notice and comment. Subsequent comments received 30 days from the date of publication of the interim rules in the **Federal Register**, will be considered and any necessary changes will be made to the interim rules prior to their final promulgation. The amendments being made to the Commission's fee schedule are also being given retroactive effectiveness as of April 25, 1987, and will be subject to a notice and comment period of 30 days following publication. However, until final rules are promulgated, fees for services will be assessed under whichever set of rules is more favorable to the requester.

The primary goals of the proposed regulations are (1) to conform Commission regulations to the FOIA as amended by the Reform Act; (2) to ensure that the "direct costs" incurred in operating the FOIA program are recouped in accordance with OMB policy and the purposes of the Reform Act; (3) to clarify the methods employed by and the fees charged to FOIA requesters, as well as users of the Commission's public reference facilities, in order to facilitate individual access to government information; and (4) to correct outdated information in the present regulations.

### Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603.

*1. Reasons for Action*

This action is mandated by the Freedom of Information Reform Act of 1986 (Pub. L. 99-570).

*2. Objectives*

The Commission is revising its regulations to conform with statutory amendments embodied in Pub. L. 99-570 and guidelines published by the Office of Management and Budget (52 FR 10012-10020, March 27, 1987).

The Commission also seeks to ensure that the "direct costs" of its FOIA program be recouped, to clarify the methods for and costs of gaining access to information through the FOIA and the Commission's public reference facilities and to correct outdated information contained in the present rules.

*3. Legal Basis*

These revisions to the regulations are based on provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570).

*4. Small Entities Subject to the Rule*

The changes, particularly with regard to fee structure and rates (principally at 17 CFR 200.80(e)(9) and (e)(10) and Appendix E to 17 CFR 200.80), will affect all small entities requesting access to agency records under FOIA insofar as those requests are made for a commercial purpose. Such commercial requesters will now be charged for staff time expended in review of documents for release. There is no reasonable method for estimating the number of entities involved.

*5. Reporting, Recordkeeping and Other Compliance Requirements*

There will be no additional reporting, recordkeeping or other compliance requirements.

*6. Overlapping or Conflicting Federal Rules*

As indicated in the rule proposal at 17 CFR 200.80(a)(3), most of the records described in Appendix A to 17 CFR 200.80 are also available pursuant to various securities statutes administered by the Commission.

*7. Significant Alternatives*

Because of the requirements of the Reform Act and guidelines developed by the Office of Management and Budget, there are no viable alternatives to revision of the rules, including the fee structure and rates.

*8. Solicitation of Comments*

The Commission encourages the submission of written comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. Such written comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposals are

adopted, and will be placed in the same public file as comments on the proposals. Persons wishing to submit written comments on this Initial Regulatory Flexibility Analysis should file four written copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. S7–26–87 and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**List of Subjects in 17 CFR Part 200**

Administrative practice and procedure, Freedom of information, Privacy, Securities.

**Text of Amendments**

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

## PART 200—[AMENDED]

1. The authority citation for Part 200, Subpart D is revised as follows and the authority citations following the sections in Subpart D are removed:

**Authority:** 80 Stat. 383, as amended, 31 Stat. 54, secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 85, 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 78m(F)(3), 78w, 79t, 79v(a), 77sss, 80a–37, 80a–44(c), 80a–44(b), 80b–10(a), 80b–11.

Section 200.80 is also issued under 5 U.S.C. 552b; Pub. L. 87–592, 76 Stat. 394, 15 U.S.C. 78d–1, 78d–2; Pub. L. 93–502; Pub. L. 93–579; 15 U.S.C. 78a *et. seq.*, as amended by Pub. L. 84–29 (June 4, 1975) and by secs. 11A, 15, 19 and 23 of Pub. L. 98–38 (June 6, 1983) (15 U.S.C. 78k–1, 78o, 78s and 78w); 11 U.S.C. 901, 1109(a).

Section 200.80a is also issued under 5 U.S.C. 552b.

Sections 200.80b and 200.80c are also issued under 11 U.S.C. 901, 1109(a).

Section 200.82 is also issued under 15 U.S.C. 78n.

Section 200.80 is amended by removing the word "and" at the end of paragraph (a)(1)(iv), by removing the reference to "(f)(2)" and inserting in its place "(e)(8)(ii)" in paragraph (a)(2) introductory text, by adding the following language to the end of paragraph (a)(3), by revising the first sentence of paragraph (b) introductory text, by revising paragraph (b)(7)(i), and by revising paragraph (c)(1) introductory text as follows.

Section 200.80 is further amended by revising paragraphs (d)(1), (d)(2), (d)(4), the first phrase after the heading of paragraph (d)(5), paragraph (d)(6)(ii), and the fourth sentence of paragraph (d)(7)(i); amending paragraph (d)(8) introductory text by replacing the word "receive" with the word "send," and removing "to a court, if need be," and revising (e)(1), (e)(2), (e)(4), removing the last three words of (e)(5) and inserting in their place "National Archieves and Records Administration" and revising paragraph (e)(7) introductory text. Paragraphs (e)(8), (e)(9), (e)(10), (e)(11), (e)(12), (e)(13) and (e)(14) are added and paragraph (f) is removed.

**§ 200.80. Commission records and information.**

(a) * * *

(3) * * *

Most of the records described in Appendix A to this section are provided to the public pursuant to the Securities Act of 1933, 15 U.S.C. 77f(d), the Securities Exchange Act of 1934, 15 U.S.C. 78m(f)(3), the Public Utility Holding Company Act of 1935, 15 U.S.C. 79v(a), the Investment Company Act of 1940, 15 U.S.C. 80a–44(a)(b), and the Investment Advisers Act of 1940, 15 U.S.C. 80b–10(a). Arrangements can be made through the Public Reference Branch as explained in paragraph (c) of this section for materials to be copied by the Commission's contract copying service at fees found in Appendix E to this section.

* * * * *

(b) *Nonpublic matters.* Certain records are nonpublic, but any reasonably segregable portion of a record shall be provided to any person requesting such record in accordance with paragraphs (d) and (e) of this section and after deletion of the portions which are considered nonpublic under paragraph (b) of this section. * * *

* * * * *

(7)(i) Records or information compiled for law enforcement purposes to the extent that the production of such records or information:

(A) Could reasonably be expected to interfere with enforcement activities undertaken or likely to be undertaken by the Commission or the Department of Justice, or any United States Attorney, or any federal, state, local, or foreign governmental authority, any profesional association, or any securities industry self-regulatory organization;

(B) Would deprive a person of a right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) Could reasonably be expected to disclose the identity of a confidential source including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(E) Would disclose techniques or procedures or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(F) Could be reasonably expected to endanger the life or physical safety of any individual.

(ii) * * *

* * * * *

(c)(1) *Public reference facilities.* In order to disseminate records, including those listed in Appendix A to this section, the Commission has a specially staffed and equipped public reference room located at 450 Fifth Street, NW., Room 1024, Washington, DC (202–272–7450) and public reference facilities in some regional offices. Copying machines, which are available to requestors on a self-service basic, can be used to make immediate copies up to 8½ by 14 inches in size of materials that are available for inspection in the Washington, DC, New York and Chicago offices. Fees and levels of service are set out in the Commission's schedule of fees in Appendix E to this section and in information available from the public reference room or the Commission's contract copier, Bechtel Information Services, 15740 Shady Grove Road, Gaithersburg, MD, 20877–1454 (telephone: toll free 1–800–231–DATA or 301–258–4300).

* * * * *

(d) *Requests for Commission records and copies thereof*—(1) *Time and place of requests for access to Commission records.* Requests for access to records available through the Commission's public reference facilities may be made in person during normal business hours at those facilities or by mail directed to Public Reference Branch, Securities and Exchange Commission, Washington, DC 20549. In addition, access to agency records not available in public reference facilities may be requested pursuant to the Freedom of Information Act. Such requests must be in writing, should be clearly and prominently identified by a legend on the first page, such as "Freedom of Information Act Request", and should be addressed to the Freedom of Information Act Officer, Securities

and Exchange Commission, Washington, DC 20549.

(2) *Requests for copies of records.* Requests for copies of Commission records available through the Commission's public reference facilities, including those listed in Appendix A to this section, may be made directly to the appropriate facility either in person or by mail addressed to the Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549. Levels of service and charges for copies are set out in the Commission's schedule of fees in Appendix E to this section. Requests for copies of materials to which access has been granted pursuant to a Freedom of Information Act request will be processed pursuant to regulations found in this section in paragraphs (e)(9) and (e)(10) and at charges set out in Appendix E to this section.

* * * * *

(4) *Normal availability.* Records maintained in the Commission's public reference facilities or copies thereof will normally be made available in keeping with levels of service and fees set out in Appendix E to this section. Records requested pursuant to the Freedom of Information Act will be made available as described in paragraphs (e)(9) and (e)(10) of this section.

(5) *Initial determinations, denials.* With respect to any record requested pursuant to the Freedom of Information Act, * * *

(6) * * *

(ii) The appeal shall be delivered in person to the Public Reference Branch, Room 1024, 450 Fifth Street, NW., Washington, DC, or sent by mail addressed to the Freedom of Information Act Officer, Securities and Exchange Commission, Washington, DC 20549. A copy should be sent to the General Counsel, Securities and Exchange Commission, Washington, DC 20549.

* * * * *

(7) * * *

(i) * * * Any person who has requested for personal examination a record stored at the Federal Records Center or temporarily located in a regional or branch office of the Commission will be notified when and where the record will be made available to him. * * *

* * * * *

(8) * * * for records, it shall send * * * and shall be prepared to demonstrate the existence * * *

* * * * *

(e) * * *

(1) *Services provided without charge.* Generally, up to one-half hour of staff time devoted to searching for Commission records will be provided without charge. Where a request for records pursuant to the Freedom of Information Act is determined not to serve a commercial purpose as defined in paragraph (e)(10)(ii) of this section, a total of two staff hours of search and review and one hundred pages of duplication as defined in paragraphs (e)(9)(i), (e)(9)(ii) and (e)(9)(iii) of this section, respectively, shall be made available without charge in the form most economical for the government.

(2) *Services for which fees are charged.* For records available through the Commission's public reference facilities, requestors may make arrangements for duplication in accordance with provisions of the Commission's dissemination contract. Copies of that contract, which contain tables of charges, may be inspected in the public reference room, 450 Fifth Street, NW., Room 1024, Washington, DC. A complete schedule of services offered by the contractor and fees charged for those services is available through the Commission's public reference facilities. Fees for services provided in connection with requests made pursuant to the Freedom of Information Act shall be assessed as set out in Appendix E to this section and in keeping with guidelines and procedures described in paragraphs (e)(9) and (e)(10) of this section.

* * * * *

(4) *Waiver or reduction of fees.* Requested records shall be furnished without charge or at reduced charge whenever it shall be determined by the Director of the Office of Consumer Affairs and Information Services that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public; provided the information will significantly assist citizens in understanding the working of their government; and the purpose of the request is not primarily commercial as defined in paragraph (e)(10)(ii) of this section. Requests for waiver or reduction of fees for searching and/or copying may be submitted with the original request for records and should state such facts as the requester considers appropriate. Denials of requests for a waiver or reduction of fees may be appealed to the General Counsel in accordance with the procedure set forth in paragraph (d)(6) of this section.

* * * * *

(7) *Copying services.* Copies of records filed with or retained by the Commission, or portions thereof, will be provided subject to fees established by agreement between the Commission and a private contractor as set forth in the Commission's current schedule of fees and, where applicable, procedures and guidelines for Freedom of Information Act requests as set out in paragraphs (e)(9) and (e)(10) of this section.

* * * * *

(8) *Releases and publications.* (i) The Commission's decisions, reports, orders, rules and regulations are published initially in the form of releases and distributed.

(ii) The Commission publishes daily the *SEC News Digest*, which summarizes the releases published by the Commission each day, contains Commission announcements, and lists certain filings with the Commission. The Commission publishes weekly the *SEC Docket*, which prints the full text of every Commission release.

(iii) The Commission publishes an annual report to the Congress which sets forth the results of the Commission's operations during the past fiscal year under the various statutes committed to its charge. Copies may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(iv) The Commission also makes other information in the fields of securities and finance, including economic studies, available to the public through the issuance of releases on specific subject matters.

(v) A classification of the releases available from the Commission appears below as Appendix B to this section. Other publications available from the Commission are set forth in Appendix C to this section. Copies of rules, regulations, and miscellaneous publications set forth in Appendix D to this section may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(9) *Fees for services required for processing Freedom of Information Act Requests.* In cases where records are requested pursuant to the Freedom of Information Act and according to procedures set forth in paragraph (d)(1) of this section, fees shall be charged as set out in the Commission's current schedule of fees, Appendix E to this section, for services as described in the following:

(i) *Search.* The term "search" includes *all* time spent looking for material manually or by using electronic data processing equipment that is responsive to a request, as distinguished from "review" as defined at paragraph (e)(9)(ii) of this section. Searching for

requested and specifically identified information, as described in paragraph (d)(1) of this section, includes the cost of staff time devoted to the search as indicated in Appendix E to this section and direct costs for use of Commission electronic data processing equipment.

(ii) *Review.* The term "review" refers to the process of examining documents located in response to a request to determine whether any portion of any document is permitted to be withheld pursuant to provisions of the Freedom of Information Act. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise material from and otherwise prepare them for release.

(iii) *Duplication.* The term "duplication" refers to producing paper or microform copies of records. The Commission shall charge for duplication as established by agreement between the Commission and a private contractor. These charges are currently set out in Appendix E to this section. Such charges shall be set so as not to exceed the direct cost that would be incurred by the Commission if it were to perform such services itself, as calculated to include the salary of operators, the cost of reproduction machinery, the cost of material and any other direct costs incurred by the Commission in copying materials responsive to a Freedom of Information Act request.

(iv) *Partial exemption from fee provisions.* No fees shall be charged for the first two hours of search time and the first one hundred pages of materials for requesters described in paragraphs (e)(10)(i) and (e)(10)(iii) of this section.

(v) *Minimum fee.* Fees will not be charged if the normal cost of collecting a fee would be equal to or greater than the fee itself.

(10) *Classification of Freedom of Information Act requesters for purposes of assessing fees.* Parties requesting records pursuant to the Freedom of Information Act will be classified and charged fees described in Appendix E to this section as follows:

(i) The following types of requesters shall be charged for duplication of records as described in paragraph (e)(9)(iii) of this section as qualified in paragraph (e)(9)(iv) of this section: Educational institutions requesting information for purposes of scholarly research; non-commercial scientific institutions requesting information for purposes of scientific research; and representatives of the news media requesting information concerning current events or matters of current interest to the general public.

(ii) Commercial requesters, defined as parties other than those mentioned in paragraph (e)(10)(i) of this section who are requesting information to be used in any way which could reasonably be expected to result in corporate or personal financial gain or profit, shall be charged for search, review and duplication of records as described in paragraphs (e)(9)(i), (e)(9)(ii) and (e)(9)(iii), respectively, of this section.

(iii) All parties other than those described in paragraphs (e)(10)(i) and (e)(10)(ii) of this section requesting access to such records shall be charged for search and duplication of records as described in paragraphs (e)(9)(i) and (e)(9)(iii) of this section, respectively, as qualified in paragraph (e)(9)(iv) of this section.

(11) *Appeal of classification.* Classification under the provisions of paragraph (e)(10) of this section may be appealed to the General Counsel in accordance with the procedure set forth in paragraph (d)(6) of this section.

(12) *Aggregation of requests.* If the Freedom of Information Act Officer reasonably believes that a requester or group of requesters acting in concert is attempting to divide one request into a series of requests for the purpose of evading the assessment of fees, those requests may be aggregated and charges assessed accordingly.

(13) *Advance payment.* The Freedom of Information Act Officer may require advance payment of fees expected to be incurred in connection with a request, but only when the subject requester has failed to make timely payment in the past, or when the estimated processing costs exceed $250.00 and the requester has no previous payment records or has failed to make timely payment in the past. Processing in such cases shall be delayed until advance payment is received and statutory time limits will be appropriately extended.

(14) *Interest on unpaid bills.* On the 31st day following the date of a bill to a requester, the Commission may begin assessing interest on the unpaid amount at the rate prescribed in section 3717 of Title 31 of the U.S. Code. Interest will accrue from the date of the bill.

**§ 200.80b [Amended]**

3. In § 200.80b, paragraph (a) is removed and paragraph (b) is amended by removing the paragraph designation and the first word, "Other," and capitalizing the word "Free."

**§ 200.80c [Amended]**

4. In § 200.80c, the section heading is amended by removing "Statutes," and capitalizing the word "Rules", paragraph (a) is amended by removing the comma after the word "Rules" in the second sentence, and paragraph (b) is revised as follows.

* * * * *

(b) Copies of the following miscellaneous publications may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Please address to him directly all inquiries, orders and payments concerning the following publications:

1. *Reports.*

SEC Annual Report to the Congress.

2. *Periodicals.*

Official Summary. A monthly summary of securities transactions and holdings reported under the provisions of the Securites Exchange Act of 1934, the Public Utility Holding Company Act of 1935, and the Investment Company Act of 1940 by officers, directors, and certain other persons.

SEC Monthly Statistical Review. A monthy publication containing data on round-lot and odd-lot share volume in stock exchanges, OTC volume in selected securities, block distributions, securities registrations and offerings, net change in corporate securities outstanding, working capital of U.S. corporations, assets of non-insured pension funds, Rule 144 filings and 8K reports.

Directory of Companies Filing Annual Reports with the Securities and Exhange Commission under the Securities Exchange Act of 1934. Published annually. Lists companies alphabetically and classified by industry groups according to the Standard Industrial Classification Manual of the Bureau of the Budget.

5. Section 200.80d is revised as follows.

**§ 200.80d Appendix D—Other publications available from the Commission.**

(a) Limited amounts of the following materials among others are available free of charge upon request to the Commission's Publications Section, Public Reference Branch, 202-272-7460:

Work of the Securities and Exchange Commission.

Blank copies of all forms used under each of the Acts administered by the Commission.

(b) Facsimile copies of other SEC publications which are out of print may be obtained through the Commission's Public Reference Section, at the cost of the copying service to be performed by the commercial copier employed to do the copying. Purchasers of copies will be billed by the copier. An example of the publications which are available in this way is the Litigation Actions and Proceedings Bulletin.

6. Section 200.80e is revised as follows.

**§ 200.80e Appendix E—Schedule of fees for records services.**

*Search and review services:* Up to one half hour total—No fee. For each one half hour or fraction thereof of chargeable service—up to GS–11 employee performing service: $8.00; GS–12 or above employee performing service: $14.00.

*Attestation with Commission seal:* $4.00

*Duplication services:* The following duplication services are available. The stated time for delivery in each case begins to run only after receipt of the material by the contractor; if files cannot immediately be made available by the Commission, the time of shipment will be affected.

*Regular service.* Paper (facsimile) copies of original paper copies, or from microfiche accessible to the contractor, will be shipped within seven calendar days after order and material are received by the contractor—each page—$0.20. (Delivery costs and applicable sales taxes are additional).

*Other services.* The Commission's dissemination contractor also provides a wide range of additional services for dissemination of information available in the Commission's public reference facilities. The contrator suppling these services will supply information and price lists upon request. Please address requests for information and all orders for subscription services, priority and watching services, and microfiche copies to: Bechtel Information Services, 15740 Shady Grove Road, Gaithersburg, MD 20877–1454 (Telephone: toll free 1–800–213–DATA or 301–258–4300). Copies will be sent directly to the purchaser by the service contractor unless attestation is requested. The purchaser will be billed by the contractor for the costs of the copies plus postage or other delivery charges, if any. Payment of all copying charges must be made to the contractor, not to the SEC, in the manner specified on the contractor's invoice. The purchaser will be billed separately by the Commission for search, review, and attestation charges, if any, at the rates noted above.

By the Commission.

Dated: June 19, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–14531 Filed 6–26–87; 8:45 am]

BILLING CODE 8010–01–M

## 17 CFR Part 240

**[Release No. 34–24635; File No. S7–737]**

## Designation of National Market System Securities

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Adoption of final rule amendments.

**SUMMARY:** The Commission today announced the adoption of amendments to its rules governing (1) the designation of securities qualified for trading in a national market system and (2) transaction reporting. These amendments result in designation as National Market System Securities of all securities for which transaction reports are required to be made pursuant to an effective transaction reporting plan. The Commission also is adopting conforming amendments to related rules. The Commission is taking this action after considering the comments received on the release proposing these amendments.

**EFFECTIVE DATE:** July 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** William M. Harter, Jr., Esq., 202/272–2414, Room 5205, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:**

### I. Summary

The Securities and Exchange Commission ("Commission") is adopting amendments to Rule 11Aa2–1 ("NMS Securities Rule") [1] under the Securities Exchange Act of 1934 ("Act"),[2] which establishes criteria and procedures for designating certain securities ("NMS Securities") as qualifed for trading in a national market system ("NMS"). The Commission also is adopting amendments to Rule 11Aa3–1 ("transaction reporting rule") under the Act,[3] which governs the collection and dissemination of transaction information for securities.[4]

The amendments replace the existing NMS designation criteria with a standard designating as NMS Securities all over-the-counter ("OTC") or exchange-listed securities for which transactions are reported pursuant to an effective transaction reporting plan approved by the Commission pursuant to Rule 11Aa3–1 under the Act ("reported securities").[5] The Commission also is amending the transaction reporting rule to require the NASD to designate which NASDAQ securities are subject to transaction reporting. In addition, the Commission is adopting amendments conforming related rules under the Act to the new definition of the term "NMS Security".[6]

The Commission today also approves an NASD proposal to incorporate specific eligibility criteria into its transaction reporting plan;[7] because these criteria represent the old Rule 11Aa2–1 Tier 2 standards, together with new corporate governance standards, continuance of OTC transaction reporting should be ensured.

### II. Comments

The Commission received comments from the Amex,[8] the NYSE,[9] and the National Security Traders Association.[10]

The Amex Letter states that the Commission appropriately is addressing "the concerns associated with the designation solely of OTC securities as NMS Securities." Hence, the Commission is "rectifying public misperception" that until now the NMS has not included all markets.[11]

Nevertheless, the Amex remains concerned that NMS stocks traded OTC will not be subject to all of the important regulatory requirements imposed on exchange-listed reported securities. The Amex states, for example, that the short sale rule must apply to OTC trading in NMS Securities and that there should be trade-through protection for bids and offers for such securities (other than OTC bids and offers displayed in CAES, the Computer-Assisted Execution System). The Amex also indicated, however, that the adoption of the

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[1] 17 CFR 240.11Aa2–1. *See* Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992 ("Rule 11Aa2–1 Adoption Release").

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.11Aa3–1. *See* Securities Exchange Act Release No. 16589 (February 19, 1980), 45 FR 12377.

[4] For a detailed discussion of the background of the NMS Securities Rule and the transaction reporting rule, *see* the Commission's release proposing the rule amendments, Securities Exchange Act Release No. 23817 (November 17, 1986), 51 FR 42856 ("Proposal Release").

[5] *See* 17 CFR 240.11Aa3–1. Reported securities include all securities listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex"), sole regional exchange listings that substantially meet the Amex or NYSE listing criteria, and OTC securities that meet the eligibility criteria contained in the NASD's Transaction Reporting Plan, as also amended today, concurrently with the Commission's rule amendments. *See* Securities Exchange Act Release No. 24633 (June 23, 1987) (published elsewhere in this edition of the **Federal Register**). The NASD's amended eligibility criteria are the old Rule 11Aa2–1 Tier 2 standards with the addition of new corporate governance requirements. Transaction reports for the listed securities from all markets are collected and disseminated pursuant to a transaction reporting plan administered by the Consolidated Tape Association ("CTA"). The CTA members are the American, Boston, Cincinnati, Midwest, New York, Pacific, and Philadelphia Stock Exchanges, and the NASD. Transaction reports for eligible OTC stocks are collected and disseminated through the NASD's electronic interdealer quotation system ("NASDAQ") or by communicating with NASDAQ headquarters, and reported pursuant to the NASD Transaction Reporting Plan.

[6] The Commission also today withdraws its previous alternative proposal to amend Rule 11Aa2–1. *See* Securities Exchange Act Release No. 22505 (October 4, 1985), 50 FR 41697.

[7] *See* SR–NASD–86–27 and Securities Exchange Act Release No. 23818 and 23819 (November 17, 1986).

[8] Letter from Kenneth R. Leibler, President and Chief Operating Officer, Amex, to Jonathan G. Katz, Secretary, SEC, dated February 10, 1987 ("Amex Letter").

[9] Letter from James E. Buck, Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated February 5, 1987 ("NYSE Letter").

[10] Letter from Arthur P. Rowsell, Chairman, and John L. Watson III, President, NSTA, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1987. The Commission also received comments on the NASD's corporate governance proposals, *see infra* note 24.

[11] Amex Letter, *supra* note 8, at 1.

proposed amendments to Rules 11Aa2–1 and 11Aa3–1 should not be delayed pending Commission consideration of these issues.[12]

The NSTA supports the Commission's proposal, but emphasizes, contrary to the Amex's contention, that all NMS stocks need not be governed by the same set of rules, because there are still two distinct markets—negotiated and auction. Also, the NSTA believes that exchange-listed stocks should not automatically qualify for inclusion in the NMS. Instead, other considerations such as capitalization, corporate governance, assets, and earnings histories should apply.

The NYSE believes that the Commission should rescind the NMS Securities Rule, arguing that the rule no longer is necessary to promote last sale reporting in the OTC market. The NYSE also fears that the rule's new structure may confuse or mislead investors by implicitly suggesting that there is no substantive difference between OTC and listed stocks.

The NYSE recognizes that a literal interpretation of section 11A(a)(2) of the Act, which provides that "[t]he Commission, by rule, shall designate the securities or classes of securities qualified for trading in the national market system," dictates retention of the rule. The NYSE argues, however, that the Congressional mandate does not warrant a rigid interpretation of section 11A; because the Commission "determined that the NMS Securities Rule is no longer necessary to continue OTC last sale reporting," the Commission also "has the flexibility to carry its determination the final logical step and rescind the rule altogether." [13]

The NYSE also does not accept the argument that the NMS Securities Rule should be retained because now that investors have come to associate the term NMS Securities with reported OTC stocks, investors would be confused if reported stocks no longer are called NMS Securities. Instead, the NYSE Letter states, retention of the NMS Securities Rule, which would not acknowledge the differences between the NMS for listed securities and for OTC securities, would set "the stage for unwarranted public confusion and misconception about the nature of these very different markets." [14]

## III. Discussion

### *A. The Rule Amendments*

The NMS Securities Rule as amended today redefines as an NMS Security any "reported security" as defined in Rule 11Aa3–1,[15] and Rule 11Aa3–1(a)(4) defines as a reported security any listed equity or NASDAQ security for which transaction reports are required [16] to be made on a real-time basis pursuant to a transaction reporting plan.

There are currently three effective transaction reporting plans that have been approved by the Commission pursuant to its transaction reporting rule: The plan administered by the Consolidated Tape Association; the NASD's plan, as amended by the NASD and approved by the Commission today; and the plan filed by the NASD and the Midwest Stock Exchange ("MSE") governing the collection, consolidation and dissemination of quotation and transaction information for NMS Securities listed on an exchange or traded on an exchange pursuant to a grant of unlisted trading privileges.[17]

The Commission also is amending its transaction reporting rule to require the submission of reporting plans by the exchanges and the NASD for all listed and NASDAQ securities, respectively, with the exchanges and the NASD specifying in their plans the listed and NASDAQ securities or classes of such securities for which real-time transaction reports are to be made.[18] Both the CTA and NASD plans, as amended, require last sale reporting for the specified groups of "eligible" securities designated in the plans. If either plan were amended to change the securities covered by that plan the Commission only could approve such amendment if it were consistent with the NMS goals set forth in Section 11A and otherwise in furtherance of the purposes of the Act. Accordingly, the Commission believes that a proponent of any change permitting a CTA eligible or a non-listed reported security to cease to be covered by the plan would bear a heavy burden. Specifically, an amendment could be approved only if the Commission finds that the amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.[19]

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[12] *Id.* at 2. The Commission solicited comment on imposing additional regulations on OTC/NMS Securities, *see* Securities Exchange Act Release No. 22127 (June 21, 1985), 50 FR 26584 ("NMS Securities Concept Release"), and continues to consider the comments received in response to that release.

[13] *See* NYSE Letter, Appendix at 7, *supra* note 9. In this connection, the NYSE argues that, with respect to listed stocks, even without the NMS Securities Rule, the Commission through its approval of several NMS plans, such as the CTA, CQ (for consolidated quotations), ITS (Intermarket Trading System) and NASD transaction reporting plans, has discharged effectively its statutory duty to designate securities qualified for trading in the NMS, and that although Section 11A defines "qualified securities" by reference to the Commission's designation, this does not require a special designation rule.

[14] *Id.* at 16.

[15] This is a modification from the proposal, and designed to provide consistency between the definitional provisions of Rules 11Aa2–1 and 11Aa3–1.

[16] It bears emphasis that the CTA Plan requires last sale reporting for eligible securities in the sense that if the issuer would list its eligible stock on an exchange, last sale reporting would be required. With regard to OTC stocks, the NMS Securities Rule had required reporting for all NMS Tier 1 stocks, but for Tier 2 securities last sale reporting was required only in the sense that if an issuer chose NMS designation, there had to be last sale reports; this continues to be the case for all securities under the amended NASD transaction reporting rule.

[17] While the MSE/NASD Plan is a separate plan, it uses the eligibility criteria of the NASD's transaction reporting plan, and so does not result in the last sale reporting of securities that would not otherwise be subject to last sale reporting. *See* Securities Exchange Act Release No. 24407 (April 29, 1987), 52 FR 17349. The Commission also notes that the Options Price Reporting Authority ("OPRA") functions pursuant to Rule 11Aa3–2, 17 CFR 240.11Aa3–2, the rule generally governing national market system plans, and not the transaction reporting rule. Hence, the OPRA Plan would not be affected by the current rule amendments and options would not be designated as National Market System Securities.

[18] Previously, Rule 17a–15 under the Act, revised and redesignated as Rule 11Aa3–1 in 1980 (*see* Securities Exchange Act Release No. 16589, February 19, 1980, 45 FR 12377), had required last sale reporting for all listed securities until the Commission allowed the carving out of an exemption for stocks that did not meet the CTA eligibility criteria. *See* Securities Exchange Act Release No. 10851 (June 13, 1974), 39 FR 22194. The transaction reporting rule as amended, rather than stating that all listed stocks shall be reported and then permitting exemptions, more directly envisions last sale reporting for the eligible securities under the current CTA and amended NASD plans.

[19] *See* Rule 11Aa3–2(c). The proposal has been modified, however, in this respect. The definition of the term "NASDAQ security" in Rule 11Aa3–1 as adopted is changed to include simply a security for which quotations are disseminated in the NASDAQ system. As proposed, Rule 11Aa3–1 would have carried forward the Rule 11Aa2–1 definition that had been modified in 1985 to add certain restrictions designed to accommodate the trading of a limited group of OTC/NMS Securities on regional exchanges. *See* Securities Exchange Act Release No. 22413 (September 16, 1985) 50 FR 38515. The NASD has included these restrictions in the definition of eligible securities under its amended Transaction Reporting Plan. Furthermore, these limitations on the definition of "NASDAQ security" serve no purpose under amended Rule 11Aa3–1, which requires a plan or plans from exchanges and the NASD regarding both listed equity and NASDAQ securities, with the plans specifying securities for which the exchanges and the NASD will provide real-time last sale reporting. In this connection, the Commission notes, however, that in indicating it was ready to approve unlisted trading privileges ("UTP") for OTC securities, the Commission also indicated that the NASD and the exchanges would have to develop a joint plan for consolidated reporting of quotations and trades in such securities. *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640.

Continued

The Commission also is adopting other conforming amendments. Previously, certain provisions of Commission rules governing short sales [20] and fees [21] were worded to provide exemptions for "NMS Securities." The Commission is amending these provisions to state specifically that the exemptions apply to just NASDAQ/NMS securities. In addition, the Commission is amending the rule governing quotations [22] to conform the wording to amended Rules 11Aa2–1 and 11Aa3–1.[23]

The Commission believes that these changes are consistent with the 1975 Amendments to the Act. Although Congress anticipated that NMS designation criteria would relate to the trading characteristics of securities, Congress provided the Commission with maximum flexibility in developing an NMS. The Commission has participated actively in the development of an NMS for 11 years. During this period, it has become clear that the fundamental components of an NMS—market information systems, trading linkages, and market competition—benefit the trading markets of securities with widely varying trading characteristics. For this reason, all Amex and NYSE securities have been included in the consolidated transaction reporting and quotation systems. In addition, essentially all listed securities that are multiply traded have been included in ITS. Similarly, the vast majority of NASDAQ securities that qualified under the Tier 2 standards were designated as NMS Securities and included in the NASDAQ/NMS reporting system.[24]

The adopted amendments also accord equal treatment to the OTC securities that previously have been designated as NMS Securities and the listed securities that are reported to the consolidated tape, thereby addressing the concern expressed by some [25] that the NMS Securities Rule was favoring NASDAQ stocks over listed stocks. NMS eligibility for both OTC and listed securities is tied to the transaction reporting rule. The requirements for an effective transaction reporting plan for NASDAQ securities are the same as those for listed securities.

The Commission has considered rescinding the NMS Securities Rule, as the NYSE suggests. The Commission believes, however, that rescinding the Rule would be inappropriate in view of section 11A(a)(2) of the Act, which requires the Commission, by rule, to "designate the securities or classes of securities qualified for trading in the national market system." The Commission, thus, does not agree with the NYSE's various arguments that despite the literal words of the Act the Commission need not have a designation rule.[26]

The amendments to the NMS Securities Rule and the transaction reporting rule also will streamline designation of NMS Securities. The Commission continues to have the NMS Securities Rule that the Act contemplates, and will be able to exercise oversight over which securities are designated as NMS Securities by reviewing the eligibility standards established in the transaction reporting plans filed by the self-regulatory organizations, either individually or jointly.[27] And because NMS designation criteria are established by reference to a transaction reporting plan, the Commission will not have to amend the NMS Securities Rule every time changes in the designation criteria are suggested. Consequently, the NASD can expand the universe of NASDAQ securities reported on a real-time basis by filing with the Commission an amendment to the NASDAQ transaction reporting plan. At the same time, the Commission retains authority to disapprove any proposal that imposes criteria that either inappropriately restrict or expand those securities eligible for last sale reporting and, consequently, NMS designation, or to amend any transaction reporting plan on its own initiative.[28] By removing

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To avoid duplicative reporting requirements, the Commission also requested the CTA to amend its plan so that OTC securities for which an exchange is granted UTP would not be subject to CTA reporting. *See* letter from Richard T. Chase, Associate Director, Division of Market Regulation, SEC, to Samuel A. Alward, Chairman, CTA, dated November 20, 1985. The Commission continues to expect that listed regional securities meeting the eligibility requirements of the NASD's amended Transaction Reporting Plan as well as OTC/UTP securities will be reported through the new joint reporting facility, and expects the CTA and CQ Plan participants to amend their plans to avoid duplicative reporting requirements.

The Commission also notes that the NASD Transaction Reporting Plan carries over from Rule 11Aa2–1 the requirement that to be a "NASDAQ Security" a listed security must not be subject to any off-board trading restrictions. The reason for including this restriction in Rule 11Aa2–1 was to ensure that securities listed on or before April 26, 1979, *i.e.*, "covered securities" under Rule 19c–3 under the Act, could not become NMS Securities unless the exchange agreed not to apply its off-board trading restrictions. Securities listed after April 26, 1979, become Rule 19c–3 securities as soon as they become "reported securities," *i.e.*, upon NMS designation, so that this restriction is unnecessary and not applicable as to those securities. This restriction will have the same meaning under the NASD's Transaction Reporting Plan.

[20] Rule 10a–1, 17 CFR 240.10a–1.

[21] Rule 31–1, 17 CFR 240.31–1.

[22] Rule 11Ac1–1, 17 CFR 240.11Ac1–1.

[23] The Commission has determined not to make a change to the definition of the term Rule 19c–3 security in Rule 11Ac1–1 ("Quote Rule"), as proposed in the Proposal Release. The Commission had considered an amendment that would include in the definition of Rule 19c–3 security only a security "listed" on an exchange. The Quote Rule mandates quotation dissemination for market makers with more than 1% of quarterly volume in any "Rule 19c–3 security." *See* Rule 11Ac1–1(b). The effect of this proposed change to the definition of Rule 19c–3 securities would have been to exclude from these mandatory quotation dissemination provisions Rule 19c–3 securities traded on an exchange pursuant to unlisted trading privileges. Although the Commission received no comments regarding this issue, it has concluded that the definition of Rule 19c–3 securities should not be amended. Regardless of whether these securities are listed or traded pursuant to UTP, for Quote Rule purposes they should be treated the same because the trading effects are the same irrespective of whether the securities are traded on an exchange pursuant to listing or UTP.

[24] Over 90% of NMS Securities are Tier 2 issuers who have elected NMS designation. As some commentators pointed out, the addition of corporate governance criteria to the NASD's amended Transaction Reporting Plan may render some current NMS Securities ineligible for last sale reporting and, consequently, NMS designation. In addition, some commentators suggested that eligibility for transaction reporting and hence designation as NMS Securities for those securities that did not have "one-share/one-vote" would be inappropriate. These comments are addressed in the release approving the amendments to the NASD's Transaction Reporting Plan. *See* Securities Exchange Act Release No. 24633, *supra* note 5.

[25] *See, e.g.*, Amex Letter, *supra* note 8. Exchange commentators raised this question of competition during the NMS Securities Tier 2 expansion rulemaking and the Commission solicited comment on this issue in the NMS Securities Concept Release.

[26] Section 11A(a)(2) of the Act clearly states that "[t]he Commission, by rule, *shall* designate . . . ." (emphasis added). Moreover, that section further specifies that "[s]ecurities or classes of securities *so designated* hereinafter in this section [are] referred to as 'qualified securities.' " (emphasis added). Thus, sections 11A(c)(1) (E) and (F) which by their terms empower the Commission to assure that "orders for the purchase or sale of *qualified securities* [are handled] in a manner consistent with the establishment and operation of a national market system" (emphasis added) and "equal regulation of all markets for *qualified securities*" (emphasis added), respectively, would be rendered inoperative without a Commission rule designating certain securities as NMS Securities, *i.e.*, "qualified securities." The Commission also does not believe the designation as NMS Securities of certain listed, along with certain OTC, securities, will cause investor confusion; investors appreciate the difference between exchange and OTC markets, and can also appreciate the fact that NMS designation does not eliminate these distinctions but simply acknowledges that all those OTC or listed securities that are reported securities are entitled to NMS designation.

[27] *See supra* notes 18 and 19, and accompanying text.

[28] *See* sections 19(b)(2) and 19(c) of the Act, and Rules 19b–4 and 11Aa3–2(b)(2) under the Act.

from the Commission's rules the current NMS designation criteria, the amendments also provide the NASD with flexibility to initiate proposed standards for and encourage the development of OTC trade reporting, with the Commission retaining ultimate control over the standards through its approval and amending authority.

The amendments also allow the NASD to propose last sale reporting eligibility standards that do not incorporate the previous Tier 1 NMS mandatory designation criteria. For example, under the NASD's rule change, which the Commission also is approving today, issuers whose securities had been designated mandatorily as NMS Securities under Tier 1 can elect to opt out of transaction reporting. The Commission believes that granting Tier 1 issuers the option of electing out of transaction reporting is appropriate at this time. Mandatory designation of the most actively traded OTC securities when the NMS Securities Rule was first adopted ensured that the most actively traded NASDAQ securities would be included in a transaction reporting system. The Commission determined this was appropriate because of the benefits to public investors and market efficiency resulting from such reporting. The Commission also recognized the potential that issuers of Tier 1 securities might not voluntarily request designation, because of concerns raised at that time by some market participants that last sale reporting would adversely affect market liquidity in those securities.[29]

In the four years since the first OTC securities were designated as NMS Securities, however, it has become generally accepted that OTC last sale reporting provides investors with improved information on executions, enhances market efficiency and liquidity, and increases the public exposure of market information concerning NMS issuers. Because last sale reporting has been widely accepted by investors and the OTC market,[30] the Commission believes that, even without mandatory designation criteria in the NMS Securities Rule, such reporting will continue to spread in the OTC market.[31] The Commission believes, therefore, that there is no longer any need to mandate trade reporting for Tier 1 OTC securities.[32]

For the foregoing reasons, the Commission concludes that the amendments to the NMS Securities Rule and the transaction reporting rule will continue OTC transaction reporting, and make designation of NMS Securities more flexible.

### IV. Summary of the Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") pursuant to the Regulatory Flexibility Act ("RFA")[33] regarding the amendments to the NMS Securities Rule and the transaction reporting rule. The FRFA states that the amendments designate as NMS Securities all listed and OTC securities for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan. The FRFA also notes that the NASD concurrently is incorporating into its rules and transaction reporting plan the existing NMS designation criteria as well as certain corporate governance requirements. The FRFA states that the amendments should ensure the continued viability of real-time reporting in the OTC market and streamline the NMS designation process. The FRFA also notes that, at the same time, the amendments do not make any additional securities subject to transaction reporting. In the Proposal Release, which summarized the Initial Regulatory Flexibility Analysis, the Commission solicited comment on any possible costs the amendments might have on small entities, and on possible alternatives to the amendments. The Commission received no comments in response to the IRFA.

A copy of the FRFA may be obtained by contacting William M. Harter, Jr., 202/272-2414, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

### List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

### V. Statutory Basis and Text of the Amendments

Pursuant to the Securities Exchange Act of 1934 and particularly sections 11A, 10, 31 and 23 thereof, 15 U.S.C. 78k-1(a), 78k-3(a), 78j, 78ee, and 78w(a), the Commission is amending §§ 240.11Aa2-1, 240.11Aa3-1, 240.11Ac1-1, 240.10a-1, and 240.31-1 in Chapter II of Title 17 of the Code of Federal Regulations.

### Text of Amendments to Rules 11Aa2-1, 11Aa3-1, 11Ac1-1, 10a-1, and 31-1

Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

**Authority:** Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w).

Sections 240.11Aa2-1 and 240.11Aa3-1 also issued under Secs. 2, 3, 6, 9, 10, 15, 17, and 23, Pub. L. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897, and 901, as amended by secs. 2, 3, 4, 11, 14, and 18, Pub. L. 94-29, 89 Stat. 97, 104, 121, 137, and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w); sec. 15A, as added by sec. 1, Pub. L. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94-29, 89 Stat. 127 (15 U.S.C. 78o-3); sec. 11A, as added by sec. 7, Pub. L. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1).

Section 240.11Ac1-1 also issued under Secs. 2, 3, 6, 9, 10, 15, 17, and 23, Pub. L. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by secs. 2, 3, 4, 11, 14, and 18, Pub. L. 94-29, 89 Stat. 97, 104, 121, 137, and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w), as amended by Pub. L. No. 94-29 (June 4, 1975); Sec. 1, Pub. L. No. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. No. 94-29, 89 Stat, 127-131 (15 U.S.C. 78o-3, as amended by Pub. L. No. 94-29 (June 4, 1975); sec. 7, Pub. L. No. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1).

Section 240.10a-1 also issued under Secs. 2, 3, 6, 9, 10, 15, 17, and 23, Pub. L. No. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by secs. 2, 3, 4, 11, 14, and 18, Pub. L. No. 94-29, 89 Stat. 97, 104, 121, 137, and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w); sec. 15A, as added by sec. 1, Pub. L. No. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. No. 94-29, 89 Stat. 127, 15 U.S.C. 78o-3); sec. 11A, as added by sec. 7, Pub. L. No. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1).

Section 240.31-1 also issued under Sec. 2, 3, 23, and 31, Pub. L. 78-291, 48 Stat. 881, 882, 901, and 904, as amended by secs. 2, 3, 18, and 22, 89 Stat. 97, 155, and 162 (15 U.S.C. 78b, 78c, 78w, and 78ee.

2. Section 240.10a-1 is amended by revising paragraph (a)(1)(ii) as follows:

**§ 240.10a-1 Short sales.**

(a)(1) * * *

(ii) The provisions of paragraph (a)(1)(i) hereof shall not apply to transactions by any person in NASDAQ securities as defined in § 240.11Aa3-1 (Rule 11Aa3-1 under the Act) except for those NASDAQ securities for which

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[29] *See* Rule 11Aa2-1 Adoption Release, *supra* note 1, at 13995-98.

[30] *See supra* note 24.

[31] In this connection, the Commission also notes that the NASD's new corporate governance requirements, *see* Securities Exchange Act Release No. 24633, *supra* note 5, do not apply to existing NMS issuers for 18 months.

[32] Although the NASD's rule change allows issuers to opt out of last sale reporting, it also, at least initially, ensures that all OTC securities currently designated as NMS Securities, including what have been designated as Tier 1 securities, can continue to be reported on a real-time basis.

[33] 5 U.S.C. 601-606.

transaction reports are collected, processed, and made available pursuant to the plan originally submitted to the Commission pursuant to Rule 17a–15 (subsequently amended and redesignated as Rule 11Aa3–1) under the Act, which plan was declared effective as of May 17, 1974.

* * * * *

3. Section 240.11Aa2–1 is revised as follows:

**§ 240.11Aa2–1 Designation of National Market System Securities.**

The term "national market system security" shall mean any reported security as defined in Rule 11Aa3–1.

4. Section 240.11Aa3–1 is amended by revising paragraphs (a)(4), (a)(5), (a)(6), and (b)(1), redesignating (b)(2)(i)–(b)(2)(vii) as (b)(2)(ii)–(b)(2)(viii), revising newly redesignated (b)(2)(ii) and adding a new (b)(2)(i) as follows:

**§ 240.11Aa3–1 Dissemination of transaction reports and last sale data with respect to transactions in reported securities.**

(a) * * *

* * * * *

(4) The term "reported security" shall mean any listed equity security or NASDAQ security for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan.

(5) The term "listed equity security" shall mean any equity security listed and registered, or admitted to unlisted trading privileges, on a national securities exchange ("exchange").

(6) The term "NASDAQ security" shall mean any registered equity security for which quotation information is disseminated in the National Association of Securities Dealers Automated Quotation system ("NASDAQ").

* * * * *

(b)(1) Every exchange shall file a transaction reporting plan regarding transactions in listed equity and NASDAQ security executed through its facilities, and every association shall file a transaction reporting plan regarding transactions in listed equity and NASDAQ securities executed by its members otherwise than on an exchange.

(2) * * *

(i) The listed equity and NASDAQ securities or classes of such securities for which transaction reports shall be required by the plan;

(ii) Reporting requirements with repect to transactions in listed equity securities and NASDAQ securities, for any broker or dealer subject to the plan;

* * * * *

5. Section 240.11Ac1–1 is amended by revising paragraph (a)(16), removing paragraph (a)(19), and redesignating paragraphs (a)(20) and (a)(21) as paragraphs (a)(19) and (a)(20) as follows:

**§ 240.11Ac1–1 Dissemination of quotations for reported securities.**

(a) * * *

(16) The term "consolidated system" shall mean the consolidated transaction reporting system for which a plan originally was submitted to the Commission pursuant to Rule 17a–15 (subsequently amended and redesignated as Rule 11Aa3–1) under the Act, which plan was declared effective as of May 17, 1974.

* * * * *

6. Section 240.31–1 is amended by revising paragraph (f) as follows:

**§ 240.31–1 Securities transactions exempt from transaction fees.**

(f) Transactions in NASDAQ securities as defined in § 240.11Aa3–1 (Rule 11Aa3–1 under the Act) except for those NASDAQ securities for which transaction reports are collected, processed, and made available pursuant to the plan originally submitted to the Commission pursuant to Rule 17a–15 (subsequently amended and redesignated as Rule 11Aa3–1) under the Act, which plan was declared effective as of May 17, 1974. The terms and provisions of this paragraph shall remain effective until May 6, 1988.

Dated: June 23, 1987.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–14680 Filed 6–26–87; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Parts 154, 375, and 382

**[Docket No. RM87–3–000]**

### Annual Charges Under the Omnibus Budget Reconciliation Act of 1986; Correction to Order No. 472

June 22, 1987.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule; Correction.

**SUMMARY:** The Federal Energy Regulatory Commission corrects its final rule regarding "Annual Charges Under the Omnibus Budget Reconciliation Act of 1986," 52 FR 21263 (June 5, 1987), by changing the word "entity's" to "entities' " in paragraphs 3(a) and (b) at 52 FR 21288, column 2, and by changing the number "$.001" to "$.0001" at 52 FR 21291, column 2.

**EFFECTIVE DATE:** May 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Roland M. Frye, Jr., Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8315.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On page 132 of Order No. 472 (52 FR 21263 at 21288, column (2), paragraphs (3)(a) and (b) should read:

(3)(a) The adjusted sales for resale costs will be divided by the entities' total adjusted sales for resale kilowatt-hours, to yield the adjusted sales for resale charge per kilowatt-hour.

(b) The adjusted coordination sales costs will be divided by the entities' total adjusted coordination sales kilowatt-hours, to yield the adjusted coordination sales charge per kilowatt-hour.

On page 147, line 5 of Order No. 472 (52 FR 21263 at 21291, column 2), the number $.001 should read $.0001.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–14571 Filed 6–26–87; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 141

**[T.D. 87–78]**

### Entry Documentation Filing

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to provide an optional procedure under which importers can file entry documentation at one port to be analyzed by Customs to determine if an examination of cargo is necessary. If no examination is necessary, the merchandise can be released when it arrives, at the discharge port. This will enable importers to obtain an expedited release of their merchandise. Expediting the clearance of cargo will benefit importers, carriers, and Customs.

**EFFECTIVE DATE:** July 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Operational Aspects: Steven Knox, Office of Cargo Enforcement and

Facilitation (202–566–5354); Legal Aspects: Jerry C. Laderberg, Entry Procedures and Penalties Division (202–566–5765).

**SUPPLEMENTARY INFORMATION:**

**Background**

Parts 141 through 144, Customs Regulations (19 CFR Parts 141–144), govern the entry of imported merchandise. Release of the merchandise from Customs custody is secured by filing the entry documentation required by §§ 142.3 *et seq.*, Customs Regulations (19 CFR 142.3 *et seq.*).

If merchandise is imported at one port and the importer of record desires to have the merchandise delivered to another port (usually where the importer's premises are located), there are two alternatives available to the importer. He may make entry by submitting entry documentation at the port where the merchandise has arrived, either in person or through an agent, to obtain release of the merchandise at that port. He then makes arrangements for transportation of the merchandise to the inland location, free of any Customs control or custody of the merchandise. Alternatively, the importer may make arrangements at the port of arrival to have the merchandise transported under Customs bond from that port to the destination port, utilizing the transportation in-bond procedures of § 18.1 *et seq.*, Customs Regulations (19 CFR 18.1 *et seq.*). These procedures entail using a Customs bonded carrier for the transportation process and complying with the documentary and sealing requirements of Parts 18 and 24, Customs Regulations (19 CFR Parts 18, 24). When the merchandise arrives at the destination port, the importer makes entry by filing the appropriate documentation. He then may obtain release of the merchandise.

By notice published in the **Federal Register** on July 22, 1986 (51 FR 26266), Customs proposed adding an alternative to these entry procedures. The proposal described the PAIRED program (Port of Arrival Immediate Release and Enforcement Determination), which has been tested at a number of locations in the U.S. Importers are allowed to file entry documentation at one port, usually an inland or interior location, to be analyzed by Customs to determine if an examination of cargo is necessary. With the permission of the district director at the inland port, the importer files such documentation as is necessary to enable Customs to decide if the merchandise may be released or if it must be retained in Customs custody for reasons such as examination or extraction of a sample for an admissibility determination, verification of manifest, *etc.* The documentation is usually submitted before the merchandise has arrived in the U.S. Then, if no examination or extraction is required, the importer or broker is notified that the shipment can be released upon arrival at the discharge port. The shipment may then proceed directly to its intended destination without going to another Customs port for further Customs processing. Thus, the importer will receive his shipment more expeditiously and with fewer transportation costs.

Customs experience with the PAIRED program, which is voluntary on the part of importers, has demonstrated that it benefits importers and carriers by expediting the delivery of merchandise and reducing congestion at the port of arrival. Approximately 80 percent of all entries under PAIRED are released immediately without the need for examination of the merchandise or in-bond transportation to another port. It benefits Customs by reducing the costs and expenditures of manpower and other resources for maintaining the transportation in-bond system.

Public comments were solicited on implementing the PAIRED program in all Customs districts.

**Discussion of Comments**

Most of the 16 comments received were favorable. These commenters agreed that the PAIRED program was an attractive alternative for importers and represented a welcome use of modern telecommunications facilities to expedite submission, review, and final disposition of entry documentation.

Those opposing adoption of the PAIRED program were concerned that the program is contrary to law, and that PAIRED will allow some merchandise to bypass necessary inspection and sampling requirements.

The opinion that PAIRED is illegal is based on an incorrect interpretation of what constitutes "release" of merchandise.

Section 484(a)(2)(A), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)(2)(A)), requires that an entry be filed at a place within the Customs-collection district where merchandise covered by the entry will be released from Customs custody. Release occurs whenever Customs determines that it has no further need to maintain actual custody of the merchandise. Under the PAIRED program, this occurs at the port where the entry documentation is filed (usually an inland port). Entry filing at an inland port and release of the merchandise by the appropriate Customs officer at that port (which order is thereby conveyed to the arrival port) is therefore consistent with 19 U.S.C. 1484(a)(2)(A).

Concerns over merchandise requiring inspection or sampling bypassing these steps due to a PAIRED entry were raised by commenters concerned with imported textiles and frozen orange juice concentrate. However, entries involving textiles or frozen juice concentrates that require special procedures, or any article requiring special procedures that necessitate Customs retaining control of the merchandise until the procedure is accomplished, are no eligible for a PAIRED entry.

Other comments, and Customs responses thereto are as follows:

*Comment:* The PAIRED program is designed to undermine the in-bond transportation industry.

*Response:* Customs support of the PAIRED program has at no time been motivated by a desire to damage the in-bond transportation industry. Our purpose in implementing the PAIRED program is to pass on to the importing community the benefits of using automated systems and selectivity procedures to expeditiously handle low-risk importations.

*Comment:* The scope of PAIRED should be expanded to include merchandise destined for a foreign trade zone or bonded warehouse and to allow filing of entry documentation at a port other than the port of destination.

*Response:* Customs agrees with the notion that expanding PAIRED would provide for even more flexibility for importers. However, at present Customs is not prepared to offer these two options.

*Comment:* How will the date of release be determined under the PAIRED program?

*Response:* For Customs purposes, the date that the shipment actually arrives at the port of discharge in the U.S. is the date the merchandise is released. This date of release then determines the date the entry summary documentation must be filed at the port of entry. The entry summary documentation is due within 10-working days of the actual arrival of the merchandise in accordance with § 142.12(b), Customs Regulations (19 CFR 142.12(b)).

After consideration of all the comments and further review of the matter, it has been decided to implement the PAIRED program in all Customs districts. A new paragraph (c) is added

to § 141.63 allowing an importer to request the district director to approve the filing of entry documentation at a port other than the port of arrival of merchandise to obtain release of the merchandise at the port of arrival.

**Regulatory Flexibility Act**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

**Executive Order 12291**

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

**Drafting Information**

The principal author of this document was John Doyle, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 141**

Customs duties and inspection, Imports, Entry documentation filing.

**Amendment to the Regulation**

Part 141, Customs Regulations (19 CFR Part 141), is amended as set forth below.

## PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 141.63 is amended by adding a new paragraph (c) to read as follows:

**§ 141.63 Submission of entry summary documentation for preliminary review.**

* * * * *

(c) *For merchandise entered other than at port of arrival.* If merchandise is to arrive or has arrived at one port and the importer wishes to file his entry documentation at another port to which the merchandise is destined, he may do so upon approval of the district director at the port of destination. The district director at the destination port may then authorize release of the merchandise, after its importation at the port of arrival, or postpone its release if he believes it is necessary for examination or other purposes.

Approved: June 15, 1987.

**William von Raab,**

*Commissioner of Customs.*

**John P. Simpson,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 87-14752 Filed 6-26-87; 8:45 am]

BILLING CODE 4820-02-M

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 2622

### Employer Liability Underpayments and Overpayments; Correction of Interest Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule; Correction.

**SUMMARY:** This document amends the latest entry in the Appendix to 29 CFR Part 2622, which sets forth the interest rates charged on underpayments or credited on overpayments of employer liability owed to the Pension Benefit Guaranty Corporation. The most recent Appendix entry, effective January 1, 1987, erroneously lists two interest rates: A 9 percent rate for underpayments of employer liability and an 8 percent rate for overpayments. Under the regulation, the interest rate for both underpayments and overpayments should be the same. Accordingly, this amendment corrects the Appendix to show a single interest rate of 9 percent, effective January 1, 1987.

**EFFECTIVE DATE:** January 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Foster, Attorney, Corporate Policy and Regulations Department (Code 35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC, 20006; telephone 202-778-8850 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation's ("PBGC") regulation on employer liability under single-employer plans (29 CFR Part 2622) provides that the rate of interest to be charged on underpayments or credited on overpayments of employer liability owed to the PBGC is "the annual rate prescribed in section 6601(a) of the Internal Revenue Code of 1954, as amended" (§ 2622.7(c)). As an aid to plan sponsors, the PBGC publishes these interest rates in Appendix A to Part 2622. Whenever the Internal Revenue Service ("IRS") changes the section 6601(a) rate, the PBGC publishes the new rate in Appendix A.

Section 6601(a) of the Internal Revenue Code ("IRC"), which deals with interest on the underpayment or nonpayment of taxes, refers to the interest rate "established under section 6621". Prior to the Tax Reform Act of 1986, this was a single rate applicable to both underpayments and overpayments of taxes. The Tax Reform Act, however, amended section 6621, *inter alia*, to provide for two interest rates: One rate for tax overpayments and another, higher rate for tax underpayments.

On December 2, 1986, the IRS announced the first interest rates determined pursuant to the Tax Reform Act, to be effective January 1, 1987. The rates were 9 percent for underpayments and 8 percent for overpayments. On December 31, 1986, the PBGC published (at 51 FR 47226) an amendment to Appendix A to Part 2622 reflecting these new interest rates. The PBGC erred in that amendment, however, in stating that the interest rate provided for under § 2622.7(c) of the regulation was now, pursuant to IRC section 6601(a), two rates—one for underpayments of employer liability and another for overpayments. Rather, § 2622.7(c) now adopts, through IRC section 6601(a), the underpayment rate only established under IRC section 6621.

The PBGC, therefore, is hereby amending Appendix A to delete Table II, which was created by the December 31, 1986 amendment, and restore to the Appendix the single table that had existed prior to that amendment. As amended, the most recent entry in the table will show the current IRC section 6601(a) rate of 9 percent, effective January 1, 1987, applicable to both underpayments and overpayments of employer liability.

Appendix A does not establish the interest rates charged or credited under the regulation. Those rates are established by the IRS. Appendix A merely collects and republishes those rates. Moreover, the PBGC is not in receipt of any employer liability overpayments on which interest has been accruing since January 1, 1987, and therefore no plan sponsors have been misled or otherwise affected by the erroneous rate published in the Appendix.

Finally, the PBGC is still planning (as was indicated in the preamble to the December 31, 1986 amendment) to issue a notice of proposed rulemaking on the issue of whether it should adopt a different interest rate(s) under the regulation in light of the changes in the IRC section 6601(a) rate effected by the Tax Reform Act.

Because Appendix A merely collects and republishes the interest rates established by the IRS under IRC section 6601(a), the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. Moreover, because this amendment is correcting an interest rate listed in the Appendix that has been in effect since January 1, 1987, the PBGC also finds that good cause exists for making this amendment effective immediately upon publication in the **Federal Register.**

The PBGC has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; nor will it create a major increase in costs or price for consumers, individual industries, or geographic regions; nor will it have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

**List of Subjects in 29 CFR Part 2622**

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, Small businesses.

In consideration of the foregoing, Appendix A to Part 2622 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

## PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

1. The authority citation for Part 2622 is revised to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1362–1364, 1367–1368, as amended by secs. 11011, 11016, Pub. L. 99–272, 100 Stat. 253, 268.

2. Appendix A to Part 2622 is amended by removing the heading for the first table, by removing all that follows the first table, and by adding a new entry at the end of the table, as follows:

**Appendix A—Late Payment and Overpayment Interest Rates**

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

| From | Through | Interest rate (pct) |
|---|---|---|
| * * * * * | | |
| January 1, 1987 | | 9 |

Issued in Washington, DC, this 22d day of June, 1987.

**Kathleen P. Utgoff,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 87–14551 Filed 6–26–87; 8:45 am]

BILLING CODE 7708–01–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[COTP San Francisco Bay Regulation SF–87–09]**

### Security Zone Regulation; San Francisco Bay, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Emergency rule.

**SUMMARY:** The USS MISSOURI will have a San Francisco port call, and moor at Pier 30/32 in San Francisco for 4 days. A security zone is considered necessary to ensure adequate waterside security during the vessel's port call.

**EFFECTIVE DATES:** These regulations are effective on 3 July 1987, at approximately 10:30 A.M., PDT, when the USS MISSOURI moors at Pier 30/32. They are terminated at approximately 8:00 A.M., PDT, 7 July 1987, when the USS MISSOURI departs the pier.

**FOR FURTHER INFORMATION CONTACT:** LTJG George Cummings, Coast Guard Marine Safety Office, San Francisco Bay, CA, 415–437–3073.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Detailed information on the vessel's port call was not received from the U.S. Navy until 16 June 1987. There was not sufficient time remaining to publish NPRM, and delaying the Security Zone's effective date would be contrary to the national interest.

**Drafting Information**

The drafters of this regulation are LTJG George Cummings, Project Officer for the Captain of the Port, and LCDR Joseph McFaul, Project Attorney, Eleventh Coast Guard District Legal Office.

**Discussion of Regulation**

The event requiring this regulation will occur on 3 July 1987 when the USS MISSOURI will arrive in San Francisco Bay for a port call and Fourth of July ceremonies. It is expected that the arrival of the USS MISSOURI will attract significant public and media attention and may be subject to protest demonstrations. A Security Zone will provide the Captain of the Port San Francisco Bay with the authority necessary to ensure the waterside security of the USS MISSOURI.

**List of Subjects in 33 CFR Part 165**

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

**Regulation**

## PART 165—[AMENDED]

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231, 50 U.S.C. 191, 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T1165 is added to read as follows:

**§ 165.T1165 Security Zone: San Francisco Bay, CA.**

(a) *Location.* The following area is a Security Zone: A Security Zone is established extending 100 yards around the USS MISSOURI while moored to Pier 30/32, San Francisco, CA.

(b) *Effective date.* This regulation becomes effective when the vessel moors at Pier 30/32, San Francisco, CA at approximately 10:30 A.M., PDT, on 3 July 1987, and remains effective whenever moored at this location. It terminates when the USS MISSOURI departs San Francisco Bay at approximately 8:00 A.M., PDT, 7 July 1986.

(c) *Regulations.* In accordance with the general regulation in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port San Francisco Bay, CA. Section 165.33 also contains other general requirements.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; and 33 CFR 160.5)

Dated: June 19, 1987.

**David Zawadzki,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.*

[FR Doc. 87–14662 Filed 6–26–87; 8:45 am]

BILLING CODE 4910–14–M

## Corps of Engineers, Department of the Army

### 33 CFR Part 209

### Administrative Procedures; Removal of Obsolete Requirements; Correction

**AGENCY:** Army Corps of Engineers, DoD.

**ACTION:** Final rule; Correction.

**SUMMARY:** The regulations which prescribe the procedures used by the Corps of Engineers in the review and promulgation of regulations governing navigable waters were amended to remove obsolete and unnecessary requirements on December 22, 1986, 51 FR 45765. An error made in the designation of paragraphs in 33 CFR 209.200 in hereby corrected.

**EFFECTIVE DATE:** June 29, 1987.

**ADDRESS:** USACE, DAEN–CECW–OR, Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph T. Eppard or Mr. Sam Collinson at (202) 272–1783.

**SUPPLEMENTARY INFORMATION:** The amendatory language to § 209.200 as it appeared in 51 FR 45765, December 22, 1986, is corrected as follows:

5. Section 209.200 *Regulations governing navigable waters* is amended by revising paragraph (a), removing paragraphs (d) and (f) and redesignating paragraph (e) as (d), paragraph (g) as (e) and redesignating paragraph (h) as (f), as follows:

Dated: June 22, 1987.

**John O. Roach, II,**

*Army Liaison Officer With the Federal Register.*

[FR Doc. 87–14520 Filed 6–26–87; 8:45 am]

BILLING CODE 3710–92–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 795 and 799

**[OPTS–42065B; FRL–3223–9]**

### 2-Ethylhexanoic Acid; Technical Modification

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA has approved minor modifications of the test standards for the 2-ethylhexanoic acid (EHA) test rule at 40 CFR 795.223(c)(2)(ii)(C) and 799.1650 (c)(2)(ii)(C) and (c)(3) in response to a request from the test sponsors.

**EFFECTIVE DATE:** June 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St. SW., Washington, DC. 20460, (202) 554–1404.

**SUPPLEMENTARY INFORMATION:** EPA has approved minor modifications of the test standards for the 2-ethylhexanoic acid test rule at 40 CFR 795.223 and 799.1650.

#### Test Rule Modifications

EPA issued a final test rule for EHA, published in the **Federal Register** of November 6, 1986 (51 FR 40318). On March 19, 1987, the Chemical Manufacturers Association (CMA) submitted a request to remove the requirement that the subchronic toxicity test be administered by the same route as the pharmacokinetics test. The Agency reviewed the request and has decided to grant the requested modification. Because the modification merely clarifies an inconsistency, the minor changes to 40 CFR 795.223(c) (2) (ii)(C) and 799.1650 (c)(2)(ii)(C) and (c)(3) requested by CMA clearly do not pose any substantive issues. Moreover, the Agency has determined that obtaining comment on these modifications would be impracticable, unnecessary, and contrary to the public interest in that doing so would delay both the start of testing and the submission of the study data. Therefore, in accordance with the procedures in 40 CFR 790.55(b)(1)(ii) and section 553(b)(3)(B) of the Administrative Procedure Act, the Agency notified the test sponsors by letter of its approval of these modifications on April 7, 1987 without seeking public comment (Ref. 2). In accordance with 40 CFR 790.55(b)(2), EPA is issuing this notice which describes the associated modifications to the test standards and reporting requirements for publication in the **Federal Register**. For a more detailed description of the rationale for these modifications, refer to CMA's letter (Ref. 1) and EPA's letter in response (Ref. 2). The rule is modified as follows:

The EHA rule requires an oral subchronic toxicity study to develop data comparable with other data on EHA and data on related chemicals like 2-ethylhexanol and di(2-ethylhexyl) phthalate. To accomplish this, the Agency believes it is unnecessary to restrict the EHA oral subchronic toxicity test to gavage and encapsulation as required for the pharmacokinetics test (Ref. 2). Furthermore, the test sponsors have conducted a preliminary stability study (Ref. 3) that indicates a traditional feeding study may be technically feasible. Therefore, the Agency has decided to remove the requirement in the final rule that both the pharmacokinetics and subchronic toxicity tests utilize either gavage or encapsulation.

The 3-month extension in the final reporting requirement for the oral subchronic toxicity test allows the test sponsors adequate time to complete validation studies for alternative oral routes of administration and to complete testing using a fully validated oral route of administration.

#### Public Record

EPA has established a public record for this rulemaking [docket number OPTS–42065B]. The record includes the information considered by the Agency in evaluating the requested modifications to this rule.

(1) The Chemical Manufacturers Association (CMA). Letter from Geraldine Cox, Ph.D., to the Director, Office of Compliance Monitoring, Office of Pesticides and Toxic Substances, USEPA. (March 19, 1987).

(2) USEPA. Letter from Charles E. Elkins, Director, Office of Toxic Substances, to Geraldine Cox, CMA. (April 7, 1987).

(3) Eastman Kodak Co. Dose verification, Analysis, and Recovery of 2-Ethylhexanoic Acid in Rat Chow, prepared for the EHA Panel of CMA, Washington, DC 20037 (December 19, 1986).

The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. G–004, NE Mall, 401 M St., SW., Washington, DC 20460.

Dated: June 17, 1987.

**John A. Moore,**

*Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, 40 CFR Chapter I is amended as follows:

### PART 795—[AMENDED]

1. In Part 795:

a. The authority citation continues to read as follows:

**Authority:** 15 U.S.C. 2603, 2625.

b. In § 795.223 by revising paragraph (c)(2)(ii)(C), to read as follows:

**§ 795.223 Pharmacokinetics test.**

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(C) Oral dosing shall be performed by gavage or by administering encapsulated test substance.

* * * * *

### Part 799—[AMENDED]

2. In Part 799:

a. The authority citation for Part 799 continues to read as follows:

**Authority:** 15 U.S.C. 2603, 2611, 2625.

b. In § 799.1650 by revising paragraphs (c)(2)(ii)(C) and (c)(3) to read as follows:

**§ 799.1650 2-Ethylhexanoic acid.**

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(C) The final report of results shall be submitted to the Agency no later than 18 months from the effective date of the final test rule.

(3) *Administration of test substance.* Dosing for the testing required under paragraph (c) (1) and (2) of this section shall be by the oral route for both tests, and as specified in § 795.233(c)(2)(ii)(C) and § 795.260(d)(7) of this chapter

* * * * *

[FR Doc. 87-14673 Filed 6-26-87; 8:45 am]

BILLING CODE 6560-50-M

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101-20

**[FPMR Amdt. D-84]**

### Management of Buildings and Grounds

**AGENCY:** General Services Administration.

**ACTION:** Final rule; Correction.

**SUMMARY:** General Services Administration is correcting minor, nonsubstantive errors to the final rule, FPMR Amendment D-84, which governs the operation of, and the activities in Federal buildings. This regulation was developed by a subcommittee of the Interagency Advisory Committee on Regulatory Review and is designed to clarify the content, eliminate duplication, and remove obstacles to effective building management.

**EFFECTIVE DATE:** April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** James Steele (202-566-1563).

**SUPPLEMENTARY INFORMATION:** In FR document 87-7694 appearing at 52 FR 11263, Apr. 8, 1987, GSA revised Part 101-20. This document corrects several incorrect internal references.

Dated: June 23, 1987.

**Rodney P. Lantier,**

*Chief, Directives and Reports Management Branch.*

### PART 101-20—[AMENDED]

Therefore, 41 CFR Part 101-20 is corrected as follows:

**§ 101-20.103-4 [Corrected]**

On page 11267, first column, in paragraph (a) the reference reading "§ 101-20.003-7" is corrected to read "§ 101-20.003(g)." In the second column, in paragraph (a) the reference reading "§ 101-20.003-23" is corrected to read "§ 101-20.003(w)." In paragraph (c) the reference reading "§101-20.003-24" is corrected to read "§ 101.20.003(x)." In paragraph (d) the reference reading "§ 101-20.003-22" is corrected to read "§ 101-20.003(v)."

**§ 101-20.107 [Corrected]**

On page 11270, third column, the section title reading "Energy management" is corrected to read "Energy conservation." On page 11271, second column, in paragraph (h) the reference reading "§ 101-20.116" is corrected to read "§ 101-20.107."

**§ 101-20.302 [Corrected]**

On page 11273, first column, the reference reading "§ 101-20.003-7" is corrected to read "§ 101-20.003(g)."

**§ 101-20.309 [Corrected]**

On page 11273, third column, the reference reading "§ 101-20.003-26" is corrected to read "§ 101-20.003(z)."

**§ 101-20.403 [Corrected]**

On page 11274, third column, in paragraph (a)(2) the reference reading "§ 101-20.003-4" is corrected to read "§ 101-20.003(d)."

**§ 101-20.404 [Corrected]**

On page 11274, third column, in paragraph (a) the reference reading "§ 101-20.003-13" is corrected to read "§ 101-20.003(m)."

[FR Doc. 87-14634 Filed 6-26-87; 8:45 am]

BILLING CODE 6820-23-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 42 CFR Part 57

### Programs for the Training of Physician Assistants and Grants for Physician Assistant Training Programs

**AGENCY:** Public Health Service, HHS.

**ACTION:** Final regulations.

**SUMMARY:** These final regulations: (1) Amend the current regulatory definition of programs for the training of physician assistants in accordance with section 701(8) of the Public Health Service Act (the Act) (42 CFR Part 57, Subpart I), as amended by the Health Professions Training Assistance Act of 1985 (Pub. L. 99-129); and (2) amend the existing regulations governing the Grants for Physician Assistant Training Programs, authorized by section 783 of the Act (42 CFR Part 57, Subpart H) to: (a) Conform the regulations with amendments made to the Act by Pub. L. 99-129, the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), and the Compact of Free Association Act of 1985 (Pub. L. 99-239), which are of a technical and ministerial nature; and (b) add provisions to encourage efforts to attract, maintain and graduate minority and disadvantaged students.

**EFFECTIVE DATE:** These regulations are effective June 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Donald L. Weaver, M.D. Director, Divsion of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C25, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301 443-6190.

**SUPPLEMENTARY INFORMATION:** On October 10, 1986, the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, published in the **Federal Register** (51 FR 36412), a Notice of Proposed Rulemaking (NPRM) to amend Subpart I of 42 CFR Part 57 to implement changes in section 701(8) of the Act. Pub. L. 99-129, amended section 701(8) by: (a) Substituting the term "primary health" for "health" to describe the type of care that graduates of physician assistant training programs must be capable of providing under the supervision of a physician; and (b) adding a requirement that physician assistant programs train students in primary care, disease prevention, health promotion, geriatric medicine, and home health care. The statute further directs the Secretary to consult with appropriate organizations and then promulgate regulations to implement the amendments. The American Medical Association, American Academy of Physician Assistants and the Association of Physician Assistant Programs provided comments to the Public Health Service in the development of the proposed new definitions.

In the NPRM of October 10, 1986 (51 FR 36414), the Department also proposed to amend the existing regulations governing grants under section 783 of the Act, codified at 42 CFR Part 57, Subpart H. This amendment is necessary to provide an added emphasis on the national need to train more minority and disadvantaged students.

The public comment period on the proposed regulations closed on November 10, 1986. The Department received one letter responding to the proposed regulations. The respondent suggested that further clarification in the final regulations is needed to specify that screening and referral for low vision services would be included in the training curriculum. The respondent had a concern as to the meaning of definitions included in § 58.802, since it was not clear that the definitions of "Geriatric medicine" and "Home health care" included training in the recognition of severe visual impairment and blindness as symptoms requiring specialized treatment and referral for possible low vision services in " . . . care and treatment of illness and disability as required by the distinct needs of the elderly" and " . . . other health care services to maintain or restore the health of an ill or disabled person in their place of residence." The respondent indicated that severe visual impairment and blindness are diseases which afflict the elderly in particular, and as individuals age the incidence of such impairment is greater.

The Department acknowledges that there is a need to include subject content in the training curriculum for physician assistant programs which addresses vision impairments associated with aging and their implication for assessment and management of the elderly patient. However, the definitions of "Geriatric medicine" and "Home health care" are broad enough to include vision impairments, as well as other specific medical fields relevant to the elderly. As discussed earlier, the Department intends to use broad definitions to encompass all such medical fields, and therefore, has not revised the definitions of "Geriatrics" or "Home health care." Accordingly, the amendments set out in the October 10, NPRM are adopted as proposed.

Additionally, this regulation makes a number of changes in the regulations governing Grants for Physician Assistant Training Programs, codified at 42 CFR Part 57, Subpart H. These changes are necessary in order to bring these regulations into compliance with amendments made by Pub. L. 97–35, Pub. L. 99–239, Pub. L. 99–129, and current departmental boilerplate language. The changes are technical and ministerial; therefore, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures. The revisions are summarized below according to the section numbers and the titles of the regulations:

1. Revise § 57.702, "*Definitions.*", to change the following terms:

(a) The definition of "Nonprofit" by striking out the repetitive phrase "a corporation or association, or is";

(b) The definition of "School of medicine" by striking out the reference to section "772(b)" and inserting in lieu thereof section "701(5)";

(c) The definition of "State" by inserting "Commonwealth of the" to the "Northern Mariana Islands" in accordance with Pub. L. 97–35, and by inserting after the "Trust Territory of the Pacific Islands" those entities which, for purposes of this grant program, are viewed as a State, "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia," in accordance with Pub. L. 99–239; and

(d) The definition of "Supervised clinical practice" by striking out the incorrect citing of subparagraph "(g)" in the codified reference for the definition.

2. Revise § 57.705, "*Project requirements.*", to reflect the requirement that a program must be accredited as an Educational Program for the Physician Assistant. (This revision is consistent with the accreditation requirement included in the regulations governing the Programs for the Training of Physician Assistants).

3. Revise § 57.709, *"Purpose for which grant funds must be spent."*, to reflect current departmental boilerplate language.

4. Delete § 57.710, "*Nondiscrimination.*", in its entirety and substitute a new § 57.710 specifying additional Department regulations that apply to grantees.

5. Delete § 57.711, "*Grantee accountability.*", and § 57.713, "*Applicability of 45 CFR Part 74.*" in their entirety.

6. Redesignate § 57.712, "*Records, audit and inspection.*", as § 57.711; and § 57.714, *"Additional conditions."*, as § 57.712.

7. Cite the Office of Management and Budget (OMB) approval numbers in those sections which contain recordkeeping and reporting requirements.

**Regulatory Flexibility Act and Executive Order 12291**

These regulations govern financial assistance programs in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a "major rule" under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

**Paperwork Reduction Act of 1980**

There are no information collection requirements in the regulations governing the Programs for the Training of Physician Assistants.

The recordkeeping and reporting requirements in § 57.704, § 57.705, and § 57.711 of the regulations governing Grants for Physician Assistant Training Programs and the application forms and instructions for this grant program have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (OMB Approval Numbers 0915–0060 for the competing application form and 0915–0061 for the continuation application form).

**List of Subjects in 42 CFR Part 57**

Dental health, Education of the disadvantaged, Educational facilities, Educational study program, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, 42 CFR Part 57, Subparts I and H are amended as set forth below:

Dated: April 14, 1987.

**Robert E. Windom,**

*Assistant Secretary for Health.*

Approved: June 9, 1987.

**Otis R. Bowen,**

*Secretary.*

(*Catalog of Federal Domestic Assistance*, No. 13.866, Grants for Physician Assistant Training Programs)

## SUBPART I—PROGRAMS FOR THE TRAINING OF PHYSICIAN ASSISTANTS

1. The authority citation for Subpart I is revised to read as follows:

**Authority:** Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 701(8)(B), 90 Stat. 2247, as amended by 95 Stat. 913, 99 Stat. 525–526 (42 U.S.C. 292a(8)(B)).

2. Section 57.801 is amended by revising paragraph (a) to read as follows:

**§ 57.801 Purpose and scope.**

(a) Section 701(8)(B) of the Public Health Service Act (42 U.S.C. 292a(8)(B))

requires the Secretary to develop regulations for programs for the training of physician assistants. The purpose of this subpart is to comply with this requirement.

* * * * *

3. Section 57.802 is amended by adding the following new definitions in alphabetical order:

**§ 57.802 Definitions.**

* * * * *

"Disease prevention" is the health strategy which emphasizes the development of individual and community measures to protect against disease or environmental hazards and their harmful consequence.

* * * * *

"Geriatric medicine" is the prevention, diagnosis, care and treatment of illness and disability as required by the distinct needs of the elderly.

* * * * *

"Health promotion" is the health strategy which emphasizes individual responsibility for one's health, and community efforts to maintain and enhance well-being through lifestyle changes.

"Home health care" is the provision of medical and other health care services to maintain or restore the health of an ill or disabled person in their place of residence.

* * * * *

"Primary care" means primary care, as defined in 42 CFR 57.702.

* * * * *

4. Section 57.803 is amended by revising paragraph (a)(1); redesignating paragraphs (f), (g), and (h) as (g), (h), and (i); changing the "." to "; and" at the end of newly redesignated paragraph (h); and adding a new paragraph (f) to read as follows:

**§ 57.803 Requirements.**

* * * * *

(a)(1) Be accredited as an Educational Program for the Physician Assistant by the American Medical Association's Committee on Allied Health Education and Accreditation; or

* * * * *

(f) Provide training to students in the areas of primary care, health promotion, disease prevention, geriatric medicine and home health care;

* * * * *

## SUBPART H—GRANTS FOR PHYSICIAN ASSISTANT TRAINING PROGRAMS

1. The authority citation for subpart H is revised to read as follows:

**Authority:** Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 783(a)(1), Public Health Service Act, 90 Stat. 2314, and 99 Stat. 524 (42 U.S.C. 295g–3(a)(1).

2. Section 57.702 is amended by revising the following terms in alphabetical order:

**§ 57.702 Definitions.**

* * * * *

"Nonprofit" as applied to any entity means one which is owned and operated by one or more corporations or associations, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

* * * * *

"School of medicine" or "school of osteopathy" means a school which provides training leading respectively to a degree of doctor of medicine or a degree of doctor of osteopathy, and which is accredited as provided in section 701(5) of the Act.

* * * * *

"State" means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

"Supervised clinical practice" means supervised clinical practice as defined in 42 CFR 57.802.

* * * * *

3. Section 57.704 is amended by adding the OMB control number at the end of the section to read as follows:

**§ 57.704 Application.**

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0060.)

4. Section 57.705 is amended by revising paragraph (b) and by adding the OMB control number at the end of the section to read as follows:

**§ 57.705 Project requirements.**

* * * * *

(b) The program must (1) be accredited as an Educational Program for the Physician Assistant by the American Medical Association's Committee on Allied Health Education and Accreditation, or (2) have received a Letter of Support from the Joint Review Committee on Educational Programs for Physician's Assistants.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0060.)

5. Section 57.706 is amended by revising paragraphs (a)(6), (a)(7), and (b)(1); redesignating paragraph (b)(2) as (b)(3); adding new paragraphs (a)(8) and (b)(2); and in newly redesignated paragraph (b)(3)(i), removing the period at the end of the paragraph and inserting a semicolon to read as follows:

**§ 57.706 Evaluation of applications.**

(a) * * *

(6) The soundness of the fiscal plan for assuring effective use of grant funds;

(7) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(8) The adequacy of the project's plan to develop and use methods designed to attract and maintain minority and disadvantaged students to train as physician assistants.

(b) * * *

(1) The relative merit of the proposed project based on the factors in paragraph (a) of this section;

(2) The extent to which the applicant develops and uses methods designed to attract, maintain and graduate minority and disadvantaged students; and

* * * * *

6. Section 57.709 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 57.709 Purposes for which grant funds must be spent.**

(a) Grant funds must be spent solely for carrying out the approved project under section 783 of the Act, these regulations, the terms and conditions of the grant award, and applicable cost principles specified in Subpart Q of 45 CFR Part 74.

* * * * *

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

7. Section 57.710 is revised to read as follows:

**§ 57.710 What additional Department regulations apply to grantees?**

Several other regulations apply to these grants. They include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation of the administration and enforcement of sections 799A and 845 of the Public Health Service Act [1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance.

**§ 57.711 [Removed]**

8. Section 57.711 *Grantee accountability* is removed.

**§ 57.712 [Redesignated as § 57.711]**

9. Section 57.712 is redesignated as § 57.711 and is further amended by adding the OMB control number at the end of the section to read as follows:

**§ 57.711 Records, audit, and inspection.**

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0060)

**§ 57.713 [Removed]**

10. Section 57.713 *Applicability of 45 CFR Part 74.* is removed.

**§ 57.714 [Redesignated as § 57.712]**

11. Section 57.714 is redesignated as § 57.712.

[FR Doc. 87–14545 Filed 6–26–87; 8:45 am]
BILLING CODE 4160–15–M

[1] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94–484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94–63.

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

**[Docket No. FEMA 6756]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

**EFFECTIVE DATES:** The third date ("Susp.") listed in the fourth column.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the

community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

For the reasons given in the preamble above, 44 CFR Part 64 is amended as follows:

**PART 64—[AMENDED]**

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et. seq.; Reorganization Plan No. 3 of 1978, E.O. 12127

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

**§ 64.6 List of Eligible Communities.**

| State | Location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Current effective map date | Date |
|---|---|---|---|---|---|
| **Region I** | | | | | |
| Connecticut | Milford, City of, New Haven County. | 090082 | Jan. 14, 1972, Emerg. Sept. 29, 1978, Reg. July 2, 1987 Susp. | July 2, 1987 | July 2, 1987 |
| Massachusetts | Mattapoisett, Town of, Plymouth County. | 255214 | June 18, 1971, Emerg. March 16, 1973, Reg. July 2, 1987, Susp. | do | Do |
| Vermont | Morrisville, Village of, Landille County. | 500065 | Feb. 18, 1976, Emerg. May 15, 1978, Reg. July 2, 1987 Susp. | do | Do |
| Do | Morrisville, Town of, Landille County. | 500064 | Aug. 20, 1974, Emerg. Jan. 3, 1979, Reg. July 2, 1987. Susp. | do | Do |
| **Region III** | | | | | |
| Pennsylvania | Manorville, Borough of, Armstrong County. | 420098 | April 7 1985, Emerg. do. Reg. July 2, 1987. Susp | do | Do |
| West Virginia | Fairmont, City of, Marion County. | 540099 | Feb. 14, 1977, Emerg. do, Reg. July 2, 1987, Susp | do | Do |
| **Region IV** | | | | | |
| Georgia | Thunderbolt, Town of, Chatham County. | 130460 | April 22, 1980, Emerg. do, Reg. July 2, 1987 Susp | do | Do |
| North Carolina | Speed, Town of, Edgecombe County. | 370093 | September 4, 1979, Emerg. do, Reg. July 2, 1987. Susp. | do | Do |
| Tennessee | Gates, Town of, Lauderdale County. | 470258 | Sept. 16, 1975, Emerg. do, Reg. July 2, 1987, Susp. | do | Do |
| **Region V** | | | | | |
| Ohio | Clark County, Unincorporated Areas. | 390732 | May 14, 1976, Emerg. do, Reg. July 2, 1987, Susp | do | Do |
| Do | London, City of, Madison County. | 390366 | Jan. 15, 1976, Emerg. do, Reg. July 2, 1987, Susp | do | Do |
| **Region IX** | | | | | |
| California | Isleton, City of, Sacramento County. | 060265 | Sept. 28, 1973, Emerg. Dec. 1, 1978, Reg. July 2, 1987. Susp. | do | Do |
| Do | Pittsburg, City of, Contra Costa County. | 060033 | June 17, 1975, Emerg. Aug. 15, 1980, Reg. July 2, 1987. Susp. | do | Do |
| *Minimal Conversions:* | | | | | |
| **Region IV** | | | | | |
| Kentucky | Manchester, City of, Clay County. | 210058 | Sept. 2, 1975, Emerg. do, Reg. July 2, 1987, Susp. | do | Do |
| North Carolina | Hamlet, City of, Richmond County. | 370200 | April 4, 1975, Emerg. do, Reg. July 2, 1987 Susp. | do | Do |
| Do | Jackson, town of, Northampton County. | 370175 | March 29, 1976, Emerg. do, Reg. July 2, 1987 Susp. | do | Do |
| Do | Siler City, Town of, Chatham County. | 370058 | June 23, 1975, Emerg. July 2, 1987, Reg. July 2, 1987, Susp. | do | Do |
| **Region V** | | | | | |
| Illinois | Alexis, Village of, Mercer and Warren Counties. | 170674 | May 9, 1975, Emerg. July 2, 1987. Reg. July 2, 1987, Susp. | do | Do |
| Do | Carthage, City of, Hancock County. | 170269 | June 12, 1974, Emerg. July 2, 1987, Reg. July 2, 1987 Susp. | do | Do |
| Do | Valier, Village of, Franklin County. | 170870 | July 22, 1975, Emerg. July 2, 1987, Reg. July 2, 1987, Susp. | do | Do |
| Do | Washburn, Village of, Woodford County. | 170728 | Jan. 27, 1975 Emerg. July 2, 1987, Reg. July 2, 1987, Susp. | do | Do |
| Michigan | Burlington, Township of Calhoun County. | 260651 | Dec. 2, 1975, Emerg. July 2, 1987, Reg. July 2. 1987, Susp. | do | Do |
| Do | Burlington, Village of, Calhoun County. | 260559 | Nov. 21, 1975, Emerg. July 2, 1987 Reg. July 2, 1987, Susp. | do | Do |
| Do | Vicksburg, Village of, Kalamazoo County. | 260578 | Nov. 10, 1976, Emerg. July 2, 1987 Reg. July 2, 1987, Susp. | do | Do |
| Minnesota | Crosslake, City of Crow Wing County. | 270095 | Aug. 7, 1975, Emerg. July 2, 1987, Reg. July 2, 1987, Susp. | do | Do |
| Do | Red Lake County, Unincorporated Areas. | 270387 | April 5, 1974, Emerg. July 2, 1987, Reg. July 2, 1987, Susp. | do | Do |
| Wisconsin | Dodgeville, City of, Iowa County. | 550177 | June 23, 1975, Emerg. July 2, 1987, Reg. July 2, 1987, Susp. | do | Do |
| Do | Lake Mills, City of, Jefferson County. | 550195 | Sept. 10, 1975, Emerg. July 2, 1987, Reg. July 2, 1987, Susp. | do | Do |
| Do | Luck, Village of, Polk County | 550335 | April 16, 1975, Emerg. July 2, 1987, Reg. July 2, 1987, Susp. | do | Do |
| **Region VII** | | | | | |
| Iowa | Bonaparte, City of, Van Buren County. | 190266 | Jan. 14, 1976, Emerg. July 2, 1987, Reg. July 2, 1987, Susp. | do | Do |

| State | Location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Current effective map date | Date [1] |
|---|---|---|---|---|---|
| Do | Centerville, City of, Appanoose County. | 190009 | July 22, 1975, Emerg. July 2, 1987, Reg. July 2, 1987, Susp. | do | Do. |
| Do | Millville, City of, Clayton County | 190081 | July 9, 1975, Emerg. July 2, 1987, Reg. July 2, 1987, Susp. | July 2, 1987 | Do. |
| Do | Quasqueton, Town of, Buchanan County. | 190332 | May 6, 1977, Emerg. July 2, 1987, Reg. July 2, 1987, Susp. | do | Do. |
| *Minimal Conversions:* | | | | | |
| **Region III** | | | | | |
| Pennsylvania | Howe, Township of, Forest County. | 421647 | Sept. 16, 1975, Emerg. June 1, 1987, Reg. July 1, 1987, Susp. | June 1, 1987 | June 1, 1987. |
| Do | Fox, Township of, Sullivan County. | 422063 | Jan. 22, 1976, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | July 1, 1987 | July 1, 1987. |
| Do | Laporte, Township of, Sullivan County. | 422065 | Aug. 11, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Lemon, Township of, Wyoming County. | 422200 | July 2, 1979, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Middlebury, Township of, Tioga County. | 422179 | Aug. 21, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Nicholson, Township of, Wyoming County. | 422202 | Dec. 31, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Northmoreland, Township of, Wyoming County. | 422204 | Aug. 27, 1979, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Norwich, Township of, McKean County. | 421859 | Dec. 19, 1974, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Ward, Township of Tioga County. | 422101 | Aug. 8, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Virginia | Culpeper County, Unincorporated Areas. | 510041 | Nov. 26, 1974, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| West Virginia | Barbour County, Unincorporated Areas. | 540001 | Nov. 21, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Lewis County, Unincorporated Areas. | 540085 | Jan. 25, 1977, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Moorefield, Town of Hardy County. | 540052 | May 12, 1977, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Morgan County, Unincorporated Areas. | 540144 | Oct. 28, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Pendleton County, Unincorporated Areas. | 540153 | Oct. 22, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Taylor County, Unincorporated Areas. | 540188 | Oct. 22, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Tucker County, Unincorporated Areas. | 540191 | Dec. 23, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Upshur County, Unincorporated Areas. | 540198 | Feb. 10, 1976, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| **Region IV** | | | | | |
| Alabama | Hale County, Unincorporated Areas. | 010094 | April 14, 1976, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Florida | Greenville, City of Madison County. | 120150 | Aug. 21, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Live Oak, City of, Suwannee County. | 120334 | Nov. 14, 1974, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Webster, City of Sumter County | 120298 | July 10, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Kentucky | Edmonton, City of Metcalfe County. | 210173 | Oct. 24, 1974, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Hindman, City of Knott County | 210130 | July 9, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Jackson County, Unincorporated Areas. | 210118 | Nov. 25, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| North Carolina | Bolton, Town of Columbus County. | 370274 | Sept. 23, 1977, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Franklinville, Town of Randolph County. | 370197 | July 10, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Jonesville, Town of Yadkin County. | 370260 | Aug. 15, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Randleman, City of Randolph County. | 370199 | Aug. 15, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| **Region V** | | | | | |
| Indiana | Clinton, City of Vermillion County. | 180259 | June 30, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | New Harmony, Town of Posey County. | 180210 | April 14, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Michigan | Carp Lake, Township of Ontonagen County. | 260548 | Dec. 19, 1974, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Ironwood, Township of Gogebic County. | 260403 | March 6, 1978, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Minnesota | Willow River, City of, Pine County. | 270353 | April 26, 1974, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Ohio | Ansonia, Village of, Darke County. | 390138 | June 17, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Fostoria, City of, Hancock County. | 390245 | April 9, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | McConnelsville, Town of, Morgan County. | 390422 | Aug. 1, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Wisconsin | St. Cloud, Village of, Fond Du Lac County. | 550142 | April 23, 1976, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Wausaukee, Village of, Marinette County. | 550264 | Oct. 14, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Sus. | do | Do. |
| Do | Weyauwega, City of Waupaca County. | 550503 | May 15, 1975, Emerg. July 1, 1987, Reg. July 1, 1987 Susp. | do | Dc. |

| State | Location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Current effective map date | Date [1] |
|---|---|---|---|---|---|
| Do | Yuba, Village of, Richland County. | 550362 | Aug. 25, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| **Region VI** | | | | | |
| Arkansas | Dewitt, City of, Arkansas County. | 050001 | June 18, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | La Mar, City of, Johnson County. | 050113 | April 3, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Louisiana | Calvin, Village of, Winn Parish | 220266 | Sept. 29, 1976, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Winnfield, City of, Winn Parish | 220247 | Aug. 4, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| New Mexico | Central, Village of, Grant County. | 350020 | June 5, 1975, Emerg. July 1, 1987, Reg. July 1, 1987 Susp. | do | Do. |
| Do | Red River, Town of, Taos County. | 350079 | April 18, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| **Region VII** | | | | | |
| Kansas | Concordia, City of, Cloud County. | 200060 | April 23, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Missouri | Barton County, Unincorporated Areas. | 290785 | Sept. 10, 1984, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Maries County, Unincorporated Areas. | 290816 | Sept. 10, 1984, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Senath, City of, Dunklin County | 290131 | March 17, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Nebraska | Craig, Village of, Burt County | 310020 | June 10, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Dunning, Village of, Custer County. | 310007 | Oct. 25, 1977, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| Do | Leigh, Village of, Colfax County | 310386 | Aug. 25, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |
| **Region VIII** | | | | | |
| Utah | Washington, City of, Unincorporate Areas. | 490182 | July 7, 1975, Emerg. July 1, 1987, Reg. July 1, 1987, Susp. | do | Do. |

[1] Date certain Federal Assistance no longer Available in Special Flood Hazard Areas
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp—Suspension.

**Harold T. Duryee,**
*Administrator, Federal Insurance Administration.*
[FR Doc. 87-14631 Filed 6-26-87; 8:45 am]
BILLING CODE 6718-05-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 1

**[OST Docket No. 1; Amdt. 1-218]**

### Organization and Delegation of Powers and Duties; Federal Railroad Administration

**AGENCY:** Department of Transportation ("DOT"), Office of the Secretary.

**ACTION:** Final rule.

**SUMMARY:** This amendment delegates to the Administrator of the Federal Railroad Administration ("FRA") all functions vested in the Secretary of Transportation ("Secretary") by section 4031 of Pub. L. 99-509, known generally as the Budget Reconciliation Act of 1986, since all of these functions relate to duties normally carried out by FRA.

**DATE:** The effective date of this amendment is April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Samuel E. Whitehorn, Esq., Office of the General Counsel, C-50, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-9306.

**SUPPLEMENTARY INFORMATION:** Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

Section 4031 of Pub. L. 99-509 (October 21, 1986; 100 Stat. 1874) abolishes the United States Railway Association ("the Association"), effective April 1, 1987, and transfers to the Secretary all powers, duties, rights, and obligations of the Association under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701, *et seq.*), and by so doing reposes in the Secretary certain duties best performed by FRA. Consequently, responsibility for these functions is being delegated to FRA.

### List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

For the reasons set forth in the preamble, Title 49 Part 1 of the Code of Federal Regulations is amended as follows:

### PART 1—[AMENDED]

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

**Authority:** 49 U.S.C. 322.

2. Section 1.49 of Part 1 of Title 49, Code of Federal Regulations, is amended by adding at the end thereof a new paragraph (bb), and the introductory text of § 1.49 is republished for the convenience of the reader, to read as follows:

**§ 1.49 Delegations to Federal Railroad Administrator.**

The Federal Railroad Administrator is delegated authority to—

* * * * *

(bb) Carry out the functions vested in the Secretary by section 4031 of the Budget Reconciliation Act of 1986 (Pub. L. 99-509), which relates to the abolition of the United States Railway Association, and the execution of the functions and duties of the Association transferred to the Secretary, effective April 1, 1987.

Issued in Washington, DC, on June 4, 1987.

**Elizabeth Hanford Dole,**
*Secretary of Transportation.*
[FR Doc. 87-14582 Filed 6-26-87; 8:45 am]
BILLING CODE 4910-62-M

# Proposed Rules

Federal Register
Vol. 52, No. 124
Monday, June 29, 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.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Parts 50 and 77

[Docket No. 86-002]

### Bovine Tuberculosis and Bison

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We propose to amend the indemnity and interstate movement regulations related to bovine tuberculosis so that the regulations that apply to cattle also apply to bison. Our proposal would increase the number of bison owners eligible to receive Federal indemnity for bison destroyed because of tuberculosis and would restrict the interstate movement of bison that are exposed, reactors, or suspects or from herds containing suspects. These actions are necessary to help eradicate bovine tuberculosis in the United States.

**DATE:** Consideration will be given only to comments postmarked or received on or before July 29, 1987.

**ADDRESS:** Send your comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments are in response to Docket No. 86-002. Comments we receive may be inspected at 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. Mitchell A. Essey, Senior Staff Veterinarian, Program Planning Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-5961.

**SUPPLEMENTARY INFORMATION:**

#### Background

Bovine tuberculosis (referred to below as tuberculosis) is a serious, infectious disease that is caused by *Mycobacterium bovis* and results in weight loss, general debilitation, and sometimes death in infected animals.

In accordance with the regulations in 9 CFR Part 50, we pay Federal indemnity to owners of cattle (and under very limited circumstances to owners of bison and swine) destroyed because of tuberculosis. Our tuberculosis indemnity regulations are intended to encourage owners to cooperate in having affected or, in some cases, exposed animals destroyed promptly to help eradicate tuberculosis in the United States. The continued presence of tuberculosis in a herd would seriously threaten the health of animals in that herd and possibly in other herds. However, the regulations in Part 50 restrict payments of indemnity for bison destroyed because of tuberculosis to bison associated with a June 1984 outbreak of bovine tuberculosis on South Dakota. Also, the regulations in 9 CFR Part 77 restrict the interstate movement of certain cattle to help prevent the spread of tuberculosis but do not restrict the interstate movement of bison that could spread the disease. We propose to amend the regulations in Parts 50 and 77 to make the provisions that apply to cattle also apply to bison.

We propose to treat cattle and bison in the same manner under 9 CFR Parts 50 and 77 for the following reasons: Tuberculosis affects bison and cattle similarly, and bison affected with tuberculosis present a risk of spreading the disease to other bison and to cattle. Furthermore, bison and cattle are similarly raised and marketed, and the provisions in Parts 50 and 77 relating to cattle would apply equally well to bison.

In addition, we propose to correct the regulations in Part 77 by removing the District of Columbia and certain territories of the United States from the list of modified accredited areas. Currently, § 77.5(b) lists as modified accredited areas "All States or portions thereof except those otherwise designated in § 77.4 or § 77.6." Because the District of Columbia and the territories (except the Virgin Islands) of the United States are not listed in either § 77.4 or § 77.6, they fall into the category of modified accredited areas. However, neither the District of Columbia nor these territories meet the standards for modified accredited areas. Furthermore, we do not have enough information now to determine the tuberculosis status of the District of Columbia or these territories. We therefore propose to exclude the District of Columbia and the territories (except the Virgin Islands) of the United States from our lists of accredited-free States, modified accredited areas, and "nonmodified accredited areas until we can determine their tuberculosis status.

We also propose to replace the terms "modified accredited areas" and "nonmodified accredited areas" in Part 77 with "modified accredited States" and nonmodified accredited States," respectively. States, as defined in present § 77.1(p), have been the only geographical areas classified as modified accredited and nonmodified accredited for the past 20 years, and we have no intention of using these classifications for geographical areas other than States.

#### Miscellaneous

We propose to amend the regulations in Part 77 to update the incorporation by reference of the Uniform Methods and Rules—Bovine Tuberculosis Eradication. This action is necessary because the regulations refer to the 1977 edition of the Uniform Methods and Rules—Bovine Tuberculosis Eradication. This edition has been superseded by the edition adopted by the United States Animal Health Association on October 24, 1984, and approved by Veterinary Services on March 13, 1985.

We also propose to make several nonsubstantive editorial changes to clarify the regulations.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed 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 proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would have no 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.

Currently, most owners of bison affected with or exposed to tuberculosis lack adequate financial incentives to free their herds from the disease. Because only bison associated with the June 1984 outbreak of tuberculosis in South Dakota are covered by our tuberculosis indemnity regulations, most bison owners are liable for all losses they incur in controlling or eradicating tuberculosis in their herds. In addition, bison affected with tuberculosis have no salvage value.

Our proposal would increase the number of owners eligible to receive Federal indemnity for bison destroyed because of tuberculosis. To receive the indemnity, owners would have to obtain an appraisal for each bison to be destroyed, have the bison destroyed, and clean and disinfect contaminated premises. Although owners would have some expenses in connection with these requirements, they would be entitled to Federal indemnity for each bison destroyed in accordance with the proposed regulations in Part 50. The benefits to bison owners would far outweigh the costs. Furthermore, we do not expect that our proposal would significantly increase the cost of the tuberculosis indemnity program because our experience indicates that less than one percent of the bison in the United States would be condemned because of tuberculosis.

Our proposal would require States to apply the provisions of the Uniform Methods and Rules—Bovine Tuberculosis Eradication to bison in the same manner as to cattle to qualify as an accredited-free State or a modified accredited State. However, these provisions would place no burden on individual herd owners.

Our proposal would continue to allow most bison to be moved interstate without restriction. We would restrict the interstate movement only of bison from nonmodified accredited States and bison that are exposed, reactors, or suspects or from herds containing suspects. At present, there are no nonmodified accredited States, and less than 1 percent of the bison in the United States are exposed, reactors, or suspects or from herds that contain suspects.

Our proposed amendment to exclude the District of Columbia and the territories (except the Virgin Islands) of the United States from the lists in Part 77 of accredited-free States, modified accredited States, and nonmodified accredited States would not affect the requirements for interstate movement of cattle or bison from the District of Columbia or these territories. The District of Columbia and the territories (except the Virgin Islands) of the United States now are listed as modified accredited areas (redesignated in the proposal as modified accredited States). If, under our proposed rule, we continue to list the District of Columbia and the territories (except the Virgin Islands) of the United States as modified accredited States, then cattle and bison other than cattle and bison that are exposed, reactors, or suspects or from herds containing suspects could be moved interstate from the District of Columbia and these territories without restriction. If, as we are proposing, we exclude the District of Columbia and the territories (except the Virgin Islands) of the United States from the lists of accredited-free States, modified accredited States, and nonmodified accredited States, then cattle and bison other than cattle and bison that are exposed, reactors, or suspects or from herds containing suspects could still be moved interstate from the District of Columbia and these territories without restriction. The requirements of the interstate movement of cattle and bison that are exposed, reactors, or suspects or from herds containing suspects also would remain the same because these requirements are unrelated to State designation.

Under the circumstance explained above, the administrator of the Animal and Plant Health Inspection Service has determined that adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

Information collection requirements contained in this document have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control numbers 0579–0001, 0579–0051, and 0579–0084.

**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.)

**List of Subjects**

*9 CFR Part 50*

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Tuberculosis.

*9 CFR Part 77*

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

Accordingly, we propose to amend 9 CFR Parts 50 and 77 as follows:

## PART 50—BOVINE TUBERCULOSIS INDEMNITY

1. The authority citation for Part 50 would continue to read as follows:

**Authority:** 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

2. The heading for Part 50 would be revised to read "PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS".

**§ 50.1 Definitions.**

3. In § 50.1(e), "Representative" would be revised to read "representative".

4. In § 50.1(g), "Veterinarian" would be revised to read "veterinarian".

5. In § 50.1(j), "cattle" would be revised to read "cattle, bison, or swine".

6. In § 50.1(m), "or bison" would be added after "cattle"; and "animals (of like kind)", every time the phrase appears, would be revised to read "cattle or bison, or both,".

7. In § 50.1(n), "Depopulation" would be revised to read "depopulation", and "and bison" would be added after "cattle".

8. In § 50.1(o), "Registered Cattle': Cattle" would be revised to read "Registered cattle or bison": Cattle or bison".

9. In § 50.1(p), "cattle" would be revised to read "cattle, bison, or swine".

10. In § 50.1(q), "of cattle" would be removed.

11. In § 50.1, all paragraph designations would be removed, and the definitions would be arranged in alphabetical order.

**§ 50.2 Cooperation with States.**

12. In § 50.2, "cattle" would be revised to read "cattle, bison, or swine".

**§ 50.3 Payment to owners for animals destroyed.**

13. In § 50.3(a), the heading would be revised to read "*Affected cattle and bison*", and, in the body of the paragraph, "and bison" would be added after "cattle".

14. In § 50.3 (b), the heading would be revised to read "*Herd depopulation—cattle and bison*", and, in the body of the paragraph, "and bison" would be added after "cattle" every time the word appears.

15. In § 50.3(c), the heading would be revised to read "*Exposed cattle and*

*bison*"; and, in the body of the paragraph, "and bison" would be added after "cattle" the first time the word appears, and "or bison" would be added after "cattle" the second and third times the word appears.

16. In § 50.3(d), "of cattle" would be removed.

17. In § 50.3, paragraph (e) would be removed.

**§ 50.4 Determination of existence of or exposure to tuberculosis.**

18. In § 50.4(a), "and bison" would be added after "Cattle".

19. In § 50.4(b), "and bison" would be added after "Cattle" and after "cattle".

**§ 50.5 Record of tests.**

20. In § 50.5, "any animal in a herd of cattle" would be revised to read "any cattle or bison in a herd".

**§50.6. Identification of animals to be destroyed because of tuberculosis.**

21. In § 50.6(a), the heading would be revised to read "*Reactor cattle and bison*", and, in the body of the paragraph, "and bison" would be added after "cattle".

22. In § 50.6(b), the heading would be revised to read "*Exposed cattle and bison*", and, in the body of the paragraph, "and bison" would be added after "cattle".

**§50.7 Destruction of animals.**

23. A parenthetical phrase would be added at the end of § 50.7 to read as follows:

(Approved by the Office of Management and Budget under control number 0579-0051)

**§50.8 Payment of expenses for transportation and disposal of carcasses of affected animals.**

24. In § 50.8, "and bison" would be added after "cattle" every time the word appears.

**§50.9 Appraisals.**

25. In § 50.9, "or bison" would be added after "cattle".

**§50.10 Report of appraisals.**

26. In § 50.10, "and bison" would be added after "cattle".

**§50.11 Report of salvage proceeds.**

27. In § 50.11, "or bison" would be added after "cattle" every time the word appears.

**§50.12 Claims for indemnity.**

28. In § 50.12, "or bison" would be added after "cattle" every time the word appears.

**§50.13 Disinfection of premises, conveyances, and materials.**

29. In § 50.13, "or bison" would be added after "cattle".

**§50.14 Claims not allowed.**

30. In § 50.14, in the introductory text, "or bison" would be added after "cattle".

31. In § 50.14(b), "and bison" would be added after "cattle" every time the word appears.

32. In § 50.14(d), "or bison" would be added after "cattle" the first and third times the word appears, and "and bison" would be added after "cattle" the second time the word appears.

33. In § 50.14(e), "or bison" would be added after "cattle".

**§50.15 Part 53 of this chapter not applicable.**

34. In § 50.15 "or bison" would be added after "cattle".

## PART 77—TUBERCULOSIS IN CATTLE

35. The authority citation for Part 77 would continue to read as follows:

**Authority:** 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

36. The heading for Part 77 would be revised to read "PART 77—TUBERCULOSIS", and the subpart designations and headings would be removed.

**§77.1 Definitions.**

37. In § 77.1, paragraph (b) would be removed.

38. In § 77.1(c), "of cattle" would be removed.

39. In § 77.1, paragraph (d) and footnote 1 would be revised to read as follows:

(d) *Uniform Methods and Rules—Bovine Tuberculosis Eradication.* Uniform methods and rules for eradication bovine tuberculosis in the United States, adopted by the United States Animal Health Association on October 24, 1984, and approved by Veterinary Services on March 13, 1985. The Uniform Methods and Rules—Bovine Tuberculosis Eradication were approved for incorporation by reference into the Code of Federal Regulations by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.[1]

[1] Copies of the Uniform Methods and Rules—Bovine Tuberculosis Eradication may be obtained from the Program Planning Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782.

40. In § 77.1, paragraphs (e), (f), (g), and (h) would be revised to read as follows:

* * * * *

(e) *Official tuberculin test.* Any test for tuberculosis conducted on cattle in accordance with the Uniform Methods and Rules—Bovine Tuberculosis Eradication. The official tuberculin test for bison is the same as for cattle.

(f) *Negative cattle and bison.* Cattle are classsified negative for tuberculosis in accordance with the Uniform Methods and Rules—Bovine Tuberculosis Eradication, based on the results of an official tuberculin test. Bison are classified negative for tuberoculosis in the same manner as cattle.

(g) *Suspect cattle and bison.* Cattle are classified as suspects for tuberculosis in accordance with the Uniform Methods and Rules—Bovine Tuberculosis Eradication, based on a positive response to an official tuberculosis test. Bison are classified as suspects for tuberculosis in the same manner as cattle.

(h) *Reactor cattle and bison.* Cattle are classified as reactors for tuberculosis in accordance with the Uniform Methods and Rules—Bovine Tuberculosis Eradication, based on a positive response to an official tuberculin test. Bison are classified as reactors for tuberculosis in the same manner as cattle.

* * * * *

41. In § 77.1(i), "or bison, or both," would be added after "cattle" the first two times the word appears, and "or bison" would be added after "cattle" the third time the word appears.

42. In § 77.1(f), "of cattle" would be removed, and "such cattle" would be revised to read "cattle or bison".

43. In § 77.1(k), "*and bison*" would be added after "*Cattle*" in the heading; and, in the body of the paragraph, "and bison" would be added after "cattle" the first time the word appears, and "or bison" would be added after "cattle" the second time the word appears.

44. In § 77.1(l), "*and bison*" would be added after "*cattle*" in the heading, and, in the body of the paragraph, "and bison" would be added after "cattle" every time the word appears.

45. In § 77.1, paragraphs (w), (x), (y), and (z) would be revised to read as follows:

* * * * *

(w) *Modified accredited State.* (a)(1) To establish or maintain status as a modified accredited State, a State must comply with all of the provisions of the Uniform Methods and Rules—Bovine

Tuberculosis Eradication regarding modified accredited States, and must apply these provision to bison in the same manner as to cattle. Modified accredited State status must be renewed annually.

(2) To qualify for renewal of modified accredited State status, a State must submit an annual report to Veterinary Services certifying that the State complies with all the provisions of the Uniform Methods and Rules—Bovine Tuberculosis Eradication regarding modified accredited States and that the State applies these provisions to bison in the same manner as to cattle. The report must be submitted to Veterinary Services each year between October 1 and November 30.

(b) Modified accredited States: Alabama, Arkansas, California, Florida, Hawaii, Idaho, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Ohio, Oregon, Puerto Rico, Tennessee, Texas, Virginia, Washington, and West Virginia.

(x) *Nonmodified accredited State.* (a) A State that has not received accredited-free State status or modified accredited State status. (b) Nonmodified accredited States: [No States]

(y) *Accredited-free State.* (a)(1) To establish or maintain status as an accredited-free State, a State must have no findings of tuberculosis in any cattle or bison in the State for at least 5 years. The State also must comply with all of the provisions of the Uniform Methods and Rules—Bovine Tuberculosis Eradication regarding accredited-free States and must apply these provisions to bison in the same manner as to cattle. Detection of tuberculosis in any cattle or bison in the State will result in suspension of accredited-free State status. Detection of tuberculosis in two or more herds in the State within 48 months will result in revocationof accredited-free State status. Accredited-free State status must be renewed annually.

(2) To qualify for renewal of accredited-free State status, a State must submit an annual report to Veterinary Services certifying that the State complies with all the provisions of the Uniform Methods and Rules—Bovine Tuberculosis Eradication regarding accredited-free States and that the State applies these provisions to bison in the same manner as to cattle. The report must be submitted to Veterinary Services each year between October 1 and November 30.

(b) Accredited-free States: Alaska, Arizona, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New hampshire, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, the Virgin Islands of the United States, Wisconsin, and Wyoming.

(z) *Accredited herd.* To establish or maintain accredited herd status, the herd owner must comply with all the provisions of the Uniform Methods and Rules—Bovine Tuberculosis Eradication regarding accredited herds and must apply the provisions to bison in the same manner as to cattle. All cattle and bison in a herd must be free from tuberculosis.

* * * * *

46. In § 77.1(aa), "or bison" would be added after "cattle".

47. In § 77.1(bb), "or bison" would be added after "cattle", and "§§ 77.9 and 77.10" would be revised to read "§§ 77.5 and 77.6 of this part".

48. In § 77.1, all paragraph designations would be removed, the definitions would be arranged in alphabetical order, and a parenthetical phrase would be added at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 0579–0084)

49. Section 77.2 would be revised to read as follows:

**§ 77.2 General restrictions.**

Cattle and bison may not be moved interstate except in compliance with this part.

50. Sections 77.3, 77.4, 77.5, and 77.6 would be removed and §§ 77.7, 77.8, 77.9, and 77.10 would be redesignated as §§ 77.3, 77.4, 77.5, and 77.6, respectively.

**§ 77.3 [Amended]**

51. In redesignated § 77.3, "*areas*" would be revised to read "*States*" in the section heading; and, in the introductory text, "or bison" would be added after "cattle", and "area" would be revised to read "State".

**§ 77.4 Movement from nonmodified accredited States.**

52. In redesignated § 77.4 "*areas*" would be revised to read "*States*" in the section heading; and, in the introductory text, "or bison" would be added after "cattle", and "area" would be revised to read "State".

53. In redesignated § 77.4(a), "or bison" would be added after "cattle" every time the word appears.

54. In redesignated § 77.4(b), "or bison" would be added after "cattle" every time the word appears.

55. In redesignated § 77.4(c), "or bison" would be added after "cattle".

56. In redesignated § 77.5, the heading would be revised to read "*Interstate movement of cattle and bison that are exposed, reactors, or suspects or from herds containing suspects.*"

57. In redesignated § 77.5(a), "*and bison*" would be added after "*cattle*" in the heading, and, in the body of the paragraph, "or bison" would be added after "Cattle" and "cattle".

58. In redesignated § 77.5 (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5), "or bison" would be added after "cattle" every time the word appears.

59. In redesignated § 77.5(a)(4), "77.9(a)(5)" would be revised to read "77.5(a)(5)".

60. In redesignated § 77.5(b), "*and bison*" would be added after "*cattle*" in the heading, and, in the introductory text, "cattle which have been classified as exposed cattle" would be revised to read "cattle or bison that have been classified as exposed".

61. In redesignated § 77.5 (b)(1) and (b)(2), "or bison" would be added after "cattle" every time the word appears.

62. In redesignated § 77.5(c), "*and bison*" would be added after "*cattle*" in the heading, and, in the body of the paragraph, "or bison" would be added after "cattle" every time the word appears.

63. A parenthetical phrase would be added to the end of redesignated § 77.5 to read as follows:

(Approved by the Office of Management and Budget under control number 0579–0051)

**§ 77.6 Other movements.**

64. In redesignated § 77.6, "or bison" would be added after "cattle" in the first sentence of this section, and the last two sentences of the section (beginning with "The revision of the regulations") would be deleted.

Done in Washington, DC, this 24th day of June, 1987.

**B.G. Johnson,**

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

[FR Doc. 87–14635 Filed 6–26–87; 8:45 am]

BILLING CODE 3410-34-M

**DEPARTMENT OF THE TREASURY**

**Customs Services**

**19 CFR Part 4**

## Interpretations of the Coastwise Laws

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** Proposed interpretive rule.

**SUMMARY:** This document invites public comments on the issues raised in a petition submitted to Customs concerning the coastwise laws which provide that no foreign vessel may transport merchandise between points in the U.S., either directly or via a foreign port. Merchandise may be transported between U.S. points only in vessels built in and documented under U.S. laws and owned by U.S. citizens. Customs has previously held that the movement of a vessel on another vessel from a coastwise point to a point on the high seas where the vessel is removed from the carrying vessel and then towed to another coastwise point is considered coastwise, trade. The carrying vessel in this kind of movement must be U.S. owned and built. If the previous ruling is changed, it would permit, insofar as the coastwise laws are concerned, the carriage by a foreign-built launch barge of an outer continental shelf platform jacket from a point in the U.S. to a point outside U.S. territorial waters where the jacket would be unloaded from the barge and then towed to an installation site on the U.S. outer continental shelf.

The petitioner submits that towing is not "transportation" and a vessel is not "merchandise," for purposes of the coastwise laws. Further, qualified barges capable of launching a deepwater jacket are nonexistent and it is economically impracticable for anyone to build such a barge in the U.S. because of competitive pressures from foreign marine fabricators. Additionally, the previous ruling does not serve to promote the American merchant marine or domestic shipbuilding industry. It tends to prevent the domestic fabrication industry from participating in deepwater projects.

Comments with respect to the issues will be considered before any decision is reached.

**DATE:** Comments must be received on or before August 28, 1987.

**ADDRESS:** Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Paul G. Hegland, Carrier Rulings Branch, (202–566–5706).

**SUPPLEMENTARY INFORMATION:**

### Background

*Coastwise Laws*

Title 46, United States Code, section 883 (46 U.S.C. 883), (the coastwise merchandise statute, often called the Jones Act), provides, in pertinent part, that:

> No merchandise shall be transported by water . . . between points in the United States . . . either directly or via a foreign port, or for any part of the transportation, *in* any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States [i.e., a coastwise-qualified vessel] . . .

The coastwise towing statute, title 46, United States Code, 316(a) (46 U.S.C. 316(a)), provides, in pertinent part, that:

> It shall be unlawful for [a vessel not documented for the coastwise or Great Lakes trade] to tow any vessel other than a vessel in distress, from any [point in the United States] to any other [such point], or to do any part of *such* towing . . . [Emphasis added in both instances.]

Sections 4.80 through 4.93, Customs Regulations (19 CFR 4.80–4.93), set forth the procedures used by the Customs Service to administer and enforce the coastwise laws.

*Dual-Mode Movement of Self-Propelled Vessels*

In the early 1960's Customs issued several rulings on whether section 883 prohibits the movement of a self-propelled vessel between coastwise points via a foreign point. In these rulings, the vessel proceeded under its own power from a U.S. point to a foreign point and was carried on a cargo carrying vessel from the foreign point to a second U.S. point, or the vessel was carried on a cargo carrying vessel from a U.S. point to a foreign point and proceeded under its own power from the foreign point to a second U.S. point. In one ruling, a yacht proceeded under its own power from Seattle to Vancouver, British Columbia, and was transported on a freighter to Los Angeles, California (telex dated April 15, 1960). In a letter dated May 4, 1961, Customs held that a pleasure boat could be shipped on a foreign-flag freighter from Los Angeles to Vancouver or Victoria, British Columbia, and from there proceed under its own power to Seattle. Customs also ruled that motorboats could proceed under their own power from a Florida port to Nassau or Bermuda where the were to be loaded on a foreign-flag carrier and transported to a U.S. port on the west coast (Letter dated April 10, 1963). None of these rulings were published.

Customs ruled that none of these movements violated section 883. The reason given in the first case was that the transportation of the merchandise (the yacht) was deemed to commence in Vancouver. The reason given in the second ruling was that the transportation of the merchandise (the pleasure boat) was deemed to have ended at Vancouver or Victoria and, in the third, that the transportation of the motorboats as merchandise would be deemed to have begun at Nassau or Bermuda. Thus, in each instance, the transportation of merchandise was between a U.S. point and a foreign point and the merchandise (the yacht, pleasure boat, or motorboats) completed the movement (to or from a U.S. point) under its own power.

*Dual-Mode Movement of Non-Self-Propelled Vessels and Drydock*

In 1977, Customs ruled that the movement of several barges which were built in the Puget Sound area and towed to Vancouver where they were loaded on foreign-flag vessels for transportation to U.S. ports on the east coast would not violate section 883 (letter ruling VES–3–07–R:CD:C 102750 PC, April 13, 1977). The reason given for this ruling was that:

> * * * transportation of the barges as "merchandise" would be deemed to begin at Vancouver and to end at the ports on the East Coast of the United States where they would be unladen from the foreign-flag vessels. The prior towing of the barges from the Puget Sound area to Vancouver and their subsequent transportation by foreign-flag vessels from Vancouver to East Coast United States ports would not be considered a transportation of merchandise between ports in the United States in whole or in part by foreign vessel and, therefore, would not be in violation of title 46, United States Code, section 883.

In 1979, Customs issued a similar ruling on the transportation of a mobile drilling platform (ruling VES–3–07/VES–3–15/VES–10–03 R:CD:C 104027 MKT, August 29, 1979, published as C.S.D. 80–96 in the Customs Bulletin and Decisions on July 23, 1980). In this ruling, the drilling platform was to be moved from one U.S. point to another by being carried on a submersible barge from the first U.S. point to a foreign point where the drilling platform would be removed from the barge and towed on its own bottom to a second U.S. point. Customs ruled that section 883 would not prohibit this movement. Section 316(a) was inapplicable because all vessels

involved were foreign-flag vessels and section 316(a) did not then apply to the coastwise towing of a foreign-flag vessel by another foreign-flag vessel. The reason given for this ruling was that:

> * * * the platform will not be unladen as merchandise at a coastwise point but at a foreign point, and subsequently the platform will be towed as a vessel to the United States. The character of the platform will change from merchandise to a vessel at the foreign point.

In ruling VES–3–07/VES–10–3 CO:R:CD:C 105692 HS, July 8, 1982, this rationale was followed to permit the movement of a floating drydock by being carried on a foreign-flag submersible barge from a coastwise point to a point outside U.S. territorial waters where the drydock was placed in the water and "wet-towed" to another coastwise point. Telex ruling VES–3–15/VES–10–03 CO:R:CD:C 105881 PH, November 8, 1982, permitted the movement of a jackup drilling rig (a vessel) by being transported on a self-propelled foreign-flag vessel from a point in U.S. territorial waters to a foreign point or waters off a foreign country or a point outside U.S. territorial waters where the rig was offloaded and towed by a foreign-flag vessel to another point in U.S. territorial waters. The November 8, 1982, ruling following the rationale quoted in the previous paragraph in holding that section 883 did not prohibit the movement and held that section 316(a) would not prohibit the movement because:

> Section 316(a), much like section 883, prohibits an unqualified vessel from towing a vessel other than a foreign-flag vessel or a vessel in distress between United States coastwise points, "either directly or by way of a foreign port or place, or to do any part of such towing."
>
> The towing portion of the proposed movement is between a foreign port or point on the high seas and a coastwise point. The words "part of such towing" in section 316(a) refer to part of towing between coastwise points and in the proposed movement, the rig is not to be *towed* between coastwise points. [Emphasis in original.]

Ruling VES–3–15–CO:R:CD:C 106672 PH, March 23, 1984, came to the same conclusion on the basis of the same rationale with regard to the movement of a U.S.-flag semi-submersible drilling rig by being carried on a foreign-flag vessel from a point in U.S. territorial waters to a point on the high seas where it was unloaded and towed by a foreign-flag tug to a point on the high seas or a point in U.S. territorial waters.

*C.S.D. 85–9*

In October 1984, Customs received a request for a ruling that the movement of a drydock from Hawaii to Texas by being transported in sections on a foreign-flag vessel from a point in U.S. territorial waters off Hawaii to a point approximately 30 miles off the coast of Texas outside U.S. territorial waters where it would be offloaded and towed by a U.S. flag vessel to a Texas port would be permissible under the coastwise laws. Initially, Customs held that because floating drydocks were not considered vessels for purposes of Customs duty, the exception from the coastwise laws for such "dual-mode" transportation would not be applicable and the proposed movement would violate section 883 because part of the transportation between coastwise points of the drydock sections would be in a non-coastwise-qualified vessel (telex ruling VES–3/VES–10–03 CO:R:CD:C 107060 PH, October 17, 1984).

Customs decision in the ruling of October 17, 1984, was appealed. Petitioner cited Customs decision in ruling 105692 HS *supra*, applying the "dual mode" rule to the movement of a floating drydock and convinced Customs that the proposed movement of the drydock would not be prohibited by section 883 (telex ruling VES–3/VES–10–03 CO:R:CD:C 107060 PH, October 18, 1984). In this telex Customs stated:

> In considering future operations of this kind involving two-mode movements by or of vessels, please be advised that we plan to reconsider the July 8, 1982, ruling, as well as Customs Service Decision 80–96, and ruling VES–3–15 VES–10–03 CO:R:CD:C 105881 PH, November 8, 1982, . . . and similar rulings.

Customs did reconsider this matter and in C.S.D. 85–9, published in the Customs Bulletin and Decisions dated January 30, 1985, modified C.S.D. 80–96 and similar rulings, holding that:

> A vessel transported on another vessel is merchandise for purpose of 46 U.S.C. 883 (see so-called sixth proviso to 46 U.S.C. 883 (Pub. L. 90–474; 82 Stat. 700) and legislative history thereon (Sen. Report 1485, July 30, 1968, 1968 U.S.C.C.A.N. 3185)). Section 883 prohibits the use of a non-coastwise-qualified vessel to transport merchandise by water, or land and water, between coastwise points, "or for any part of the transportation." We conclude that the movement of a vessel on another vessel from a coastwise point to a foreign point or a point on the high seas where the vessel is removed from the carrying vessel is part of transportation of merchandise between coastwise points when the vessel is towed from the point of removal from the carrying vessel to another coastwise point. This is also true of such a movement when the towing portion of the movement comes before the carrying portion of the movement. The carrying vessel in this kind of movement must be coastwise-qualified.

In modifying C.S.D. 80–96 and similar rulings permitting dual-mode movements, insofar as the coastwise laws are concerned, Customs considered the overall movement. Customs concluded that a vessel or other merchandise which is carried on another vessel part of the way between coastwise points and towed by another vessel the remainder of the way between those coastwise points is transported between coastwise points. Because section 883 prohibits the transportation of merchandise between coastwise points, or any part of the transportation, in a non-coastwise-qualified vessel, the carriage portion of the dual-mode movement (that part of the transportation between coastwise points which is *in* the vessel) would be prohibited by a non-coastwise-qualified vessel. The coastwise towing statute would not be applicable to the movement because that statute applies to towing between coastwise points or any part of *such* towing (i.e., it applies to towing between coastwise points or any part of an overall *tow* between coastwise points).

In issuing C.S.D. 85–9, Customs did not intend to modify the first three rulings. Customs believed those rulings to be correct because the vessels which were transported part of the way between coastwise points in those cases proceeded under their own power for the remainder of the movement. Thus, the vessels (the yacht, pleasure vessel, and motorboats) were not *transported* between coastwise points but, instead, were transported only between a coastwise point and a foreign point.

Customs concluded, in issuing C.S.D. 85–9, that the rationale for C.S.D. 80–96 and similar rulings that the character of the vessel which is carried and towed changes from merchandise to that of a vessel at the point it is unloaded from the carrying vessel or from that of a vessel to merchandise at the point where the vessel is loaded onto the carrying vessel was wrong. Customs perceived no inherent difficulty in treating a vessel, while it is carried on another vessel as well as while it is proceeding on its own bottom, as both a vessel and merchandise. Customs concluded that the "mystical transformation" theory underlying the dual-mode exception made no sense. A vessel is merchandise for purposes of section 883, while it is carried on another vessel (see 6th proviso to section 883, referred to in C.S.D. 86–9) and Customs sees no reason why it would not be merchandise while on its own bottom, whether or not it is proceeding under its own power. Customs concluded that the key to determining applicability of section 883

to dual-mode movements such as those under consideration was not whether the transported vessel or article was merchandise, but whether the vessel or article was *transported* between coastwise points.

*Request for Change in C.S.D. 85–9 Position*

Customs has received a request that the position taken in C.S.D. 85–9 be changed, insofar as the movement of outer continental shelf (OCS) platform jackets from points in the U.S. to the U.S. OCS is concerned. According to the petitioner, platform jackets used on the OCS are becoming increasingly heavy as drilling is done in deeper waters. Also, future deep-water drilling projects will require one-piece platform jackets because building jackets in two or more pieces, although perhaps technically possible, is too expensive to be economically feasible.

The petitioner states that the movement of a deepwater jacket is ordinarily accomplished by a dual-mode movement in which the jacket is carried from a point in the U.S. to a point in the vicinity of the installation site and outside territorial waters on a specialized launch barge. The jacket is launched from the launch barge and towed by one or more vessels to the installation site where it is attached to the ocean floor. The petitioner states that before installation of a platform jacket at an OCS site, exploratory work, which results in the imbedding in the OCS of templates and casings, is an economic necessity with respect to virtually all deepwater projects.

*Why the Platform Installation Site is a Coastwise Point*

Section 4(a)(1), Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a)(1)) (OCSLA), provides, in pertinent part, that the laws of the U.S. are extended to:

> * * * the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom . . . to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.

Under this provision, Customs has ruled that the coastwise laws are extended to mobile rigs during the period they are secured to or submerged onto the seabed of the OCS(Treasury Decision 54281(1) dated January 9, 1957). Subsequent rulings have applied the same principles to drilling platforms, artificial islands, warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS, and other installations and devices attached to the OCS for any of the requisite purposes.

*Effect of C.S.D. 85–9 on Installation of Platforms on OCS*

Under C.S.D. 80–96 and similar dual-mode rulings, a launch barge which carried a platform jacket from a point in the U.S. to a point outside territorial waters where the jacket was launched and from which it was towed to the installation site could be a non-coastwise-qualified vessel. Under C.S.D. 85–9, the launch barge would be required to be coastwise-qualified.

*Non-Existence of Coastwise-Qualified Barges for Installation of Deepwater Jackets on OCS*

According to the petitioner, there is no U.S. coastwise-qualified barge capable of launching deepwater jackets in existence today anywhere in the world. The largest coastwise-qualified barge is capable of launching a jacket of only 7,500 short tons. Jackets required for deepwater sites are from 30,000 to 60,000 short tons.The petitioner claims that it is not economically feasible to construct in the U.S. a barge large enough to carry and launch deepwater jackets and states that he knows of no person planning such construction in the U.S. The economic risk inherent in the construction of a coastwise-qualified launch barge capable of launching deepwater jackets is increased because foreign fabricators of jackets are making inroads in the U.S. OCS market. A foreign fabricator need not use a coastwise-qualified barge to launch its jacket because the coastwise laws, even as interpreted under C.S.D. 85–9, do not apply to transportation and/or towing from a foreign point to a point on the U.S. OCS. Thus, the only sure users of a coastwise/qualified launch barge capable of launching deepwater jackets would be U.S. fabricators of such jackets.

*Petitioner's Legal Arguments for Changing C.S.D. 85–9 Position*

The petitioner contends that, legally, the carriage on a non-coastwise-qualified launch barge of a platform jacket from a point in the U.S. to a point outside territorial waters where the jacket is launched and from which it is towed to an OCS installation site which, under the OCSLA, is considered a coastwise point, does not violate section 883. The arguments made are summarized as follows:

1. The carrying portion of the movement of the jacket would not be transportation between coastwise points, within the terms of section 883, because to have such transportation there must be a lading of merchandise onto a vessel at one coastwise point and an unlading of the merchandise from the vessel at another coastwise point. In this case, the jacket is unladen from the carrying vessel at a non-coastwise point.

2. The carrying portion of the movement of the jacket would not be part of transportation of merchandise between coastwise points, within the terms of the provision in section 883 that prohibits "any part" of coastwise transportation. This is because the towing portion of the movement does not have the character of transportation, within the terms of section 883. The carrying portion of the movement can not be part of coastwise transportation if there is no other part of the coastwise transportation.

In support of the argument that the towing portion of the movement does not have character of transportation, within the terms of section 883, the petitioner points out that Customs recognizes this principle with regard to section 316(a) (i.e., to be "part of such towing" within that statute, all segments of a movement must be by tow for section 316(a) to be applicable to a towing movement). Furthermore, the towing portion does not constitute transportation because the towing vessel does not lade the jacket at one point, move it, and unlade it at a second point. If the towing portion of the movement is to be considered part of a transportation, within the terms of section 883, then the absurd result would follow that the towing vessel itself is engaged in transportation, for purposes of section 883.

The carrying portion of the movement of the jacket would not be part of transportation of *merchandise* between coastwise points, within the terms of the provision in section 883 that prohibits "any part" of coastwise transportation, even if the towing portion is part of the transportation. This is because once the jacket was launched from the barge it would take on the character of a "vessel." Although the term "merchandise," for purposes of section 883, is quite broad in scope and a vessel

should be treated as merchandise when carried on another vessel, when a vessel is being towed, it should be treated as a vessel and not "merchandise," for purposes of section 883. This argument was the basis for C.S.D. 80–96 and similar rulings permitting dual-mode movements and C.S.D. 85–9 gave no good reason for departing from this interpretation.

The rejection of the above-described basis for permitting dual-mode movements has mischievous consequences which could result in a tug towing a jacket in distress which was being moved in a dual-mode movement being subject to penalties under section 883, even though the tug would be specifically exempt from penalties under section 316(a) because the towed vessel was a vessel in distress. This is because, under C.S.D. 85–9, this towing would be part of transportation, within the terms of section 883.

### Comments

Before adopting this proposal, consideration will be given to any comments that are submitted timely to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Informations Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

### Authority

This document is issued under the authority of 19 U.S.C. 66; and 19 U.S.C. 1624; 46 U.S.C. 13, 316(a), 319, 802, 808, 883, 883–1, and 12106.

### Drafting Information

The principal author of this document was Bruce J. Friedman, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

**William von Raab,**

*Commissioner of Customs.*

Approved:

**Francis A. Keating II,**

*Assistant Secretary of the Treasury.*

June 1, 1987.

[FR Doc. 87–14542 Filed 6–26–87; 8:45 am]

BILLING CODE 4820–02–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary—Federal Housing Commission

### 24 CFR Part 888

[Docket No. N–87–1694; FR–2318]

### Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation; Orange County, NY

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Proposed notice.

**SUMMARY:** Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents periodically, but not less frequently than annually. This document proposes new Fair Market Rents for the Orange County market area of New York State. These rents are necessary to provide fair market rents comparable to market rents for new construction in this market area.

Comment Due Date: July 29, 1987.

**ADDRESS:** Send comments to: Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street SW., Washington, DC 20410–0500. Telephone (202) 426–7624. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

### Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f)(the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the difference between the total housing expense and the total family contribution. Initial contract rents, plus an allowances for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly-constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. In addition, for the Fair Market Rents most recently promulgated by the Department (see the August 7, 1986 **Federal Register**, 51 FR 28486), these rents reflected the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs.

### This Document

This document proposes a special revision to the entire Fair Market Rent schedule applicable to the Orange County, New York market area. The 1986 FMRs reflected data submitted by the New York Regional Office (NYRO), as well as the cost containment efforts implemented for all 1986 New Construction and Substantial Rehabilitation Rents. While the data submitted by the field office was proper, it reflected comparables all built during the 1970s, because there has been no construction of modestly designed rental housing in Orange County for the past several years. HUD's procedures, which are consistent with sound appraisal practices, permit the use of such comparables, which are then adjusted for all variables, including age. Further, where comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

The NYRO has requested that the Department propose new rents for Orange County. Careful analysis of this request and reanalysis of the 1986 FMRs for this market area indicate that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even where it is clear that there has been compliance with the Department's cost containment guidelines with respect to project design. Therefore, an upward adjustment of FMRs for this market area

is needed. Accordingly, the Department is proposing a revision of the entire schedule applicable to the area.

**Other Information**

HUD regulations in 24 CFR Part 50, implementing section 102(2)(c) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs proposed in this Notice are within the exclusion set forth in § 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (Section 8).

Accordingly, the following new Fair Market Rent schedule is proposed for the Orange County, New York market area:

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

Region 2—New York Regional Office; Market: Orange

| Structure type | Number of bedrooms | | | | |
|---|---|---|---|---|---|
| | 0 | 1 | 2 | 3 | 4 |
| Detached | | | 757 | 859 | 931 |
| Semi-Detached Row | 529 | 572 | 684 | 815 | 892 |
| Walkup | 466 | 534 | 649 | 762 | 843 |
| Elevator 2-4 STY | 623 | 674 | 852 | | |
| Elevator 5+ STY | 669 | 766 | 935 | | |

Dated: June 19, 1987.

**Thomas T. Demery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 87-14445 Filed 6-26-87; 8:45 am]

BILLING CODE 4210-27-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 906

### Public Comment and Opportunity for Public Hearing on Proposed Modifications to the Colorado Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of program amendments submitted by the state of Colorado to modify the Colorado Permanent Regulatory Program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to exemptions, experimental practices, prime farmlands, subsidence control, fish and wildlife, bonding and insurance requirements, revegetation, lands unsuitable and related areas, inspection and enforcement, and topsoil.

This notice sets forth the times and locations that the Colorado program and the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

**DATES:** Written comments not received on or before 4:00 p.m. July 29, 1987 will not necessarily be considered. If requested, a public hearing on the proposed amendment will be held on July 24, 1987, beginning at 10:00 a.m., at the location shown under **ADDRESSES.**

**ADDRESSES:** Written comments should be mailed or hand-delivered to: Mr. Robert H. Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102.

If a public hearing is requested, it will be held at the Office of Surface Mining Reclamation and Enforcement, Western Field Operations, Brooks Towers, 1020 15th Street, Denver, Colorado.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766-1486.

**SUPPLEMENTARY INFORMATION:**

**1. Public Comment Procedures**

*Availability of Copies*

Copies of the Colorado program, the proposed amendments to the program a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting the OSMRE Albuquerque Field Office listed under **ADDRESSES.**

The aforementioned documents are available for review at the following locations:

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102.

Office of Surface Mining Reclamation and Enforcement, Room 5315 A, 1100 L Street, NW., Washington, DC 20240.

Colorado Mined Land Reclamation Division, 423 Centennial Building, 1313 Sherman Street, Denver, CO 80203.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSMRE Albuquerque, New Mexico Field Office will not necessarily be considered and included in the Administrative Record for this proposed rulemaking.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business July 20, 1987. If no one requests to comment, a public hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administration Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those persons scheduled. The hearing will end after all persons who wish to comment have been heard.

*Public Meeting*

Persons wishing to meet with OSMRE representative to discuss the proposed amendments may request a meeting at the OSMRE office listed in **ADDRESSES** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be

made a part of the Administrative Record.

**II. Background on the Colorado State Program**

Information regarding the general background on the Colorado State Program, including the Secretary's findings, the disposition of comments and detailed explanation of the conditions of approval of the Colorado program, can be found in the December 15, 1980 **Federal Register** (45 FR 82173–82214). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 906.10, 30 CFR 906.11, 30 CFR 906.15, 30 CFR 906.16, and 30 CFR 906.30.

**III. Discussion of the Proposed Amendments**

Since approval of Colorado's program on December 15, 1980, numerous changes to the Federal regulations have occurred. These changes are the result of a regulatory reform initiative by OSMRE to simplify its regulations, and also as a result of court decisions in *In re: Permanent Surface Mining Regulation Litigation II.* As a result of these Federal rules changes, certain sections of Colorado's rules are now less effective than or inconsistent with the current Federal rules.

On May 7, 1986 OSMRE transmitted to Colorado a list of Colorado's regulations that OSMRE had determinmed were less effective than or inconsistent with the Federal requirements for surface coal mining and reclamation operations (Administrative Record No. CO–282).

On July 11, 1986, Colorado notified OSMRE of its projected schedule to initiate rulemaking and amend its program as required. Colorado anticipates completing the State rulemaking process regarding regulatory reform by December 1987 (Administrative Record No. 291).

On June 1, 1987, OSMRE received the first formal request from Colorado to amend its program in response to the regulatory reform issues.

The proposed amendments are summarized below.

*Exemption*

Colorado proposes to amend Rule 1.05.1 to further define the provisions required to qualify for a two acre exemption. This proposed rule includes provisions defining operations, physically related operations, and ownership and control. The proposed rules, with minor exceptions, are identical to the Federal rules found at 30 CFR 700.119(b) and 30 CFR 700.11(c).

*Experimental Practices*

Colorado proposes to amend Rule 2.06.2 to require approval of the Director of OSMRE prior to authorizing any experimental practice or significant revision to an experimental practice. Language is being added to require that an applicant for an experimental practice submit data to justify the experimental practice in addition to the current requirements that an applicant must submit appropriate descriptions, maps, and plans. Language is also being added to require a description of the performance standards for which variances are requested and the duration of the experimental practice.

*Subsidence Control*

Colorado proposes to amend Rule 2.05.6(6)(f) to add the additional requirements that subsidence control plans include a description of the physical conditions that affect the likelihood or extent of subsidence and subsidence-related damage; provide a description of the size, sequence, and timing for the development of underground workings; show the location of areas in which planned-subsidence mining methods will be used, including all areas where measures will be taken to prevent or minimize subsidence and subsidence-related damage; and provide a schedule for the submittal of a detailed plan of the the underground workings.

Colorado also proposes to amend Rule 4.20.1 to require the operator to submit, at the time of permit revision or renewal, a detailed plan of underground workings, including maps and descriptions, that show significant features such as the size, configuration, and location of pillars and entries, extraction ratios, measures to prevent or minimize subsidence and related damage, areas of full extraction, and other information requested for good cause shown. Upon request by the operator, this information is to be held confidential.

Also proposed for amendment is additional language to be inlcuded in Rule 4.20.4 to preclude underground mining beneath or adjacent to bodies of water with a volume of 20 acre-feet or more, unless the Division determines that subsidence will not cause materials damage.

Other minor changes are also proposed for this rule.

*Fish and Wildlife*

Colorado proposes to amend Rule 4.18 by requiring that no surface coal mining operation shall be conducted that will or is likely to jeopardize the continued existence of endangered or threatened species, destroy or adversely modify critical habitat of such species, or will result in the unlawful taking of a bald or golden eagle, its nest, or eggs. Colorado also proposes an addition to this section whereby, after notification of the existence of endangered or theatened species, critical habitat, or eagles, or nests thereof within the permit area, the Colorado Mined Land Reclamation Division (Division) shall consult with appropriate State and Federal Fish and Wildlife agencies and then determine whether, and under what conditions, the operator may proceed.

Other minor word changes and numbering changes are proposed for this section.

*Lands Unsuitable*

Colorado proposes to amend the definition of "historic lands" found at 1.04(59) to include not only sites listed on, but sites eligible for listing on the National Register of Histroic Places.

Colorado proposes to amend Rules 2.03.7(3) and 2.07.6(2) to require the written waiver from the owner of an occupied dwelling within 300 feet of the mining activities to state that the owner and signator had the legal right to deny mining and knowingly waived that right.

Colorado proposes to add the requirement to Rule 0.07.6(2) that if the Division or the Colorado Mined Land Reclamation Board (Board) is unable to determine if a proposed operation is within the boundaries of lands where mining is limited or prohibited, a determination will be requested from the appropriate government agency. In addition, the Division will notify the National Park Service and the U.S. Fish and Wildlife Service of any requests for valid existing rights determinations pertaining to areas within their jurisdiction. A provision is also included that failure of a government agency to respond within 30 days will be presumed an approval.

Colorado proposes to delete Rule 7.03.3(f) that allows the State to make lands unsuitable designations on Federal lands. Such designations must be made by OSMRE and cannot be made by the State.

Colorado proposes to amend Rule 7.04(5) to require the data base and inventory system to also include information received from the U.S. Fish and Wildlife Service, the State Historic Preservation Officer, and the agency administering section 127 of the Clean Air Act.

Colorado proposes to amend Rules 7.06.2 and 7.06.3 concerning petition requirements to require a petition

designation or termination to include the notarized signature of the petitioner, and a U.S. Geological Survey topographic map showing the perimeter of the petitioned area.

Colorado also proposes other minor changes to the aforementioned rules.

*Inspection and Enforcement*

Colorado proposes to amend Rule 5.02.4(1) to provide that all records, reports, inspection materials, or information obtained under these rules will be maintained for 5 years after expiration of the period during which the subject operation is active or is covered by any portion of reclamation bond.

*Prime Farmlands*

Colorado proposes to amend Rule 2.04.12 requiring the Division to determine the nature and extent of required prime farmland applications after consultation with the U.S. Soil Conservation Service. Colorado is also proposing language to provide the opportunity for an applicant to request a negative prime farmland determination from the Division.

Colorado proposes to amend Rule 2.06.(2)(a) by deleting the current language and replacing it with application content requirements that are, with minor exceptions, identical to the Federal requirements found at 30 CFR 785.17.

Colorado proposes to amend Rule 2.06.6(2)(g) by deleting the current language and adding the requirement that permit applications contain soil productivity information from the Soil Conservation Service for each prime farmland soil being disturbed by mining.

Colorado proposes to amend Rule 4.25.5 to require that, where one or more row crops are the dominate crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth is to be chosen as the reference crop, and that the level of management shall be equivalent to that on unmined prime farmland in the surrounding area. Colorado also proposes to add language concerning the determination of reference crop yields that is, with minor exceptions, identical to the language found at 30 CFR 823.15(7) and 823.15(8).

*Topsoil*

Colorado proposes to amend Rule 1.04(120) to delete current definitions of soil horizons and redefine them by reference to the Soil Conservation Service National Soils Handbook.

Colorado proposes to amend Rule 2.04.9(1)(b) to allow the Division to waive any soil testing parameter based upon a demonstration by the applicant that the parameter is not necessary based on site specific conditions.

Colorado proposes to amend Rule 2.05.4(2)(d) to require that, if topsoil substitutes or supplements are proposed, a demonstration of suitability must be included in the application.

Colorado proposes to amend Rule 4.06.2 to make minor changes to the topsoil definition; to add thickness of soil horizons, total depth, texture, percent coarse fragments, and areal extent of the different soils and materials to the list of parameters to be tested for determining suitability of overburden materials for use as a topsoil supplement or substitute; and to deleter current limitations on topsoil removal areas and add the requirement that topsoil be removed at a time when the chemical and physical properties can be protected and erosion minimized.

*Revegetation*

Colorado proposes to amend Rule 1.04 to make minor modifications to the definition of "pastureland" for clarification, and to delete the definitions for "herbaceous vegetation community" and "woody vegetation" because the distinction previously needed for sampling requirements is no longer needed.

Colorado proposes to amend Rules 4.15.1 and 4.15.2 to delete the requirement that the vegetation cover be predominatly native species. Language is being proposed to require that all reestablished plant species be compatible with the plant and animal species of the area and comply with State and Federal seed, noxious and poisonous plant, and introduced species regulations and laws.

Colorado proposes to amend Rule 4.15.7 and 4.15.8 to replace the term "herbaceous cover" with "vegetative cover" to be more inclusive. Colorado also proposes to add language to Rule 4.15.7 that will require statistical tests for measuring revegetation success to provide results that are valid at the 90 percent confidence level, using a one-sided test with a 0.10 alpha error probability.

Colorado proposes to amend Rule 4.15.8(7) to require the Division to consult with appropriate wildlife agencies concerning all areas with a wildlife postmining land use to determine stocking levels and planting arrangements, and to delete the language allowing approval of a greater or lesser stocking density.

Colorado also proposes other minor language and organizational changes to Rule 4.15 for clarification.

*Bonding and Insurance Requirements*

Colorado proposes to amend Rules 1.04 and 3.02.4 to no longer allow personal property as a form of collateral bond or self-bond.

Colorado proposes to amend Rule 3.02 to delete all provisions for incremental bonding.

Colorado proposes to amend Rule 3.02.2(4)(b) to provide bond adjustment notifications to the surety and any person with a property interest in the collateral who has requested notification, and to provide opportunity for the permittee, surety, or person(s) with a property interest to request a formal public hearing to contest bond adjustments.

Colorado proposes to amend Rule 3.02.4 to allow evaluation of collateral amounts at any time, and require that they be evaluated as part of permit renewal; to provide that letters of credit are automatically renewable upon each anniversary date; to provide that bond forfeiture may be avoided if the surety company can demonstrate the ability to complete the reclamation plan to the Division; and to add a provision that the permittee is liable for additional costs if the bond is insufficient to pay for the full cost of reclamation.

Colorado proposes to amend Rule 3.03.2 to include a provision that if a bond release application is disapproved, the permittee, surety, and any person with an interest in collateral who has previously requested notification be notified of the recommended actions necessary to secure the bond release.

Colorado also proposes to make other minor changes to its bonding and insurance rules.

Therefore, OSMRE is seeking pubic comment on the adequacy of the proposed amendments to the Colorado program. Comments should specifically address the issue of whether the proposed amendments are in accordance with SMCRA and are no less effective than its implementing regulations.

## IV. Procedural Matters

*1. Compliance with National Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of *SMCRA*, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

*2. Executive Order No. 12291 and the Regulatory Flexibility Act*

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4,

7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Reguatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by *SMCRA* and the Federal rules will be met by the State.

*3. Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 906**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 20, 1987.

**Raymond L. Lowrie,**

*Assistant Director, Western Field Operations.*

[FR Doc. 87-14665 Filed 6-26-87; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

[CGD7 87-05]

### Drawbridge Operation Regulations; New Pass, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** At the request of the Florida Department of Transportation (FDOT) the Coast Guard is considering a change to the regulations governing the New Pass bridge on State Route 789 at Sarasota, Florida, by permitting the number of openings to be limited during certain hours. This proposal is being made because of complaints about vehicular traffic delays. This action should accommodate the needs of highway traffic and still provide for the reasonable needs of navigation.

**DATE:** Comments must be received on or before August 13, 1987.

**ADDRESS:** Comments should be mailed to Commander(oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130-1608. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne Lee, Chief, Bridge Section, Seventh Coast Guard District, telephone (305) 536-4103 (FTS 350-4103).

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include thier names, addresses, identify the bridge, and give reasons for concurrence with, or any recommended change in, the proposal.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in light of comments received.

**Drafting Information**

The drafters of this notice are Mrs. Zonia C. Reyes, Bridge Adminsitration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

**Discussion of Proposed Regulation**

On April 16, 1987, the Commander, Seventh Coast Guard District, published a notice of proposed rulemaking (52 FR 12431) soliciting comments on a regulation that would have restricted opening of the New Pass drawbridge on Saturdays, Sundays, and federal holidays between the hours of 10 a.m. and 6 p.m. During those periods the bridge would have been required to open only on the hour, twenty mintues past the hour, and forty minutes past the hour.

The Coast Guard has received significant number of comments on the proposed regulation change. The majority of the responses stressed the need for limitations on bridge openings on weekdays, as well as on weekends and holidays. As a result of the comments, additional data on bridge openings have been analyzed and it appears that weekday restrictions may be needed to reduce highway traffic congestion.

Many of the commentors also asked that New Pass bridge openings be limited to every 30 minutes, instead of every 20 minutes as proposed. A comparison often was made to the operation of the nearby Ringling Causeway drawbridge, which opens every half-hour from 7:30 a.m. to 6 p.m. Waterway conditions in the vicinity of the Ringling bridge allow vessels to wait safely for up to 30 minutes. At New Pass, swift currents and limited holding area near the bridge could make it hazardous for boaters to wait for extended periods.

Some commentors complained that the proposed 20-minute schedule for the new bridge would be less favorable to highway users than the rules for the old drawspan. This apparently was based on a mistaken belief that the previous regulations called for openings at 30-minute intervals. In fact, the regulations for the old New Pass bridge required openings ever 15 minutes, if necessary, for the passage of waiting vessels. The proposed 20-minute operating schedule should reduce highway traffic congestion caused by "back-to-back" openings by allowing sufficient time for accumulated vehicular traffic to disperse between openings.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on substantial number of small entities.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.311 is added to read as follows:

**§ 117.311 New Pass.**

The draw of the State Road 789 bridge, mile 0.0, at Sarasota, shall open

on signal; except that, from 7 a.m. to 6 p.m., Monday thru Friday, except Federal holidays, and from 10 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need not open except on the hour, twenty minutes past the hour, and forty minutes past the hour. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed at anytime.

Dated: June 18, 1987.

**H.B. Thorsen,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 87-14664 Filed 6-26-87; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

### 33 CFR Part 209

### Administrative Procedure; Removal of Wrecks and Other Obstructions

**AGENCY:** Army Corps of Engineers, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** U.S. Army Corps of Engineers (USACE) proposes to amend its regulations governing removal of wrecks and other obstructions. These proposed amendments are made to reflect recent legislative changes and to reflect current USACE policy and procedures regarding removal of wrecks and other obstructions.

**DATE:** Comments must be received by July 31, 1987.

**ADDRESSES:** Comments should be submitted to USACE, DAEN-CWO-M, Washington, DC 20314-1000. Comments will be available for examination at Room 6238, Casamir Pulaski Building, U.S. Army Corps of Engineers Headquarters, 20 Massachusetts Avenue NW., Washington, DC 20314-1000, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** LCDR Thomas Purtell or Mr. Harold Tohlen at (202) 272-0281.

**SUPPLEMENTARY INFORMATION:** Regulations which establish the policy and procedure to be used by the Corps of Engineers in removal of wrecks and other obstructions to navigation are promulgated in 33 CFR 209.170 and 209.190. These proposed amendments are made to these sections to reflect legislative changes to sections 15, 19 and 20 of the Rivers and Harbors Act of 1899 as implemented by section 939 of the Water Resources Development Act of 1986 (Pub. L. 99-662). In addition, these proposed amendments are made to reflect current USACE policy and procedures as enhanced by the Memorandum of Agreement between the Department of the Army and the U.S. Coast Guard, Subject: Coast Guard and Department of the Army Responses to Marking and Removal of Sunken Vessels and Other Obstructions to Navigation, signed in October 1985.

#### Statutory Authority

Section 939 of the Water Resources Development Act of 1986 (Pub. L. 99-662) amends sections 15, 19 and 20 of the Rivers and Harbors Act of 1899 (33 U.S.C. 409, 414 and 415). Amendment of section 15 removes the worlds "voluntarily or carelessly" and "accidentally or otherwise" from all descriptions of sinking, and adds the words," lessee, or operator" immediately after the word "owner" in each palce it appears. These changes expand application of this section of the law to all sinkings, without need for prerequisite determination of cause. The changes also expand responsibility for sunken craft to include the lessee or operator in addition to the owner. Sections 19 and 20 are amended to reflect owner, lessee, or operator liability to the United States for the cost of removal, or destruction and disposal of wrecks or other obstructions which exceeds the value of such craft and cargo.

#### Background

In October 1985, the Department of the Army and the U.S. Coast Guard entered into a Memorandum of Agreement (MOA) concerning marking and removal of sunken vessels and other obstructions to navigation. Copies of this document are available for examination at the location specified in **ADDRESS**. This MOA was encouraged by two recommendations (M-78-53 and 54) of the National Transportation Safety Board (NTSB) in its investigation of the M/V DAUNTLESS COLOCOTRONIS grounding (NTSB-MAR-78-5). The proposed amendments to 33 CFR 209.190 include provisions of the MOA in Corps of Engineers policy and procedure. These proposed amendments also implement aspects of NTSB recommendations by providing the definition of "hazard to navigation" and by clarifying the procedure used by the Corps of Engineers to annually coordinate information with the Coast Guard concerning wrecks that continue to pose a hazard to navigation.

**Note:** 1. This regulation is not a major rule within the meaning of E.O. 12291 requiring preparation of a regulatory impact analysis because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices.

2. Pursuant to 5 U.S.C. 605(b) I hereby certify that this regulation will not have a significant impact on a substantial number of entities.

3. The term "he" and its derivatives used in these regulations are generic and should be considered as applying to both male and female.

#### List of Subjects in 33 CFR Part 209

Accidents, Administrative practice and procedure, Intergovernmental relations, Law enforcement, Navigation (water), Reporting and record keeping requirements, Waterways.

**John O. Roach II,**

*Army Liaison Officer with the Federal Register.*

Accordingly, 33 CFR Part 209 is amended as follows:

## PART 209—ADMINISTRATIVE PROCEDURE

1. The authority citation for Part 209 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 33 U.S.C. 1, 3, 403, 407, 409, 410, 412, 413, 414, 415, 417, 499, 628, 646, 661, 709, 1323, 1413, 10 U.S.C. 3012, 14 U.S.C. 86, 16 U.S.C. 472 a et seq., 16 U.S.C. 470, 661-666(c), 760(c), 760(g), 797(e), 1456, 42 U.S.C. 4321-4347, 43 U.S.C. 1333(e), Pub. L. 78-534, Pub. L. 79-526, Pub. L. 85-480, Pub. L. 90-483, Pub. L. 91-611, Pub. L. 92-405, Pub. L. 92-532, Pub. L. 93-153, Pub. L. 93-205, Pub. L. 95-91, Pub. L. 99-662.

2. Section 209.170 is amended by revising paragraph (a) to read as follows:

**§ 209.170 Violations of laws protecting navigable waters.**

(a) *Wrecks and similar obstructions.* Section 15 of the Rivers and Harbors Act of 1899 (30 Stat. 1152; 33 U.S.C. 408), makes it unlawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft, or to permit or cause to be sunk, vessels or other craft in navigable channels, or to float loose timber and logs or sack rafts of timber and logs in streams or channels actually navigated by steamboats in such a manner as to obstruct, impede, or endanger navigation (an Act of Congress approved May 9, 1900, 31 Stat. 172; 33 U.S.C. 410, authorized the Secretary of the Army to prescribe regulations to govern the floating of loose timber and logs and sack rafts and other methods of navigation on any navigable river or waterway of the United States or any part thereof whereon the floating of

loose timber and logs and sack rafts is the principal method of navigation). Whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, it is the duty of the owner, lessee or operator to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned. He, or others, may be found guilty of a misdemeanor and punished by fine, imprisonment, or both, and in addition may have licenses revoked or suspended. He, or others, may also be compelled to remove the wreck as a public nuisance or to pay for its removal.

* * * * *

3. Section 209.190 is revised to read as follows:

**§ 209.190 Removal of wrecks and other obstructions.**

(a) *Purpose.* This regulation prescribes the policy and procedure to be used by district/division commanders to ensure that the impacts of obstructions to navigation are minimized.

(b) *Applicability.* This regulation applies to all HQUSACE/OCE elements and all field operating activities having jurisdiction over navigable waters of the United States as defined by § 2.05–25 of this title.

(c) *Definitions—Abandonment.* The act of surrendering all rights to a vessel, cargo, or both by its owner or owners should vessel and cargo be separately owned. For the purposes of this regulation, abandonment means the determination by the Corps of Engineers that the United States may remove a wreck or other obstruction to navigation without incurring financial liability to its owner(s) for the vessel or its cargo.

*Hazards to navigation.* An obstruction, usually sunken, that presents sufficient danger to navigation so as to require expeditious, affirmative action such as marking, removal, or redefinition of a designated waterway to provide for navigational safety.

*Obstruction.* Anything that restricts, endangers, or interferes with navigation. Obstructions can be authorized man-made structures such as bridges, pierheads, offshore towers, etc., or unexpected interferences which must be assessed as to their effect on navigation.

(d) *General.* (1) It is the policy of the U.S. Army Corps of Engineers to provide safe navigation to the maritime community by prompt and decisive action in marking and removal of obstructions determined to be hazards to navigation.

(2) Vessel owners, lessees, operators, masters, and others having any knowledge of wrecks or other obstructions to navigation should be encouraged to report the location of such hazards promptly to the district commander.

(3) Marking and removal of obstructions and dissemination of information shall be considered on a case-by-case basis.

(4) The Corps of Engineers has limited resources to remove sunken vessels. Where removal of hazards to navigation is determined to be warranted, and an emergency does not exist, district commanders shall vigorously pursue removal by owners, lessees, or operators. This pursuit may include actions described in paragraph (e)(4) of this section. When such efforts are unsuccessful within a reasonable time as determined by the district commander, removal shall be in accordance with paragraph (k) or (l) of this section.

(e) *Procedure.* (1) Removal of obstructions to navigation by the Federal Government shall be given the following priority:

(i) Those located within navigation channels, shipping lanes, or endangering structures that facilitate navigation,

(ii) Those outside of navigation channels or shipping lanes that have reasonable potential to move into navigation channels or shipping lanes, or to endanger structures that facilitate navigation and

(iii) Those located outside of navigation channels or shipping lanes.

(2) Priority three removals demand strong justification. A thorough analysis of historical flows or currents and the density and type of traffic in the areas must demonstrate that a reasonable potential exists for the obstruction to be hazardous to navigation.

(3) Removal of obstructions will not normally be considered when: The obstruction only affects the approaches to private wharves or canals in general, public navigation is not affected; the obstruction affects only light recreation traffic; the obstruction is merely aesthetically displeasing. In all situations, owners, lessees, or operators are responsible for marking and removal of sunken vessels from the navigable waters of the United States.

(4) When a sinking occurs and the owner, lessee, or operator does not pursue removal, the preferred course of action is to seek a judgment by the court requiring the owner, lessee, or operator to accomplish removal. If the district commander determines there are extenuating circumstances, removal may be pursued in accordance with paragraph (k) of this section.

(f) *Required actions.* Upon receiving reports of sunken vessels or other obstructions, district commanders shall promptly assess the impact upon navigation of each reported obstruction and expeditiously identify appropriate corrective action; decide if an obstruction is a hazard to navigation, and take appropriate corrective action(s) to reduce the danger to navigation to an acceptable level; investigate the incident and notify the owner, lessee, or operator to mark and remove the obstruction in accordance with section 15 of the Rivers and Harbors Act of 1899 (33 U.S.C. 409). This notification is an exercise of Federal responsibility and does not change exisitng authorities of either the Corps or the Coast Guard. An information copy of the mark and remove notification may be additionally sent to whomever may be a responsible party for the obstruction.

(g) *Guidance.* (1) District commanders shall consider the following options in formulating appropriate action(s) in response to obstructions to navigation.

(i) No action.

(ii) Charting.

(iii) Broadcasting and publication of navigational safety information.

(iv) Marking.

(v) Redefinition of navigational area, e.g., channel fairway anchorage, etc.

(vi) Removal.

(vii) Some combination of these options.

(2) District commanders shall consider the following factors (not to be taken as all inclusive) in determining if a sunken vessel or other obstruction is a hazard to navigation and in determining the course of action(s) appropriate to increase safety to an acceptable level.

(i) The degree to which the obstruction restricts, endangers, or interferes with the navigability of a body of water considering location with respect to navigational traffic patterns, navigational difficulty at the site of the obstruction, clearance or depth of water over obstruction, fluctuation of water level and other hydraulic characteristics.

(ii) Physical characteristics of the obstruction, including cargo (if any exists).

(iii) Possible movement of the obstruction.

(iv) Marine activity in the vicinity of the obstruction considering the type and density of commercial and recreational vessel traffic, and trends of waterway use.

(v) Location of obstruction with respect to existing aids to navigation.

(vi) Prevailing and historical weather conditions.

(vii) Length of time the obstruction has been in existence.

(viii) History of vessel accidents involving the obstruction.

(h) *Abandonment of vessels and cargoes.* (1) Permit requirements under section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act do not normally apply to simple abandonment of wrecked or sunken vessels.

(2) Every precaution should be taken in cases involving wrecked or sunken vessels to insure that the rights of the United States under 33 U.S.C. 409 are not prejudiced by acceptance of abandonment when tendered by owners, lessees, operators, or underwriters of vessels. Under no circumstances will acceptance of abandonment be indicated because this acceptance might make the Government liable for damages caused by the vessel or cargo. If a letter of abandonment is received, receipt of the letter should be merely acknowledged and a statement included in the reply as follows: "This acknowledgment should in no way be construed as acceptance by the United States of an abandonment of such vessel, nor as waiver of any right to enforce liability for any damage caused by its sinking or cost of removal."

(3) Abandonment may be established by one of the following methods:

(i) An affirmative act by the owner, lessee, or operator of the vessel or cargo demonstrating no intention of taking further action or asserting claims on the vessel or cargo. Where an owner, lessee, or operator refuses to tender abandonment, or to remove the vessel, the lapse of a reasonable time as determined by district commander shall establish abandonment.

(ii) Lack of response by the vessel or cargo owner, lessee, or operator to a legal advertisement requiring removal that is published by the district commander.

(iii) In any event, an appropriate lapse of time (6 months) with no apparent action or interest in the vessel demonstrated by owner, lessee, or operator shall establish abandonment.

(4) Once the decision for removal by the Corps under section 19 of the Rivers and Harbors Act of 1899 (33 U.S.C. 414) has been made, abandonment shall be established as expeditiously as possible. When a notice of abandonment has not been received from owners, lessees, operators, or underwriters, or ownership cannot be established, the district commander shall establish abandonment by inserting a legal advertisement in a newspaper nearest the locality of the hazard to navigation and in a newspaper of at least 25,000 circulation. The advertisement shall be published at least once a week for 30 days, addressed "To Whom It May Concern" and shall require the removal of the sunken vessel by the owner, lessee, or operator. Abandonment is established if the legal advertisement has failed to draw any response for 30 days after the date first published.

(5) When ownership of cargo aboard a sunken vessel is uncertain or cannot be established, abandonment of the cargo shall be established separately in the same manner as abandonment of sunken vessels.

(i) *Marking of hazards to navigation.* (1) In every case where a vessel, raft, or other craft is wrecked or sunk in a navigable waterway, it is the responsibility of the owner, lessee, or operator to mark it immediately. A buoy or beacon should be used during the day. A lighted lantern is required at night. These marks must be maintained until the sunken craft is removed or abandoned. Owners, lessees, or operators should inform the U.S. Coast Guard and U.S. Army Corps of Engineers districts of intention and/or establishment of markings on wrecks or other obstructions. Guidance regarding specific marking requirements is available from the U.S. Coast Guard, District Commander.

(2) In the event that the owner, lessee, or operator cannot be identified, refuses to mark the obstruction, or is otherwise unable to properly mark it, the district commander shall advise the Coast Guard as soon as practicable that an obstruction requires marking. The district commander will also notify the Coast Guard when removal operations have been completed. Coast Guard regulations concerning marking of wrecks may be found in Part 64 of this title.

(3) When necessary, the Department of the Army will assist the Coast Guard in locating and marking hazards to navigation.

(4) Marking of an obstruction determined to be a hazard to navigation does not, by itself, remove the "hazard to navigation" status of the obstruction; however, under some circumstances it can be an acceptable alternative to other corrective actions.

(j) *Removal of Hazards to Navigation by Owners, Lessees, or Operators.* If an owner, lessee, or operator decides to remove a hazard to navigation in a timely manner or if given the opportunity to remove a hazard under emergency conditions and acts promptly to remove such hazard, district commanders shall insure that marking of the hazard to navigation is accomplished promptly and maintained diligently; removal operations are pursued in a diligent manner; removal operations do not unreasonably interfere with navigation; the plan for removal and disposal of the hazard to navigation is acceptable to the district commander. If the owner, lessee, or operator fails to comply with the requirements of this paragraph, the district commander may pursue removal in accordance with provisions of paragraph (k) or (l) this section.

(k) *Removal of hazards to navigation by the Corps of Engineers under section 19 of the Rivers and Harbors Act of 1899 (33 U.S.C. 414).* (1) District commanders may take action under this authority without prior approval of the Chief of Engineers provided that:

(i) The decision is documented in accordance with paragraph (m) of this section.

(ii) The cost of removal does not exceed $100,000 per incident.

(iii) The hazard to navigation is located in or contigiuous to a navigation channel, shipping lane, or endangers a structure that facilitates navigation.

(iv) All reasonable efforts to require the owner, lessee, or operator to remove the hazard to navigation in a timely manner have been exhausted.

(v) The owner, lessee, or operator is advised by certified mail that the hazard to navigation will be removed by the Corps of Engineers with the reservation of all rights of the United States to recover from the owner, lessee, or operator all expenses of removal.

(vi) Abandonment of vessel and/or cargo has been established in accordance with paragraph (h) of this section.

(viii) Removal under the authorities stated in Parts 114 or 153 of this title is not appropriate.

(2) Removal by the Government shall begin as soon as possible after abandonment has been established. Where removal will be performed by a contractor, at least 10 days shall be allowed for advertisement for bids for the removal of the vessel.

(3) District commanders shall forward a recommendation for removal to DAEN-CWO-M for approval if any of the conditions of paragraph (k)(l) of this section cannot be met. Recommendations shal not be qualified, i.e., contingent upon an owner's failure to remove a vessel. The basis for the recommendation shall be documented in accordance with paragraph (m) of this section.

(4) Once the decision for removal has been made and abandonment has been

established, the owner, lessee, or operator shall not be allowed to remove the vessel. Removal shall be accomplished expeditiously.

(l) *Removal of hazards to navigation by the Corps of Engineers under section 20 of the Rivers and Harbors Act of 1899 (33 U.S.C. 415).* (1) District commanders may take action under this authority without prior approval of the Chief of Engineers provided that the hazard to navigation impedes or stops navigation or poses an immediate and significant threat to life, property, or a structure that facilitates navigation; the decision is documented in accordance with paragraph (m) of this section; the cost of removal does not exceed $100,000 per incident; and the owner, lessee, or operator is advised promptly, in writing that the hazard to navigation will be removed by the United States with the reservation of all rights of the United States to recover from the owner, lessee, or operator all expenses or removal. It is not necessary that such notice by given prior to initiating removal, however, advance notice and/or the opportunity to remove the hazard may be given to the owner, lessee, or operator at the discretion of the district commander.

(2) District commanders shall forward a recommendation for removal by the Corps to DAEN-CWO-M for approval if any of the conditions of paragraph (l)(1) cannot be met. The basis for the recommendation shall be documented in accordance with paragraph (m) of this section. In case of emergency, advance oral request for approval may precede written recommendation.

(3) Removal by the United States without formal abandonment involves the taking of private property for public purposes, the provisions of laws applicable to the particular case must be strictly followed.

(m) *Documentation.* (1) District commanders may officially delegate the authority to make the "hazard to navigation" decision.

(2) Recommendations and decisions concerning marking and removal of hazards to navigation and discussions with the Coast Guard concerning such decisions and recommendations shall be prepared as follows.

(i) Summarize discussions with the Coast Guard and state the decisions reached by both agencies. If there is disagreement, enclose a detailed report identifying the differences with the Coast Guard. (This documentation is not required if removal is proposed or taken under section 20 of the Rivers and Harbors Act of 1899).

(ii) If removal by the Corps is the recommended or chosen course of action, provide the following information: Authority to be used, method of removal (Government hired labor, contract, or a combination of both), estimate of total cost to the Government with appropriate itemization, schedule for performing the work, the location of obstructions or hazards to navigation shall be shown on a map such as a navigation or nautical chart that identifies pertinent features of the waterway, rationale for district commander's decision or recommendation including a discussion of all factors listed in paragraph (g)(2) of this section (a copy of decision report should be forwarded to the U.S. Coast Guard District, Chief, Operations Division).

(3) If Chief of Engineers approval is required, documentation shall also be submitted in accordance with paragraphs (l) and (m) of this section. If Chief of Engineers approval is not required, documentation shall be retained at the district.

(n) *Funding procedures.* (1) Costs for removal of hazards to navigation not requiring approval of the Chief of Engineers shall be initially charged to the Revolving Fund. When costing of expenses associated with the removal are completed, a request for reimbursement funds from O&M General shall be submitted immediately to DAEN–CWO–M. A copy of the decision document (paragraph (m) of this section) shall be submitted with the request for reimbursement.

(2) Costs for removal of hazards to navigation approved by the Chief of Engineers will be funded at the time of approval. Upon completion of removal operations for which funds have been allotted, any remaining balance shall be promptly submitted for revocation.

(3) Funds recovered from owners, lessees, or operators for Government expenses incurred in removing hazards to navigation shall be forwarded to the Treasurer of the United States through DAEN–CWO–M for crediting to the O&M General Account.

(o) *Reports.* (1) Whenever an obstruction disrupts navigation or endangers a structure that facilitates navigation, report the incident by telephone to DAEN–CWO–M as soon as possible during normal business working hours unless the situation warrants Emergency Operation communication procedures. This is to advise the Chief of Engineers and his staff of disruptions to navigation in a timely manner. (Information reported will be integrated into Situation Reports required by ER 500–1–1 at the HQUSACE/OCE level unless alternate instructions are given by DAEN–CWO–M. When off duty reporting is warranted, Emergency Operation Communication procedures should be utilized). Accordingly, consultation with the Coast Guard is not necessary to initiate such reports. Subsequent telephone reports shall be made as necessary to keep the Chief of Engineers and his staff advised of actions taken by all parties involved. Reports shall be timely, concise, and as comprehensive as possible. (RCS DAEN–CWO–65 applies).

(2) *Action summary.* A summary of all incidents resulting in obstructions shall be maintained by the district commanders. This summary shall be periodically reviewed and updated (not less than annually) in coordination with the U.S. Coast Guard. The action summary shall provide, at least, the following information:

(i) Identification number or name of obstruction, waterway, district.

(ii) Date and description of incident (enclose Coast Guard investigation report, if available).

(iii) Location and description of obstruction.

(iv) Documentation of decisions concerning hazard to navigation.

(v) Owners, lessees, and operators names, addresses, and phone numbers.

(vi) Summary of actions taken by owner, lessee, operator, Coast Guard, and Corps of Engineers.

(vii) A location map showing the obstruction location, date, and method of locating. (RCS–CONG 1006)

(p) *Memorandum of Agreement.* (1) In October 1985, the Corps of Engineers and the Coast Guard signed a Memorandum of Agreement (MOA), Subject: Coast Guard and Department of the Army Responses to Marking and Removal of Sunken Vessels and Other Obstructions to Navigation.

(2) District commanders shall assure that the procedures set forth in the MOA are followed for all obstructions that occur on or after January 16, 1986.

(3) District commanders, in coordination with local Coast Guard districts, shall develop procedures to implement provisions of the MOA.

[FR Doc. 87-14521 Filed 6-26-87; 8:45 am]

BILLING CODE 3710-92-M

## DEPARTMENT OF EDUCATION

### Office of Elementary and Secondary Education

### 34 CFR Part 222

### Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

**AGENCY:** Department of Education.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On May 1, 1987, the Department of Education published in the **Federal Register** a notice of proposed rulemaking (NPRM) related to sections 2, 3, and 4 of Pub. L. 81-874, the Impact Aid Program, which provided a comment period ending June 15, 1987 (52 FR 16144-16155). In response to a number of commenters, the Secretary, on June 12, 1987, extended the comment period for the provisions of Subpart J of the NPRM, relating to section 2, to July 15, 1987 (52 FR 22501, 23137).

In response to numerous additional requests, the Secretary now extends the comment period for all provisions of the NPRM to July 15, 1987. The Secretary also gives notice that, when published in final form, the provisions of this NPRM will become effective starting with fiscal year 1988.

**DATE:** The comment period for all provisions of the May 1, 1987, NPRM (52 FR 16144-16155) is extended until July 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Dr. David G. Phillips, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-6272. Telephone (202) 732-4052.

Dated: June 25, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87-14791 Filed 6-26-87; 8:45 am]

BILLING CODE 4000-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 261, 271, and 302

**[FRL-3223-8]**

### Hazardous Waste Management System; Identification and Listing of Hazardous Waste Notification Requirements Reportable Quantity Adjustments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Supplemental Notice of Proposed Rulemaking; Extension of comment period.

**SUMMARY:** The purpose of this notice is to extend the public comment period on the Agency's May 18, 1987 supplemental notice to proposed rulemaking (52 FR 18583) which requested comment on the validity of applying the proposed toxicity characteristic to wastes, including wastewaters, likely to be managed in surface impoundments. The Agency will accept comment until August 16, 1987 solely on the issues raised in the May 18, 1987 notice.

EPA received several requests for an extension of the comment period. The basis of these requests was that more time was needed to adequately respond to the complex, technical issues. Therefore, to ensure that commenters have adequate time to prepare their comments, we are taking this opportunity to lengthen the comment period by 45 days, from July 2 to August 16, 1987.

**DATES:** The deadline for submitting written comments on the May 18, 1987 notice is extended from July 2, 1987 to August 16, 1987.

**ADDRESSES:** One original and three copies of all comments, identified by the docket number F-8-7-TCN-FFFFF should be sent to the following address: EPA RCRA Docket (S-212), U.S. Environmental Protection Agency (WH-562), 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** For general information contact the RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 toll-free or (202) 382-3000.

For information on specific aspects of this proposed rule contact: Doreen Sterling, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-6775.

Dated: June 23, 1987.

**J.W. McGraw,**

*Acting Assistant Administrator for Solid Waste and Emergency Response.*

[FR Doc. 87-14668 Filed 6-26-87; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### 43 CFR Part 29

### Trans-Alaska Pipeline Liability Fund

**AGENCY:** Department of Interior, Office of the Secretary.

**ACTION:** Petition for rulemaking and proposed rule.

**SUMMARY:** In response to a petition from the Trans-Alaska Pipeline Liability Fund (Fund), the Department proposes to amend the regulations for supervision and administration of the Fund provided for by section 204(c) of the Trans-Alaska Pipeline Authorization Act. The proposed amendments would eliminate inconsistencies between the existing regulations and the Act, clarify confusion language and delete unnecessary provisions.

**DATE:** Comments on these proposed rules must be received on or before August 28, 1987.

**ADDRESS:** Comments should be sent to the Office of Environmental Project Review, Room 4256, Department of the Interior, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Bruce Blanchard, Office of Environmental Project Review, Room 4256, Department of the Interior, Washington, DC 20240, telephone (202) 343-3891.

**SUPPLEMENTARY INFORMATION:** The Department received a Petition for Rulemaking from the Trans-Alaska Pipeline Liability Fund (Fund) on September 29, 1986. The petition is published in its entirety following the list of Subjects.

The Department agrees that the changes to 43 CFR Part 29 requested in the petition for rulemaking should go forward as proposal rules. For the most part, the commentary provided by the Fund in its petition sufficiently explains the need for the changes. However, in several instances the Department feels additional explanation would help clarify the need for the changes and the Department's views as to the necessity of the proposed changes.

1.43 CFR 29.1(d)(7) (renumbered as § 29.1(e)(7) in the proposed rules). This

proposed would delete loss of tax revenue as a specifically enumerated type of damage. The Department agrees with this proposal, because the current provision could be read as making loss of tax revenue an element of damages without a requirement to show proximate cause. Thus, by proposing the deletion of this section, the Department is not attempting to exclude loss of tax revenue as an element of damages; it merely would require that such damages be properly proved. Accordingly, in this instance, the Department disagrees with the rationale for the proposed change provided by the Fund in its commentary.

2. 43 CFR 29.8. This proposal would revise the notification process to be followed when an incident occurs, and would also change advertising procedures. The Department has no objection to proposing this amendment, and is doing so, but will communicate directly with the Environmental Protection Agency and the Coast Guard to obtain their views.

3. 43 CFR 29.9. This proposal would amend substantially the provisions dealing with claims processing. The Department is proposing this amendment, and is particularly interested in public comment on this proposal.

**Executive Order 12291 and the Regulatory Flexibility Act**

The Department of the Interior has determined that this document is not a major rule under E.O. 12291. The geographic impact of an oil spill is localized to that area of the coast where the spill occurs, and the impact of an oil spill could affect only those small entities located at or near the spill, out of the total universe of small entities along the coast of Alaska and the Western coast of the "lower 48" states. Accordingly, the Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

**Paperwork Reduction Act**

The information collection requirements contained in amended 43 CFR 29.9 have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of information according to the amended section will not be required until it has been approved by the Office of Management and Budget.

**Environmental Effects**

These proposed rules are categorically excluded from the National Environmental Protection Act (NEPA) process because they are of an administrative, financial, legal, technical and procedural nature, and therefore neither an environmental assessment nor an environmental impact statement is required. 40 CFR 1508.4; 516 DM 2.3A.

**Drafting Information**

The petition that follows was prepared by the Trans Alaska Pipeline Fund and its counsel. The Department's determinations on whether to accept the Fund's proposals and issue them as proposed rules were made by Robert H. Moll and Timothy S. Elliott of the Office of the Solicitor, in consultation with Bruce Blanchard, Director, Office of Environmental Project Review.

**List of Subjects in 43 CFR Part 29**

Alaska, Oil pollution, Pipelines.

These proposed rules are issued under the authority of sections 204(c) of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653(c)(4), and sections 311(p)(1) and 311(p)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(p) (1), (2).

Dated: May 19, 1987.

**Joseph W. Gorrell,**

*Principal Deputy Assistant Secretary—Policy, Budget and Administration.*

**Petition for Proposed Rulemaking to Amend 43 CFR Part 9, Trans-Alaska Liability Fund**

The Trans-Alaska Pipeline Liability Fund (Fund) hereby petitions the Secretary of the Interior (Secretary) for the adoption of certain amendments to 43 CFR Part 29. The Fund is a corporation created by section 204(c) of the Trans-Alaska Pipeline Authorization Act, enacted November 16, 1973 (Act). 43 U.S.C. 1653(c)(4)(1976). The purposes of the Fund is to pay for certain extraordinary damages—damages in excess of $14 million—caused by a vessel's discharge of oil being transported from the terminal facilities of the Trans-Alaska Pipeline System (TAPS) to other ports under the jurisdiction of the United States, where such oil (TAPS oil) has been shipped through TAPS. The Fund is financed through fees collected by the Fund from the owners of oil shipped from the TAPS marine terminal at Valdez, Alaska. The Fund is administered by a Board of Trustees designated by the holders of the right-of-way for the Trans-Alaska Pipeline System and is subject to regulations prescribed by the Secretary of the Interior.

The Fund was created as a secondary source of payment of damage claims resulting from an oil spill from a vessel transporting TAPS oil. The owner or operator of the vessel at the time of the spill is strictly liable for the first $14 million in damages and it has no limit on its liability if it were negligent. When the cause of the spill is something other than the negligence of the owner/operator, the Fund is strictly liable for damages over $14 million but not exceeding $100 million for any one incident.

On June 23, 1977 (42 FR 31789), as amended June 27, 1978 (43 FR 27840) and January 4, 1980 (45 FR 1026), the Department of Interior promulgated regulations concerning the administration of the Trans-Alaska Pipeline Liability Fund. 43 CFR Part 29. These regulations were promulgated pursuant to the Act. Over the Fund's 8 years of existence, two spills have required the Fund's compliance with all of the Notification, Advertisement and Claims procedure. As a result of the Fund's experience arising from these incidents, some provisions in the present regulations have proven to be unnecessary and inefficient. Other provisions require the Fund to act inconsistently with the enabling statute. Therefore, the Fund requests that the Department revise the regulations to resolve these inconsistencies, to simplify the administration of the Fund, and to clarify the Fund's purpose and role in the Congressional scheme to assure compensation to parties injured as a result of a spill of TAPS oil.

The parts of each section in which changes are requested are set out below with the new language underlined. In the case of new subsection numbers caused by insertions, the former subsection is listed in brackets.

**Proposed Changes to Part 29—Trans-Alaska Pipeline Liability Fund**

*Section 29.1 Definitions*

As used in this part:

* * * * *

(c) "Claim" means a demand in writing for *payment for damage allegedly caused by an incident.*

*(d) "Contact person" means a person designated by the owner or operator and identified to the Fund Administrator and the Coast Guard as the official responsible for coordinating with the Fund the resolution of claims filed as a result of a TAPS oil spill.*

(d) Should be changed to (e).

*(e)* (7) [formerly d (7)] should be deleted.

(e) Should be changed to (f).

(f) Should be changed to (g).

*(h)* [formerly g] "Incident" means a discharge of *TAPS oil* from a vessel *which has loaded such oil at the*

*terminal facilities of the Pipeline and which*:

(h) Should be deleted.

(i) "Operator of the pipeline" means *the common agent designated by the Permittees to operate the pipeline.*

(j) "Owner *of the oil*" means the owner of *TAPS oil* at the time that such oil is loaded on a vessel at the terminal facilities of the Pipeline.

(k)(1) "Owner" means, in the case of a vessel, the person owning the vessel carrying *TAPS oil* at the time of an incident and

(k)(2) "Operator" means, in the case of a vessel, the person operating, or chartering by demise, the vessel carrying *TAPS oil* at the time of an incident.

* * * * *

(m) "Person in Charge of the Vessel" means the *individual on board the vessel with the ultimate responsibility for vessel navigation and operations.*

(n) "Permittees" means the holders of the pipeline right-of-way for the Trans-Alaska Pipeline System.

* * * * *

*(q) "TAPS Oil" means oil which was transported through the Trans-Alaska Pipeline and loaded on a vessel at the terminal facilities of the Pipeline.*

(q) Should be changed to (r).

(r) Should be changed to (s).

(s) Should be changed to (t).

(u) [formerly t] "Vessel" means any type of water-craft or other artificial contrivance, used or capable of being used as a means of transportation on water, which is engaged in any segment of transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States, and which is carrying *TAPS oil.*

*Comment:* Changes to § 29.1 (j), (m) and (q) are intended to sharpen the definitions and the changes in old § 29.1 (k) and new § 29.1 (u) are conforming changes.

Section 29.1 (c) clarifies the term "claim" so as to indicate its status as a potential liability instead of a proven one.

New § 29.1 (d) has been included to define a new aspect of the procedures. Recent experience has shown that the vessel owner or operator may not be aware of the Fund's procedure. To ensure that someone in each company can co-ordinate claims when a spill of TAPS oil occurs, the designation of a contact person has been included within the regulations.

New § 29.1 (h) clarifies those discharges of oil for which the Fund may be liable by incorporating the language of the statute. *See*, section 204(c)(1) of the Act.

Section 29.1 (i) needed to be changed because the Operator of the pipeline does not collect the fee imposed by the Act as the present definition states. The definition now reflects the actual identity of the operator.

Section 29.1 (k) has been revised to clarify the term "owner or operator." In the Act the terms "owner and operator" and "owner or operator" are both used and the regulations use the same term in the appropriate places. In the present regulations only the term "owner or operator" is defined. To avoid the assumption that either the phrase "owner and operator," or the phrase "owner or operator" are terms of art, it is proposed that the word "owner" and the word "operator" be separately defined.

Section 29.1 (n) would avoid naming specifically the holders of the right-of-way. The current list of permittees in the regulations is incorrect. Names of individual permittees may change and there is no necessity for listing specific names in the regulations when the names of the holders of the right-of-way at any time are publicly available.

Newly designated § 29.1 (e)(7) should be deleted; lost tax revenues should not be included as "damages." Loss of tax revenues should not be compensable for two reasons: They would not have been proximately caused by an oil spill, and they would be too speculative to award as damages. *See generally Aldon Industries, Inc. v. Don Myers & Associates, Inc.*, 517 F. 2d 188, 191 (5th Cir. 1975).

*Section 29.2 Creation of the Fund*

(a) The Trans-Alaska Pipeline Liability Fund (Fund) was created by the Act as a non-profit corporation to be administered by the holders of the Trans-Alaska Pipeline right-of-way under regulations prescribed by the Secretary. *The vessel owner and operator are strictly liable for the first $14,000,000 of claims for any one incident. The vessel owner and operator remain liable for claims over that amount whenever* the damages involved were caused by the unseaworthiness of the vessel or by negligence *and should the Fund pay any claims under those circumstances, the Fund retains the right of subrogation. The Fund's maximum liability for any one incident is the amount of the claims over $14,000,000 but not to exceed $100,000,000.*

Section 29.2 (b) and (c) should be deleted.

(b) *The Fund shall be subject to, and shall take all steps necessary to carry out its responsibilities under, the Act and these implementing regulations.*

(c) [formerly d] The right of repeal, alter, or amend these regulations is expressly reserved.

*Comment:* Section 29.2(a) has been expanded upon to set out clearly the statutorily defined role of the Fund. Under 43 U.S.C. 1653(c)(3) the vessel owner and operator are strictly liable for claims up to $14,000,000. the Fund is strictly liable for the balance of claims over $14,000,000 but only up to $100,000,000. Consistent with the legislative design that the Fund not be "precluded from proceeding against the owner or operator of the vessel or other third parties, if either or both were negligent or caused the discharge," 43 U.S.C. 1653(c)(8) provides that the Fund is subrogated to the rights of claimants damaged by the unseaworthiness of a vessel or by any party's negligence. H.R. Rep. No. 624, 93d Cong., 1st Sess. 2. *reprinted in* 1973 U.S. Code Cong. & Ad. News, 2523, 2531. In such cases, the Fund is entitled to reimbursement from the negligent party for any claim paid by the Fund.

Sections 29.2 (b) and (c) now require the Fund to qualify to do business in any state in which it may reasonably be expected "to do business in" and subject the Fund to "the laws and regulations of the states in which it is registered to do business." It is not clear that the Fund is "doing business" in any state. Furthermore, absent that provision in the regulations, it is questionable whether the Fund would have to qualify to do business in any state in which it intended to do so. *See Osborne v. Oklahoma Tax Comm'n*, 279 P.2d 1096, 1097 (Okla. 1954).

The new § 29.2(b) would retain the requirement in the current § 29.2(b) that the Fund take all steps necessary to carry out its responsibilities.

*Section 29.3 Fund Administration*

* * * * *

(c) Should be deleted.

(d) Should be changed to (c).

(e) Should be changed to (d).

(f) Should be changed to (e).

* * * * *

(e)(3) [formerly (f)(3)] The indemnification provided by this section shall continue as to a person who has ceased to be a Board Member or officer *and* shall inure to the benefit of the heirs, executors, and administrators of such a person. The right of indemnification hereinabove provided for shall not be exclusive of any rights to which any Board Member or officer of the Fund may otherwise be entitled by law.

*Comment:* Section 204(c)(4) of the Act provides that the Fund shall be

administered by the holders of the Trans-Alaska Pipeline right-of-way. Section 29.3(c) of the regulations currently provides that a tie vote of the Fund's Boards shall be broken by the member designated by the Secretary with the longest service on the Board. Giving the power to break tie votes to a Board member who does not represent one of the holders of the right-of-way denigrates the statutory authority and responsibility which repose in the holders. The Fund is not a government-owned corporation and should be allowed to determine how tie votes of the Board are to be broken. Normal corporate practice would give that authority to the Chairman of the Board.

Section (f)(3) had the word "and" dropped from the first sentence.

*Section 29.5 Officers and Employees*

(a) The Administrator is the Chief Executive Officer of the Fund and is responsible for carrying out all executive and administrative functions as authorized by the Board of Trustees in accordance with the Act including the receipt and verification of fees collected from Owners of *TAPS oil* pursuant to § 29.6(a), the investment of Fund assets in securities according to guidelines approved by the Board of Trustees *and consistent with these regulations*, and the disbursement of such assets in payment of expenses and approved claims.

* * * * *

*Comment:* Currently, this section of the regulations is confusing as it requires the investment of assets to be in accordance with "guidelines approved by the Board of Trustees and the Secretary." In § 29.11 of the regulations the Secretary has established minimum requirements for Fund investments. Pursuant to those requirements the Board of Trustees has established guidelines to be followed by the investment managers. From time to time the Board has changed the investment guidelines. Because § 29.5(a) might be construed as requiring Secretarial approval of the guidelines each time they are changed, which would be unduly cumbersome and unnecessary in light of the investment criteria in § 29.11 of the regulations, § 29.5(a) should be amended as suggested above, along with a conforming word change and correction of a misspelled word.

*Section 29.6 Financing, Accounting, and Audit*

(a)(1) The Operator of the pipeline shall notify each Permittee within a reasonable time as to the date of the tanker loadings and the volumes of TAPS oil loaded. The Permittee will send an invoice for transportation charges for TAPS oil (which includes five cents per barrel for the Fund) to the owner of the oil. The Permittee will receive the five cents per barrel fee from the owner of the oil in accordance with the terms of its particular pipeline tariff, filed with the appropriate governmental agency, and shall transfer the fee on or before the next business day to a Fund bank account designated by the Administrator. Collection of fees shall cease at the end of the month following the month in which $100,000,000 has been accumulated in the Fund from any source. Collection of fees shall be resumed when the accumulation falls below $100,000,000. The Administrator shall notify the pipeline carriers by the fifteenth of the month *if* fees are to be collected during the following month.

(a)(2) The Value of the Fund shall be the current market value of the Fund on the day at the end of each month or other agreed upon accounting period.

* * * * *

(c) At the end of each month that fees are payable under the Act, or other agreed upon accounting period, the Operator of the pipline shall provide the Fund with a statement of the respective volumes of crude oil transported by the Operator of the pipeline and delivered to vessels, the amount of fees charged and collected, and the Owners of *TAPS oil* from whom such fees were or are due. The Administrator shall provide a copy of the statement to the Owners of the oil, and to the State of Alaska.

* * * * *

(e) The Fund *shall be subject to an annual audit* by the Comptroller General, in coordination with the Administrator and the Secretary. Authorized representatives of the Comptroller General and the Secretary shall have complete access, for purposes of the audit or otherwise, to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and they shall be afforded full facilities for verifying among other things, tranactions with the balances on securities held by depositories, fiscal agents, and custodians. A report of each audit made by the Comptroller General shall be submitted to the Congress.

*Comment:* The change in § 29.6(a)(1) is requested so that the regulations reflect the actual way the fee for the Fund is charged and collected. In addition, the notification requirement should be changed to limit the responsibility of the Administrator to notify pipeline owners only when they will have to collect the fee rather than requiring monthly notification. In addition, the wording in (a)(2) has been modified to eliminate redundancy. Section 29.6(c) has been changed so that the Fund only receives documentation when the fees are actually being collected. Currently, § 29.6(e) requires the Comptroller General to audit the Fund annually. It is questionable whether the Secretary of the Interior may by regulation require the Comptroller General to undertake an annual audit of the Fund when Congress, by providing that the Fund should be subject to such an audit, has left the undertaking of an audit to the discretion of the Comptroller General.

*Section 29.7 Imposition of Strict Liability*

(a) Notwithstanding the provisions of any other law, where a vessel is engaged in any segment of transportation between the terminal facilities of the Pipeline and ports under the jurisdiction of the United States, and is carrying *TAPS oil*, the owner and operator (jointly and severally), and the Fund established by section 204(c) of the Act, shall be strictly liable without regard to fault in accordance with that section for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as a result of any discharge of *TAPS oil* from such vessel. Strict liability under this section shall cease when the *TAPS oil* has first been brought ashore at a port under the jurisdiction of the United States.

(b) Strict liability shall not be imposed under this part if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under the Act with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such damaged party.

(c)(1) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The *owner and operator* of the vessel shall be jointly and severally liable for the first $14,000,000 of *the* claims that meet the definition of damages as provided for in these regulations. The Fund shall be liable for the balance of the claims that meet the same definition up to $100,000,000. If the total of these claims exceeds $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or State law.

(c)(2) *The Fund shall establish uniform procedures to determine whether claims from a TAPS oil spill might exceed $14,000,000 and $100,000,000. These procedures shall provide that when a determination is made that claims may exceed $100,000,000, payment of claims may be withheld in full or in part for a twenty-four month period so that claims may be proportionately reduced prior to payment.*

* * * * *

(d)(2) The certificate obtained in accordance with this subsection shall be carried on board the vessel. No *TAPS oil* may be loaded on any vessel which has not been issued a valid certificate which is still in effect at the time of loading.

*Comment:* Changes to sections (a), (b), and (c)(1) [formerly (c) are in line with changes in the Definition section.

Section 29.7 (c)(2) has been proposed to provide a mechanism to pro rate claims from a spill which total over $100,000,000. At present, the Fund is required to pay out on a claim within 90 days after filing. If total claims exceeded the upper limit, the Fund would obviously be unable to pro rate claims which it had already fully satisfied.

Amendment to § 29.7(d)(2) would remove the language requiring the owner or operator of the vessel to furnish the Fund with a copy of the certificate of financial responsibility. As a practical matter, many vessel owners and operators have been unwilling to supply copies of certificates to the Fund. The Fund cannot enforce this provision and the requirement is unnecessary because, in any event, all vessels must exhibit their certificates to the Valdez terminal operator before oil will be loaded. The business of the Fund is to collect fees from the owners of oil shipped from Valdez, to prudently invest those fees, and to pay allowable claims for which it is liable under the Act. Its business is not to monitor the compliance of vessle owners and operators with the regulations issued by the Secretary of the Interior and the Federal Maritime Commission.

*Section 29.8 Notification and Advertisement [All New]*

(a) Upon discovery of an incident, the Person in Charge of the Vessel shall immediately notify the owner or operator and the Coast Guard. Notification under this section is in addition to any notification requirements under section 311(b)(5) of the Federal Water Pollution Control Act Amendments of 1972 and the regulations of the U.S. Coast Guard promulgated under the Act (33 CFR 153.203).

(b) Upon receiving notice of an incident, the Coast Guard shall immediately notify the Fund.

(c)(1) At the time of a spill of TAPS oil, the vessel owner and operator shall consult with each other and identify a single contact person to both the Fund Administrator and the Coast Guard as the official who is responsible for coordinating with the Fund the resolution of claims from a spill of TAPS oil.

(c)(2) The Fund shall establish procedures for coordination of the handling of claims with the contact persons.

(d) Pursuant to its procedures, the Fund shall ascertain if the spill may result in damage claims in excess of $14,000,000. If it concludes that that level may be reached, the Fund shall commence advertisement no later than 45 days from the date the Fund receives notice of the incident and shall continue advertising for a period of not less than thirty days.

(e) The advertisement must appear in one or more local newspapers of general circulation and the Fund shall establish procedures governing the format and the information to be included in the advertisement of an incident. All advertisements must include:

(1) The date and location of the incident;

(2) The name of the owner or operator;

(3) The name and address of the contact person or of the Fund Administrator to whom claims should be sent.

*Comment:* As a result of the recent spills, procedural problems with the Fund's regulations came to light. These proposed regulations are a result of hands-on experience with notification and advertisement.

The current notification and advertisement provision in the regulations has caused confusion among vessel owners and operators. Under the current procedures, when a vessel owner or operator notifies the Fund that oil has been discharged from a vessel carrying TAPS oil, the Fund then notifies the owner or operator that it has discharged oil. Because the TAPS Fund is notified of spills of TAPS oil by the National Response Center, the person in charge of a vessel should be able to satisfy the requirements of the Federal Water Pollution Control Act and the TAPS Act with one telephone call, and the regulations should be amended to so provide. Under the revised regulations, the person in charge of the vessel will also notify the owner or operator so that the owner and operator can quickly consult with each other and designate a single contact person.

The procedures set forth in the proposed amendment therefore are more straightforward. The person in charge of a vessel notifies the Fund of an oil spill through the National Response Center of the U.S. Coast Guard. If it appears that the oil spill will result in damages for which the Fund is liable—damages in excess of $14,000,000—the Fund advertises the spill and the procedures by which claims may be presented to the contact person and the Fund.

The time for placing advertisements has been changed from 20 days to 45 days in order to make sure there is adequate time to acquire the necessary information for the advertisement.

*Section 29.9 Claims, Settlement and Adjudication*

* * * * *

(a)(2)(iii) Documentation of all monetary claims asserted.

(b) (1), (2), and (3) Should be deleted.

(c) (1) and (2) Should be deleted.

*(c)* [new] The contact person must provide copies of all claims filed with the vessel owner or operator to the Fund Administrator upon request of the Administrator. Once such claims are paid, the contact person shall notifiy the Fund and upon request of the Administrator supply any adjuster's reports.

(d) Should be deleted.

*(d)* [new] Prior to reaching $14 million in claims filed, the contract person shall notify the Fund whether the vessel owner or operator will assume responsibility to pay damages over the $14 million level.

(e) Should be deleted.

*(e)(1)* [new] In the event the vessel owner or operator refuses to pay claims over the $14 million level, the Fund shall determine if the $14 million in claims already filed meet the definition of damage as established by this section. The Fund shall pay the claims, or portions of claims, over $14 million, which have been determined to meet that definition.

(e)(2) The Fund shall establish uniform procedures and standards for the appraisal and settlement of claims against the Fund, including but not limited to procedures for appraising claims made to the vessel owner or operator to determine when $14 million of claims meeting the definition of damages has been reached; procedures to determine whether claims over the $14 million level which it receives meet the definition of damages; procedures for determining when the services of a

private insurance and claims adjuster shall be used.

(f) Should be deleted.

*(f)* [new] In the event the vessel owner and operator refuses payment of any claims up to $14,000,000, the injured parties have recourse to the district court for the federal district in which the spill occurred or the appropriate state court for the state in which the spill occurred. The Fund only becomes liable after $14,000,000 in claims meeting the definition of damages have been paid or have been acknowledged as payable by the vessel owner or operator.

(g) Should be deleted.

*(g)* [new] The Fund may settle or compromise any claim presented to it.

(h) Should be deleted.

*(h)* [formerly i] No claim may be presented, nor any action be commenced, for damages recoverable under this part unless that claim is presented to or that action is commenced against the vessel *owner or operator*, or their guarantor, or against the Funds as to their respective liabilities, within *two* years from the date of discovery of the damages caused by an incident, or of the date of the incident causing the damages, whichever is earlier.

(j) Should be changed to (i).

* * * * *

(i)(2)(ii) Where a claim presented to the Fund has previously been presented to the owner or operator and such owner or operator has a close business, personal or governmental association with any member of the Board of Trustees, such as to create a conflict of interest or the appearance of a conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(k) Should be deleted.

(l) Should be deleted.

Charge (m) to (j).

*Comment:* The Secretary of the Interior has the responsibility under section 204(c)(4) of the TAPs Act to prescribe regulations pertaining to the administration of the Fund. However, the Secretary of the Interior may not on the basis of "policy decisions" shift the liability of the owner and operator of the vessel to the TAPS Fund. Yet, that is how the present language could be so construed. Other infirmities in the current regulations would impose liability upon the Fund regardless of the source of the oil discharge.

To insure that this section comports with the law, the old claims procedure has been revamped. Formerly, the regulations required that claims were to be initially filed with the Fund. Not only does this procedure place an unnecessary extra step in the way of a claimant, the procedure was not followed in the recent incident. Obviously, failure to file with the Fund would have had no effect on the claimants' right to payment. Instead of including this requirement in the regulations, it is proposed that the Fund be given the responsibility to establish procedures that ensure claims are handled expeditiously without regard to what entity first receives the claim. Through these procedures the contact person, will keep the Fund informed of the status of claims. When the $14 million level is approaching, the contact person will notify the Administrator. Section 29.9(d) is not a binding notification, but rather a procedural device to assure speedy process of valid claims by the Fund. Based on its own procedures, the Fund will make payments of claims over $14,000,000.

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## 43 CFR Part 35

## Implementation of the Program Fraud Civil Remedies Act

**AGENCY:** Department of the Interior, Office of the Secretary.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Interior is issuing regulations to implement the Program Fraud Civil Remedies Act of 1986. The regulations will 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 Department of the Interior.

**DATE:** Comments must be received on or before July 29, 1987.

**ADDRESS:** Comments are to be submitted to Associate Solicitor, Division of General Law, Mail Stop 6531, U.S. Department of the Interior, Washington, DC 20240. Comments received, as well as the rulemaking file, will be available for inspection during regular business hours in Room 6522 of the Main Interior Building, 18th and C Streets, NW., Washington, DC, by telephoning the Division of General Law at 343-5216.

**FOR FURTHER INFORMATION CONTACT.** Barbara Abate or John D. Trezise, Office of the Solicitor, (202) 343-5216.

**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 in an amount less than $150,000 or a false statement to the Federal Government may be liable for an administrative civil penalty of not more than $5,000 for each false claim or statement and, in cases where claims have been paid, for an assessment of up to double the amount falsely claimed.

The Act requires each affected Federal agency to promulgate rules and regulations necessary to implement the provisions of the Act. 31 U.S.C. 3809. The Senate Governmental Affairs Committee stated in its report on the Act that it "expects that the regulations would be substantially uniform throughout government." S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985). In keeping with that expression, in November 1986 the President's Council on Integrity and Efficiency (PCIE) requested the Department of Health and Human Services to form a task force to develop model regulations for implementation of the Act by all affected Federal agencies. The task force completed a model set of regulations on March 6, 1987, and the PCIE recommended that all affected Federal agencies adopt them.

The Department of the Interior here proposes to adopt the final model regulations recommended by the PCIE, incorporating, where appropriate, definitions and provisions specific to the Department's organization.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The rule will establish procedures for administrative investigations and adjudications and is not expected to have any direct economic effects.

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

Because this rule is administrative and procedural in nature, it is categorically excluded from the National Environmental Policy Act review process. *See* 516 Departmental Manual 2, Appendix 1.

The author of this rule is Barbara Abate, Division of General Law, Office of the Solicitor.

### List of Subjects in 43 CFR Part 35

Administrative practice and procedure, Fraud, Investigations, Penalties.

For the reasons set forth in the preamble, it is proposed to amend Title 43, Subtitle A of the Code of Federal Regulations to add a new Part 35 as set forth below.

## PART 35—ADMINISTRATIVE REMEDIES FOR FRAUDULENT CLAIMS AND STATEMENTS

Sec.



**Authority:** 15 U.S.C. 301; 31 U.S.C. 3801–3812.

### § 35.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, sections 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

### § 35.2 Definitions.

As used in this part:

(a) *ALJ* means an administrative law judge in the Department of the Interior appointed pursuant to 5 U.S.C. 3105 or detailed to the Department of the Interior pursuant to 5 U.S.C. 3344.

(b) *Benefit* means, except as the context otherwise requires, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(c) *Claim* means any request, demand, or submission—

(1) Made to the Department of the Interior 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 Department of the Interior or to a party to a contract with the Department of the Interior—

(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 Department of the Interior which has the effect of decreasing an obligation to pay or account for property, services, or money.

(d) *Complaint* means the administrative complaint served by the reviewing official on the defendant under § 35.7 of this part.

(e) *Defendant* means any person alleged in a complaint under § 35.7 to be liable for a civil penalty or assessment under § 35.3 of this part.

(f) *Department* means the Department of the Interior.

(g) *Director* means the Director of the Office of Hearings and Appeals, Office of the Secretary, who is the designee of the Secretary of the Interior authorized to consider and decide finally for the Department appeals under this part. The authority delegated to the Director includes the authority to redelegate appellate review authority to an *ad hoc* board of appeals appointed in accordance with 43 CFR 4.1(b)(4). Appeals to the Secretary under this part should be mailed or delivered to the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Documents will be considered filed when received in the Office of the Director.

(h) *Government* means the United States Government.

(i) *Individual* means a natural person.

(j) *Initial decision* means the written decision of the ALJ required by § 35.10 or § 35.37 of this part, and includes a revised initial decision issued following a remand or a motion for reconsideration.

(k) *Investigating official* means the Inspector General of the Department of the Interior or an officer or employee of the Office of Inspector General designated by the Inspector General and serving 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.

(l) *Knows or has reason to know,* means that a person, with respect to a claim or statement—

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

(m) *Makes,* wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context required, "making" or "made," shall likewise include the corresponding forms of such terms.

(n) *Person* means any individual, partnership, corporation, association, private organization, State, Territory, political subdivision of a State or Territory, municipality, county, district, and Indian tribe, and includes the plural of that term.

(o) *Representative* means an attorney, or other representative meeting the

qualifications of a non-attorney representative found at 43 CFR § 1.3 and designated in writing.

(p) *Reviewing official* means the Solicitor of the Department of the Interior or his designated representative, who is:

(1) Not subject to supervision by, or required to report to, the investigating official; and

(2) Is serving 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) *Secretary* means the Secretary of the Interior or his designated representative.

(r) *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 Department of the Interior, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will remiburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

**§ 35.3 Basis for civil penalties and assessments.**

(a) *Claims.* (1) Any person who makes 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 which asserts 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 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, in addition to any other remedy that may be prescribed by law, to 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 to the Department, a recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or Territory, or political subdivision thereof, acting for or on behalf of the Department, recipient, or party.

(4) Each claim for property, services or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Any person who makes 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 the statement has 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, in addition to any other remedy that may be prescribed by law, to 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 to the Department when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or Territory, or political subdivision thereof, acting for or on behalf of the Department.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement, each such person may be held liable for a civil penalty under this section.

(e) 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 (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

**§ 35.4 Investigation.**

(a) If the investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit the investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of the investigating official to report violations of criminal law to the Attorney General.

**§ 35.5 Review by reviewing official.**

(a) If, based on the report of the investigating official under § 35.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 35.3, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 35.7 of this part.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money, or the value of property, services, or other benefits, requested or demanded in violation of § 35.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

**§ 35.6 Prerequisites for issuing a complaint.**

(a) The reviewing official may issue a complaint under § 35.7 of this part only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 35.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money, or the value of property or services, demanded or requested in violation of § 35.3(a) of this part does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

**§ 35.7 Complaint.**

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 35.8 of this part.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

**§ 35.8 Service of complaint.**

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgement of the defendant or his or her representative.

**§ 35.9 Answer.**

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

**§ 35.10 Default upon failure to file an answer.**

(a) If the defendant does not file an answer within the time prescribed in § 35.9(a) of this part, the reviewing official may refer the complaint to the Office of Hearings and Appeals, Hearings Division, Department of the Interior, for assignment to an ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 35.8 of this part, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 35.3 of this part, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 35.38 of this part.

(h) The defendant may appeal the decision denying a motion to reopen by filing a notice of appeal with the Director within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the appeal is decided.

(i) If the defendant files a timely notice of appeal with the Director, the ALJ shall forward the record of the proceeding to the Director.

(j) The Director shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Director decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the Director shall remand the

case to the ALJ with instructions to grant the defendant an opportunity to answer.

(i) If the Director decides that the defendant's failure to file a timely answer is not excused, the Director shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the Director issues such decision.

**§ 35.11 Referral of complaint and answer to the ALJ.**

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the Office of Hearings and Appeals, Hearings Division, Department of the Interior, for assignment to an ALJ. The reviewing official shall include the name, address, and telephone number of a representative for the Government.

**§ 35.12 Notice of hearing.**

(a) When the ALJ receive the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 35.8 of this part. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

**§ 35.13 Parties to the hearing.**

(a) The parties to the hearing shall be the defendant and the Department of the Interior.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

**§ 35.14 Separation of functions.**

(a) The investigating official, the reviewing official, and any employee or agent of the Department who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the Department, including in the offices of either the investigating official or the reviewing official.

**§ 35.15 Ex parte contacts.**

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

**§ 35.16 Disqualification of reviewing officials or ALJ.**

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the Director may determine the matter only as part of the review of the initial decision upon appeal, if any.

**§ 35.17 Rights of parties.**

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issue at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

**§ 35.18 Authority of the ALJ.**

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide case, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to decide upon the validity of Federal statutes or regulations.

**§ 35.19 Pre-hearing conferences.**

(a) The ALJ may schedule pre-hearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one pre-hearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use pre-hearing 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 and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a pre-hearing conference.

**§ 35.20 Disclosure of documents.**

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 35.4(b) of this part are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 35.5 of this part is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 35.9 of this part.

**§ 35.21 Discovery.**

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevent document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 35.22 and 35.23 of this part, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions of discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 35.24 of this part.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery suject to a protective order under § 35.24 of this part.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subponea shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 35.8 of this part.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The part seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

**§ 35.22 Exchange of witness lists, statements and exhibits.**

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 35.33(b) of this part. At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

**§ 35.23 Subpoenas for attendance at hearing.**

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the

witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 35.8 of this part. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

**§ 35.24 Protective order.**

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, or commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

**§ 35.25 Fees.**

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Department, a check for witness fees and mileage need not accompany the subpoena.

**§ 35.26 Form, filing and service of papers.**

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Evey pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

**§ 35.27 Computation of time.**

(a) In computing any period of time under this part or in an order issued thereunder, 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 period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

**§ 35.28 Motions.**

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a pre-hearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

**§ 35.29 Sanctions.**

(a) The ALJ may sanction a person, including any party or representative, for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(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), (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) 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 ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

**§ 35.30 The hearing and burden of proof.**

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 35.3 of this part and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

**§ 35.31 Determining the amount of penalties and assessments.**

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the Director, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigting such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the Director in determing the amount of penalties and assessments to impose with respect to the misconduct (ie., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation.

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct:

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the Director from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

**§ 35.32 Location of hearing.**

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

**§ 35.33 Witnesses.**

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 35.22(a) of this part.

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. The rule does not authorize exclusion of —

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

**§ 35.34 Evidence.**

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 35.24.

**§ 35.35 The record.**

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Director.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 35.24 of this part.

**§ 35.36 Post-hearing briefs.**

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

**§ 35.37 Initial decision.**

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 35.3 of this part;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 35.31 of this part.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all defendants with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Director. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Secretary, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Department and shall be final and binding on the parties 30 days after it is issued by the ALJ.

**§ 35.83 Reconsideration of initial decision.**

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the Department and shall be final and binding on the parties after the ALJ denies the motion, unless the initial decision is timely appealed to the Secretary in accordance with § 35.39 of this part.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Department and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Secretary in accordance with § 35.39 of this part.

**§ 35.39 Appeal to the Secretary of the Interior.**

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Secretary by filing a notice of appeal with the Director in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 35.38 of this part has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The Director may extend the initial 30 day period for an additional 30 days if the defendant files with the Director a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Director, the ALJ shall forward the record of the proceeding to the Director.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Director.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Director shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Director that

additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Director shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The Director may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The Director shall promptly serve each party to the appeal with a copy of the decision of the Secretary and a statement describing the right of any person determined to be liable for a civil penalty or assessment ot seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Director serves the defendant with a copy of the Secretary's decision, a determination that a defendant is liable under § 35.33 of this part is final and is not subject to judicial review.

**§ 35.40 Stays ordered by the Department of Justice.**

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Secretary a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Secretary shall stay the process immediately. The Secretary may order the process resumed only upon receipt of the written authorization of the Attorney General.

**§ 35.41 Stay pending appeal.**

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Secretary.

(b) No administrative stay is available following a final decision of the Secretary.

**§ 35.42 Judicial review.**

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Secretary imposing penalties or assessment under this part and specifies the procedures for such review.

**§ 35.43 Collection of civil penalties and assessments.**

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedure for such actions.

**§ 35.44 Right to administrative offset.**

The amount of any penalty or assessment which has become final, or for which a judgement has been entered under § 35.42 or § 35.43, or any amount agreed upon in a compromise or settlement under § 35.46 of this part, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this section against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

**§ 35.45 Deposit in Treasury of United States.**

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

**§ 35.46 Compromise or settlement.**

(a) Parties may take offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Secretary has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 35.42 or during the pendency of any action to collect penalties and assessments under § 35.43 of this part.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 35.42 of this part or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Secretary, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Secretary, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

**§ 35.47 Limitations.**

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 35.8 of this part within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 35.10(b) of this part shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties

Dated: June 15, 1987.

**Joseph W. Gorrell,**

*Principal Deputy Assistant Secretary, Policy, Budget and Administration.*

[FR Doc. 87-14627 Filed 6-26-87; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Parts 171 through 179

**[Docket HM-200, Advance Notice No. 87-6]**

### Hazardous Materials in Intrastate Commerce; Advance Notice of Proposed Rulemaking

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** This publication invites comments on the need for, and possible consequences of, DOT extending the application of its hazardous material regulations (HMR; 49 CFR Parts 171-179) to all intrastate transportation of hazardous materials in commerce.

**DATE:** Comments must be received by September 28, 1987.

**ADDRESS:** Address comments to: Dockets Unit, Office of Hazardous Materials Transportation (DHM-30), U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8426 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Office hours are 8:30 a.m. to 5:00 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Charlton, Standards Division, Office of Hazardous Materials Transportation, 400 Seventh Street SW., Washington, DC 20590, phone: (202) 366-4488.

**SUPPLEMENTARY INFORMATION:** RSPA is considering whether to extend the application of the HMR to all intrastate transportation in commerce as a means of promoting national uniformity and

transportation safety. At the present time, the HMR generally do not apply to intrastate carriage by highway, with the exception of three types of hazardous materials: Hazardous wastes, hazardous substances, and flammable cryogenic liquids in portable tanks and cargo tanks (see § 171.1(a)). The HMR apply to the intrastate carriage by highway of these three types of hazardous materials, but to no others. The HMR apply to all hazardous materials transported in commerce by railcar, aircraft, and vessel.

Section 103(1) of the Hazardous Materials Transportation Act (HMTA, 49 App. U.S.C. 1801–1811) specifies that

> . . . "commerce" means trade, traffic, commerce, or transportation, within the jurisdiction of the United States, (A) between a place in a State and any place outside such State or (B) which affects trade, traffic, commerce, or transportation described in clause (A); . . .

Section 105(a) of the HMTA (49 U.S.C. 1804(a)) grants the Secretary of Transportation the authority to issue regulations for the safe transportation of hazardous materials in commerce. Plainly, the Secretary has the authority to extend the application of the HMR to cover all intrastate transportation of hazardous materials which affects interstate commerce. Because of the complexity of the U.S. transportation system, such an extension would, in effect, cover all intrastate hazardous materials transportation in commerce.

In the past, DOT has discussed the issue of regulating the intrastate transport of hazardous materials a number of times. In 1976 DOT amended and reissued the HMR under the authority of the HMTA. That rulemaking (Docket HM–134, 41 FR 38175, September 9, 1976) discussed the expansion of DOT's authority under the Act, to allow the regulation of all hazardous materials transportation affecting interstate commerce. The following statement appeared in the preamble of the final rule:

> Clearly, the scope of this new regulatory authority as described by section 103(1) of the HMTA, is broader than that which has been exercised under 18 U.S.C. 831. The Bureau now contemplates exercising this expanded HMTA authority through individual rulemaking proceedings which it would initiate as the need for extending the hazardous materials regulations to particular intrastate situation affecting interstate commerce come [sic] into focus [41 FR 38175, September 9, 1976].

RSPA has initiated rulemakings to exercise its expanded authority as clear needs presented themselves. Under Docket HM–145A, the application of the HMR was extended to the intrastate transportation of hazardous waste materials. The NPRM under that docket (May 25, 1978; 43 FR 22626) stated:

> The HMTA defines "commerce" to include interstate commerce and intrastate transportation that affects interstate commerce (HMTA, section 103(1); see also HM–134, 41 FR 38175, September 9, 1976). The fact that the RCRA [Resource Conservation and Recovery Act] applies to all waste transportation, regardless of whether interstate commerce is directly involved, amounts to a finding that intrastate commerce in hazardous wastes affects interstate commerce. The necessity of assured delivery to a permitted disposal facility, as against possible diversion of shipments to improper disposal sites, requires regulation of intrastate movements. To the generator/shipper, or to the carrier of a hazardous waste, it may not be clear whether a given shipment is being offered for interstate or intrastate transportation, since the accompanying shipping paper may show alternate consignee facilities. This uncertainty also may hamper enforcement efforts, if the proposed DOT amendments restricted their application solely to interstate transportation. In view of this, the proposal herein would apply to both interstate and intrastate transportation of hazardous wastes by all modes.

Subsequent rulemaking actions extended application of the HMR to the intrastate transportation of hazardous substances (May 22, 1980; 45 FR 34560) and flammable cryogenic liquids in portable tanks and cargo tanks (June 16, 1983; 48 FR 27674).

The Office of Technology Assessment (OTA) of the U.S. Congress has published a report entitled "Transportation of Hazardous Materials" (July, 1986). The OTA report suggested that safety would be enhanced by RSPA's applying the HMR to all movements under its jurisdiction. The report specifically mentioned the reporting of hazardous materials incidents and container requirements for hazardous materials as candidates for extension of the requirements to intrastate transportation. It is partially in response to the OTA report that RSPA is publishing this ANPRM.

RSPA agrees that the proposed action may produce safety benefits due to increased uniformity of requirements and to covering activities which up to now have either not been regulated or, if subject to state regulation, have not been regulated in a uniform manner. Examples of areas where safety benefits may result from the proposals in this ANPRM include: The use of DOT specification packagings, the requirements for maintenance and retesting of packagings, and the hazard communication requirements. Packaging and communications are examples where uniformity is important and testing and maintenance where there is little or no state regulatory activity.

On the other hand there may be adverse impacts on businesses (especially small businesses engaged in local distribution), farmers, and consumers. Farmers hauling fertilizer (other than hazardous substances in reportable quantities) for application on their land could come under Federal jurisdiction for the first time. Without knowing the full extent of either the safety benefits or the adverse impacts, RSPA is not able to make an assessment of the overall impact of its proposal and is soliciting comments on any potential impacts which might occur should the ANPRM be adopted as a final rule.

While recent surveys of state requirements indicate that most states have adopted the HMR in whole or in part as state requirements, RSPA does not have complete and specific information on the states that may have special exceptions (such as for private carriage) or have grandfathered certain non-DOT specification packagings (such as cargo tanks). The extent of such exeptions will affect both the benefits and the costs of extending the HMR to intrastate commerce. Commenters are encouraged to address these and other topics as specifically as possible. The inclusion of data on populations affected and costs of compliance would be helpful.

In addition to comments addressed to the aforementioned issues, RSPA requests constructive comments in response to the following questions:

1. Should RSPA extend application of the HMR to all intrastate transportation of hazardous materials?

2. Should RSPA consider exceptions to the application of the HMR to the intrastate transportation of hazardous materials by highway?

3. If RSPA decides to apply the HMR to the intrastate transportation of hazardous materials by highway, what time frame should be allowed for compliance with the new requirements? Should different time frames be allowed for different requirements (e.g., communications vs. packaging, bulk packaging vs. non-bulk)? If so, what should these time frames be?

4. Section 103(5) of the HMTA includes within the definition of "state" the Commonwealth of Puerto Rico, the Virgin Island, American Samoa and Guam. Should any special consideration be given to the implementation of the HMR requirements in these or other jurisdictions if this proposal is adopted?

Issued in Washington, DC on June 22, 1987, under the authority delegated in 49 CFR Part 106, Appendix A.

**Alan I. Roberts,**

*Director, Office of Hazardous Materials Transportation.*

[FR Doc. 87-14541 Filed 6-26-87; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 681

### Western Pacific Spiny Lobster Fisheries, Availability of Amendment to Fishery Management Plan and Request for Comments

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an amendment to a fishery management plan and request for comments.

**SUMMARY:** NOAA issues this notice that the Western Pacific Fishery Management Council has submitted Amendment 5 to the Spiny Lobster Fishery Management Plan of the Western Pacific Region (FMP) for review by the Secretary of Commerce (Secretary) and is requesting comments from the public.

**DATE:** Comments will be accepted through August 22, 1987.

**ADDRESSES:** Send comments to E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment are available on request from the Council at 1164 Bishop Street, Room 1405, Honolulu, HI 96813.

**FOR FURTHER INFORMATION CONTACT:** Kitty Simonds (Executive Director, Western Pacific Fishery Management Council), 808-523-1368.

**SUPPLEMENTARY INFORMATION:** This amendment was prepared under the provisions of the Magnuson Fishery Conservation and Management Act, which requires that the Secretary, upon receiving an FMP or amendment, must immediately publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve this amendment.

This amendment proposes (1) to establish a minimum legal size for slipper lobster, (2) to require escape vent panels in all lobster traps, (3) to require release of any slipper lobster carrying eggs, (4) to revise the daily lobster catch report, (5) to revise permit application forms, (6) to eliminate the annual processor's report, (7) to revise the trip processing and sales report, and (8) to change the name of the FMP. The receipt date for this amendment is June 24, 1987. Proposed regulations will be published within 15 days.

(16 U.S.C. 1801, *et seq.*)

Dated: June 24, 1987.

**Samuel W. McKeen,**

*Director, Office of Management and Budget.*

[FR Doc. 87-14702 Filed 6-24-87; 4:56 pm]

BILLING CODE 3510-22-M

### 50 CFR Part 683

### Western Pacific Bottomfish and Seamount Groundfish Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an amendment to a fishery management plan and request for comments.

**SUMMARY:** NOAA issues this notice that the Western Pacific Fishery Management Council has submitted Amendment 1 for the Fishery Mangement Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP) for review by the Secretary of Commerce (Secretary), and is requesting comments from the public.

**DATE:** Comments will be accepted through August 22, 1987.

**ADDRESSES:** Send comments to E. C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment are available on request from the Council at 1164 Bishop Street, Room 1405, Honolulu, HI 96813.

**FOR FURTHER INFORMATION CONTACT:** Kitty Simonds (Executive Director, Western Pacific Fishery Management Council), 808-523-1368.

**SUPPLEMENTARY INFORMATION:** This amendment was prepared under provisions of the Magnuson Fishery Conservation and Management Act which requires that the Secretary, upon receiving an FMP or amendment, must immediately publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve this amendment.

This amendment proposes measures to limit access to control fishing for bottomfish in the exclusive economic zone surrounding American Samoa and Guam and extends the due date of the Annual Report for the Bottom Fisheries of the Western Region. The receipt date for this amendment is June 34, 1987. Proposed regulations will be published within 15 days.

916 U.S.C. 1801 *et seq.)*

Dated: June 24, 1987.

**Samuel W. McKeen,**

*Director, Office of Management and Budget.*

[FR Doc. 87-14703 Filed 6-24-87; 4:26 pm]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 52, No. 124
Monday, June 29, 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

### National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Time and Place: Hilton Inn of the Ozarks, 3050 No. Kentwood, Springfield, MO 65802.

Status: Open.

Matters To Be Considered: On July 15, beginning at 9 a.m., the Commission will hold a public hearing to receive testimony on the dairy price support program, new dairy technologies, and the influence of the program and technologies on the family farm.

Written Statements May Be Filed Before or After the Meeting With: Contact person named below.

Contact Person for More Information: Mr. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Ave., NW., Suite 1100, Washington, DC 20005, (202) 638–6222.

Signed at Washington, DC, this 23d day of June 1987.

**David R. Dyer,**

*Executive Director, National Commission on Dairy Policy.*

[FR Doc. 87–14617 Filed 6–26–87; 8:45 am]

BILLING CODE 3410–05–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–603]**

### Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Italy

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have determined that tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from Italy are being, or are likely to be, sold in the United States at less than fair value. The International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

**EFFECTIVE DATE:** June 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Karen DiBenedetto (202–377–1776) or Charles E. Wilson (202–377–5288), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### Final Determination

We have determined that tapered roller bearings from Italy are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The period of investigation was March 1, 1986 through August 31, 1986. The margin found for the company investigated is listed in the "Suspension of Liquidation" section of this notice.

#### Case History

On February 2, 1987, we made an affirmative preliminary determination (52 FR 3835, February 6, 1987). Since then, the following events have occurred:

On February 9, 1987, we sent another deficiency letter to the respondent; and on February 10, 1987, we sent a cost of production questionaire.

On February 13, 1987, we received a request from counsel for the respondent to postpone the final determination to no later than the 135th day after the date that the preliminary determination was published in the **Federal Register**. We granted this request and postponed the due date for the final determination until no later than June 22, 1987 (52 FR 6361, March 3, 1987).

On February 20, 1987, we received repsondent's response to our deficiency letter. On February 26, 1987, petitioner alleged that "critical circumstances" exist with respect to imports of tapered roller bearings from Italy. On February 27, 1987, the respondent requested, and we granted, an extension of its cost of production questionnaire response. On March 20, 1987, we received respondent's cost of production response. On March 30, 1987, we made a preliminary affirmative determination of "critical circumstances" (52 FR 11302, April 8, 1987).

We sent a deficiency letter to respondent concerning the cost of production questionaire response on March 31, 1987. On April 7, 1987, we received respondent's response. We conducted verification in Turin, Italy, May 4 through May 8, 1987. A public hearing was held on May 14, 1987. We conducted verifications on May 19 and 20, 1987, in Scarborough, Ontario, and on May 21 and 22, 1987, in King of Prussia, Pennsylvania.

#### Scope of Investigation

The products covered by this investigation are tapered roller bearings, currently classified under *Tariff Schedules of the United States* (TSUS) item numbers 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings, currently classified under TSUS item number 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item number 692.32 or elsewhere in the TSUS.

#### Fair Value Comparisons

Because RIV-SKF Officine di Villar Perosa, S.p.A. (RIV-SKF), accounted for virtually all sales of the merchandise from Italy, we limited our investigation to that company. To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. On verification we were unable to verify significant portions of the response to our questionnaire.

We resorted to best information available because of the many significant discrepancies that were discovered during verification with respect to the information submitted by respondent in response to the Department's antidumping duty questionnaire. Among these discrepancies were insufficient documentation to determine whether sales to the United States were purchase price or exporter's sales price transactions. Neither the volume nor value of United States sales could be verified, and the dates of these sales were incorrectly reported. Finally, charges were based on averages which could not be traced to specific invoices.

Because the response as a whole was unverifiable, in accordance with section 776(b) of the Act, we used best information available as provided in the petition.

**Verification**

As provided in section 776(a) of the Act, we attempted to verify information provided by the respondent. However, because of the many significant discrepancies found in the response during verification, we determined the response was not verifiable.

**Petitioner's Comments**

*Comment 1:* Petitioner contends that, in light of the inadequacies in the questionnaire responses, and the delays in responding, the final determination should be based on the best information otherwise available.

DOC Position: We agree. Absent a completely verifiable response, we are basing our final determination on the best information available, as contained in the petition. (See "Fair Value Comparisons" section of this notice for further explanation regarding the Department's use of best information available.)

*Petitioner's Other Comments:* Other comments by petitioner relate to United States price, Canadian sales, and sales below the cost of production. Since we have not used the response as a basis for making our final determination, these comments are moot.

*Respondent's Comments:*

*Comment 1:* Respondent contends that the Department should divide the investigation of tapered roller bearings from Italy into one investigation of cups, cones and cup/cone sets, and a second investigation of tapered bearing units (TBUs). Furthermore, in calculating its final dumping margins, the Department should calculate two separate dumping margins for the two distinct product groups.

DOC Position: We disagree. Throughout this investigation, the Department has included all the merchandise subject to investigation within one class or kind of merchandise. TBUs, as well as the other products in this investigation, are used as anti-friction devices for industrial purposes. TBUs may differ somewhat in design from cups, cones and cup/cone sets, in that TBUs consist of an extra inner ring. This difference is not significant, particularly in light of the fact that TBUs and the other products in this investigation have the same general use. Furthermore, TBUs and the other products subject to this investigation are distributed through the same general channels of trade; that being to original equipment manufacturers for installation in machinery as anti-friction devices. Products within a single class or kind need not be identical. Therefore, in this case we have determined that all the products subject to investigation are properly included within the same class or kind for purposes of this investigation.

The Department generally calculates a single margin in its antidumping duty investigations for all products within a single class or kind. Accordingly, inasmuch as TBUs are within the same class or kind as the other tapered roller bearings under investigation, we are calculating a single margin for all merchandise under investigation.

*Comment 2:* Respondent maintains that the information submitted by RIV-SKF in its questionnaire responses provided a sufficient basis for proceeding to verification, and the Department should not rely upon best information available for purposes of its final determination.

Respondent further contends that it has submitted its responses in a thorough and timely manner, and that these submissions, combined with the Department's verification reports, have provided petitioner with ample information for meaningful participation in this investigation.

*DOC Position:* We disagree. (See reasons set forth in the "Fair Value Comparisons" section of this notice.)

*Respondent's Other Comments:* Other comments by respondent relate to United States price and Canadian sales. Since we have not used the response as a basis for making our final determination, these comments are moot.

**Final Affirmative Determination of Critical Circumstances**

To determine whether critical circumstances exist, section 733(e)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(e)) requires that we examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known, that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In determining whether the importers knew, or should have known, the exporter was selling the merchandise at less than fair value, we normally consider margins of 25 percent or more to constitute constructive knowledge of sales at less than fair value. Since the final margin in this case exceeds this level we find that knowledge of sales at less than fair value can be imported to the importers.

In determining whether imports have been massive over a relatively short period, we normally consider the following factors: (1) The volume and value of imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports.

Using volume figures, based on currently available information, we found that imports of the class or kind of merchandise subject to the investigation have been massive. Therefore, we determine that "critical circumstances" exist with respect to imports of tapered roller bearings from Italy.

**Continuation of Suspension of Liquidation**

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of tapered roller bearings from Italy that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register** The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond on all entries-equal to the estimated average amount by which the foreign market value of the merchandise subject to this

investigation exceeds the United States price as shown in the table below.

Since we have made a final affirmative critical circumstances determination, we are continuing the retroactive suspension of liquidation ordered by our March 30, 1987, preliminary affirmative critical circumstances determination. The effective date for the suspension of liquidation of this investigation is November 10, 1986, ninety days prior to the date of publication of our preliminary affirmative determination of sales at less than fair value.

This suspension of liquidation will remain in effect until further notice. The margins are as follows:

| Manufacturers/producers/exporters | Average margin percentage |
|---|---|
| RIV-SKF | 124.75 |
| All others | 124.75 |

### ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or canceled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on tapered roller bearing from Italy entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal t the amount by which the foreign market value exceeds the United States price.

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

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

June 22, 1987.

[FR Doc. 87-14655 Filed 6-26-87; 8:45 am]

BILLING CODE 3510-DS-M

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[A-479-601]

## Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Yugoslavia

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have determined that tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from Yugoslavia are being, or are likely to be, sold in the United States at less tha fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

**EFFECTIVE DATE:** June 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Judith L. Nehring (202/377-0160) or Mary S. Clapp (202/377-1769), Office of Investigations, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Final Determination

We have determined that tapered roller bearings from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The period of investigation was December 1, 1985, through August 31, 1986. The margin found for the company investigated is listed in the "Suspension of Liquidation" section of this notice.

### Case History

On February 2, 1987, we made an affirmative preliminary determination (52 FR 3840, February 6, 1987). Since then, the following events have occurred:

On February 6, 1987, we sent a questionnaire to the sole respondent, Unis Ro Promet requesting that supplemental information be submitted no later than February 22, 1987, in order to be considered for the final determination.

On February 13, 1987, we received a request from counsel for the respondent to extend the due date of the questionnaire response and also to postpone the final determination to no later than the 135th day after publication of our "Preliminary Determination" notice in the **Federal Register**. We granted this request and postponed the due date for the final determination until no later than June 22, 1987 (52 6366, March 3, 1987, and correction, 52 FR 8404, March 17, 1987.

### Scope of Investigation

The products covered by this investigation are tapered roller bearings, currently classified under *Tariff Schedules of the United States* (TSUS) item numbers 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings, currently classified under TSUS item number 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item numbers 692.32 or elsewhere in the TSUS

### Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used best information available as required by section 776(b) of the Act because respondent did not provide sufficient responses to our requests for information.

### United States Price

For purposes of our final determination, we have not used sales data presented by respondent to calculate United States price. Although the Department was provided a listing of U.S. sales, we were unable to make comparisons to sales of such or similar merchandise in the home market. In the Department's analysis, the reported home market product matches in the questionnaire response were neither complete nor correct. Unis' bearings specifications sheet showed home market products which are more similar than those covered by its home market response.

For these reasons, an accurate comparison of U.S. merchandise to home market merchandise could not be made. Therefore, we used the petitioner's data as the best information available.

The U.S. price was based on Unis offers to Timken customers in 1985, less ocean freight, insurance and duty based on U.S. Department of Commerce statistics for tapered roller bearing cups, cones and cup and cone assemblies.

### Foreign Market Value

For purposes of our final determination, we also used petitioner's information as best information available to calculate foreign market value. The home market sales section of the responses contained deficiencies which rendered the data insufficient for use in making the final determination. Specifically, the respondent submitted a listing of home market sales which covered only the two largest customers in Yugoslavia and contained data on sales of "similar" merchandise as identified by the respondent, instead of

all home market sales of such or similar merchandise made during the period of investigation. The Department made repeated requests for this information in its questionnaries to Unis. The requested information was not provided. Furthermore, in a meeting at the Department of Commerce with a representative from Unis, we again requested a complete listing of home market sales of such or similar merchandise. Unis did not porovide such a listing.

For these reasons, we calculated the foreign market value of tapered roller bearings based on the best information available, which is those prices furnished by the petitioner. Foreign market value was based on Spanish prices to original equipment manufacturers, adjusted to estimate Yugoslavia home market prices in an effort to reflect a comparision of know non-exported Yugoslavian home market prices to Spanish home market prices. We have also adjusted the petitioner's prices by the average rate of exchange for the Yugoslavian dinar for the period of investigation.

We made currency conversions from Yugoslavian dinars to U.S. dollars in accordance with § 353.56(a) of our regulations. Normally, we use certified exchange rates furnished by the Federal Reserve Bank of New York, but no certified rates were available for Yugoslavia. Therefore, we used monthly exchange rates published by the International Monetary Fund as the best information available.

### Verification

Respondent did not submit sufficient responses which would enable the Department to conduct verification, as required by section 776(a) of the Act.

### Comments

The opportunity for public comment was offered at the time of the preliminary determination. Since then, no comments, oral or written, have been submitted to the Department.

### Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of tapered roller bearings from Yugoslavia that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond on all entries equal to the estimated average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margin is as follows:

| Manufacturers/producers/exporters | Average margin percentage |
|---|---|
| Unis Ro Promet | 33.61 |
| All Others | 33.61 |

### ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on tapered roller bearings from Yugoslavia entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

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

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

June 22, 1987.

[FR Doc. 87-14656 Filed 6-26-87; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

**[Modification No. 2 to Permit No. 496]**

### Marine Mammals; Permit Modification; Center for Coastal Marine Studies (P79D)

Notice is hereby given that, pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 496 issued to the Center for Coastal Marine Studies, University of California at Santa Cruz, Santa Cruz, California 95064 on April 8, 1985, (50 FR 15214), as modified on May 6, 1987 (52 FR 16889), is further modified as follows:

Section B.1 is deleted and replaced by:

"1. In regard to the animals authorized in Section A.1, the following activities may be conducted on each animal, as described in the application and modification request: tagged with roto-tag(s), marked, hot branded, weighed, injected with a radioactively or chemically labelled compound, and have specimem material sampled. Up to 50 orphaned pups may be euthanized each year."

This modification became effective on June 23, 1987

The Permit, as modified, and documentation pertaining to the modification are available for review in the following offices: Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: June 23, 1987.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87-14707 Filed 6-26-87; 8:45 am]

BILLING CODE 3510-22-M

## COMMISSION ON MERCHANT MARINE AND DEFENSE

### Meeting

**SUMMARY:** The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub.L. 92-463, as amended, the Commission announces the following meeting:

Dates and times: Monday, July 27, 1987; Beginning 2:00 p.m.

Place: Center for Naval Analyses auditorium, First Floor, 4401 Ford Avenue, Alexandria, Virginia.

Type of meeting: Open.

Contract person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22301-0268, Telephone (202) 756-0411.

Purpose of meeting: To receive and consider statements on the perspective of the industries that supply equipment

and material to shipyards and ship operators on the problem of maintaining an adequate industrial base to support ship construction, ship repair, and ship operations adequate to the defense needs of the United States. Individuals or organizations desiring to present oral testimony must notify the Executive Director in writing by July 15, 1987, and must provide 40 copies of written testimony no later than July 23. Witnesses will be allowed a maximum of 15 minutes to summarize the written testimony, and will be asked to respond to questions from the Commissioners. Questions about the nature and content of testimony, scheduling, due dates, and related matters should be directed to Mr. Robert Nevel, Technical Director, at the Commission's office in writing or by telephone.

**SUPPLEMENTARY INFORMATION:** Other interested persons are invited to submit written statements about the shipyard and ship operator supplier industry and the shipping required to implement United States defense policy. Written statements should be received by the close of business on July 23, 1987. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. All submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

**Allan W. Cameron**

*Executive Director, Commission on Merchant Marine and Defense.*

[FR Doc. 87-14618 Filed 6-26-87; 8:45 am]

BILLING CODE 3820-01-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blends and Other Vegetable Fiber Textile Products From the Republic of Korea, Effective on January 1, 1987; Correction

June 24, 1987.

On Page 47044, column 3, of the **Federal Register** notice published on December 30, 1986 (51 FR 47044), Category 670-L/870-L should be corrected to 670-L/870.

On Page 47045, column 1, the unit of measure for Categories 604 and 605-C should be pounds instead of dozen.

On Page 47045, column 1, Category 670-L/870, delete "and not more than 6,030,000 pounds shall be in 870-L."

On Page 47045, column 2, paragraph 1, lines 7 and 8, replace the phrase "except September 1-December 31, 1986 for" with the word "and."

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-14654 Filed 6-26-87; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Explosives Safety Standards; Revision of Current Public Traffic Route Quantity—Distance Standards

**ACTION:** .Notice of Change to DoD Explosives Safety Standards.

**SUMMARY:** Pursuant to Title 10 U.S.C. Article 172, the Department of Defense Explosives Safety Board announces its decision to make the following revisions to the DoD Explosives Safety Standards which will impact upon the general public. Current Public Traffic Route (PTR) quantity-distance requirements from potential explosion sites (PES) will be changed to include the variable of the traffic density that is on the PTR. Traffic density will be determined for a 24-hour period on days which reflect normal busy periods. For roadways with 5000 or more vehicles per day, separation distance for the PTR will be increased from 60 percent of inhabited building distance to the full inhabited building distance. For roadways with 200 to 4999 vehicles per day there will be no change in current PTR separation distance requirements. For roadways with less than 200 vehicles per day, the separation distance from a PES will be based upon blast only with no minimum fragment distance required.

There has been a need to standardize siting criteria within DoD for explosives demonstration and demolition areas. New siting criteria for demonstration and demolition areas will now be included in the Standard. Sites for demonstrations with or demolition of ammunition and explosives shall be separated from non-protective structures housing personnel which are non-essential to the operation or locations where non-essential personnel can congregate in the open as specified below:

(1) Range (Feet) = 328 W(lb)$^{1/3}$, but not less than 1250 ft, for nonfragmenting explosive materials. If known, maximum debris throw ranges, with an appropriate safety factor, may be used to replace the 1250 ft minimum range.

(2) Range (Feet) = 328 W(lb)$^{1/3}$, but not less than 2500 ft, for fragmenting explosive materials. For bombs and projectiles with caliber 5 inch or greater use a minimum distance of 4000 ft. The maximum fragment throw range (including the interaction effects for stacks of items or single items, whichever applies), with an appropriate safety factor, may be used to replace the 2500 ft/4000 ft minimum ranges. Items should be sited, so that lugs/strongbacks and nose/tail plate sections are oriented away from personnel locations.

The DoD is developing ammunition which contains extremely insensitive high explosive and which must demonstrate, by rigorous testing programs, a negligible probability of accidental initiation or propagation. Such ammunition and associated explosive will be hazard classified Class/Division 1.5. In order to provide siting criteria for facilities in which this ammunition will be produced, stored, and maintained, the Board has established Quantity-distance separation requirements for Class/Division 1.5 ammunition and explosives. The requirements are based on current Class/Division 1.2, 1.3, and 1.4 quantity-distance tables, the storage location, and weapon configuration and will be included in the Standard. This information is detailed in the following Table.

Q-D Criteria for Class/Division 1.5 Components and Assemblies w/Other Class/Division Components

| Location | Configuration | | |
|---|---|---|---|
| | Explosive Bulk | Ammunition | |
| | | Non-IHE Fuzed[2] w/ or wo 1.3 propelling charge | Unfuzed or w/ IHE Fuze 2.4 w/ 1.3 propelling w/o 1.3 propelling charge |
| Igloo storage | Div 1.3 | Div 1.2[3] | Div 1.3 Div 1.3/ 1.4.[5] |
| All others | Div 1.3 | Div 1.2[3] | Div 1.3[1] Div 1.3.[1] |

[1] Unit risk minimum fragment distance applies unless expcepted, on a case-by-case basis by the DDESB.

[2] Fuzed configuration must be tested for propagation.
[3] Unit risk may be justified on a case-by-case basis.
[4] "IHE Fuzed" means that the fuze has an IHE booster with an out-off-line Non-IHE explosive and two or more independent safety features.
[5] 1.4 for items packed in non-flammable pallets or packing, stored in earth-covered steel or concrete arch magazines when acceptable to the DoD component and the DDESB on a site-specific basis.

**ADDRESS:** Department of Defense Explosives Safety Board, 2461 Eisenhower Avenue, Alexandria, VA 22331–0600.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ray B. Sawyer, (202) 325–8624.

Linda M. Lawson,

*Alternate OSC Federal Register Liaison Officer, Department of Defense.*

June 23, 1987.

[FR Doc. 87–14641 Filed 6–26–87; 8:45 am]

BILLING CODE 3810–01–M

## Advisory Council on Dependents' Education; Meeting

**AGENCY:** Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education. It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the Department of Defense Dependents Schools (DoDDS) coordinator.

**DATE:** August 7, 1987, 9 a.m. to 5 p.m.; August 8, 1987, 9 a.m. to 5 p.m.

**ADDRESS:** August 7, 1987, Pentagon, Room 3E869, Washington, DC; August 8, 1987, Pentagon, Room 3E752, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Kay Templeton Garvey, Public Affairs Officer, DoDDS, 2461 Eisenhower Avenue, Alexandria, Virginia 22331–1100 (202/325–0867).

**SUPPLEMENTARY INFORMATION:** The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Pub. L. 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Pub. L. 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents Education). The Council is co-chaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform such other tasks as may be required by the Secretary of Defense. The August agenda includes a brief overview of the DoDDS system, responses to the recommendations made by the Council in its March meeting, and discussion on effective educational practices in DoDDS and stateside school systems.

Linda M. Lawson,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

June 24, 1987.

[FR Doc. 87–14642 Filed 6–26–87; 8:45 am]

BILLING CODE 3810–01–M

## Defense Science Board Task Force on Low Observable Technology; Rescheduled Meeting

**ACTION:** Change in date of advisory committee meeting notice.

**SUMMARY:** The meeting of the Defense Science Board Task Force on Low Observable Technology scheduled for August 19–20, 1987 as published in the **Federal Register** (Vol. 51, No. 205, Page 37629, Thursday, October 23, 1986, FR Doc. 86–23948) will be held on September 23–24, 1987. In all other respects the original notice remains unchanged.

Linda M. Lawson,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

June 23, 1987.

[FR Doc. 87–14640 Filed 6–26–87; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Army

## Procedures for Consideration of Identification of Remains By the Armed Forces Identification Review Board

**AGENCY:** Department of the Army, US Army Military Personnel Center (MILPERCEN), DOD.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Deputy Chief of Staff for Personnel, U.S. Army, intends to adopt procedures to be used by a recently established Armed Forces Identification Review Board (AFIRB) which reviews recommended identification of remains made by the U.S. Army Central Identification Laboratory, Hawaii (CILHI), of the United States military personnel whose death occurred during the Vietnan Conflict, or other recommended identifications referred to it by competent authority, and to take action to approve or disapprove the recommended identifications.

**DATE:** The AFIRB Procedures will be effective on 1 August, 1987.

**ADDRESSES:** Copies of the AFIRB Procedures are published in the **Federal Register** for public inspection.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel Jim Cole at the address given below; telephone 202/325–7960, (AUTOVON) 221–7960:

Commander, MILPERCEN, ATTN: DAPC–PDC–M, Alexandria, VA 22331–0400

**SUPPLEMENTARY INFORMATION:** The AFIRB Procedures have been coordinated with each military service and National League of POW–MIA Families.

**1. Purpose**

This document prescribes procedures for review and action by the Armed Forces Identification Review Board (AFIRB) upon recommended identifications of remains.

**2. References**

a. Title 10 United States Code, Sections 1481 and 1482.

b. Army Regulation 15–6, Procedure for Investigating Officers and Boards of Officers, Change 1 (15 June 1981).

c. Army Regulation 638–25 (Bureau of Medicine and Surgery (Navy) Instruction 5360.22A, Air Force Regulation 143–5), Armed Services Graves Registration Office (31 July 1974).

d. Board Charter/Terms of Reference for the AFIRB, approved by the Secretary of the Army with concurrence

of the Office of the Secretary of Defense on 10 June 1987.

**3. Establishment of the AFIRB**

The AFIRB is established by the SECDEF (reference 2d) and is located for administrative and logistical purposes within the Armed Services Graves Registration Office (ASGRO).

**4. Scope of Procedures**

These procedures are promulgated by the Deputy Chief of Staff for Personnel, U.S. Army, for the use and compliance of those personnel performing duties in support of AFIRB. They apply to AFIRB consideration of recommended identifications of remains returned to United States military control. They provide guidance for internal operations of the AFIRB.

**5. Mission of the AFIRB**

As stated in reference 2d, the mission of the AFIRB is to review recommended identifications of remains made by the U.S. Army Central Identification Laboratory, Hawaii (CILHI) [1] of United States military personnel whose deaths occurred during the Vietnam Conflict and whose remains have been recovered or repatriated from Southeast Asia, or of other recommended identifications referred to it by competent authority (e.g. a Service Secretary), and to take action to approve or disapprove the recommended identifications.

**6. Organization**

a. AFIRB. The AFIRB consists of one primary voting member each from the Departments of the Army, Navy and Air Force as designated by their respective Departments. Each service Secretary, or his representative, may designate alternate voting members to serve on the AFIRB in the event that a primary member cannot be present for an AFIRB meeting. Department of the Navy may designate a Marine Corps representative as its voting member; however, Department of the Navy will be limited to one vote for each case file considered by the AFIRB. The voting members shall be of the grade of Colonel, Navy Captain, GM–15 or higher. The Army voting member is designated as the Chairman. Nonvoting members of the AFIRB include a representative of the Defense Intelligence Agency (DIA), and/or a representative of the Joint Casualty Resolution Center (JCRC) designated by each of those agencies. Persons designated as members are administratively appointed to the AFIRB by the Chief, ASGRO.

*b. Consultants.* "Consultants" to the AFIRB are not members of the AFIRB. They are experts in forensic sciences such as anthropology, pathology, and odontology who are either employees or contractors of the U.S. Government. "Board-certified" experts will be used as consultants unless none in the required area of expertise is available. Consultants review and evaluate recommended identification and accompanying case files and provide their individual evaluations to the AFIRB in written reports which are included in the case files.

*c. Support.* The Chief, ASGRO provides the AFIRB and the consultants with all necessary administrative and logistical support.

**7. Procedures**

*a. Recommended Identification.* A recommended identification of remains will be made by the CILHI. In order to be considered by the AFIRB, the laboratory findings and recommended identification will be included in a "case file." The case file will also include recovery documentation, postmortem processing documents photographs, antemortem medical and dental records (including photographs, and radiographs), and other relevant documentation and information from agencies such as the JCRC and the DIA. In all cases, CILHI will record in the case files any information which suggests that characteristics of the remains or other information may correlate to specific individual(s).

*b. Consultant Evaluation.* When a recommended identification and accompanying case file have been completed by the CILHI, the Commander, CILHI will notify the Chief, ASGRO. The Chief, ASGRO will advise the cognizant Service of the recommended identification and will promptly arrange for CILHI to present the recommended identifications and accompanying case files to the consultants. Recommended identifications will be presented to at least three forensic scientists, normally two forensic anthropologists and one forensic odontologist. Any consultant may examine the remains for which the identification is recommended if he or she deems it necessary to the evaluation. The evaluation of each consultant will be made in a written report and included in the case file. Additionally, a recommended identification and case file may be referred to other advisors, as appropriate, as discussed in paragraph 7d(2) for evaluation. When these advisors review the recommendation and case file they will submit a written report which will be included in the case file. If each consultant concurs in the CILHI recommendation and concludes that the case file is sufficient for presentation to the AFIRB, it will be forwarded to the Chief, ASGRO for referral to the Service to which the deceased belonged. Should any consultant conclude that the scientific work-up of a case file is insufficient, the Chief, ASGRO will return the case file with the consultant written evaluations to the CILHI for further study. The CILHI will be requested to address any comments or suggestions made in the consultant's written evaluation. Additional matters of the nature of those specified in paragraph 7a generated by the reassessment will be added to the case file. Upon return of the case file from the CILHI, the consultants will be given the case file for further evaluation prior to referral to the Service to which the deceased belonged. This process will include efforts to resolve any differences which may have arisen; however, where differences remain, the Service will clearly explain to the next of kin the significance of these differences of opinion to the identification process.

*c. Notification of Primary Next of Kin.* (1) Upon receipt of the case file, the deceased's Service will have a Service representative notify the primary next of kin (PNOK) of the recommended identification of the remains by the CILHI, the consultants' evaluations, and the approximate date when the recommended identification is to be considered by the AFIRB. The PNOK will be notified of their opportunity to:

(a) Review the recommended identification and the entire case file, except as limited by paragraph 7c(2).

(b) Have, in the case of recommended individual identification of remains, an independent professional examination of the remains conducted at PNOK expense [2]; and

(c) Submit, within 30 days of receipt of the notification, additional written matters which will be included in the case file. Depending upon the circumstances of each case, the Service representative may extend for a

[1] In cases in which a recommended identification has been made by a laboratory equipped and qualified to perform the functions performed by the CILHI, the term "CILHI" as used in this document should be construed to refer to that laboratory, but shall not restrict the AFIRB's authority to remand a recommended identification to the CILHI regardless of origin.

[2] Transportation of remains to an appropriate facility for the independent expert to perform the examination will be at Government expense. The United States Government will retain custody and control over the remains during such an examination.

reasonable time the period in which the PNOK may submit matters.

(2) The PNOK will be provided as much information in the case file as possible; however, classified or privileged information will not be released to the PNOK. The PNOK will be supplied with all unclassified information, reports and evaluations. They will also be provided an unclassified summary or extract of the classified or privileged information in the case file.

(3)(a) If the PNOK submit no additional written matters or matters which agree with the CILHI recommendation, the Service representative will return the recommended identification and accompanying case file to the Chief, ASGRO, who will submit them to the AFIRB for review and action.

(b) If the PNOK submits additional written matters as outlined in paragraph 7c(1)(c), which disagree with the CILHI recommendation, the Service representative will return the case file to the Chief, ASGRO who will refer the recommended identification and accompanying case file to the consultants for further evaluation and written report prior to submission to the AFIRB.

*d. AFIRB Review and Action.* (1) Upon notification by the Service concerned that a case file is ready for presentation to the AFIRB, the Chief, ASGRO will notify AFIRB members that a recommended identification is ready for its consideration and contact DIA and JCRC to obtain relevant intelligence or incident data, and arrange for a meeting of the AFIRB. As an administrative matter, AFIRB meetings may be arranged to consider more than one recommended identification per meeting if such an arrangement will not delay for more than seven days the consideration of any recommended identification. The Chief, ASGRO will refer the recommended identification and accompanying case file to the AFIRB for review and action.

(2) Prior to taking action, the AFIRB will review the recommended identification and accompanying case file. The AFIRB may contact the CILHI, DIA, JCRC, the consultants or other advisors, as appropriate. However, prior to taking actions upon a recommended identification, the AFIRB, through the Chief, ASGRO, will have the Service representative notify the PNOK of their opportunity to examine and submit additional written matters to the AFIRB based upon any additional matters and materials added to the case file as a result of the procedures addressed in this subparagraph within 15 days of notification. These additional written matters will be included in the case file.

(3) The AFIRB will meet to take action to approve or disapprove a recommended identification. A primary or alternate voting member from the Army, Navy (Marine Corps), and Air Force must be present at a meeting for a quorum to exist. If more than one voting member from a particular Department is present at a meeting, only one may vote. Action by the AFIRB will be by a majority vote and based upon a preponderance of all relevant facts and circumstances including anthropological evidence, DIA or other intelligence reports, witness statements, JCRC evaluations and any other information relevant to loss of a service member and recovery of remains. The lack of conclusive anthropological evidence will not preclude CILHI from recommending or the AFIRB from approving a recommended identification in a case where the evidence, taken in its entirety, supports an identification. The U.S. Government has an obligation to provide to family members reasonable judgments which may be short of scientific certainty that the case being reviewed may be of a specific individual. The meetings and proceedings of the AFIRB are informal in nature and are not hearings. The Chairman, AFIRB can refer to the provisions of Chapter 4, reference 2b for nonbinding guidance on the conduct of AFIRB meetings.

**8. Group Remains**

In cases where individual identification of remains is not possible but the evidence is sufficient to identify the remains as belonging to a specific group of United States military personnel, CILHI may recommend to the AFIRB approval of identification of the remains as belonging to members of the group. Except as noted in paragraph 7c(1)(b), such recommended identifications will be processed in accordance with paragraph 7, above. If the AFIRB approves such a recommended identification, it may recommend to the Service Secretaries concerned, that the remains be buried in a common grave. The Service Secretaries concerned will take such actions as they deem appropriate in accordance with their responsibilities as set forth in reference 2a.

**9. Forwarding of Decisions**

Recommended identifications which are approved by the AFIRB will be forwarded to the Service Secretary concerned, or his representative, for appropriate action. Recommended Identifications which are disapproved by the AFIRB will be remanded to CILHI for further study. The Service Secretary concerned, or his representative, will be notified when a case file is remanded to CILHI for further study.

**10. Timeliness**

Not more than 30 days should normally elapse between the time that CILHI presents its recommendation for identification to the consultants and the notification of the PNOK of the date that the AFIRB will meet to take action upon the recommended identification.

**11. Reconsideration**

A request by the PNOK for reconsideration of an action of the AFIRB concerning a recommended identification of remains will be granted only on the basis of newly discovered evidence not previously considered by the AFIRB. Such a request will be forwarded with the case file to the Service Secretary concerned, or his representative, for a determination. If the Service Secretary, or his representive, determines that newly discovered evidence exists and grants the request, the case file will be returned to the Chief, ASGRO whereafter the procedures in paragraphs 7b and 7d will be followed.

**12. Changes to Procedures**

a. Changes to these procedures will be coordianted with representatives of the Department of the Navy, the Department of the Air Force, and the Assistant Secretary of Defense (International Security Affairs).

b. These procedures will be followed unless the Service Secretary concerned determines that military exigencies preclude their application. They are not intended to, may not be relied upon to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity against the Untied States, or any of its officials, employees or instrumentalities.

John O. Roach, II,

*Army Liaison Officer With the Federal Register.*

[FR Doc. 87-14633 Filed 6-26-87; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

[CFDA No.: 84.103]

### Applications for New Awards Under the Training Program for Special Programs Staff and Leadership Personnel for Fiscal Year 1987; Invitation

*Purpose:* Provides grants to institutions of higher education, and other public and private nonprofit institutions and organizations for projects that improve the operation of the Special Programs for Students from Disadvantaged Backgrounds (Talent Search, Upward Bound, Student Support Services, and Educational Opportunity Centers) by providing training for staff and leadership personnel employed in, or preparing for employment in such programs and projects.

*Deadline for transmittal of Applications:* July 31, 1987.

*Applications Available:* June 30, 1987.

*Available Funds:* $1,000,000.

*Estimated Range of Awards:* $50,000–$250,000.

*Estimated Average Size of Awards:* $100,000.

*Estimated Number of Awards:* 10.

*Project Period:* 12 months.

*Applicable Regulations:* (a) The Training Program for Special Programs Staff and Leadership Personnel Regulations, 34 CFR Part 642, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

*Fundiung Priorities:* In accordance with 34 CFR 75.105 (c)(1) and § 642.34 of the program regulations (34 CFR Part 642) the Secretary encourages applicants to address the following topics in fiscal year 1987:

(1) *Retentiuon of students.* Instruction, including written materials, which is designed to train Student Support Services project staff in improving the retention of project participants in postsecondary institutions and, to train Upward Bound project staff to improve the retention of project participants in secondary schools. The focus of the training may be directed at clearly defined populations that have abnormally high drop-out rates.

(2) *Learning disabled college students.* Instruction, including written materials, which is designed to train Student Support Services personnel in state-of-the art developments in the education of learning disabled students.

(3) *Program evaluation.* Instruction, including written materials and post-training follow-up, for Special Programs project directors on techniques of planning and implementing formative and summative program evaluations.

(4) *Institutionalizing project services.* Instruction, including case-studies or other written materials, for Special Programs project directors, to improve the impact of their projects by maximizing the use of facilities, staff, services and other resources of their institution or other local service agencies.

The Secretary will consider applications addressing other topics if the applicant demonstrates a significant training need in the region to be served.

*For Applications or Information Contact:* Jowava M. Leggett, Chief, Special Services Branch, Division of Student Services, U.S. Department of Washington, DC 20202. Telephone: (202) 732–4804.

**Program Authority:** 20 U.S.C. 1070d, 1070d–1d.

Dated: June 23, 1987.

**C. Ronald Kimberling,**

*Assistant Secretary, Postsecondary Education.*

[FR Doc. 87–14650 Filed 6–26–87; 8:45 am]

BILLING CODE 4000–01–M

### Indian Education National Advisory Council; Closed Meeting

**AGENCY:** National Advisory Council on Indian Education.

**ACTION:** Notice of closed meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Search Committee/Full Council of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2.

**DATES:** July 9–10, 1987, 9:00 a.m. until conclusion of business each day.

**ADDRESS:** U.S. Department of Education, 400 Maryland Avenue, SW., Room 3000, Washington, DC 202/732–5115.

**FOR FURTHER INFORMATION CONTACT:** Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 2000 L Street, NW., Suite 574, Washington, DC 20036 (202/634–6160).

**SUPPLEMENTARY INFORMATION:** The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act (Title IV of Pub. L. 92–318), and to advise Congress, and the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults. Under section 441(a) of the Indian Education Act, the Secretary appoints the Director, Indian Education Programs, from a list of nominees submitted to the Secretary by the Council.

On July 9, 1987, the Search Committee of the Council will meet in closed session starting at approximately 9:00 a.m., and will end at the conclusion of business, approximately 5:00 p.m. The agenda will consist of the Search Committee interviewing candidates for the position of Director, Indian Education Programs.

On July 10, 1987, the Search Committee/Full Council will meet in closed session starting at approximately 9:00 a.m., and will end at the conclusion of business, approximately 5:00 p.m. The agenda will consist of discussion of the Search Committee's recommendations of the candidates to the Full Council for approval.

The closed meeting will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemption (6) of section 552b(c) of Title 5 U.S.C.

The public is being given less than fifteen days notice of this closed meeting due to scheduling problems.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: June 22, 1987. Signed at Washington, DC.

**Lincoln C. White,**

*Executive Director, National Advisory Council on Indian Education.*

[FR Doc. 87–14645 Filed 6–26–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

[ERA Docket No. 87–26–NG]

### Application To Import Natural Gas From Canada; Kimball Energy Corp.

**AGENCY:** Department of Energy, Economic Regulatory Administration.

**ACTION:** Notice of Application for Blanket Authorization to Import Natural Gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on May 15, 1987, of an application filed

by Kimball Energy Corporation (Kimball) of Arlington, Texas, for blanket authority to import daily quantities of up to 100,000 Mcf of Canadian natural gas and an aggregate volume of 75 Bcf in addition to previously authorized volumes. The gas would be sold on a short-term basis in the domestic spot market. Kimball asks the ERA to approve the importation for a primary term of two years beginning on the date when initial deliveries of gas commence and that the authorization be automatically extendable from month to month thereafter, until cancelled by Kimball or the ERA upon 30 days written notice. Kimball, a marketer and broker of natural gas, would purchase the volumes to be imported from a variety of unidentified Canadian suppliers and resell it to willing purchasers or serve as an agent acting on behalf of spot market customers. The identity of each purchaser and the specifics of each sale are not known at this time. However, as presently contemplated, all sales would be on a best-efforts basis under freely-negotiated contracts containing market-responsive pricing provisions with no minimum purchase or take-or-pay obligation. The proposed imports would be accomplished using existing pipeline capacity and no new construction would be involved. The transportation arrangements, including the delivery points where the gas would enter the U.S., may vary for different transactions. Kimball intends to submit reports to the ERA, on a confidential basis, within 45 days after the end of each calendar quarter, describing the particular spot market arrangements that it has entered into.

Kimball is curently importing Canadian gas for spot market sales through its joint enterprise with ITRP Natural Gas Ventures, Inc. pursuant to a two-year blanket authorization issued by the ERA on June 24, 1986, that provides for purchases of up to 100,000 Mcf per day and a total of 73 Bcf. *ITRP/Kimball Gas Ventures, a Joint Venture*, 1 ERA Para. 70.656 (June 24, 1986).

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than July 29, 1987.

**FOR FURTHER INFORMATION CONTACT:**

P.J. Fleming, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4819.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., July 29, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Kimball's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 23, 1987.

**Constance L. Buckley,**

*Director, Natural Gas Division Economic Regulatory Administration.*

[FR Doc. 87–14646 Filed 6–26–87; 8:45 am]

**BILLING CODE 6450–01–M**

## Remedial Orders; Issuance of Proposed Remedial Order to Kenco Refining, Inc. and Tesoro Petroleum Corp. and Opportunity for Objection

**AGENCY:** Economic Regulatory Administration, U.S. Department of Energy.

**ACTION:** Notice of issuance of proposed Remedial order to Kenco Refining, Inc. and Tesoro Petroleum Corporation, and notice of Opportunity for Objection.

Pursuant to 10 CFR § 205.192(c), the Economic Regulatory Administration of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Kenco Refining, Inc. (Kenco), 1580 Lincoln Street, Suite 850, Denver, Colorado 80203 and Tesoro Petroleum Corporation (Tesoro), 8700 Tesoro Drive, San Antonio, Texas 78217. This proposed Remedial Order (PRO) charges Kenco

and Tesoro with filing erroneous Refiners Monthly Reports (Form P–102–M–I,) during the months of March through July 1977. ERA determined that small refiner bias (SRB) entitlements valued at $1,285,402 for crude oil refined by Tesoro during March through May 1977 were improperly issued to Kenco since the crude oil was purchased from the processor (Tesoro) and the refined products were indirectly sold to the processor. The PRO finds that Kenco should have separately identified the volumes of crude oil processed pursuant to 10 CFR 211.67(e)(3), since the volumes did not qualify for small refiner bias entitlements under 10 CFR 211.67(e)(2). Additionally, during the months of May, June and July 1977, sales of residual fuel oil into the East Coast Market refined from this crude oil were improperly reported by Kenco and not reported by Tesoro, causing a loss of 14,495 residual fuel oil entitlements from the Entitlements Program valued at $127,026. ERA further finds that the substance of the transactions shows that Tesoro originally owned the crude oil and processed that oil for its own account. The PRO concludes that Kenco and Tesoro engaged in practices which resulted in the circumvention and contravention of the Entitlements Program. Kenco's and Tesoro's misreporting and circumvention caused losses to the Entitlements Program totalling $1,412,428, before interest. The impact was spread nationwide among all refiner participants in the Entitlements Program.

A copy of the PRO, with confidential information deleted, may be obtained from the DOE Freedom of Information Reading Room, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the PRO may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, DC, on the 18th day of June 1987.

**Milton C. Lorenz,**

*Special Counsel, Economic Regulatory Administration.*

[FR Doc. 87–14647 Filed 6–26–87; 8:45 am]

BILLING CODE 6450–01–M

## Energy Information Administration

### Agency Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of requests submitted for clearance to the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has resubmitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is particularly important that comments on this resubmission of EIA's Petroleum Marketing Program collections package address those issues raised by OMB about EIA's original submission of January 16, 1987. In its response letter of April 16, 1987, OMB extended the current monthly forms in this package until September 30, 1987, so that EIA could continue their collection without interruption until OMB's comments could be considered and acted upon. To obtain copies of these materials, please contact John Gross at the address below.

The following information is provided in the Supplementary section of the notice: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed within 30 days of publication of this notice. Last notice issued Friday, June 19, 1987.

**ADDRESS:** Address comments to the Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC. 20503. Comments may also be addressed to Mr. Gross at the address below.

**FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:** John Gross, Director, Data Collection Services Division (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2308.

**SUPPLEMENTARY INFORMATION:** If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible.

The energy information collections submitted to OMB for review:

1. Energy Information Administration/ Office of Oil and Gas.

2. EIA–782A/B/C; EIA–821; EIA–863; EIA–14; EIA–856; EIA–182.

3. Previously cleared under OMB Numbers 1905–0141, 1905–139, 1905–0140, 1905–0018, 1905–0168, 1905–0125, 1905–0156, 1905–0143.

4. Petroleum Marketing Program Survyes.

5. New.

6. Monthly/Annually/Triennially.

7. Mandatory.

8. Businesses or other for profit.

9. 20,016 respondents.

10. 58–197 responses.

11. 156,908 hours.

12. The Petroleum Marketing Program surveys collect information on costs, sales, prices, and distribution for crude oil and petroleum products. Data are published in the petroleum publications and in multifuel reports. Respondents are refiners, first purchasers, gas plant operators, resellers/retailers, motor gasoline wholesalers, suppliers, distributors and importers.

**Statutory Authority:** Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC, June 23, 1987.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 87–14678 Filed 6–26–87; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

[Docket No. CI87-514-000 et al.]

### Natural Gas Companies; Correction to Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates and Extension of Time for Comments, Protests and Interventions; Amoco Production Co. et al.

June 24, 1987.

Take notice that the table to the notice issued May 12, 1987 and published at 52 FR 18942 on May 20, 1987, contained an error on the last item on the table (52 FR 18944). Docket No. CI87-496-500, Hillin Production Company, should be Docket No. CI87-495-000. The time for filing comments, protests and interventions relating to this docket only is extended to and including July 6, 1987.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-14684 Filed 6-26-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP87-74-000]

### Tariff Filing; Colorado Interstate Gas Co.

June 24, 1987.

Take notice that on June 15, 1987, Colorado Interstate Gas Company (CIG) tendered for filing certain revised tariff sheets which establish a "Sales Standby Service" in CIG's Sales Rate Schedules P-1, G-1, PR-1 and SG-1. CIG has filed these tariff sheets in the alternative and states that the alternatives reflect the rate effects of continuation of, and the elimination of, CIG's minimum bill provisions in Rate Schedules F-1 and PR-1. CIG also states that before July 14, 1987, the proposed effective date of the tendered tariff sheets, it will file a motion designating which alternative set of tariff sheets it wishes to be made effective. CIG requests that these tariff sheets be accepted for filing to become effective July 14, 1987, in conjunction with CIG's pending general rate proceeding in Docket No. RP87-30. CIG requests waiver of the 30-day notice requirement contained in 18 CFR 154.22. CIG alsos states that it is filing a motion to consolidate this proceeding with Docket No. RP87-30.

The elective "Sales Standby Service" proposed to be established in CIG's Rate Schedules G-1, P-1, PR-1 and SG-1 will allow CIG's customers to elect to subscribe for such service. Upon such an election a customer may substitute up to 100% of its General Daily Sales Entitlement from CIG with firm transportation service on CIG's system. When volumes are transported pursuant to a firm transportation service agreement executed between CIG and its customers under CIG's Volume No. 1-A tariff, a customer will be charged the transportation commodity rate and a sales standby charge. The firm transportation reservation charge will be waived for volumes transported under this tariff provision.

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. All such motions or protests should be filed on or before July 1, 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. 87-14685 Filed 6-26-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. SA87-49-000]

### Petition for Adjustment; Crystal Oil Co.

June 24, 1987.

On June 2, 1987, Crystal Oil Company (Crystal) filed a petition for adjustment with the Commission pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA)[1] and Subpart K of the Commission's regulations.[2] Crystal seeks a waiver of §§ 271.804(a), (c), and 271.805 of the Commission's stripper gas well regulations, which regulate measurement of production for purposes of collection of NGPA section 108 prices, and allow collection of the section 108 price subject to refund if a motion for enhanced recovery is filed within 150 days of a 90-day period in which production exceeds an average of 60 mcf per day. Crystal claims special hardship and inequity will result if these waivers are not granted. In addition, Crystal seeks waiver of the filing fees under section 502(c) of the Commission's regulations due to special financial hardships they recently have suffered.

Crystal states that Hunt Petroleum Corporation (Hunt), its predecessor as operator of the Nebo Fee No. 89-D well (Nebo well), failed to file the necessary motions under the above regulations to qualify the subject well for NGPA section 108 prices for the production by means of enhanced recovery techniques from April 30, 1984, to February 28, 1986. Crystal states that it could not testify to the accuracy of Hunt's data, but that it could satisfy the standards of the Commission's regulations through its own repiping and compression operations. Crystal states that it will undergo an out-of-pocket loss as a result of charging only the NGPA section 104 prices rather than the higher contract prices under section 108 if this adjustment is not allowed.

Crystal further states that failure to grant this adjustment may result in this well being shut in, risking permanent loss of the gas to the marketplace, contrary to the Commission's policy of encouraging stripper gas well production. Crystal requested waiver of fees due its continuing cash flow problems and recent emergence from bankruptcy.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. All petitions to intervene must be filed within fifteen days after the publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-14686 Filed 6-26-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. CI87-605-000 and CI87-617-000]

### Applications for Partial Limited-Term Blanket Abandonment Authorization and Blanket Certificate of Public Convenience and Necessity Authorizing Sales of Gas in Interstate Commerce for Resale With Pre-Granted Abandonment Authorization; Enron Oil & Gas Co.

June 24, 1987.

Take notice that on May 19, 1987, as amended on June 17, 1987, Enron Oil & Gas Company (Applicant) filed applications pursuant to sections 4 and 7 of the Natural Gas Act (NGA), and § 2.77 of the Commission's General Policy and Interpretations (18 CFR 2.77) requesting permission and approval for itself and its joint interest owners to

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[1] 15 U.S.C. 3301-3342 (1982).

[2] 18 CFR 385.1101-.1117 (1986).

abandon on a partial limited-term basis sales of natural gas to Northwest Pipeline Corporation ("Northwest") from the Big Piney/LaBarge Area of Sublette and Lincoln Counties, Wyoming for a three year period and authorizing for a three year period the sale in interstate commerce for resale of such natural gas produced by Applicant and their joint interest owners, with pre-granted abandonment, as more fully described in the applications, which are on file with the Commission and open for public inspection.

Specifically, Applicant requests that the Commission authorize Applicant and its joint interest owners to:

(1) Abandon temporarily certain sales for resale of NGA gas which was previously certificated by the Commission for sale to Northwest; and

(2) Make sales in interstate commerce for resale without supply or market limitations, of such NGA gas with pre-granted abandonment on a blanket-type basis.

Applicant indicates that it is the successor-in-interest to Belco Petroleum Corporation (Belco Petroleum) and Belco Development Corporation (Belco Development) and that the following rate schedules are involved herein:

| Rate schedule | Contract date | Certificate |
|---|---|---|
| Nov. 22, 1987 | Belco Petroleum #32 | CI68-727 |
| Aug. 14, 1967 | Belco Development #5 | CI73-5 |
| July 1, 1980 | Belco Petroleum #5 and #6. | G-20104 and CI60-474 |
| Apr. 17, 1981 | Belco Petroleum #1 | G-19589 |
| Dec. 28, 1980 | Belco Development #2 | CI60-66 |
| Oct. 13, 1980 | Belco Development #4 | CI72-878 |
| Mar. 9, 1982 | Belco Development #3 | CI72-877 |

Applicant states that currently the deliverability of the reserves subject to this application consists of 8,000 Mcf/d of NGPA section 104 gas, 40,000 Mcf/d NGPA 106(a) gas, 4,750 Mcf/d of NGPA section 107 gas and 3,200 Mcf/d of 108 gas. Applicant also states that it is receiving the applicable maximum lawful price for all gas sold under each contract.

Applicant indicates that Exxon Company USA, Chevron USA Inc., Apache, Wexpro, Texaco, Inc., and Chandler and Accounts are joint interest owners participating in some of the subject wells in varying degrees. Applicant states that it has a weighted average working interest of approximately 80 percent in the wells subject to the instant application.

Applicant asserts that the gas subject to this application has been subject to substantially reduced takes by Northwest on an annual basis for various periods of time over the last three years.

Sales proposed to be made by Applicant on behalf of itself and its joint interest owners will not involve a dedication of reserves but will be based on periodic nominations, either by purchasers or by Applicant. The sales volumes, prices, purchases, and supply source will vary.

Applicant asserts that benefits will accrue to Northwest, its customers and the general public by the grant of the application in that Applicant will relieve Northwest of take-or-pay obligations under the Gas Purchase Contracts related to the subject wells for the term of the Agreement, will relieve Northwest of certain past take-or-pay liability and will make this gas available to others for sale.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's Rules as promulgated by Order Nos. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications 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 385.214). 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 motion to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–14687 Filed 6–26–87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CI87–654–000]**

## Application for Limited-Term Abandonment With Pregranted Abandonment; Maynard Oil Co.

June 24, 1987.

Take notice that on May 29, 1987, as suplemented on June 15, 1987, Maynard Oil Company (Maynard), 8080 North Central Expressway, Suite 660, Dallas, Texas 75206, filed an application (1) requesting limited-term abandonment of sales of gas certificated in its small producer certificate in Docket No. CS71–282, and (2) to authorize pregranted abandonment for subsequent sales of such gas under its small producer certificate. The limited-term abandonment and pregranted abandonment are requested for a period of three years, with the option for further extensions as appropriate.

Maynard states it is currently subject to substantially reduced takes by its pipeline purchasers without payment or compensation for such reduction. Maynard therefore expressly requests that its application be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85–1–000, at 18 CFR 2.77. Maynard states that its largest purchasers have taken less than contractual minimum take levels for some time. In addition, various supply contracts under certification have expired and the jurisdictional purchasers have not, to date, indicated a willingness to sign new agreements, much less to take minimum volume amounts. Maynard states that although it has contacted its jurisdictional purchasers regarding the reduced takes, to date the issue is unresolved and Maynard has not received any payments for reduced takes. Therefore, without the requested abandonment authority for certain sales contracts, Maynard states it will be unable to increase its sales volumes or revenues to even minimum levels in the foreseeable future. Maynard states that the following is a description of the sales to be abandoned including contract date, purchaser, NGPA price category and estimated deliverability:

| Contract date | Purchaser | NGPA price category | Estimated well deliverability (mcf/day) |
|---|---|---|---|
| 7/12/66 | Panhandle Eastern Pipe Line Co | Section 104 | 4 |
| | | Section 108 | 1 |
| 3/12/68 | do | Section 104 | 50 |
| | | Section 108 | 50 |
| 1/20/66 [1] | do | Section 104 | 3,300 |
| | | Section 108 | 200 |
| 4/15/66 [1] | do | Section 104 | 960 |
| | | Section 108 | 40 |
| 3/08/66 | Northern Natural Gas Company | Section 104 | 100 |

| Contract date | Purchaser | NGPA price category | Estimated well deliverability (mcf/day) |
|---|---|---|---|
| 4/12/66 | do | Section 104 | 400 |
| 2/17/81 | Transwestern Pipeline Co | Section 106(a) | 500 |
| | | Section 108 | 100 |
| 3/18/66 [1] | NW Central Pipeline Co | Section 104 | 50 |
| 7/15/80 | El Paso Natural Gas Company | Section 106(a) | 100 |
| Total | | | 5,855 |

[1] Contract has expired.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, 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 petition to intervene or a protest in accordance with the requirements of the Commisison'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 the proceeding herein must file a petition 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 to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–14688 Filed 6–26–87; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP87–402–000]**

## Petition for Exemption; Midwestern Gas Transmission

June 23, 1987.

Take notice that on June 22, 1987, Midwestern Gas Transmission Company (Midwestern), 1100 Milam Building, Houston, Texas 77002, filed in Docket No. CP87–402–000 a petition pursuant to section 7(c)(1)(B) of the Natural Gas Act for an exemption from the certificate requirements of section 7(c) for the temporary transportation of natural gas through Midwestern's Northern System for use in testing the integrity of that system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern states that as part of an ongoing program to ensure the safety and integrity of the Northern System, Midwestern is scheduled to conduct intelligent pigging of the Northern System pipeline during the weeks of July 6, 1987 and July 13, 1987, through which the tests would determine any anomalies in the line that need repair. Midwestern asserts that in order to move the pig through the line at sufficient speed to conduct the test Midwestern must achieve a flow rate in the line of at least 100,000 Mcf of natural gas per day (Mcfd). Midwestern proposes to flow through the Northern System a small, limited volume of gas that Tennessee Gas Pipeline Company (Tennessee) is entitled to purchase from Pro Gas. Midwestern would, after testing is complete, return equivalent quantities to Tennessee by means of a no-fee exchange. Midwestern states that no more than a total of 400,000 Mcf would be required to conduct the test.

Any person desiring to be heard or to make any protest with reference to said petition for exemption should on or before July 7, 1987, 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 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–14689 Filed 6–26–87; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. GP87–51–000]**

## Petition for a Declaratory Order; Northern Natural Gas Co., Division of Enron Corp. and Phillips Petroleum Co.

June 24, 1987.

Take notice that on May 19, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern) and Phillips Petroleum Company (Phillips) (collectively referred to as Petitioners), filed with the Commission pursuant to § 385.207 of the Commission's regulations (Rule 207), a petition for a declaratory order. Petitioners seek a determination of whether the favored nations clause in Phillips' contract to sell gas to Northern constitutes the required contractual authority to permit Phillips to seek a higher price pursuant to the good faith negotiation rule of Order Nos. 451 [1] and 451–A.[2] Under the favored nations clause, Northern must pay Phillips the highest price it pays any producer in the area.[3] Phillips requests an order declaring that it may initiate good faith negotiation even before Northern pays a higher price under Order No. 451 to another producer in the area. Northern, however, requests an order declaring that Phillips may not initiate good faith negotiation.

Phillips asserts that under Order No. 451 any indefinite price escalation clause provides authority to initiate good faith negotiation. Accordingly, since the Commission has treated grandfathered favored nations clauses as indefinite price escalator clauses in the same manner as area rate clauses for ratemaking purposes, the favored nations clause allegedly provides authority to initiate good faith negotiation. Furthermore, Phillips contends, Northern's payment of a higher price to another producer so as to trigger the favored nations clause is not a condition precedent to Phillips' initiating good faith negotiation. According to Phillips this follows from the fact that both both the Commission and Northern have agreed that the favored nations clauses permits Phillips to submit a rate filing for any area rate or NGPA ceiling price even if Phillips cannot yet collect that rate since Northern has not paid that rate to another producer.

Northern, on the other hand, contends that under Order No. 451 only price escalation clauses triggered solely by the

[1] 51 FR 22168 (June 18, 1986.)

[2] 51 FR 46762 (December 24, 1986.)

[3] Since the contract was entered into before 1962, 18 CFR 154.93, which prohibits all but certain specified indefinite price escalation clauses, is not applicable.

Commission's establishment of a higher price ceiling, such as an area rate clause, provide authority to initiate good faith negotiation. Northern states that the requirement that it pay a higher price to a thrid party before the favored nations clause is triggered distinguishes the favored nations clause from an area rate clause and from the definition of contractual authority found in 18 CFR 270.201 (a)(2)(ii)(A). Northern also observes that allowing Phillips to initiate good faith negotiation before Northern pays a higher price to another producer would, if the parties cannot agree on a price, permit Phillips to obtain abandonment before it has contractual authority to collect a higher price from Northern.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, not later than 20 days after publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition filed in this proceeding are on file with the Commission and available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–14690 Filed 6–26–87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP87–103–000]**

## Informal Technical Conference; Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

June 23, 1987.

On November 26, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), filed an application in Docket No. CP87–103–000 pursuant to section 7(c) of the Natural Gas Act. Tennessee requests authority to revise the firm natural gas storage service it offers certain customers under Rate Schedules SS–E and SS–NE to permit each customer to use up to one-third of its total authorized winter storage quantity for gas not purchased from Tennessee. Tennessee also requests authority to modify the monthly billing provisions of its Rate Schedules CD, SS–E, and SS–NE to provide for storage for third-party gas.

Tennessee's application was noticed on December 15, 1985, with an intervention due date of January 5, 1987. A timely protest and request for a hearing was filed by Consolidated Edison Company of New York, Inc. (Con. Ed.). The Public Service Electric and Gas Company (PSE&G) filed a timely request for summary rejection or, in the alternative, a hearing. Con. Ed. and PSE&G object to Tennessee's proposed one time inventory charge and one-third limit of third party injections into storage. The Long Island Lighting Company in its timely intervention in support of the proposal states that it is not convinced that the customers' third-party injections should be limited to only one-third of total authorized capacity.

Take notice that an informal technical conference will be convened in the above captioned preceeding at 10:00 a.m. on July 7, 1987. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Commission staff are invited to attend. Attendance at the conference will not confer party status. Any person wishing to become a party to this proceeding must file a Motion to Intervene in accordance with Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214).

For further information contact John J. Buckley of the Commission's staff at (202) 357–8999.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–14691 Filed 6–26–87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP87–40–002]**

## Compliance Filing; Western Transmission Corp.

June 24, 1987.

Take notice that on June 17, 1987, Western Transmission Corporation (Western) tendered for filing certain tariff sheets to its FERC Gas Tariff, Original Volume No. 1 in compliance with the Commission order of March 20, 1987, which required Western to file (1) tariff sheets setting forth operating terms and conditions governing its transportation service, and (2) a revised tariff sheet OAT–1 eliminating the use-or-lose provisions. Western's previous compliance filing of April 13, 1987 was rejected for noncompliance pursuant to the Commission order dated May 12, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Fedeal 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. All such motions or protests should be filed on or before July 1, 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. 87–14692 Filed 6–26–87; 8:45 am]

BILLING CODE 6717-01-M

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## Office of Hearings and Appeals

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $71,612 (plus accrued interest) obtained as a result of consent orders which the DOE entered into with the following parties: Jay Oil Company of Fort Smith, Arkansas, and Keller Oil Company, Inc. of Effingham, Illinois. The funds are being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

**DATE AND ADDRESS:** Applications for refund of a portion of the consent order funds must be filed within 90 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, with reference to the appropriate proceeding: Jay Oil Company Consent Order Proceeding (Case No. HEF–0101) and Keller Oil Company, Inc. Consent Order Proceeding (Case No. HEF–0103).

**FOR FURTHER INFORMATION CONTACT:** Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000

Independence Avenue, SW., Washington, DC 20585, (202) 586–2860.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to consent orders which settled possible pricing violations with respect to two firms' sales of petroleum products during the consent order periods listed below. Under the terms of the consent orders, each firm was required to remit a specified sum of money to the DOE. The funds are being held in individual interest-bearing escrow accounts pending determination of their proper distribution.

| Consent order firm | Consent order period | Amount remitted |
|---|---|---|
| Jay Oil Co., Fort Smith, AK | Nov. 1, 1973–Feb. 28, 1975. | $38,500 |
| Keller Oil Co., Inc., Effingham, IL | May 1, 1979–Sept. 30, 1979. | 33,112 |

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order funds. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on October 14, 1986, 51 FR 37343 (October 21, 1986).

As the Decision and Order indicates, applications for refunds from the consent order funds may now be filed. Applications will be accepted provided they are filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Applications will be accepted from customers who purchased petroleum products from either consent order firm during the applicable consent order period. The specified information required in an application for refund is set forth in the Decision and Order. The Decision and Order states that any remaining consent order funds remaining after the first-stage claims procedure is completed will be distributed in accordance with the Petroleum Overcharge Distribution and Restitution Act of 1986.

Dated: June 18, 1987.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

**Decision and Order of the Department of Energy**

*Special Refund Procedures*

June 18, 1987

*Names of Firms:* Jay Oil Co., Keller Oil Co., Inc.

*Dates of Filing:* October 13, 1983, October 13, 1983.

*Case Numbers:* HEF–0101, HEF–0103.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with consent orders entered into with Jay Oil Company (Jay) and Keller Oil Company, Inc. (Keller) (except when individually identified, the companies will be collectively referred to as the consent order firms).

**I. Background**

Jay and Keller are both "reseller-retailers" of petroleum products as that term was defined in 10 CFR 212.31. Jay is located in Fort Smith, Arkansas and Keller is located in Effingham, Illinois. An ERA audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations at 10 CFR Part 212, Subpart F. Subsequently, each of the firms entered into a separate consent order with the DOE in order to settle its disputes with the DOE concerning certain sale of petroleum products. Each of the consent orders refers to the ERA's allegations of overcharges, but notes that there were no formal findings that violations occurred. The consent orders also state that the consent order firms do not admit that they committed violations.

The Jay consent order, which was entered into on January 6, 1981, resolves issues raised in a Remedial Order issued to the firm on May 6, 1977 by the Dallas, Texas Regional Office of the Federal Energy Administration (FEA).[1] The consent order covers sales of motor gasoline and diesel fuel during the period November 1, 1973 through February 28, 1975. The consent order requires that Jay remit $77,000 to the DOE for deposit into an interest-bearing escrow account for ultimate distribution by the DOE. To date Jay has remitted $38,500, and has not made any payment since March 1982.[2]

The Keller consent order, which was entered into on August 31, 1981, resolved issues raised in an ERA audit covering the firm's sales of motor gasoline during the period May 1, 1979 through September 30, 1979. In accordance with the consent order, Keller remitted $33,112 to the DOE for deposit into an interest-bearing escrow account pending distribution by the DOE.[3]

On October 14, 1986, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Jay and Keller consent order funds. 51 FR 37343 (October 21, 1986). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in these proceedings, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of any alleged overcharges made by either of the consent order firms during the relevant consent order period.

In order to give notice to all potentially affected parties, a copy of the PD&O was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. Copies were also sent to identified customers and to various service station dealers' association. While none of the consent order firms' customers filed comments on the procedures,[4] comments were filed collectively on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. These comments concern the distribution of any funds remaining after refunds have been made to injured

[1] The Remedial Order and a Revised Remedial Order issued to Jay were both remanded upon adjudication to the FEA Regional Office with regard to the issue of the firm's ability to meet the repayment terms. *See Jay Oil Co.*, 1 DOE ¶ 80,127 (1977) and 2 DOE ¶ 80,151 (1978).

[2] As of May 31, 1987, the Jay escrow account contained $60,049, representing $38,500 in principal and $21,549 in accrued interest.

[3] As of May 31, 1987, the Keller escrow account contained $49,618, representing $33,112 in principal and $16,506 in accrued interest.

[4] Spe-Dee Mart Food Stores (Spe-Dee Mart) of Fayetteville, Arkansas, a customer of Jay, filed a refund "claim." As indicated in the PD&O, no refund applications may be filed until the issuance of a final Decision and Order.

parties. The purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the Jay and Keller refund proceedings. In determining the manner of indirect restitution, we will act in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99–509, Title III. Therefore, we will adopt the first-stage refund procedures as proposed.

**4. Jurisdiction and Authority**

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of enforcement proceedings. 10 CFR Part 205, Subpart V. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing these two consent order funds. We will therefore grant the ERA's petitions and assume jurisdiction over these funds.

**III. Refund Procedures**

Since we have not received any adverse comments regarding our proposed refund procedures, and since we believe those procedures to be fair and efficient, we will adopt them.

*A. Refund Claimants*

The consent order funds will be distributed to claimants who satisfactorily demonstrate that they were injured by either of the consent order firms' alleged overcharges. The ERA audit files identify one allegedly overcharged purchaser of Jay petroleum products, Spe-Dee Mart. These files also identify retailers and end-users that purchased motor gasoline or diesel fuel from Jay on or about May 15, 1973, the initial base period date for the reseller price rule at 10 CFR 212.93. In view of the likelihood that at least some of these firms purchased from Jay during the consent order period, we have listed them in Appendix A to this Decision and Order. We solicit information regarding the addreses of these firms and the identity of any other purchasers of Jay motor gasoline or diesel fuel during the consent order period. Keller has supplied us with the names of its customers during the consent order period. These names are listed in Appendix B to this Decision and Order. These customers, as well as any other customer of the consent order firms during the respective consent order periods, will be eligible to apply for refunds based on their purchases from Jay or Keller. Each applicant must show that it purchased the consent order firm's products during the consent order period, and was injured by the alleged overcharges.

*B. Showing of Injury*

To demonstrate injury, a reseller or retailer claimant must provide evidence that it would have maintained its prices for the petroleum products purchased from the consent order firm at the same level had the alleged overcharges not occurred. Accordingly, any reseller or retailer claimant should show that at the time it purchased these products, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See Busler Enterprises, Inc.*, 13 DOE ¶ 85,308 (1985); *Eugene Endicott*, 13 DOE ¶ 85,086 (1985). In addition, a reseller or retailer must show that it had "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.[5] As we noted in the PD&O, however, the maintenance of a bank will not automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

The following presumptions are being adopted in order to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources avialable. *See* 10 CFR 205.282(e).

1. Applicants Claiming a Refund of $5,000 or Less

As stated in the PD&O, we recognize that making a detailed showing of injury may be too complicated and burdensome for resellers or retailers who purchased relatively small amounts of petroleum products from a consent order firm. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be granted. In the past we have adopted a small claims presumption to assure that the costs of filing and processing refund applications do not exceed the benefits. *See e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984) (*Aztex*); *Marion Corp.*, 12 DOE ¶ 84,014 (1984) (*Marion*). We will adopt such a presumption in this case. Therefore, any reseller applicant claiming a refund of $5,000 or less need not make a detailed showing of injury in order to be eligible to receive a refund.[6]

2. Spot Purchasers

We further adopt our proposal that resellers or retailers that made spot purchases from a consent order firm be ineligible to receive a refund, even a refund below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. Spot purchasers tend to have considerable discretion as to where and when to make purchases and would therefore not have made spot purchases unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Vickers*, 8 DOE at 85,396–97. Accordingly, any reseller or retailer claimant who was a spot purchaser must submit evidence to rebut the spot purchaser presumption and establish the extent to which it was injured as a result of its spot purchases.

3. Consignees

Subsequent to the issuance of the PD&O, it came to our attention that some of Jay's customers may have been consignees. Consignees are firms that distributed petroleum products pursuant to a contractual agreement with a reseller, under which the reseller retained title to the products, specified the price to be paid by the purchaser, and paid the consignee a commission based on the volume of products it distributed. *See* 10 CFR 212.31 (definition of "consignee agent"). In previous Decisions, we have adopted the rebuttable presumption that consignees that distributed the products of a consent order firm were not economically injured as a result of their contractual arrangement with their reseller/supplier. *See, e.g., Aztex.* However, we also determined in those

[5] Retailer and reseller applicants will not be required to submit bank information in connection with sales made after July 15, 1979 and April 30, 1980, respectively, the dates on which the amendments of the price rule eliminating the banking requirement for retailers and most resellers became effective. 44 FR 42541 (July 19, 1979); 45 FR 29546 (May 2, 1980).

[6] As in prior refund cases, resellers or retailers whose calculated refund (excluding interest) exceeds the threshold amount may elect to apply for a refund of $5,000 without being required to make detailed demonstration of injury.

cases that consignees could rebut this presumption by establishing that their sales volumes, and their corresponding revenue, declined due to the alleged uncompetitiveness of the consent order firm's prices. *Id.; see also Gulf Oil Corp./C. F. Canter Oil Co.*, 13 DOE ¶ 85,388 (1986). We will adopt this approach in these proceedings.

4. End-Users

In the PD&O, we made a finding that end-users and ultimate consumers of the consent order firms' petroleum products whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent orders. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the time covered by the consent orders, and thus were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of the non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Marion; see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984). We have received no comments objecting to this finding. We will therefore adopt our proposal that end-users of petroleum products purchased from either of the consent order firms need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges.

*C. Calculation of Refund Amounts*

In the PD&O, we proposed that in the Jay proceeding Spe-Dee Mart be eligible for a potential refund of $25,736.50, plus interest, on the basis of the information in the ERA audit files.[7] This is consistent with previous refund proceedings in which we apportioned part or all of the consent order funds to customers of the consent order firms on the basis of information in the audit files. *See, e.g., Marion; Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984). We will therefore adopt this proposal.

With respect to the remaining funds in the Jay escrow account and the entire Keller escrow account, we proposed in the PD&O to use a volumetric method to distribute each consent order fund among the applicants who demonstrate that they are eligible to receive refunds. The volumetric refund method presumes that the alleged overcharges of a consent order firm were spread equally over all gallons of product marketed by that particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. Since we received no objections to our proposal to use this methodology, we will adopt it in these proceedings.[8]

The volumetric refund amount is calculated by dividing a consent order amount by the gallonage of petroleum products sold by a consent order firm during the consent order period. For claimants that purchased motor gasoline from Keller, the volumetric factor is $0.00207 per gallon.[9] For claimants in the Jay proceeding, the volumetric factor is $0.001879 per gallon.[10] An eligible claimant's refund will be calculated by multiplying the appropriate volumetric refund amount by the number of gallons of petroleum products the claimant purchased from the consent order firm during the consent order period. In addition, successful claimants will receive a proportionate share of the accrued interest.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Keller and Jay consent order funds. Accordingly, we will now accept Applications for Refund from eligible customers who purchased petroleum products from either of the consent order firms during the applicable consent order period: November 1, 1973 through February 28, 1975 for Jay and May 1, 1979 through September 30, 1979 for Keller. There is no official application form. Applications for Refund should be written or typed on business letterhead or personal stationery. The following information should be included in all Applications for Refund:

1. The appropriate consent order firm's name and case number (Case No. HEF–0101 for Jay and HEF–0103 for Keller) and the applicant's name should be prominently displayed on the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. The manner in which the applicant used the consent order firm's petroleum products, i.e., whether it was a reseller, retailer, or end user.

4. The volume of Keller motor gasoline or Jay motor gasoline or diesel fuel that the applicant purchased in each month of the period of time for which it is claiming it was injured by the alleged overcharges. If the product was not purchased directly from one of the consent order firms, the claimant must include a statement setting forth the reasons for believing the product originated from one of the consent order firms.

5. A statement of whether the applicant was in any way affiliated with either of the consent order firms. If so, the applicant should state the nature of the affiliation.

6. A statement of whether there has been any change in ownership of the entity that purchased petroleum products from either of the consent order firms since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided.

7. A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order

[7] The Remedial Order issued to Jay alleged that Spe-Dee Mart was overcharged in the amount of $102,897.04. Since the consent order amount of $77,000 is equivalent to 50.024 percent of the total alleged overcharge amount of $153,924.40, Spe-Dee Mart's pro-rated portion of the settlement is $51,473. However, because Jay has thus far remitted only half of the consent order amount, at this time we have allotted only 50 percent of $51,473, or $25,736.50, as Spe-Dee Mart's allocable share. In the event that further payments are made by Jay, Spe-Dee Mart's allocable share will be increased.

[8] We recognize that the impact on an individual purchaser could have been greater than the applicable volumetric refund amount, and we will allow any purchaser to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

[9] This figure was derived by dividing the $33,112 remitted to the DOE by Keller by the estimated 16,000,000 gallons of motor gasoline sold by Keller during the consent order period.

[10] This figure was derived by dividing $12,763.50 ($38,500 remitted by Jay less Spe-Dee Mart's allocable share of $25,736.50) by 6,792,460 gallons (15,392,460 gallons of motor gasoline and diesel fuel sold by Jay during the consent order period less 8.6 million gallons, the estimated amount sold to Spe-Dee Mart). Although a higher figure was tentatively set forth in the Proposed Decision, as a result of additional purchase volume information which we have received from Spe-Dee Mart, we believe that the present volumetric refund amount is more accurate than the proposed one. In the event that Jay remits any further amounts, the volumetric refund amount will be increased.

issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d)

8. The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

In addition, Spe-Dee Mart and any other reseller or retailer applicant who wishes to claim a refund in excess of $5,000 must also:

(a) State whether it maintained banks of unrecouped product cost increases and furnish the OHA with quarterly bank calculations from the beginning of the consent order period until the end of the banking regulations (July 16, 1979 for retailers; April 30, 1980 for most resellers) and

(b) Submit evidence to establish that it did not pass through the alleged overcharge to its customers. For example, a firm may submit weighted average monthly purchase prices for each product purchased from the consent order firm for each month of the consent order period and compare those prices with average prices in the firm's market area for each of those months. (In the absence of an accurate market survey provided by the applicant, the OHA will use the market price information contained in *Platt's Oil Price Handbook and Oilmanac.*)

All Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. The applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585. Any applicant that believes that its application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

It Is Therefor Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Jay Oil Company pursuant to the consent order executed on January 6, 1981, may now be filed.

(2) Applications for refunds from the funds remitted to the Department of Energy by Keller Oil Company, Inc. pursuant to the consent order executed on August 31, 1981, may now be filed.

(3) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: June 18, 1987.

**George B. Breznay,**

*Director, Office fo Hearings and Appeals.*

**Appendix A**

*Jay Oil Company*

[Case No. HEF-0101]

Lowes Snack Shack
John Wells
Downtown Citgo
Tannersley Bros.
Whitlock Citgo
Glidewell Distr.
Cecil Dian
Mead Container
Bill Yates Buick
Continental Banking
Albert Moore
Tommy Dean
Emerson Dozier
Ed Stitles
Holt Cardraw
B&B Citgo [1]
62 Truck Stop [1]

**Appendix B**

*Keller Oil Co., Inc.*

[Case No. HEF-0103]

Taylorville Self-Serv
McAfood Shell
Dixie Truck Stop
Dust Ramada Shell
Dutch Pantry
Holiday Shell
Lincoln Lodge
Millerville Shell
Pruden Shell
Reece Union 76
Rushco Shell
Piasa Motor Fuel
Hen House Shell
Frontier Shell
Shell Quick Stop
HWRT, Inc.
Golitko Shell
Heinzelmann Shell
Tom Marlatt's Shell
Shelbyville Union 76
Sullivan Shell
Weldon Oil Co.
Glen Brown Shell
Hunters Shell
Randy's Shell
Downtown Self-Serv
Mt. Vernon Self-Serv
Arcola Shell
Hen House-Mahomet
Taylorville, IL
Alton, IL
Tuscola, IL
Effingham, IL
Greenup, IL
Effingham, IL
Altamont, IL
Salem, IL
Vandalia, IL
Edgewood, IL
Alton, IL
Martinsville, IL
Farina, IL
Montrose, IL
Hartford, IL
Nokomis, IL
Atwood, IL
Maroa, IL
Shelbyville, IL
Sullivan, IL
Weldon, IL
Danville, IL
Taylorville, IL
Bement, IL
Effingham, IL
Mt. Vernon, IL
Arco, IL
Mahomet, IL

[1] The ERA audit files indicate that these firms were consignment dealers on May 15, 1973. They are therefore presumptively ineligible for refunds. *See* Part III.B.3. of the Decision.

[FR Doc. 87-14626 Filed 6-26-87; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[A-4-FRL-3223-7]**

### Standards of Performance for New Stationary Sources; National Emission Standards for Hazardous Air Pollutants; Delegation of Additional Standards to North Carolina

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Delegation.

**SUMMARY:** On April 17, 1987, the North Carolina Division of Environmental Management requested that EPA delegate to the State the authority to implement and enforce additional categories of Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). (These are listed below under "Supplementary Information".) Since EPA's review of pertinent North Carolina laws, rules, and regulations showed them to be adequate to implement and enforce these federal standards, the Agency has delegated authority for them to North Carolina. Affected sources are now under the jurisdiction of the State.

**EFFECTIVE DATE:** June 8, 1987.

**ADDRESS:** Copies of the State's requests and EPA's letter of delegation are available for public inspection at the

EPA Region IV office, 345 Courtland Street, NE., Atlanta, Georgia 30365.

All reports required pursuant to the newly delegated standards (listed below) should be submitted to the Air Quality Section, North Carolina Department of Environmental Management, Post Office Box 27687, Raleigh, North Carolina 27611.

**FOR FURTHER INFORMATION CONTACT:** Bob Peddicord of the EPA Regional IV Air Programs Branch at the above address, telephone (404) 347–2864 or FTS 257–2864.

**SUPPLEMENTARY INFORMATION:** Sections 111 and 112 of the Clean Air Act authorize EPA to delegate authority to implement and enforce the Standards of Performance of New Stationary Sources (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) to any state which has adequate implementation and enforcement procedures.

On November 24, 1976, EPA delegated to North Carolina authority to implement and enforce most of the NSPS and NESHAP then existent. Since that date, EPA has updated the State's delegation several times. On April 14, 1987, the North Carolina Division of Environmental Management requested a delegation for the following recently promulgated NSPS and NESHAP:

40 CFR Part 60, Subpart Na: Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983

40 CFR Part 61, Subpart N: Inorganic Arsenic Emissions from Glass Manufacturing Plants

40 CFR Part 61, Subpart O: Inorganic Arsenic Emissions from Primary Copper Smelters

40 CFR Part 61, Subpart P: Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.

After a thorough review of the request, I determined that such delegation was appropriate with the conditions set forth in the original delegation letter of November 24, 1976, and granted the State's request in a letter dated June 8, 1987. North Carolina sources subject to the NSPS and NESHAP listed above are now under the jurisdiction of the State of North Carolina.

I certify, pursuant to 5 U.S.C. 605(b), that this delegation will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**Authority:** Sections 111 and 112 of the Clean Air Act (42 U.S.C. 7411 and 7412).

Dated: June 18, 1987.

**Lee A. DeHihns, III,**

*Acting Regional Administrator.*

[FR Doc. 87–14669 Filed 6–26–87; 8:45 am]

**BILLING CODE 6560–50–M**

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**[OPTS–59821; FRL–3224–2]**

## Certain Chemicals Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substance Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMNs and provides the summary of each.

**DATES:** Close of Review Period:
Y87–165, and 87—166—July 5, 1987.
Y 87–167—July 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**Y 87–165**

*Manufacturer.* Confidential.

*Chemical.* (G) Acrylate copolymer.

*Use/Production.* (G) Adhesive for bonding of unlike substances and binding or coating agent for fabrics, textiles or paper. Prod. range: Confidential.

**Y 87–166**

*Manufacturer.* Stephan Company.

*Chemical.* (S) Polymer of 2-propenoic acid, 2-methyl-, polyer, with 1-ethenyl-2-pyrrolidine and ethyl-2-methyl-2-propenoate; and 2-(dimethylamino)ethanol.

*Use/Production.* (S) Industrial binder additive for fiberglass. Prod. range: 5,500 to 23,000 kg/yr.

**Y 87–167**

*Importer.* Dynamit Nobel Chemicals.

*Chemical.* (G) Polyester resin of aryl dicarboxylic acids plus alkane diols.

*Use/Import.* (S) Industrial ingredient in a paint formulated to provide low temperature impact resistance. Import range: Confidential.

Dated: June 19, 1987

**Linda K. Smith,**

*Acting Division Director, Information Management Division.*

[FR Doc. 87–14671 Filed 6–26–87; 8:45 am]

**BILLING CODE 6560–50–M**

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**[OPTS–59245; FRL–3224–1]**

## Fluorinated Polyol, Test Market Exemption Application

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

**DATE:** Written comments by: July 14, 1987.

**ADDRESS:** Written comments, identified by the document control number "[OPTS–59245]" and the specific TME number should be sent to: Document Control Officer (TS–790), Confidential Data Branch, Information Management Division, Office of Toxic Substances,

Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME's received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**T 87-19**

*Close of Review Period.* July 26, 1987.
*Manufacturer.* Confidential.
*Chemical.* (G) Fluorinated polyol.
*Use/Production.* (G) Industrial protective coating. Prod. range: Confidential.

Dated: June 19, 1987.

**Linda K. Smith,**

*Acting Division Director, Information Management Division.*

[FR Doc. 87-14672 Filed 6-26-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL HOME LOAN BANK BOARD

**[No. 87-688]**

### Application for Unlisted Trading Privileges and Opportunity for Hearing; Boston Stock Exchange

Dated: June 23, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** On June 16, 1987, the Boston Stock Exchange filed, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1, an application ("Application") with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities.

Coast Savings and Loan Association, Los Angeles, California (FHLBB No. 7046, Common Stock, No Par Value

Standard Federal Bank, Troy, Michigan (FHLBB No. 0161), Common Stock, $1.00 Par Value

Columbia Savings and Loan Association, Beverly Hills, California (FHLBB No. 6325), Common Stock, $1.00 Par Value

Home Federal Savings and Loan Association, San Diego, California (FHLBB No. 3143), Common Stock, $.01 Par Value

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments

Any interesting person may inspect the Application at the Board, and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to the Application are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the Application after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to the Application are consistent with the maintenance of fair and orderly markets and the protection of investors.

**FOR FURTHER INFORMATION CONTACT:** John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202) 377-6415 or at the above address.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-14711 Filed 6-26-87; 8:45 am]

BILLING CODE 6720-01-M

### Appointment of Receiver; Investors Federal Bank, F.S.B. El Reno, OK

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Investors Federal Bank, F.S.B., El Reno, Oklahoma, on June 18, 1987.

Dated: June 18, 1987.

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Acting Secretary.*

[FR Doc. 87-14712 Filed 6-26-87; 8:45 am]

BILLING CODE 6720-01-M

### Federal Savings and Loan Advisory Council Meeting

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the proposed agenda of a forthcoming meeting of the Federal Savings and Loan Advisory Council. Notice of the meeting is required under the Federal Advisory Committee Act.

**DATE(S):** July 15, 1987, 9:00 a.m.—4:30 p.m.; July 16, 1987, 9:00 a.m.—11:30 a.m.

**ADDRESS:** Federal Home Loan Bank Board, Board Room, 6th Floor, 1700 G Street, NW., Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:** John M. Buckley, Jr. (202/377-6577), Debra J. Ahearn (202/377-6924).

**SUPPLEMENTARY INFORMATION:**

Proposed Agenda:

1. Bank Board Priorities.
2. Where should Capital Requirements go from here?
3. Junk Bonds.

No. 8, June 23, 1987.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-14608 Filed 6-26-87; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each ageement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that

document to the person filing the agreement at the address shown below.

*Agreement No.:* 003–010965–001
*Title:* Island Ocean Terminal Agreement
*Parties:*
Puerto Rico Maritime Shipping Autority
Sea-Land Service, Inc.
Trailer Marine Transport Corporation
*Synopsis:* The proposed amendment would add marine Transportation Services Sea-Barge Group, Inc. and Gulf Puerto Rican Transport, Inc. as parties to the agreement.

By Order of the Federal Maritime Commission.

Dated: June 24, 1987.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–14676 Filed 6–26–87; 8:45 am]

BILLING CODE 6730–01–M

## Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

*License Number:* 1201
*Name:* Lion Transfer & Storage Company
*Address:* c/o One Bollinger Place, Stamford, CT 06907
*Date Revoked:* March 2, 1987
*Reason:* Requested revocation voluntarily

*License Number:* 2779
*Name:* Marathon Shipping, Inc.
*Address:* 1225 Connecticut Avenue, NW., Washington, DC 20036
*Date Revoked:* April 25, 1987
*Reason:* Failed to maintain a valid surety bond

*License Number:* 3065
*Name:* Rose Moving and Storage Co., Inc.
*Address:* 10421 Ford Road, Deaborn, MI 48126
*Date Revoked:* April 27, 1987
*Reason:* Requested revocation voluntarily

*License Number:* 2386
*Name:* The International Shipping Company
*Address:* P.O. Box 9484, Washington, DC 20016
*Date Revoked:* April 29, 1987
*Reason:* Requested revocation voluntarily

*License Number:* 2797
*Name:* S–D–C Air Freight, Inc. dba Sea Masters Ocean Freight
*Address:* 6080 NW. 84th Ave., Miami, FL 33166
*Date Revoked:* May 2, 1987
*Reason:* Failed to maintain a valid surety bond

*License Number:* 3046
*Name:* J.E. Bowlby, Inc. dba Jebco International
*Address:* P.O. Box 63, 268 Green Village Road, Green Village, NJ
*Date Revoked:* May 6, 1987
*Reason:* Surrendered license voluntarily

*License Number:* 2793
*Name:* Ex-Im Business Services Corporation
*Address:* 832 Higley Bldg., Cedar Rapids, Iowa 52401
*Date Revoked:* May 6, 1987
*Reason:* Failed to maintain a valid surety bond

*License Number:* 2650
*Name:* Societe Commerciale De Transports Transatlantiques Overseas U.S.A., Inc. dba S.C.T.T. Overseas U.S.A. Inc.
*Address:* 11777 Katy Freeway, #450, Houston, TX 77079
*Date Revoked:* May 9, 1987
*Reason:* Failed to maintain a valid surety bond

*License Number:* 476
*Name:* Bernard A. Zweifach dba World Wide Freight Forwarding Company
*Address:* 113–14 72nd, Forest Hills, NY 11375
*Date Revoked:* May 12, 1987
*Reason:* Requested revocation voluntarily

*License Number:* 2244
*Name:* Aero-Marine Forwarding, Inc.
*Address:* P.O. Box 8342, Fremont, CA 94537
*Date Revoked:* May 20, 1987
*Reason:* Surrendered license voluntarily

*License Number:* 474
*Name:* F. J. Herbelin Forwarding Co., Inc.
*Address:* 1217 Prairie, P.O. Box 4128, Houston, TX 77210
*Date Revoked:* May 26, 1987
*Reason:* Surrendered license voluntarily

*License Number:* 250
*Name:* Overton & Co. Customs Brokers, Inc.
*Address:* 225 Broadway, New York, NY 10007
*Date Revoked:* June 1, 1987
*Reason:* Failed to maintain a valid surety bond

**Robert G. Drew,**

*Director, Bureau of Domestic Regulation.*

[FR Doc. 87–14675 Filed 6–26–87; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Consumer Advisory Council; Solicitation of Nominations for Membership

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Solicitation of nominations for membership on the Board's Consumer Advisory Council.

**SUMMARY:** The Board is asking the public to nominate qualified individuals for appointment to its Consumer Advisory Council. Eleven new members will be selected for three-year terms that will begin in January 1988. Nominations should include the address and telephone number of the nominee, information about past and present positions held, and a description of special knowledge, interests or experience related to consumer credit or other consumer financial services. It is contemplated that the Board will announce its selection of new members by year-end.

**DATE:** Nominations should be received by August 31, 1987.

**ADDRESS:** Nominations should be submitted in writing to Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. This information about nominees is available for inspection upon request, except as provided in the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

**FOR FURTHER INFORMATION CONTACT:** Bedelia Calhoun, Staff Specialist, Division of Consumer and Community Affairs, (202) 452–3305; or for Telecommunications Device for the Deaf (TDD) users only, Earnestine Hill or Dorothea Thompson (202) 452–3544; Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The Consumer Advisory Council was established by the Congress in 1976 to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer related matters. The Council by law represents the interests both of consumers and of the financial community. Members serve three-year terms that are staggered to provide the Council with continuity.

Eleven new members will be selected this year for terms beginning January 1, 1988. The Board is interested in candidates who have some familiarity with current issues in the area of

consumer credit and other consumer financial services. In making the appointments, the Board will seek to complement the qualifications of continuing Council members in terms of affiliation and georgraphic representation, and to ensure the representation of women and minority groups. The Board expects to announce its selection of new members by year-end.

The Council meets in Washington, DC three times a year. Council members are paid $100 per day for participating in the one and a half day meetings and for travel time. The Board also pays travel expenses.

The names and affiliations of current Council members (and the expiration date of each term of office) are listed below:

*Chairman*

Edward N. Lange, Partner, Davis, Wright, Riese & Jones; Seattle, Washington, December 31, 1987

*Vice Chairman*

Steven W. Hamm, Administrator, South Carolina Department of Consumer Affairs, Columbia, South Carolina, December 31, 1988

*Members*

Edwin B. Brooks, Jr., President, Security Federal Savings & Loan Association, Richmond, Virginia, December 31, 1988

Jonathan A. Brown, Director, BankWatch, Washington, DC, December 31, 1987

Judith N. Brown, National Treasurer, American Association of Retired Persons, Edina, Minnesota, December 31, 1989

Michael S. Cassidy, Senior Vice President, Chase Manhattan Bank, N.A., New York, New York, December 31, 1988

Theresa Faith Cummings, Social Services Consultant, Springfield, Illinois, December 31, 1987

Richard B. Doby, Bank Commissioner, State of Colorado, Denver, Colorado, December 31, 1989

Richard H. Fink, President, Citizens for a Sound Economy, Washington, DC, December 31, 1989

Neil J. Forgarty, Attorney, Hudson County Legal Services, Jersey City, New Jersey, December 31, 1988

Stephen Gardner, Assistant Attorney General, Consumer Protection Division, State of Texas, Dallas, Texas, December 31, 1989

Kenneth A. Hall, President, South Division, First United Bank, Picayune, Mississippi, December 31, 1988

Elena Hanggi, President, Association of Community Organizations for Reform Now, Little Rock, Arkansas, December 31, 1989

Robert J. Hobbs, Senior Attorney, National Consumer Law Center, Boston, Massachusetts, December 31, 1988

Ramon E. Johnson, Professor of Finance, University of Utah, Salt Lake City, Utah, December 31, 1989

Robert W. Johnson, Professor of Management and Director, Credit Research Center, Purdue University, West Lafayette, Indiana, December 31, 1988

John M. Kolesar, President, Ameritrust Development Bank, Cleveland, Ohio, December 31, 1988

Alan B. Lerner, Senior Executive Vice President, Associates Corporation of North America, Dallas, Texas, December 31, 1988

Fred S. McChesney, Visiting Fellow of Law & Economics, University of Chicago, Chicago, Illinois, December 31, 1987

Richard L.D. Morse, Professor of Family Economics, Kansas State University, Manhattan, Kansas, December 31, 1989

Helen E. Nelson, President, Consumer Research Foundation, Mill Valley, California, December 31, 1987

Sandra R. Parker, Chairman, Banking Committee, Richmond United Neighborhoods, Richmond, Virginia, December 31, 1988

Joseph L. Perkowski, Chief Executive Officer, Minneapolis Federal Employees Credit Union, Minneapolis, Minnesota, December 31, 1987

Brenda L. Schneider, Director of Community Relations, Manufacturers National Bank, Detroit, Michigan, December 31, 1987

Jane Shull, Director, Institute for the Study of Civic Values, Philadelphia, Pennsylvania, December 31, 1988

Ted L. Spurlock, Vice President and Director of Credit and Consumer Banking Services, J.C. Penney Company, Inc., Dallas, Texas, December 31, 1987

Mel R. Stiller, Executive Director, Consumer Credit Counseling Service of Eastern Massachusetts, Boston, Massachusetts, December 31, 1987

Christopher J. Sumner, President and Chief Executive Officer, Western Savings & Loan Company, Salt Lake City, Utah, December 31, 1987

Edward J. Williams, Senior Vice President, Consumer Bank Group, Harris Trust and Savings Bank, Chicago, Illinois, December 31, 1988

Michael Zoroya, Retail Services Consultant, The May Department Store, St. Louis, Missouri, December 31, 1987

Board of Governors of the Federal Reserve System, June 23, 1987.

**James McAfee,**

*Associate Secretary of the Board*

[FR Doc. 87-14625 Filed 6-26-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 87M-0191]**

### CTL, Inc.; Premarket Approval of Custom Eyes ™ Tinted Bifocal (Bufilcon A) Soft (Hydrophilic) Contact Lenses

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by CTL, Inc., Raleigh, NC, for premarket approval, under the Medical Device Amendments of 1976, of the CustomEyes ™ Tinted Bifocal (bufilcon A) Soft (Hydrophilic) Contact Lenses. 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 supplemental application.

**DATE:** Petitions for administrative review by July 29, 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 July 28, 1986, CTL, Inc., Raleigh, NC 27612, submitted to CDRH a supplemental application for premarket approval of the CustomEyes ™ Tinted Bifocal (bufilcon A) Soft (Hydrophilic) Contact Lenses. These tinted lenses range in distance powers from −6.00 diopters (D) to +4.00 D and add power up to 1.50 D. The lenses are indicated for daily wear for the correction of visual acuity in not-aphakic presbyopic persons with nondiseased eyes that are myopic, hyperopic or emmetropic. The lenses may be worn by persons who have up to 2.00 D of astigmatism that does not

interfere with visual acuity. The tinted lenses are used for color enhancement of the eye, altering the apparent color of the eye and as a handling aid. CTL, Inc., will tint clear (untinted bufilcon A) finished lenses originating from Barnes-Hind, Inc., Sunnyvale, CA. The lenses are to be disinfected using either a heat or chemical lens care system. The lenses will be tinted blue, green, aqua, brown, or yellow with one or more of the four 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 application includes authorization from Barnes-Hind, Inc., Sunnyvale, CA, to incorporate by reference the information contained in its approved premarket approval applications for the Hydrocurve II (bufilcon A) Hydrophilic Contact Lens and HYDROCURVE II® Bifocal (bufilcon A) Soft (Hydrophilic) Contact Lens (Docket No. 85M–0054). Additionally, the application includes by reference the information contained in its approved premarket approval application for the tinted bufilcon A lenses (Docket No. 86M–0184).

On January 8, 1979, November 18, 1983, and October 17, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On May 8, 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 labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the approved contact lenses 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 Federal Food, Drug, and Cosmetic 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 wil 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 July 29, 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: June 19, 1987.

**John C. Villforth,**

*Director for Devices and Radiological Health.*

[FR Doc. 87–14629 Filed 6–26–87; 8:45 am]

BILLING CODE 4160–01–M

## Health Resources and Services Administration

### Proposed Fellowship Eligibility Criteria and Grant Funding Preference for Post-Baccalaureate Faculty Fellowship Grants

The Health Resources and Services Administration announces that applications for Fiscal Year 1987 Post-Baccalaureate Faculty Fellowship Grants will be accepted under the authority of section 830(b) of the Public Health Service Act, as amended by Pub. L. 99–92, and invites comments on the proposed fellowship eligibility criteria and grant funding preference set out below.

Approximately $817,000 is available in Fiscal Year 1987 for competing awards. Authorization for the current fiscal year is provided under a Continuing Resolution (Pub. L. 99–500 and 99–591).

**Purpose**

Section 830(b) of the Public Health Service Act, as amended by the Nurse Education Amendments of 1985, Pub. L. 99–92, authorized grants to public or private nonprofit schools of nursing to cover the costs of post-baccalaureate fellowships for faculty in such schools to:

(1) Investigate cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, phycically and mental disabled individuals, and ethnic and minority groups;

(2) Examine nursing interventions that result in positive outcomes in health statuts, with attention to iterventions which address family violence, drug and alcohol abuse, the health of women, adolescent care, and disease prevention; and

(3) Address other areas of nursing practice considered by the Secretary to require additional study." The Secretary has not designated other areas of nursing practice for this grant cycle.

**Applicants**

Public or private nonprofit schools of nursing are eligible to apply for grants to cover the cost of tuition and fees and, in some instances, stipends for currently employed faculty who would qualify for a post-baccalaureate faculty fellowship. Only one application will be accepted from any one school of nursing. A school with separate departments or more than one type of program must submit a

combined request. It is proposed that potential fellows must:

1. Hold a baccalaureate degree.

2. Be employed by the applicant institution as a faculty member during the period of the awarded fellowship.

Because the applicant institution may or may not be the school in which the faculty member is enrolled, employment by the applicant institution provides the potential grantee reasonable controls in administering and monitoring the fellowship(s) and progress of the fellow(s). It also allows the potential grantee the freedom and authority to negotiate with the faculty member such areas as release time for full or part time study.

3. Be enrolled in a master's program in nursing or in a doctoral program which requires a substantial study, master's thesis or a doctoral dissertation, and anticipate meeting master's or doctoral degree requirements by August 31, 1988 or sooner.

Programs leading to a graduate degree offer curricula that provide students with the ability of knowledge to conduct studies of the nature described by the legislation and described in item 4. A completion date by August 31, 1988 or sooner assures that the faculty members will be able to complete their study within the budget year that funds are available.

4. Undertake a reported study, thesis or dissertation focusing on an:

(a) Investigation of cost-effective alernatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, physically and mentally disabled individuals, and ethnic and minority groups; or

5. Examination of nursing interventions that result in positive outcomes in health status, with attention to interventions which address family violence, drug and alcohol abuse, the health of women, adolescent care, and disease prevention.

5. Be licensed to practice as a registered nurse in a State.

Almost without exception, students admitted to graduate schools of nursing must be registered to practice. In addition, it is unlikely that they would be able to undertake the required clinically oriented study without the legal right to practice.

**Funding Preference**

It is proposed to give a funding preference to those schools that have been successful in recruiting or retaining minority faculty. The Department believes that continued efforts must be made to increase the number of minority faculty and students in schools of nursing.

Interested persons are invited to comment on the proposed fellowship eligibility criteria and grant funding preference. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1987 award cycle, this comment period has been reduced to 30 days. All comments received on or before July 29, 1987, will be considered before the final criteria and funding preference are established. No funds will be allocated or final selections made until a final notice is published stating whether the criteria and funding preference will be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20867.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

**Application Deadline**

One review cycle will be held annually for Post-baccalaureate Faculty Fellowship grant applications. The deadline date for receipt of applications is July 29, 1987. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline, or

(2) Postmarked on or before the deadline date, and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Services will be accepted in lieu of a postmark. Private material postmarks shall not be acceptable as proof of timely mailing.

A request to use Form PHS 6025–1, HRSA Competing Training Grant Application, (OMB No. 0915–0060), and for approval of the supplemental instructions is in preparation and will be sumitted to OMB.

Requests for application material should be directed to: Grants Management Officer (A–23), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6915.

For technical assistance and other information regarding this program, contact: The Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6333.

This program is not presently listed in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs of 45 CFR Part 100.

Dated: May 21, 1987.

**David N. Sundwall, MD,**

*Administrator, Assistant Surgeon General.*

[FR Doc. 87–14651 Filed 6–26–87; 8:45 am]

BILLING CODE 4160–15–M

## Office of Human Development Services

## Child Abuse and Neglect Prevention Activities

**AGENCY:** Administration for Children, Youth and Families (ADYF), Office of Human Development Services (OHDS), Department of Health and Human Services (HHS).

**ACTION:** Notice of the availability of Federal funds to support child abuse and neglect prevention activities.

**SUMMARY:** FY 1987 Federal funds ("challenge grants") are now available to those States that in the previous State or Federal Fiscal Year, FY 1986, had established or maintained trust funds or other funding mechanisms (including appropriations) available only for child abuse and neglect prevention activities. "States" are defined as the several States, the District of Columbia, and the Commonwealth of Puerto Rico. This Notice sets forth the application and other requirements for these grants.

**DATE:** A signed original and two copies of the application must be received by August 13, 1987.

**ADDRESS:** Address applications to: Challenge Grants, National Center on Child Abuse and Neglect, Attention: Mary McKeough, P.O. Box 1182, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** Mary McKeough, (202) 245–2856.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On October 12, 1984, Pub. L. 98–473, the continuing appropriations bill for FY 1985, was enacted. The purpose as described in sections 402 through 409 of that bill is, by providing Federal "challenge grants", to encourage States to establish and maintain trust funds or other funding mechanisms, including

appropriations, to support child abuse and neglect prevention activities. On August 15, 1985, Pub. L. 99–88, the Supplemental Appropriations Act of 1985, appropriated $5 million for FY 1985 to support these provisions and extended the availability of these funds through FY 1986. Thirty-three States were awarded grants totaling $4.8 million from the FY 1985 appropriation. There were no funds appropriated for this program in FY 1986.

At the time this legislation was enacted, Congress estimated that approximately 20–25 States had set up trust funds or other funding mechanisms to support child abuse and neglect prevention activities. The most recent data available indicate that approximately 42 States have established trust funds or other funding mechanisms to support such activities.

Child abuse and neglect prevention activities include the activities specified in section 405:

(1) Providing statewide educational and public informational seminars for the purpose of developing appropriate public awareness regarding the problems of child abuse and neglect;

(2) Encouraging professional persons and groups to recognize and deal with the problems of child abuse and neglect;

(3) Making information about the problems of child abuse and neglect available to the public and to organizations and agencies which deal with problems of child abuse and neglect; and

(4) Encouraging the development of community prevention programs including:

(A) Community based educational programs on parenting, prenatal care, perinatal bonding, child development, basic child care, care of children with special needs, coping with family stress, personal safety and sexual abuse prevention training for children, and self-care training for latchkey children; and

(B) Community-based programs relating to crisis care, aid to parents, child abuse counseling, peer support groups for abusive parents and their children, lay health visitors, respite or crisis child care, and early identification of families where the potential for child abuse and neglect exists.

### B. Eligibility

States are eligible to apply for a grant for these FY 1987 funds if the State had established and maintained in the previous State or Federal Fiscal Year (FY 1986) a trust fund or other funding mechanism, including appropriations, available only for child abuse and neglect prevention activities. The term "State" as defined in section 403(2) means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico. We want to emphasize that based on section 405 which refers to State activities "in the previous fiscal year," these FY 1987 funds can be made available only based on FY 1986 activities.

### C. Funds Available and Fiscal Requirements

In FY 1987, $5 million is available for these grants.

Section 406(a)(1) of Pub. L. 98–473 provides that any grant to an eligible State shall be the lesser of two amounts:

(1) Twenty-five percent of the total amount made available by such State for child abuse and neglect prevention activities and collected in the previous State or Federal Fiscal Year (1986) in a trust fund or other funding mechanism. This amount can include appropriations but cannot include interest income from the principal of such a fund or funding mechanism.

or

(2) An amount equal to 50 cents times the number of children residing in the State according to the most current data available to the Secretary. (Section 406(a)(2) defines "children" as individuals who have not attained the State's age of majority.)

In computing a State's allocation, we will use the Bureau of the Census population statistics contained in its publication "Current Population Reports" (Series P–25, No. 970, issued June 1985) which is the most recent satisfactory data available from the Department of Commerce.

If the amount appropriated is insufficient to fund each State in full, the grants awarded to eligible States will be reduce proportionately.

States must obligate funds awarded under this program by September 30, 1988 and must expend them by September 30, 1989.

### D. Application Requirements

The application requirements for these grants do not go beyond the requirements of the statute but do require minimum documentation in order to assure compliance. We have cited each requirement to the specific section of the law and suggest that this notice be read in conjunction with the statute. No application forms or other materials will be needed in order to prepare an application. A State may submit its application in any format it chooses.

The Secretary will approve any application that meets the requirements of section 406(b) and will not disapprove an application unless the State has been given an opportunity to correct any deficiencies (section 406(b)(2)). Any additional materials required to satisfy the requirements of section 406(b) must be submitted within 10 days of the date when the State is notified by telephone of the deficiency.

An application may be based on the total amount of FY 1986 funds made available in either a trust fund or other funding mechanism, including appropriations, or based on a combination of FY 1986 funds made available in both a trust fund and other funding mechanism, including appropriations. *However, only one application per State will be considered.*

Section 406(b)(1)(A) provides that either the trust fund advisory board, or in States without a trust fund mechanism, the State liaison agency to the National Center on Child Abuse and Neglect, will be responsible for administering these funds. A State submitting and application based a combination of funds must coordinate the development of its application between the trust fund advisory board and the State liaison agency and must include the name and address of a contact person. It is up to the State to determine the basis of its application, to establish its process for the development and submission of the State's single application, and to designate the agency responsible for administering this program.

Except for States submitting applications based on a combination of funds, the application must be prepared by the agency specified in paragraph one below. The application must be signed by the individual authorized to act for the State in administering these funds, and must contain the following information and assurances:

1. The name and address of the trust fund advisory board responsible for administering and awarding these grants to eligible recipients within the State to carry out child abuse and neglect prevention activities, and the name and address of a contact person (section 406(b)(1)(A)).

In States that do not have trust funds, the name and address of the State liaison agency to the National Center of Child Abuse and Neglect (section 2 of the Child Abuse Prevention and Treatment Act) and the name and address of a contact person (section 406(b)(1)(A)

2. A copy of the State law or legal authority:

(a) Establishing the trust fund or other funding mechanism (section 405);

(b) Documenting that the proceeds of the trust fund or other funding mechanism are used only for child abuse and neglect prevention activities (section 405);

*Clarification:* Some States have established trust funds for both child abuse and neglect and domestic violence prevention activities. In such cases, Federal funds under this program are available based only on the funds available for the child abuse and neglect prevention activities; and

(c) Defining the State's age of majority (section 402(a)(2) and (b)(1)).

*Clarification:* Some States, under various circumstances, define the legal age of majority to be other than eighteen. Where a State has more than one legally supportable age of majority, we will apply the age that we determine is more closely related to the goals of the Challenge Grant program.

3. Documentation or certification that the trust fund (or other funding mechanism) was in operation during FY 1986 (section 405).

*Clarification:* Applications may be based on either the Federal Fiscal Year 1986, October 1, 1985 through September 30, 1986, or the State Fiscal Year 1986. Applications based on the State's Fiscal Year must specify the actual period of time encompassed.

4. Documentation or certification of the total amount of funds collected or allotted for child abuse and neglect prevention activities and made available in Fiscal Year 1986 in the trust fund or other funding mechanism, including appropriations. This total may not include interest income from the principal of such fund (section 406(a)(1)(A)).

*Clarification:* A certification of the total amount of funds collected and made available must be based only on those funds collected and made available during FY 1986. Only those funds collected and made available in a Statewide trust fund or a subordinate system of trust funds administered at the State level may be used as the basis of a State's application. Funds collected in trust funds administered by county or other local jurisdictions may not be included as part of the State's application for funding under this program. Unexpended funds collected in prior years may not be used as the basis of a State's application. In determining the total amount of these funds, a State may not include any Federal funds it may have received (e.g., Federal funds received under the Federal Challenge Grant, Title IV–B, Title XX programs), even though those funds may have been made available only for child abuse and neglect prevention activities. In addition, a State may not include any funds it has designated as the State's matching funds for other Federal programs.

Documentation submitted must be sufficient to show that a clearly identifiable amount of funds from an established trust fund, or other funding mechanism, was available only for child abuse and neglect prevention activities in FY 1986. Documentation must be labeled as to its source, signed by a duly authorized individual, and dated. Documentation that merely provides a retrospective review of FY 1986 activities will not be acceptable. Documentation will be reviewed in accordance with standard audit procedures acceptable under generally approved accounting practices.

5. An assurance that any funds received under this statutory authority will not be used to meet the non-Federal matching requirement of any other Federal law (section 406(b)(1)(B)).

6. An assurance that the State will comply with Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR Part 74, and that the Comptroller General of the United States and his authorized representatives will have access to these records for purposes of audit and examination (sections 406(b)(1)(C) and section 408).

7. An assurance that the State will submit an Interim Program Performance Report no later than December 30, 1988, and a Final Program Performance Report ninety days after all funds have been expended, but no later than December 30, 1989, to the Director, National Center on Child Abuse and Neglect, on the purposes for which the funds were spent, including a description of the specific programs, projects, and activities funded (section 406(b)(1)(C) and section 409).

8. The Employer Identification Number (EIN) of the applicant organization as assigned by the Internal Revenue Service.

9. A brief description of the intended use of these funds (section 406(b)(1)).

**E. Notification under Executive Order 12372**

The "challenge grant" program has been excluded from the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities" (see the **Federal Register** of January 2, 1987 (52 FR 161)).

**F. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements in this Notice have been approved through April 30, 1989 by the Office of Management and Budget under OMB Control No. 0980–0181.

(Catalog of Federal Domestic Assistance Program Number 13.672, Child Abuse and Neglect Prevention Activities.)

Dated: June 3, 1987.

**Joseph Mottola,**

*Commissioner, Administration for Children, Youth and Families.*

Approved: June 12, 1987.

**Jean K. Elder,**

*Assistant Secretary for Human Development Services-Designate.*

[FR Doc. 87–14581 Filed 6–26–87; 8:45 am]

BILLING CODE 4130–01–M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Advisory Council on Historic Preservation; SES Performance Review Board

June 22, 1987.

**AGENCY:** Department of the Interior.

**ACTION:** Notice of SES Performance Review Board Appointments.

**SUMMARY:** This notice provides the names of those individuals who have been appointed by the Chairman of the Advisory Council on Historic Preservation to serve as members of the Advisory Council's SES Performance Review Board. Pursuant to the Memorandum of Understanding between the Advisory Council and the Department of the Interior, the SES performance appraisal plan for the Department has been adopted for use by the Advisory Council. The Performance Review Board will review the appraisal, award, and bonus recommendations for the SES members of the Advisory Council staff, and recommend final action to the Chairman. This notice is processed on behalf of the Advisory Council, as required by 5 U.S.C. 4314(c)(4).

**DATE:** These appointments are effective July 1, 1987.

**FOR FURTHER INFORMATION CONTACT:**

J. Lynn Smith, Personnel Officer, Office of the Secretary (PMSP), Department of the Interior, Washington, DC 20240. Telephone number: 343–6702

The names of the SES Performance Review Board members are:

Mr. Peter J. Basso (Career), Deputy Chairman for Management, National Endowment for the Arts

Mr. John Agresto (Non-Career), Deputy Chairman, National Endowment for the Humanities

Mr. Joseph W. Gorrell (Career), Principal Deputy Assistant Secretary, Policy, Budget and Administration, Department of the Interior

Dated: June 22, 1987.

**Joseph W. Gorrell,**

*Principal Deputy Assistance Secretary, Policy, Budget and Administration.*

[FR Doc. 87–14701 Filed 6–26–87; 8:45 am]

BILLING CODE 4310–10–M

## Bureau of Land Management

[CA–940–07–5410–10; CA 20442]

## Realty Action; Conveyance of Mineral Interests in California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action—Conveyance of the Reserved Mineral Interest.

**SUMMARY:** The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976. The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

| Serial No. | Legal description | Acres | County | Mineral reservation |
|---|---|---|---|---|
| CA 20442 | T. 14 N., R. 16 W., MD Mer, Sec. 31, NW1/4SE1/4. | 40.00 | Mendocino | Oil and Gas |

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

Upon publication of this notice of realty action in the **Federal Register** as provided in 43 CFR 2720.1(b), the mineral interests owned by the United States in the private land conveyed by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining law. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance to such mineral interest, upon final rejection of the application or two years from the date of filing of the application, whichever occurs first.

**FOR FURTHER INFORMATION CONTACT:** Joan Mangold, BLM California State Office, 2800 Cottage Way, Room E–2841, Federal Office Building, Sacramento, California 95825, (916) 978–4815.

Dated: June 19, 1987.

Nancy J. Alex,

*Chief, Lands Section, Branch of Adjudication and Records.*

[FR Doc. 87–14697 Filed 6–26–87; 8:45 am]

BILLING CODE 4310–40–M

## Fish and Wildlife Service

## Endangered and Threatened Wildlife and Plants; Republication and Availability of Lists

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The Service announces the republication and availability of the current Lists of Endangered and Threatened Wildlife and Plants.

**DATE:** The republished lists contain all changes through April 10, 1987.

**ADDRESS:** Requests for copies should be addressed to the Publications Unit, 148 Matomic, U.S. Fish and Wildlife Service, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian P. Cole, Acting Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–2771).

**SUPPLEMENTARY INFORMATION:** The Service has incorporated all changes to the lists at 50 CFR 17.11 and 17.12 published since the October 1, 1986, compilation of that title. The date on this reprint is April 10, 1987. In addition, minor changes or corrections to the spellings of names, historic ranges, and applicable rules elsewhere in this title have been incorporated in the special reprinting of these lists. Otherwise, no entry in these lists has been significantly affected. The document also contains a list of the species that have been removed from § 17.11 or § 17.12 since 1973. The 32-page document is available from the Publications Unit (address above).

Dated: June 18, 1987.

**Frank Dunkle,**

*Director.*

[FR Doc. 87–14630 Filed 6–26–87; 8:45 am]

BILLING CODE 4310–55–M

## Receipt of Applications for Endangered Species; Martha Crump et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–719201

*Applicant:* Martha Crump, Gainesville, FL

The applicant requests a permit to import 141 toes of the Monte Verde Toad (*Bufo periglanes*) to establish the age group structure of this frog population.

PRT–717614

*Applicant:* Gary M. Johnson, Westminster, CA

The applicant requests a permit to export/reimport two female Asian elephants. (*Elephas maximus*) for purpose of exhibition and conservation education. These elephants were imported into the United State prior to the date that this species was listed under the Convention on International Trade in Endangered Species.

PRT–719302

*Applicant:* Alfred Donau, Tucson, AZ

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of William De Klerk, Bedford, Republic of South Africa, for the purpose of enhancement of propagation.

PRT–719319

*Applicant:* Zoo Atlanta, Atlanta, GA

The applicant requests a permit to export ten captive-born Morelet's crocodiles (*Crocodylus moreletii*) to Madras Crocodile Bank, Madras, South Indiana for captive breeding and exhibition.

PRT-719350

*Applicant:* William Emery, Gross Point, MI

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by Fred Rademeyer, Aston Manor, Republic of South Africa. The herd is maintained for the purpose of sport hunting.

The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT-719357

*Applicant:* National Zoological Park, Washington, DC

The applicant requests a permit to purchase three males and three female Darwin's rheas (*Pterocnemia pennata*) from International Animal Exchange, Ferndale, Michigan. The birds will be obtained from a breeder in Chile and imported by International Animal Exchange. They will then be sold to the National Zoo for purposes of captive breeding and educational display.

PRT-719370

*Applicant:* Jan Giacinto, Exotic Animals, Tarzana, CA

The applicant requests a permit to import one male captive-born cheetah (*Acinonx jubatus*) from Safari Park Beekse Bergen, the Netherlands, for the purpose of captive breeding.

PRT-719372

*Applicant:* San Diego Zoological Society, San Diego, CA

The applicant requests a permit to export one female orangutan (*Pongo pygmaeus abelli*) to the Calgary Zoo, Alberta, Canada, as a breeding loan to enhance the propagation of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: June 23, 1987.

**R.K. Robinson,**

*Chief, Branch of Permits, Federal Wildlife Permit Office.*

[FR Doc. 87-14679 Filed 6-26-87; 8:45 am]

BILLING CODE 4310-55-M

## Marine Mammal Permit Application; Issuance

On March 25, 1987, a notice was published in the **Federal Register** (Vol. 52) that an application had been filed with the Fish and Wildfire Service by Charles Monnett of the University of Minnesota (PRT-716436) for a permit to take (capture, tag, implant with radio transmitter) up to 320 Alaskan sea otters for research purposes.

Notice is hereby given that on June 15, 1987, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Permit Office in Room 611, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: June 23, 1987.

**R. K. Robinson,**

*Chief, Branch of Permits, Federal Wildlife Permit Office.*

[FR Doc. 87-14652 Filed 6-26-87; 8:45 am]

BILLING CODE 4310-55-M

## Minerals Management Service

### Development Operations Coordination Document; Conoco Inc.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 090, Block 66, portion, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron and Morgan City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on June 22, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 22, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-14698 Filed 6-26-87; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

### Appalachian National Scenic Trail; Sale of Excess Lands; Piscataquis County, ME

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice, sale of lands excess to the Appalachian National Scenic Trail, Piscataquis County, Maine.

**SUMMARY:** The following land has been identified as suitable for disposal by public sale under the provisions of section 7(f)(2) of the National Trails Systems Act, Pub. L. 90-543, as amended by Pub. L. 98-11 on March 28, 1983.

| Tract No. | Size (acres) | Location | Fair market value |
|---|---|---|---|
| 106-27 | 21.00 | Monson, Maine | $5,000.00 |

The land is not required for the protection or management of the Appalachian National Scenic Trail. The land is offered subject to existing rights of record.

The land will be offered for sale to the highest bidder. Bids in an amount less than the appraised fair market value

will not be considered. Sealed bids must be received prior to 1:00 P.M. on September 11, 1987 at the Appalachian Trail Land Acquisition Field Office, P.O. Box 908, 1314 Edwin Miller Boulevard, Martinsburg, West Virginia 25401. Specifications for bidding and conveyance, a legal description, a narrative description of the land, a map, and other information regarding the terms and conditions of the sale are available for public inspection at the Appalachian Trail Land Acquisition Field Office, 1314 Edwin Miller Boulevard, Martinsburg, West Virginia 25401, and are also on file at the Office of the Town Manager, Town of Monson, in Monson, Maine.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Judy L. Brumback, Appalachian Trail Land Acquisition Field Office, P.O. Box 908, Martinsburg, West Virginia 25401, Telephone (304) 263–4943.

**Charles R. Rinaldi,**

*Chief, Land Acquisition Field Office.*

[FR Doc. 87–14653 Filed 6–26–87; 8:45 am]

BILLING CODE 4310–70–M

## Cape Krusenstern National Monument Subsistence

**AGENCY:** National Park Service, Alaska Region, Interior.

**ACTION:** Subsistence Resource Commission Meeting.

**SUMMARY:** The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Cape Krusenstern National Monument Subsistence Resource Commission. The following agenda items will be discussed:

1. Call to order.
2. Minutes of last meeting.
3. Superintendent's report: Situational and Implementation Status and Issues.
4. Fish and Game Regulations: Provisions of ANILCA, National Park Service/Alaska Department of Fish and Game Memorandum of Understanding, and provisions for modification and change.
5. Resolution #86–01 (Resident Zones): Current status and submission requirements.
6. Preparation of Outline for Subsistence Hunting Plan: Items, information requirements, preparation responsibilities, and schedule.
7. Support Resources: Native Liaison Ranger, Superintendent, NPS Subsistence Coordinator, Alaska Department of Fish and Game, etc.
8. Reports to other agencies.

**DATE:** The meeting will begin on July 13, 1987, at 9:00 a.m. and will conclude the afternoon of July 14, 1987.

**ADDRESS:** The meeting will be held in the Drift Inn Conference Room in Kotzebue, Alaska.

**FOR FURTHER INFORMATION CONTACT:** G. Ray Bane, Acting Superintendent, Northwest Alaska Areas, P.O. Box 1029, Kotzebue, Alaska 99752.

**SUPPLEMENTARY INFORMATION:** The Cape Krusenstern National Monument Subsistence Resource Commission is authorized under Title VIII, section 808, or the Alaska National Interest Lands Conservation Act Pub. L. 96–487.

Dated: June 19, 1987.

**Richard J. Stenmark,**

*Acting Regional Director, Alaska Region.*

[FR Doc. 87–14649 Filed 6–26–87; 8:45 am]

BILLING CODE 4510–70–M

## INTERSTATE COMMERCE COMMISSION

**[No. 30416 and No. 30660]**

## Class Rates, Mountain Pacific Territory and Transcontinental Rail, 1950

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Class rate prescription vacated.

**SUMMARY** The Commission adopts the proposal noticed at 46 FR 17922, March 20, 1981, and eliminates the prescription of class rates for the Mountain Pacific Territory.

**DATES:** This decision is effective on July 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357.

This action will not significantly affect either the quality of the human environment or energy conservation.

**Authority:** 49 U.S.C. 10321, 10701, 10702 and 10704.

Decided: June 22, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–14637 Filed 6–26–87; 8:45 am]

BILLING CODE 7035–0–M

## DEPARTMENT OF JUSTICE

## Information Collection(s) Under Review

June 23, 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 full 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

**Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection**

(1) Larry E. Miesse, 202/633–4312
(2) Drug Enforcement Administration, Department of Justice
(3) REGISTRANTS INVENTORY OF DRUGS SURRENDERED
(4) DEA–41
(5) On occasion
(6) Business or other for-profit. Section 1307.21 of 21 CFR requires that any registrant desiring to voluntarily dispose of controlled substances

shall list these on DEA Form 41 and submit to the nearest DEA office. The DEA 41 is used to mandatorily account for surrendered destroyed controlled substances.
(7) 20,000 respondents
(8) 10,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Fishman–395–7340

(1) Larry E. Miesse, 202/633–4312
(2) Drug Enforcement Adminstration, Department of Justice
(3) ARCOS TRANSACTION REPORTING
(4) DEA–333
(5) Quarterly
(6) Business or other for-profit. Data collection is necessary for the United States to meet obligations under two international treaties: Single Convention on Narcotic Drugs and Convention on Psychotropic Substances. Treaties require information on the manufacture and consumption of certain substances. Information tracks substances from manufacture to sale to dispensing level.
(7) 617 respondents
(8) 2,468 burden hours
(9) Not applicable under 3504(h)
(10) Robert Fishman–395–7340

(1) Larry E. Miesse, 202/633–4312
(2) Drug Enforcement Administration, Department of Justice
(3) CONTROLLED SUBSTANCES IMPORT/EXPORT DELCARATION
(4) DEA 236
(5) On occasion
(6) Businesses or other for-profit. Form provides the DEA with control measures over the importation and exportation of controlled substances as required by both domestic and international drug control laws.
(7) 218 respondents
(8) 436 burden hours
(9) Not applicable under 3504(h)
(10) Rober Fishman–395–7340

(1) Larry E. Miesse, 202/633–4312
(2) Drug Enforcement Administration, Department of Justice
(3) APPLICANTS FOR INDIVIDUAL MANUFACTURING QUOTA FOR A BASIC CLASS OF CONTROLLED SUBSTANCE
(4) DEA 189
(5) Annually
(6) Businesses or other for-profit. Applicants who desire to manufacture Schedule I and II controlled substances are required to apply on DEA form 189; DEA uses this information to calculate the individual manufacturing quotas for U.S. companies involved in the manufacture of controlled substances
(7) 85 respondents
(8) Not applicable under 3504(h)
(10) Robert Fishman–395–7340

(1) Larry E. Miesse, 202/633–4312
(2) Drug Enforcement Administration, Department of Justice
(3) U.S. OFFICIAL ORDER FORMS FOR SCHEDULES I & II REQUISITION
(4) DEA 222/222a
(5) On occasion
(6) Individuals or households, state or local governments, businesses and other for-profit, Federal agencies or employees. The DEA 222 is used to transfer or purchase Schedule I & II controlled substances and data is needed to provide an audit of the transfer and purchase. The DEA 222a is used to obtain the DEA 222 Order Form. The DEA 222 is a controlled form.
(7) 436,000 respondents
(8) 109,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Fishman–395–7340

**Larry E. Miesse,**

*Agency Clearance Officer, Department of Justice*

[FR Doc. 87–14643 Filed 6–26–84; 8:45 am]

BILLING CODE 4410–09–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Dance Advisory Panel; 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 Dance Advisory Panel (Dance Companies Section) to the National Council on the Arts will be held on July 13–16, 1987, from 9:00 a.m.–9:00 p.m. and July 17, 1987, from 9:00 a.m.–6:00 p.m. in room M0–7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 17, 1987 from 4:30 p.m.–6:00 p.m. The topics for discussion will include policy issues.

The remaining session of this meeting on July 13–16, 1987, from 9:00 a.m.–9:00 p.m. and July 17, 1987, from 9:00 a.m.–4:30 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, this session will be closed to the public pursuant to subsection (c)(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 Ms. Yvonne Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

**Yvonne Sabine,**

*Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 87–14620 Filed 6–26–87; 8:45 am]

BILLING CODE 7537–01–M

### Design Arts Advisory Panel and Visual Arts Panel; 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 Design Arts Advisory Panel and Visual Arts Panel (Joint Collaboration Initiative Section) to the National Council on the Arts will be held on July 15, 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.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. 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 subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

**Yvonne Sabine,**

*Acting Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 87–14621 Filed 6–26–87; 8:45 am]

BILLING CODE 7537–01–M

### Music Advisory Panel; 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 Music Advisory Panel (Opera-Musical Theater

Advancement Section) to the National Council on the Arts will be held on July 14, 1987, from 9:00 a.m.–5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. 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 subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

**Yvonne Sabine,**

*Acting Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 87–14622 Filed 6–26–87; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–2061]**

### Kerr-McGee Chemical Corp.; Availability of Draft Supplement to the Final Environmental Statement for the Rare Earths Facility, West Chicago, Du Page County, IL

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Supplement to the Final Environmental Statement (DSFES) prepared by the Commission's Office of Nuclear Material Safety and Safeguards, related to the decommissioning of the Rare Earths Facility located in West Chicago, Illinois, is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20555. The DSFES is also available for inspection at the Commission's Local Public Document Room in the West Chicago Public Library, 332 E. Washington Street, West Chicago, Illinois 60185. Kerr-McGee's proposed decommissioning and stabilization plan involves demolition of the existing buildings, removal of building rubble and contaminated soil to an adjacent disposal site, and stabilization of building rubble, contaminated soil, ore tailings, and ore residues on the disposal site. Kerr-McGee's proposed plan and alternatives to the plan are discussed in the DSFES. The DSFES is being provided to the State Clearinghouse, Bureau of the Budget, Lincoln Tower Plaza, 524 S. Second Street, Springfield, Illinois 62706. The DSFES is also being sent to the Metropolitan Clearinghouse, Northeastern Illinois Planning Commission, 400 West Madison Street, Chicago, Illinois 60606.

Copies of the Draft Supplement to the Final Environmental Statement (identified as NUREG–0904, Supplement No. 1) may be obtained by calling (202) 275–2060 or (202) 275–2171 or writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7982.

Interested persons may submit written comments on the DSFES for the Commission's consideration to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Fuel Cycle Safety Branch. Federal, State, and local agencies are being provided with copies of the document. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, DC and the Local Public Document Room in West Chicago, Illinois. Comments are due by August 17, 1987.

Upon consideration of comments submitted with respect to the Draft Supplement, the Commission's staff will prepare a Final Supplement to the Final Environmental Statement, the availability of which will be published in the **Federal Register.**

Dated at Silver Spring, Maryland, this 22nd day of June, 1987.

For the Nuclear Regulatory Commission.

**Leland C. Rouse,**

*Chief, Fuel Cycle Safety Branch, Division of Fuel Cycle, Medical, Academic, and Commercial Use Safety, NMSS.*

[FR Doc. 87–1467, Filed 6–26–87; 8:45 am]

BILLING CODE 7590–01–M

### Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 9–11, 1987, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on June 16, 1987.

**Thursday, July 9, 1987**

*8:30 A.M.–8:45 A.M.: Report of ACRS Chairman* (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

*8:45 A.M.–10:30 A.M.: NRC Severe Accident Policy* (Open)—Consider proposed NRC Reactor Risk Reference Document (NUREG–1150) to be used in implementation of the NRC severe accident policy statement.

*10:45 A.M.–12:45 P.M.: Millstone Nuclear Power Station, Unit 1* (Open)—Discuss report of ACRS subcommittee regarding the Integrated Safety Assessment for this nuclear station. Representatives of the NRC Staff and the licensee will participate as appropriate.

*1:45 P.M.–2:15 P.M.: Future ACRS Activities* (Open)—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

*2:15 P.M.–4:00 P.M.: Foreign Nuclear Power Plant Safety Features* (Open/Closed)—Discuss proposed ACRS report to NRC regarding safety features in foreign nuclear plants.

Portions of this session will be closed as required to discuss information provided in confidence by a foreign source.

*4:15 P.M.–5:15 P.M.: Improved Safety for Future Light Water Reactors* (Open)—Discuss proposed ACRS response to NRC request for additional information regarding the feasibility, benefit, and cost effectiveness of systems recommended in its report of January 15, 1987, Subject: ACRS Recommendations on Improved Safety for Future Light Water Reactor Plant Design.

*5:15 P.M.–6:00 P.M.: Preparation of ACRS Reports to the NRC* (Open)—Discuss proposed ACRS report to the NRC regarding control room habitability in nuclear power plants.

**Friday, July 10, 1987**

*8:30 A.M.–10:00 A.M.: TMI–2 Core Removal* (Open)—Briefing by representatives of INEL regarding status of TMI–2 core removal and examination.

*10:15–12:00 Noon: TVA Nuclear Performance Plan* (Open)—Discuss proposed TVA Corporate Nuclear Performance Plan and plans to restart TVA nuclear power plants.

*1:00 P.M.–2:30 P.M.: Activities of NRC Office for Analysis and Evaluation of Operational Data* (Open)—Briefing and discussion regarding 1987 Case Studies and Startup Plant Study by the NRC Office of AEOD.

*2:30 P.M.–4:30 P.M.: Safety Features in Foreign Nuclear Power Plants* (Open/Closed)—Discuss proposed ACRS Report to the NRC regarding safety features in foreign nuclear power plants.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

*4:45 P.M.–5:30 P.M.: Liquid Level Indication in Nuclear Power Plants* (Open)—Discuss proposed ACRS action/comments regarding nuclear core liquid-level indication in nuclear power plants.

*5:30 P.M.–6:30 P.M.: ACRS Subcommittee Activities* (Open)—Hear and discuss reports of ACRS subcommittees regarding thermal-hydraulic phenomena in nuclear power plants and related research activities and proposed topics for selected safety research reports.

**Saturday, July 11, 1987**

*8:30 A.M.–12:00 Noon: Preparation of ACRS Reports* (Open/Closed)—Discuss proposed ACRS comments/reports to the NRC regarding matters considered during this meeting.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

*1:00 P.M.–1:15 P.M.: Appointment of New ACRS Members* (Open/Closed)—Discuss status of selection regarding candidates for appointment to the ACRS.

Portions of this session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

*1:15 P.M.–2:30 P.M.: Preparation of ACRS Reports* (Open/Closed)—Continue preparation of reports to NRC regarding items considered during this meeting.

Portions will be closed as necessary to discuss information provided in confidence by a foreign source.

*2:30 P.M.–3:00 P.M.: Miscellaneous* (Open)—Complete discussion of matters considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 20, 1986 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, 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 Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangments can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)), and information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

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 can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M.

Dated: June 23, 1987.

**John C. Hoyle,**

*Advisory Management Officer.*

[FR Doc. 87–14657 Filed 6–26–87; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release Nos. 34–24634; File No. SR–Amex–86–6, SR–NYSE–86–14]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc. and New York Stock Exchange, Inc. To Amend the Exchanges' Listing Standards for Foreign Companies

### I. Introduction

The American ("Amex") and New York ("NYSE") Stock Exchanges (collectively, the "Exchanges") [1] have submitted for Commission consideration, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), proposed rule changes which would permit them to waive or modify certain listing standards for foreign securities.[2] The Amex and the NYSE believe that such a change is necessary because some foreign companies are reluctant to list on their respective exchanges due to the fact that some listing standards are either inconsistent with or contrary to the laws, customs or practices of the company's home country.[3] In particular, the Amex and NYSE contend that listing requirements relating to certain corporate governance procedures and interim earning reports may unduly inhibit foreign companies from listing on the exchanges. Accordingly, the Amex and NYSE proposals would permit them to waive or modify certain of their listing standards for foreign companies when it can be shown that the foreign company's procedure is based on the laws, customs or practices of its home country.

### II. Description of Proposals

The Amex and NYSE proposals would permit the Exchanges to consider a foreign company's compliance with the laws, customs and practices of the country of its domicile in determining whether the company has complied with the otherwise applicable listing standards.[4] The Amex and NYSE have

[1] The Amex proposal was noticed in Securities Exchange Act Release No. 23064 (March 25, 1986), 51 FR 11125 (File No. SR–Amex–86–6). The NYSE proposal was noticed in a release which also requested comment on issues raised by the NYSE and Amex proposals and on a similar proposal submitted by the National Association of Securities Dealers ("NASD"). *See* Securities Exchange Act Release No. 23469 (July 25, 1986), 51 FR 27618 (File No. SR–NYSE–86–14) ("July Release").

[2] In discussing listing standards for foreign securities, Amex rules refer to securities issued by foreign companies while the NYSE rules refer to securities issued by non-U.S. companies. Neither the Amex or NYSE define these terms in their rules. Amex and NYSE, however, have represented to Commission staff that in determing when a security is issued by a foreign or non-U.S. company, they will generally refer to the definition for "foreign private issuer" set forth in Rule 3b–4 under the Act. Rule 3b–4 defines foreign private issuer as any corporation incorporated or organized under the laws of any foreign country and that does not have (1) more than 50 percent of the outstanding voting securities of such issuer held of record either directly or through voting trust certificates or depository receipts by residents of the U.S. and (2) any of the following: (i) the majority of its executive officers or directors are U.S. citizens or residents, (ii) more than 50 percent of the assets of the issuer are located in the U.S. or (iii) the business of the issuer is administered principally in the U.S.

[3] For example, Amex indicates that many Scandanavian companies are required to afford significant Board level representation to their employees which may be in conflict with Amex requirements relating to voting for a Board of Directors.

[4] Specifically, Amex would amend section 110 of the Amex Company Guide and NYSE would amend

Continued

both identified the following areas in which an exception or waiver from otherwise applicable listing standards might be provided based on a home country practice: (1) Quarterly reporting of interim earnings; (2) composition and election of the Board of Directors; (3) shareholder approval requirements and voting rights;[5] and (4) quorum requirements for shareholder meetings.[6] Before an exemption or waiver could be provided, however, the company would have to provide an opinion from independent counsel that the practice of the issuer is consistent with the laws, customs or practices of its country of domicile.[7]

Notwithstanding flexibility in these areas, both proposals require that interim earnings be reported on a semi-annual basis and that earnings statements and other reports are made available in English. Moreover, the proposals would not alter a foreign companies' obligation to comply with the Exchanges' policies on timely disclosure of important corporate developments. Accordingly, if there was a significant change in earning trends between semi-annual earnings reports, the foreign company generally would be required to disclose such news.[8]

In the July Release, the Commission requested comments on common issues which were raised by the Amex and NYSE proposals and by a similar proposal submitted by the NASD.[9] In particular, the Commission requested that commentators address two issues: Whether the proposals might result in a material reduction in investor protection and whether the proposals could result in a significant detrimental competitive impact on domestic companies by permitting foreign companies to list on the Amex or NYSE without requiring them to comply with the same financial reporting and corporate governance standards that currently are required of domestic companies listed on those exchanges?

The Commission received four letters in response to the Commission's request for comment[10] on the Amex and NYSE proposals.[11] The majority of the commentators (Keidanren, National Australia Bank Limited, and SIA) supported the proposals and one commentator (California Department of Corporations) opposed the proposals.[12]

In general, those commentators in support of the proposals agreed that the current rules served as a deterrent to foreign listings. In its letter, the SIA International Committee points to the recent success the NASD has had in listing foreign companies and indicated that NASDAQ's current lack of corporate governance standards may have been a factor in the decisions by these companies to choose NASDAQ. The SIA also noted that technological innovations have enabled U.S. investors to choose investments without regard to geographical constraints, with the result that U.S. investors seeking investment in such foreign companies simply have shifted their orders to other capital markets.

Commentators supporting the proposals also indicated their belief that although home country practices may differ from NYSE listing standards they do not threaten the fundamentals of investor protection. In particular, the SIA concluded that in as much as the Amex and NYSE proposed rules do not impact "the fundamental matters of disclosure" (*e.g.*, both Amex and NYSE would maintain their timely disclosure policies), they will not significantly reduce current investor protections. In addition, SIA noted that the Exchanges would retain their quantitative listing standards and that investors still will

section 103.00 of the NYSSE Listed Company Manual.

[5] Both Amex and NYSE envision this provision to include companies that issue a class or classes of common stock having other than one vote per share.

The Commission has instituted proceedings under section 19(c) of the Act to consider whether to adopt a rule which would prohibit the listing or quotation, on a national securities exchange or association, of common stock or equity securities of a domestic issuer that issues securities, or takes other corporate action, that would have the effect of nullifying, restricting or disparately reducing the voting rights of existing shareholders. *See* Securities Exchange Act Rlease No. 24623, June 22, 1987. We note that the current version of the Commission's proposed section 19(c) rule is drafted to apply only to domestic issuers. The Commission, however, is soliciting comment on whether the proposed rule should apply to foreign issuers as well as domestic issuers.

[6] The NYSE has submitted two letters that serve to clarify, as well as limit, the scope of its proposal. Letter from Robert J. Birnbaum, President and Chief Operating Officer, NYSE, to Michael Cavalier, Branch Chief, Division of Market Regulation ("Division"), dated June 24, 1986 ("NYSE June 1986 Letter") (the home country practice exemption would not extend to requirements such as proxy solicitations or other notices required to be given to the Exchange) and letter from Robert J. Birnbaum, to Brandon Becker, Associate Director, Division, dated October 22, 1986 ("NYSE October 1986 Letter").

[7] Furthermore, action by the Exchanges to waive or modify foreign listing standards other than those enumerated in the filings must be submitted for Commission consideration pursuant to section 19(b)(3)(A) of the Act. *See* letter from Benjamin D. Krause, Senior Vice President, Securities Division, Amex, to Brandon Becker, Associate Director, Division, dated October 1, 1986 and NYSE October 1986 letter.

[8] See Amex Company Guide: Section 401; NYSE Listed Company Manual, § 202.05.

[9] The NASD proposal was noticed in Securities Exchange Act Release No. 22506 (October 4, 1985) 50 FR 41769 (File No. SR-NASD-85-20).

The NASD proposal to adopt, as part of its proposed eligibility requirements for its transaction reporting plan, certain corporate governance and annual and interim reporting requirements was approved by the Commission. *See* Securities Exchange Act Release No. 24635, June 23, 1987. Under the changes approved by the Commission eligible securities under the NASDAQ Transaction Reporting Plan will be designated as National Market System ("NMS") securities under the amendments to Rule 11Aa2-1 under the Act. Previously, the NASD did any have any corporate governance or shareholder reporting requirements. As a result of this rule change, an NMS issuer will have to distribute reports to shareholders with the same frequency as those reports are filed with the Commission. The NASD will also establish requirements relating to audit committees, independent directors, shareholder meetings, quorums, solicitation of proxies, and conflicts of interest.

Foreign issuers, who are not subject to the Commission's quarterly reporting requirements, will not be required by the NASD to send quarterly reports to shareholders.

Furthermore, the other reporting and corporate governance provisions will not be applicable to foreign issuers if their effect would be to require the issuer to do anything contrary to the law of any public authority exercising jurisdiction over the issuer or were contrary to "generally accepted business practices in the issuer's country of domicile." *See* Securities Exchange Act Release Nos. 23817 (November 17, 1986), 51 FR 42856, 43818 (November 17, 1986), 51 FR 42960, and 23819 (November 17, 1986), 51 FR 42963.

[10] Letter from Gerard J. Quinn, Assistant General Counsel, California Department of Corporations ("Department"), to Jonathan G. Katz, Secretary, SEC, dated September 15, 1986; letter from Keijiro Koyama, Managing Director, Japan Federation of Economic Organizations ("Keidanren"), to Jonathan G. Katz, Secretary, dated August 27, 1986; letter from N.R. Clark, Managing Director, National Australia Bank Limited, to Secretary, SEC, dated August 29, 1986; letter from Hugo J. Celardin, Chairman, International Committee, Securities Industry Association ("SIA"), to Jonathan G. Katz, Secretary, dated September 22, 1986.

[11] Prior to the publication of the Commission's request for comment, the Commission received a letter from John D. Dingell, Chairman of the Committee on Energy and Commerce, U.S. House of Representatives, to John S.R. Shad, Chairman, SEC, dated May 1, 1986, commenting on the Amex and NASD proposals concerning foreign issuer listing standards. Chairman Dingell expressed general support for the Amex's proposed disclosure standards which still would require foreign issuers to publish, at least semi-annually, an English language version of an interim financial statement. In addition, in a letter to Amex, forwarded to the Commission by Chairman Dingell, Senator D'Amato, Chairman of the Subcommittee on Securities, Committee on Banking, Housing and Urban Affairs, expressed concern over the Amex proposal to exempt foreign companies from listing standards governing shareholder voting rights, independent directors, quorum requirements and quarterly financial reporting requirements. *See* letter from Senator Alfonse M. D'Amato, to Arthur Levitt, Jr., Chairman of the Board, Amex, dated September 20, 1985.

[12] The NASD also submitted a comment letter in response to the July Release that addressed only its proposed rule change. Letter from Lynn Nelluis, Secretary, NASD, to Jonathan G. Katz, Secretary, SEC, dated September 18, 1986. The NASD stated, among other things, that it did not believe that investor protection would be diminished by its proposal.

enter their orders through exchange member broker-dealers who should be aware of significant events affecting foreign companies. In this regard, SIA noted that there has been growth in the research and financial press coverage of foreign companies and that listing foreign companies on U.S. exchanges could be expected to accelerate this trend, particularly with regard to those companies which are listed.

The Department did not object to accommodations being made by the Exchanges to foreign companies in some circumstances (*e.g.*, interim earnings reports on a semi-annual rather than a quarterly basis). The Department, however, stated that the Exchanges should be required to report publicly such waivers and make specific findings that such waivers are reasonable and do not materially harm investor interests. Moreover, the Department indicated concern that the same factors cited as justification for waiver of listing standards for foreign issuers eventually will be used to argue for a similar reduction in requirements for domestic issuers. The Department stated that as the number of foreign issuers in the U.S. market increases, a "compelling case" for equal treatment for domestic issuers will be created.[13]

## IV. Discussion

Section 6(b)(5) of the Act requires that the rules of an exchange be designed to "prevent fraudulent and manipulative Acts and practices, . . . protect investors and the public interest, . . . and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers." Section 6(b)(8) of the Act requires that the rules of an exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title." For the reasons detailed below, the Commission has concluded that the proposals, as modified, are consistent with the requirements of the Act and, in particular, sections 6(b)(5) and 6(b)(8).

The Commission believes that the Amex and NYSE proposals adequately protect the public and will not result in a material reduction in investor protection. First, the rule proposals only allow waivers of listing standards for foreign companies in four specific areas. To qualify for listing the foreign companies still must meet the quantitative standards required for domestic companies or the alternative standards established for foreign companies.[14] These standards will ensure that foreign companies listed on the Amex and NYSE are well-established companies whose shares are widely held thus assuring substantial following by securities analysts.[15]

Second, the Amex and NYSE listing standards which most directly relate to investor protection are largely unaffected by the rule changes. As discussed above, both the Amex and the NYSE proposed rules have excluded from the foreign company exemption those standards which require disclosure of significant corporate events.[16] The Amex and NYSE also have indicated that provisions requiring listed companies to notify the exchange of a series of other corporate events will not be subject to waiver or modification under this proposal.[17] Moreover, the rule proposals will not alter the obligation of a non-U.S. company participating in the U.S. securities markets from otherwise complying with the requirements of the Federal securities laws.[18] The Commission believes that where the fundamental investor protections of the Federal securities laws and exchange rules remain in place it is appropriate to permit differentiations from the requirements imposed on domestic companies in order to permit the exchanges to be more competitive on an international basis and to provide access to U.S. investors to investment opportunities in a larger number of foreign secureities. In this connection, the Commission does not believe that the proposals impose any unnecessary competitive burdens simply because they would permit some foreign companies to report financial earnings on a semi-annual, rather than quarterly, basis as required for domestic companies. Domestic companies already are requireed to submit quarterly reports under Federal securities law reporting requirements. Therefore, exchange rules that still would require quarterly reports under Federal securities law reporting requirements. Therefore, exchange rules

[13] The Commission also received some comments on voting rights listing standards applicable to foreign issuers in connection with its review of an NYSE proposal to modify its one share, one vote listing requirement. *See* Securities Exchange Act Release No. 23724 (October 17, 1986) 51 FR 37529. Five commentators indicated that the Commission should consider a foreign issuer exemption from any voting rights rule it might adopt. *See* testimony at Commissions's Hearings on the NYSE's One Share, One Vote Proposal, December 16, and 17, 1986 ("December Hearings") of Richard Scribner, Senior Vice President, American Stock Exchange, Inc.; Evelyn T. Davis, Editor, *Highlights and Lowlights;* F. Daniel Bell, President, North American Securities Administrators Association ("NASAA"); and letters from Michael Arron President, American Israel Corporation, dated December 5, 1986; Louis S. Black, Jr., Chairman, Federal Regulation of Securities Committee, Section on Corporations, Banking and Business Law, American Bar Association ("ABA").

Specifically, NASAA indicated that it only would recommend such an exception if the law in the foreign issuer's country of domicile requires dual class voting rights while the ABA stated that the Commission should consider exempting foreign issuers where disparate voting rights are lawful in the issuer's jurisdiction of incorporation or its principal place of business. Two commentators indicated that foreign issuers desiring to list their securities in U.S. markets should be required to meet the same listing standards, including voting rights, as domestic issuers. *See* testimony at December Hearings of Frank B. Gopen and Hans R. Reinisch.

[14] Amex and NYSE provide alternative standards for foreign or Non-U.S. companies that focus on the worldwide distribution of shares. Under the alternate standards an applicant foreign company must demonstrate significantly greater assets and income than domestic companies.

[15] *See*, Amex Company Guide, §§ 101, 107, 109, 110; NYSE Listed Company Manual, §§ 102.01, 102.02, 103.01. The Amex alternative standards for securities of foreign companies (section 110(a), Amex Company Guide) require, for example, 1 million publicly held shares worldwide, an aggregate market value for those shares of $20 million and a tangible net worth of $25 million; NYSE standards for non-U.S. companies (§ 103.01, NYSE Listed Company Manual) require 2.5 million publicly held shares worldwide, a market value for those shares of $100 million and net tangible assets of $100 million worldwide. For foreign companies chosing to list under standards for domestic companies, the Amex requires (section 101, 102) a minimum public distribution of 500,000 shares, tangible net worth of $4 million and pre-federal tax net income of $750,000; the NYSE requires (§ 102.01) 1.1 million publicly held shares having an aggregate market value of $18 million and pre-federal tax earnings of $2.5 million.

[16] Thus, under the proposed Amex rule, disclosure policies Sections 401–405 of the Amex Company Guide) would not be subject to waiver or modification. This would include such areas as immediate public disclosure of material information, clarification or confirmation of rumors and reports, and prohibititions against insider trading. Similarly, for the proposed NYSE rule, the NYSE's Timely Disclosure of Material News Developments policy (§ 202.05 of the NYSE Listed Company Manual) would not be subject to modification. This policy states that listed companies are expected to release quickly to the public any news or information which might reasonably be expected to affect the market for its securities and also should act promptly to dispel unfounded market rumors resulting in unusual market activity or price variations.

[17] Accordingly, foreign issuers would continue to be required to notify the NYSE about such matters as proposed amendments to the company's charter and by-laws and any changes in directors or officers of the company. *See* §§ 204.01–204.33 NYSE Listed Company Manual and letter from Robert J. Birnbaum, President and Chief Operating Officer, NYSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated June 24, 1986. Similarly, a foreign company with securties traded on Amex would continue to be required to notify Amex about such corporate matters as shareholder meetings and a declaration of divdends. *See e.g., Sections* 502 and 703, Amex Company Guide.

[18] Although under both the Amex and NYSE proposals, listed Canadian companies, which are required to file quarterly financial reports under U.S. securities Laws, could theroretically seek an exemption from the exchanges' quarterly financial reporting requirements, the company would still be required to submit and publish quarterly reports pursuant to Commission rules and the Exchanges' timely disclosure policies.

that still would require quarterly reports for domestic companies are, for the most part, irrelevant to the costs imposed on these companies. Moreover, the Commission does not require non-U.S., non-Canadian exchange-traded companies to file quarterly interim earnings reports. Such companies are only required to file annual reports on Form 20-F pursuant to section 13(a) of the Act. [19] In addition, although it is unclear how many foreign companies currently listed on Amex and NYSE would be relieved from the expense of quarterly reporting under the proposal, many foreign companies simply can avoid this requirement by not listing on these exchanges. [20] Accordingly, the rule proposals may not significantly alter or reduce existing financial reporting costs for a large number of foreign issuers.

The costs which domestic companies might incur in complying with Amex or NYSE corporate governance standards such as independent directors, audit committee and shareholder voting rights are very difficult to quantify. The Commission, however, has not found any evidence to indicate how domestic companies would be competitively disadvantaged by the existence of different corporate governance standards for some foreign issuers. We note that foreign issuers currently can be quoted on NASDAQ without being subjected to these listing requirements. The rule proposals simply provide another potential U.S. market for certain foreign issuers that could not previously be traded on such exchanges due to differences in their home country's laws and rules. In addition, the Commission notes that, currently, U.S. investors who are interested in purchasing foreign issues can execute their orders in a foreign stock market that may offer less protections to the investor than those provided in the U.S. markets. Accordingly, permitting certain foreign securities that previously could not be traded on the Amex or NYSE to trade on U.S. regulated exchange markets may actually result in increased protection for U.S. investors. [21]

The Amex and NYSE proposals are designed to enable the Exchanges to modify their listing requirements where those requirements conflict with the laws, customs or practices of a foreign company's country of domicile. The Commission believes that the Exchanges cannot reasonably expect foreign issuers to design their corporate structure simply to facilitate the development of a secondary market for their securities in the United States, especially when U.S. investors already can acquire the securities of foreign issuers overseas. In this regard, the Commission notes that the federal securities laws traditionally have accorded different treatment to foreign issuers regarding periodic reporting and other requirements due, in part, to recognition of the differing legal requirements and practices which are applicable to such issuers. Accordingly, because consideration and approval of the foreign listing proposals are based on concerns that are unique to the listing of foreign issuers, the Commission believes that approval of these proposals prior to completion of the Commission's consideration of whether to adopt a rule regarding disenfranchisement of shareholders is appropriate. As noted above, see note 5, *supra*, the rule currently being considered for adoption by the Commission is drafted to apply only to domestic issuers. The Commission, however, is soliciting comment on whether the proposed rule should apply to foreign issuers as well as domestic issuers.

## V. Conclusion

For the reasons discussed above, the Commission believes that the proposed Amex and NYSE rules are consistent with the requirements of the Act, particularly sections 6(b)(5) and 6(b)(8). In particular, it appears that these rules will help remove obstacles which have made foreign companies reluctant to list on either the Amex or the NYSE.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes, as amended and modified, are approved.

Dated: June 23, 1987.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-14682 Filed 6-26-87; 8:45 am]

BILLING CODE 8010-01-M

[19] Under the Act, these foreign companies are also obligated to furnish to the Commission, and to the exchanges on which their securities are registered, on Form 6-K, any information required to be made public in the home jurisdiction, furnished to a foreign exchange or furnished to shareholders.

[20] We note that many foreign companies desiring a U.S. market for their securities can trade on NASDAQ without a quarterly reporting requirement.

[21] The Commission believes that the provisions of the Amex and NYSE proposals which would permit the Exchanges to waive or modify certain listing standards for foreign companies, including those standards which prohibit the listing of a class or classes of common stock having other than one vote per share where the prohibition conflicts with the foreign company's home country laws, customs or practices, is distinguishable from the Commission's consideration of whether to adopt a rule, pursuant to section 19(c) of the Act, that would amend the rules of the national securities exchanges and associations to prohibit the listing, or authorizing the quotation, of common stock or equity securities of an issuer that issues stock or takes other corporate action that disenfranchises shareholders. *See* note 5, *supra*.

[Release No. 34-24632; File No. SR-NASD-86-27]

## Self-Regulatory Organizations; Order Approving Rule Change by the National Association of Securities Dealers, Inc., Relating to Eligibility Criteria for Issuers of NASDAQ National Market System Securities

On September 26, 1986, the National Association of Securities Dealers, Inc. ("NASD") submitted copies of a proposed rule change ("amendment") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder.

The amendment adds to Schedule D of the NASD's By-Laws the substance of the provisions now being incorporated in the Transaction Reporting Plan with respect to NASDAQ/NMS securities,[1] and formerly found in Rule 11Aa2-1 under the Act. This change is made for the purpose of consolidating the NASDAQ National Market System rules into a single easily identifiable document.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 23818 (November 17, 1986), 51 FR 42960. No comments were received regarding the proposal.[2]

The Commission finds that the proposed rule change is consistent with the Act and the rules thereunder applicable to the NASD. In particular the amendment is consistent with the requirements of section 15A under the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

Dated: June 23, 1987.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-14683 Filed 6-26-87; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 24633 (June 23, 1987) (published elsewhere in this edition of the **Federal Register**.) (Order Approving Amendments to the Transaction Reporting Plan with Respect to NASDAQ/NMS Securities).

[2] The substance of this proposal—the NASD's adoption of new eligibility standards and procedures for its Transaction Reporting Plan—is discussed in the release approving the amended Transaction Reporting Plan. *See* Securities Exchange Act Release No. 24633, *supra* note 1.

[Release No. 34-24633; File No. S7-787]

## Self Regulatory Organizations; Transaction Reporting Plan; Order Approving Amendments to the Transaction Reporting Plan With Respect to NASDAQ/NMS Securities

On September 26, 1986, the National Associaiton of Securities Dealers, Inc. ("NASD") submitted copies of amendments [1] to its Transaction Reporting Plan with Respect to (NASDAQ/NMS) Securities ("Plan").[2] The proposed amendments were noticed in Securities Exchange Act Release No. 23819 (November 17, 1986), 51 FR 42963. Three comments were received.

### I. Description of the Amendments

The purpose of the amendments is to specify eligibility requirements that determine the NASDAQ securities for which there shall be real-time last sale reporting. These eligibility criteria also are being inserted into Schedule D of the NASD's By-Laws. [3]

The eligibility criteria to be incorporated in the Plan are the Tier 2 National Market System ("NMS") designation criteria that until today have been contained in Rule 11Aa2-1 under the Exchange Act ("NMS Disignation Rule").[4] Additionally, these eligibility criteria include certain corporate governance requirements.[5] According to these standards, each NMS company will be required to maintain a minimum of two independent directors on its board of directors, as well as to establish and maintain an audit committee composed of a majority of independent directors. Also, an NMS issuer must provide shareholders with copies of annual and interim reports. In addition, the issuer must examine all related party transactions to address potential conflicts of interest situations. Finally, there are new provisions concerning quorums, solicitation of proxies, and the execution of listing agreements. The proposal also will permit the NASD to waive or modify for companies these corporate governance and financial standards; the waivers or modifications are intended to work in the same way as the proposed rule changes submitted by the American ("Amex") and New York ("NYSE") Stock Exchanges, that also have been approved by the Commission.[6]

In its related Rule 19b-4 filing [7] with the Commission, the NASD stated that the purpose of its corporate governance proposal was to provide shareholders of NMS companies a level of participation in corporate affairs that currently is mandated for issuers registered on certain national securities exchanges. In addition, the NASD believes that, once these corporate governance standards are approved, additional states will grant NMS issuers an automatic exemption from blue sky laws. Securities that until today have been designated as NASDAQ/NMS Securities under the NMS Designation Rule remain so designated subject to either voluntary termination or termination based on failure to meet maintenance standards, including the new corporate governance standards.

### II. Comments

The Commission received comments from the Securities Admininstrator of the Maine Department of Professional and Financial Regulation, Bureau of Banking, Securities Division ("Maine Securities Administrator"); [8] Adolph Coors Company; [9] and the National Securities Traders Association ("NSTA").[10]

The Maine Securities Administrator stated that he opposed the corporate governance provisions due to the NASD's failure specifically to address shareholder voting rights. He noted that in 1985 the Maine state legislature already had amended the Maine securities laws, and that the NASD had influenced the adoption of an amendment that provided that NMS Securities would become exempt from registration upon a finding by the Maine banking superintendent that the Commission had approved NASD corporate governance provisions. The Maine Securities Administrator emphasized, however, that the legislature had included the NMS provision believing that the Commission's approval of the corporate governance provisions would "signify SEC endorsement of the investment quality of NMS Securities." [11] These provisions did not fully safeguard shareholder voting rights, as the Maine Securities Administrator had apparently expected them to.

Coors stated that it objected to the incorporation of corporate governance standards in the NAD's Transaction Reporting Plan. It believed that "to incorporate the corporate governance rules into a rule which initially was designed to promote efficient markets seems out of place." [12] Coors itself would have to "de-list" from NMS because it does not include independent directors on its Board. Accordingly, Coors stated, "[i]f our company's securities and those of other companies in similar situations are 'down-listed,' it will be the investors who are harmed by limited market information, lower market liquidity, and less market

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[1] These amendments were submitted pursuant to Rules 11Aa3-1 and 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"). *See* SR-NASD-86-27 and Securities Exchange Act Release Nos. 23818 and 23819 (November 17, 1986).

[2] The Plan and subsequent amendments are contained in File No. S7-787. The Commission approved the Plan in Securities Exchange Act Release No. 18601 (April 1, 1982), 47 FR 14641.

[3] The Commission also today is approving these amendments to the By-Laws. *See* Securities Exchange Act Release No. 24632 (June 23, 1987) (published elsewhere in this edition of the **Federal Register**).

[4] Until today, the NMS Securities Rule employed a two-tiered approach for designation of NMS Securities pursuant to procedures established in the Plan. Tier 1 required that the most actively traded over-the-counter ("OTC") securities be designated as NMS Securities. Tier 2 permitted additional OTC securities to become NMS designated at the election of the issuer. The Tier 2 designation criteria contain two alternatives. The first alternative, applicable to newer companies with substantial net income but less extensive assets, requires that an issuer have net income in the previous fiscal year or in two of the last three fiscal years of at least $300,000 and at least 350,000 publicly held shares with a market value of $2,000,000. This alternative also required a minimum bid price per share of three dollars and a minimum of two NASDAQ market makers in the stock for five business days prior to the application date. *See* 17 CFR 240.11Aa2-1(b) (4) (ii). The second alternative, applicable to longer-established companies with substantial assets, requires that the issuer have operated for four years, have capital and surplus of $8,000,000 and have at least 800,000 publicly held shares with a market value of $8,000,000. This second alternative also requires a minimum of two NASDAQ market makers for five business days before the application date, but imposes no minimum price per share requirement. *See* 17 CFR 240.11Aa2-1(b) (4) (iii).

The Commission today also is adopting amendments to the NMS Securities Rule that delete the specific NMS designation criteria. Instead, the Rule designates as NMS Securities all securities for which real-time last sale reports are required by a transaction reporting plan approved by the Commission. *See* Securities Exchange Act Release No. 24635 (June 23, 1987) (published elsewhere in this edition of the **Federal Register** ("NMS Designation Rule Amending Release").

[5] These standards were noticed in Securities Exchange Act Release Nos. 22505 and 24818 (October 4, 1985 and November 17, 1986), 50 FR 41697 and 51 FR 42960. Existing NMS issuers will have eighteen months from the effective date of these changes to comply with the corporate governance standards.

[6] *See* Securities Exchange Act Release No. 24634 (June 23, 1987) (published elsewhere in this edition of the **Federal Register**).

[7] *See supra* note 1.

[8] Letter from Stephen L. Diamond, Securities Administration, Maine Department of Professional and Financial Regulation, Bureau of Banking, Securities Division, to Jonathan G. Katz, Secretary, SEC, dated December 29, 1986 ("Maine Letter").

[9] Letter from Harold R. Smethills, Executive Vice President, Corporate Finance and Administration, Adolph Coors Company to Johnathan G. Katz, Secretary, SEC, dated December 30, 1986 ("Coors Letter").

[10] Letterfrom Arthur P. Rowsell, Chairman, and John L. Watson III, President, NSTA, to Jonathan G Katz, Secretary, SEC, dated January 16, 1987.

[11] Maine Letter, *supra* note 8, at 2.

[12] Coors Letter, *supra* note 8, at 2.

surveillance." [13] The NSTA stated that it did not object to the NASD's proposed corporate governance requirements.

### III. Discussion

Rule 11Aa3–1 under the Act requires the Commission to approve the amendment to the NASD's current designation plan if the amendment satisfies the standards contained in Rule 11Aa3–2. Rule 11Aa3–2(c)(2) under the Act requires the Commission to approve an amendment to an effective national market system plan if it finds that such amendment is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of a national market system, or otherwise in furtherance of the purposes of the Act. After careful consideration, the Commission has determined to approve the proposed amendments.

As a general matter, the amendments now being proposed to the Transaction Reporting Plan establish criteria that are similar to the Tier 2 standards previously contained in the NMS Securities Rule and the NASD's current plan.[14] The Commission continues to believe that these levels are appropriate and consistent with the protection of investors and the goals of the NMS.[15]

The one substantive change is the NASD's proposed addition of corporate governance standards to its Transaction Reporting Plan. The Commission believes that generally it is appropriate for the NASD to have governance standards as a part of its Transaction Reporting Plan. In this connection, the Commission notes that the CTA Plan [16] effectively incorporates the NYSE and Amex corporate governance standards by using the NYSE and Amex listings standards as eligibility criteria. The NASD proposal would accomplish the same result for NASDAQ securities, in effect establishing both listing standards and last sale reporting criteria.

Specifically, the exchanges have become accepted as sources of fundamental investor protections; because of their historical role in this area, it is reasonable for a self-regulatory organization such as the NASD to continue to set standards affecting minimum investor protections. By requiring minimum safeguards for all companies listing stock in their market, exchange listing standards already, and NASD standards will, create uniformity not otherwise provided by providing assurance to investors that all the companies traded in those markets have the fundamental safeguards they have come to expect of major companies. Consequently, investors are spared the costs of reviewing each potential company and evaluating the significance of varying corporate structures in making investment decisions.[17]

Minimum investor protection requirements for NMS Securities also serve to make NMS Securities trading OTC more equivalent alternatives to listed securities. One of the functions of exchanges' corporate governance listing requirements is to permit shareholders to shift investments without having to analyze whether shareholder protections differ between companies. also, similar structural requirements will provide for greater intersubstitutability among NMS/OTC companies and among NMS/OTC and listed companies.[18]

Finally, the Commission does not expect that the imposition of these criteria will cause many issuers either not to seek eligibility for transaction reporting, and hence NMS designation, or to withdraw from designation. The NASD proposal sets forth fundamental standards of corporate governance which the Commission understands are met or surpassed by most major corporations. Moreover, the Commission does not believe that compliance with the proposed governance standards would impose substantial cost burdens on the few NMS companies who may not fully meet each standard.

### IV. Approval of Amendments

The Commission finds that the proposed amendments to the Transaction Reporting Plan with Respect to NASDAQ/NMS Securities are consistent with the Act and the rules themselves, in particular, section 11A(a)(1) and Rules 11Aa3–1 and 11Aa3–2.

It is therefore ordered, pursuant to section 11A of the Act, and paragraph (a)(2) of Rule 11Aa3–2 thereunder, that the amendments to the Plan be, and hereby are, approved.

Dated: June 23, 1987.

By the Commission.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87–14681 Filed 6–26–87; 8:45 am]

BILLING CODE 8010–01–M

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[13] *Id.*

[14] On January 7, 1982, the Commission approved the NASD's "National Market System Designation Plan with respect to NASDAQ securities" ("Designation Plan") which had been filed pursuant to Rule 11Aa2–1. The NASD's Designation Plan generally provided procedures for designation of NMS Securities, determining substantial compliance with the designation criteria, and publishing lists of designated securities. The plan also established maintenance criteria for NMS Securities, and criteria for terminating or suspending the designation of NMS Securities. Upon approval today of the Commission rule amendments and NASD rule changes, the Designation Plan will become inoperative, and its substance will be incorporated into the NASD's Transaction Reporting Plan.

[15] *See* Securities Exchange Act Release Nos. 18601 and 21583 (April 1, 1982 and December 18, 1984), 47 FR 1464 and 50 FR 730 (approving old Rule 11Aa2–1 Tier 2 initial and NASD Tier 2 maintenance levels and procedures). The elimination of mandatory designation criteria from the Commission's Rule 11Aa2–1 is discussed in the release approving the amendments to Rule 11Aa2–1. *See* NMS Designation Rule Amending Release, *supra* note 4.

[16] NYSE and Amex listed securities and securities listed on regional exchanges that substantially meet the initial listing requirements of the Amex or NYSE are reported pursuant to the Consolidated Tape Association ("CTA") Plan. The CTA is a joint industry organization composed of the NASD and seven national securities exchanges that administer the consolidated transaction reporting system for listed securities. The Commission approved the CTA Plan in Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799. Under the amendments to Rule 11Aa2–1 adopted today, *supra* 4, CTA eligible securities will be designated as NMS Securities.

[17] The Commission notes that the question of shareholder voting rights for NASDAQ stocks is a separate one the Commission is considering in a separate proceeding. *See* Securities Exchange Act Release No. 24623 (June 22, 1987) (instituting proceedings under section 19(c) of the Act to determine whether to amend the NYSE, Amex and NADS's rules to effect minimum requirements in this area). We note that in those proceedings the Commission is soliciting comment on the possibility of applying these requirements to foreign issuers.

[18] In regard to NASD's waiver from corporate structure standards for certain foreign issuers, *see* the discussion in the accompanying release approving the substantially similar waiver or modification approach of the Amex and NYSE. Securities Exchange Act Release No. 24634, *supra* note 6.

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## DEPARTMENT OF STATE

**[CM–8/1087]**

### Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 0930 on the following dates: July 30, 1987; August 20, 1987; September 17, 1987; October 15, 1987; November 19, 1987 and December 17, 1987. All meetings will be held in room 9230 of the Department of Transportation, 400 Seventh Street, SW., Washington, DC 20950–0001.The purpose of these meetings is to prepare for the thirty-fourth Session of the Subcommittee on Radiocommunication of the International Maritime Organization which will be held in

January 1988. In particular the working group will discuss the Global Maritime Distress and Safety System.

For further information contact LT McDannold, U.S. Coast Guard Headquarters (G-TTS-1), 2100 Second Street, SW., Washington, DC 20593-0001. Telephone: (202) 267-2860.

Dated: June 19, 1987.

**Richard C. Scissors,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 87-14699 Filed 6-26-87; 8:45 am]

BILLING CODE 4710-07-M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ending—June 19, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

**Docket No. 44950**

*Parties:* Members of International Air Transport Association
*Date Filed:* June 16, 1987
*Subject:* Brazil—US Apex Fares
*Proposed Effective Date:* July 1, 1987

**Docket No. 44951 R-1—R-11**

*Parties:* Members of International Air Transport Association
*Date Filed:* June 16, 1987
*Subject:* US Australia Fares
*Proposed Effective Date:* July 1, 1987

**Docket No. 44956**

*Parties:* Members of International Air Transport Association
*Date Filed:* June 19, 1987
*Subject:* GP Excursion Fares Brazil to US
*Proposed Effective Date:* July 1, 1987

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 87-14705 Filed 6-26-87; 8:45 am]

BILLING CODE 4910-62-M

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 19, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

**Docket No. 44955**

*Date Filed:* June 18, 1987
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 2, 1987.
*Description:* Conforming Application of Northwest Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for an amendment of its certificate of public convenience and necessity for route 179 so as to remove condition 12 from that certificate. Removal of the condition would permit Northwest to carry local traffic on its London-Frankfurt flights on a year-round basis.

**Phyllis T. Kaylor,**

*Chief, Documentary Service Division.*

[FR Doc. 87-14704 Filed 6-26-87; 8:45 am]

BILLING CODE 4910-62-M

**[Order 87-6-52; Docket 44724]**

### Application of Ketchikan Air Service, Inc., for Certificate Authority Under Subpart Q

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Ketchikan Air Service, Inc., fit and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

**DATE:** Persons wishing to file objections should do so no later than July 14, 1987.

**ADDRESSES:** Objections and answers to objections should be filed in Docket 44724 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Janet A. Davis, Air Carrier Fitness Division (P-56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2341.

Dated: June 23, 1987.

**Vance Fort,**

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 87-14706 Filed 6-26-87; 8:45 am]

BILLING CODE 4910-62-M

## Coast Guard

**[CGD 87-045]**

### National Boating Safety Advisory Council; Applications for Appointment

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for applications.

**SUMMARY:** The U.S. Coast Guard is seeking applications for appointment to membership on the National Boating Safety Advisory Council (NBSAC). This Council advises the Secretary of Transportation on matters related to recreational boating safety.

Seven members will be appointed as follows: Two (2) members from the recreational vessel manufacturers and associated equipment manufacturers; two (2) members from State officials responsible for State boating safety programs; and three (3) members from national recreational boating organizations and from the general public.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The Council normally meets twice each year at a location selected by the Coast Guard.

**DATE:** Request for applications should be received no later than July 20, 1987.

**ADDRESS:** Persons interested in applying should write to Commandant (G-BBS/43), U.S. Coast Guard Headquarters, Washington, DC 20593-0001.

**FOR FURTHER INFORMATION CONTACT:** Commander A. Rozumny, Acting Executive Director, National Boating Safety Advisory Council (G-BBS), Room 4306, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001; (202) 267-0993.

Dated: June 23, 1987.

**T.T. Matteson,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.*

[FR Doc. 87-14663 Filed 6-26-87; 8:45 am]

BILLING CODE 4910-14-M

**Federal Aviation Administration**

## Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review; Salt Lake City International Airport, Salt Lake City, UT

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Salt Lake City International Airport (SLC) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for SLC under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before December 15, 1987.

**DATES:** The effective date of the FAA's determination on the SLC noise exposure maps and of the start of its review of the associated noise compatibility program is June 18, 1987. The public comment period ends July 17, 1987.

**FOR FURTHER INFORMATION CONTACT:** Dennis Ossenkop, FAA, Airports Division, ANM–611, 17900 Pacific Hwy S. C–68966, Seattle, WA 98168.

Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps for SLC are in compliance with applicable requirements of Part 150, effective June 18, 1987. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be aproved or disapproved on or before December 15, 1987. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft opertions, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the mesaures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

SLC submitted to the FAA noise exposure maps, descriptions, and other documentation which were produced during an airport Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the nose exposure maps and related descriptions submitted by SLC. The specific maps under consideration are Figures 14–8 and 14–9 in the submission. The FAA has determined that these maps for SLC are in compliance with applicable requirements. This determination is effective on June 18, 1987. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for SLC, also effective on June 18, 1987. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 15, 1987.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduced the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, SW., Room 615, Washington, DC

Federal Aviation Administration, Airports Division, ANM–600, 17900 Pacific Hwy S., C–68966, Seattle, Washington 98168

Salt Lake City International Airport, Salt Lake City, Utah

Questions may be directed to the individual named above under the heading, **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington, June 18, 1987.

**Edward G. Tatum,**

*Manager, Airports Division, ANM-600.*

[FR Doc. 87-14612 Filed 6-26-87; 8:45 am]

BILLING CODE 4910-13-M

## Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on July 17, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks and Introductions; (2) Approval of Minutes of the Meeting Held on May 15, 1987; (3) Executive Director's Report; (4) Special Committee Activities Report for May/June 1987; (5) Midyear Review of RTCA Operations and Special Budgets; (6) Consideration of Proposals to Establish New Special Committees; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements of the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 23, 1987.

**Wendie F. Chapman,**

*Designated Officer.*

[FR Doc. 87-14616 Filed 6-26-87; 8:45 am]

BILLING CODE 4910-13-M

## Research, Engineering and Development (RE&D) Conference

**ACTION:** Notice of Conference.

The Department of Transportation hereby announces a Federal Aviation Administration (FAA) Research, Engineering and Development (RE&R) Conference. This 2-day conference will commence at 9 a.m. on August 18, 1987, at the Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036. Pre-registration is recommended due to limited space.

The purpose of the conference is to present the FAA RE&D Plan to the aviation community in draft form and to discuss the draft plan with conference attendees. This discussion is expected to solicit the views of individuals on RE&D needs in general and the draft plan in particular. These individual views will provide guidance in completing the plan.

Copies of the draft plan will be distributed at the conference. In addition to views expressed during conference discussions, written comments on the draft plan will be accepted through September 18, 1987. Comments should be mailed to the address below.

Further information concerning the conference and/or pre-registration forms may be obtained from the Systems Studies/Advanced Concepts Division, AES-300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-9850. Copies of the draft plan may be obtained from this address after August 19, 1987.

Issued in Washington, DC, June 23, 1987.

**Malcolm Burgess,**

*Manager, Systems Studies/Advanced Concepts Division, AES-300.*

[FR Doc. 87-14609 Filed 6-26-8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Secret Service

### Appointment of Performance Review Board (PRB) Members

This notice announces the appointment of members of Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning July 1, 1986, and ending June 30, 1987. Each PRB will be composed of at least three of the Senior Executive Service members listed below.

**Name and Title**

Stephen E. Garmon—Deputy Director, U.S. Secret Service
Joseph R. Carlon—Assistant Director, Protective Research (USSS)
Guy P. Caputo—Assistant Director, Protective Operations (USSS)
Jack A. Renwick—Assistant Director, Inspection (USSS)
Kevin R. Houlihan—Assistant Director, Investigations (USSS)
David C. Lee—Assistant Director, Administration (USSS)
Robert R. Snow—Assistant to the Director, Public Affairs (USSS)
Don A. Edwards—Assistant to the Director, Training (USSS)
H. Terrence Samway—Deputy Assistant Director, Protective Research (USSS)
John R. Smith—Deputy Assistant Director, Protective Operations (USSS)
Stephen J. Harrison—Deputy Assistant Director, Protective Operations (USSS)
George J. Opfer—Deputy Assistant Director, Protective Operations (USSS)
Richard A. McCann—Deputy Assistant Director, Investigations (USSS)
John J. Kelleher—Chief Counsel, U.S. Secret Service

**FOR FURTHER INFORMATION CONTACT:** Wesley Bishop, Chief, Personnel Division, Room 903, 1800 G Street, NW., Washington, DC 20223, Telephone No. 202-535-5635.

**John R. Simpson,**

*Director.*

[FR Doc. 87-14696 Filed 6-26-87; 8:45 am]

BILLING CODE 4810-42-M

## 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) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Office (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, Elaina Norden, 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: June 18, 1987.

By direction of the Administrator.

**David A. Cox,**

*Associate Deputy Administrator for Management.*

**Extension**

1. Department of Veterans Benefits
2. Notice-Payment Not Applied and Application for Reinstatement
3. VA Form 29–4499a
4. This form is used by veterans to reinstate their Government Life Insurance and is used by VA to verify eligibility for reinstatement.
5. On occasion
6. Individuals or households
7. 1,936 responses
8. 484 hours
9. Not applicable

**Revision**

1. Department of Veterans Benefits
2. Obtaining Supplemental Information From Hospital or Doctor
3. VA Form Letter 29–551B
4. This information is obtained from the attending physician or hospital and is used to establish the insured's eligiblity for disability insurance benefits.
5. On occasion
6. Individuals or households
7. 244 responses
8. 61 hours
9. Not applicable

**Extension**

1. Department of Veterans Benefits
2. Statement of Applicant and/or Physical Examination Report
3. VA Form 29–4465
4. This information is provided by the veteran and physician and is needed to determine eligibility for insurance or other benefit applied for.
5. On occasion
6. Individuals or households; Federal agencies or employees
7. 1,615 responses
8. 2,100 hours
9. Not applicable

**Revision**

1. Department of Veterans Benefits
2. Eligibility Verification Report
3. VA Forms 21–0510 through 21–0519–1
4. This information is provided by veterans and/or beneficiaries to report annual income, net worth, marital status and status of dependents. VA uses this information to verify rate of benefits and to make adjustments as needed.
5. On occasion
6. Individuals or households
7. 2,016,750 responses
8. 403,350 hours
9. Not applicable

**Extension**

1. Department of Medicine and Surgery
2. Claim for Payment of Cost of Unauthorized Medical Services
3. VA Form 10–583
4. This information is used by health care providers to claim payment for cost of treatment and by veterans to claim reimbursement for the costs of treatment obtained without prior approval from VA and to determine the veteran's eligibility for that benefit.
5. On occasion
6. Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; and Non-profit institutions.
7. 68,750 responses
8. 17,188 hours
9. Not applicable

[FR Doc. 87–14661 6–26–87; 8:45 am]

BILLING CODE 8320-01-M

## Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held July 16 and 17, 1987, in the Omar Bradley Conference Room of Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Both meetings will begin at 8 a.m. and conclude at 4:30 p.m.

These meetings will be open to the public to the seating capacity of the room. Anyone having questions concerning the meetings may contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Veterans Administration Central Office (phone number 202–233–3317/3303).

Dated: June 19, 1987.

By direction of the Administrator.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 87–14660 Filed 6–26–87; 8:45 am]

BILLING CODE 8320-01-M

## Commission to Assess Veterans' Education Policy; Meeting

The Veterans Administration gives notice that a meeting of the Commission to Assess Veterans' Education Policy, authorized by section 320 of Pub. L. 99–576, will be held in Room 335 of the Cannon House Office Building, 1st and Independence, SE., Washington, DC, 20515, on July 30, 1987, at 9 a.m. The purpose of this meeting will be to review various aspects of the administration of veterans' education programs for the purposes of making recommendations to the Administrator and the Congress as the Commission determines appropriate.

The meeting will be open to the public. Due to limited seating capacity, it will be necessary for those wishing to attend to contact Babette V. Polzer, Executive Director, Commission to Assess Veterans' Education Policy (phone: 202/233–2886) prior to July 20, 1987.

Interested persons may attend or submit prepared statements for the Commission. Statements may be filed with the Executive Director for the Commission, c/o the Veterans Administration (226), 810 Vermont Avenue, NW., Room 427–D, Washington, DC 20420.

Dated: June 19, 1987.

By direction of the Administrator.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 87–14659 Filed 6–26–87; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 124
Monday, June 29, 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**

**TIME AND DATE:** 11:00 a.m., Thursday July 2, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Market Surveillance Matters

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87–14718 Filed 6–25–87; 9:34 am]

BILLING CODE 6351–01–M

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**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, July 10, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Market Surveillance Matters

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87–14719 Filed 6–25–87; 9:34 am]

BILLING CODE 6351–01–M

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**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday July 17, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Market Surveillance Matters

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87–14720 Filed 6–25–87; 9:34 am]

BILLING CODE 6351–01–M

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**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday July 24, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Market Surveillance Matters

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87–14721 Filed 6–25–87; 9:34 am]

BILLING CODE 6351–01–M

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**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, July 31, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Market Surveillance Matters

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87–14722 Filed 6–25–87; 9:34 am]

BILLING CODE 6351–01–M

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**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**DATE AND TIME:** 2:00 p.m. (eastern time) Monday, July 6, 1987.

**PLACE:** Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, DC 20507.

**STATUS:** Part will be open to the public and part will be closed to the public.

**MATTERS TO BE CONSIDERED:**

*Open*

1. Announcement of Notation Vote(s)
2. Report on Commission Operations (Optional)
3. Proposals to Design a Study on the Use of Fitness Tests in Public Safety Employment

**MATTERS TO BE CONSIDERED:**

*Closed*

Litigation Authorization; General Counsel Recommendations

**Note.**—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 634–6748 at all times for information on these meetings.)

**CONTACT PERSON FOR MORE INFORMATION:** Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated and issued: June 24, 1987.

**Cynthia C. Matthews,**

*Executive Officer, Executive Secretariat.*

[FR Doc. 87–14795 Filed 6–25–87; 3:00 pm]

BILLING CODE 6750–06–M

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**FEDERAL DEPOSIT INSURANCE CORPORATION**

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2)), notice is hereby given that at its closed meeting held at 1:30 p.m. on Wednesday, June 17, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Matters relating to the possible failure of insured banks: Names and locations of banks authorized to be exempt from disclosure pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Recommendation regarding the Corporation's assistance agreement with an insured bank.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: June 24, 1987.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Assistant Executive Secretary (Operations).*

[FR Doc. 87-14766 Filed 6-25-87; 12:58 pm]

BILLING CODE 6714-01-M

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**FEDERAL TRADE COMMISSION**

**TIME AND DATE:** 11:00 a.m., Tuesday, July 7, 1987.

**PLACE:** Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

**STATUS:** Open.

**MATTER TO BE CONSIDERED:**

Consideration of proposed amendments to Rule on Games of Chance in the Food Retailing and Gasoline Industries.

**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. 87-14723 Filed 6-25-87; 9:35 am]

BILLING CODE 6750-01-M

federal register

Monday
June 29, 1987

Part II

# Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 217, 222 and 227

Sea Turtle Conservation; Shrimp Trawling Requirements; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217, 222 and 227

[Docket Number 70227-7121]

# Sea Turtle Conservation; Shrimp Trawling Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Secretary of Commerce adopts rules requiring shrimp trawlers in the Gulf of Mexico and the Atlantic Ocean off the Southeastern United States to use measures to reduce the incidental catch and mortality of sea turtles in shrimp trawls. In offshore waters at specified times all shrimp trawlers 25 feet and longer are required to use qualified turtle excluder devices (TEDs) and all shrimp trawlers smaller than 25 feet are required to restrict tow times to 90 minutes or less. In inshore waters at specified times all shrimp trawlers are required to restrict tow times to 90 minutes or less. In both inshore and offshore waters shrimp trawlers using TEDs are exempt from the tow time restrictions. The rules specify criteria and procedures for qualifying additional TEDs; specify vessel sizes, areas and seasons for which qualified TEDs or 90 minute tow times must be used; establish reporting requirements; continue measures for resuscitation and release of captured sea turtles; and continue designated critical habitat. These rules will reduce substantially the incidental catch and mortality of endangered and threatened sea turtles associated with shrimp trawling.

**DATE:** This rule becomes effective on October 1, 1987.

**ADDRESS:** Regional Director, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Fl. 33702.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz, (813) 893-3366, Charles Karnella, (202) 673-5349, or David Cottingham, (202) 377-5181.

**SUPPLEMENTARY INFORMATION:**

## a. Background

All sea turtles that occur in U.S. waters are listed as endangered or threatened species under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, (ESA or the Act). Five of these, the loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempi*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*), are found in marine waters from North Carolina through Texas, where there is a significant incidental mortality of sea turtles in shrimp trawls.

The Act prohibits captures of endangered sea turtles within the United States, within the U.S. territorial sea, and on the high seas, except as authorized by the Secretary of Commerce or the Secretary of the Interior. The Secretary of Commerce has authority over sea turtles in marine waters and the Secretary of the Interior has authority over sea turtles on land. The Act authorizes the respective Secretaries, by regulation, to extend to threatened species the protections provided by statute to endangered species.

## b. Incidental Mortality and Capture in Shrimp Trawls

Incidental capture and drowning of sea turtles by shrimp trawlers is a significant source of mortality for sea turtles. Research programs using on-board observers have documented the capture and drowning of turtles in shrimp trawls in both the Gulf of Mexico and the Atlantic. Although it is not possible to determine from these data precisely how many turtles drown in shrimp trawls each year, NMFS estimates that this figure is in excess of 11,000. This estimate is derived from data gathered during more than 27,000 hours of observation aboard commercial shrimp trawlers. The Final Supplement to the Final Environmental Impact Statement on Listing and Protecting the Green Sea Turtle, Loggerhead Sea Turtle and the Pacific Ridley Sea Turtle under the Endangered Species Act of 1973 (FSEIS) discusses these data in greater detail. An overview of the problem of the incidental take of sea turtles in fisheries operations is presented in the U.S. Recovery Plan for Marine Turtles.

Some of the sea turtles that die in marine waters wash onto shore in coastal areas. Since 1980 a volunteer Sea Turtle Stranding and Salvage Network has patrolled beaches and reported sea turtle strandings to NMFS. From January 1980 through December 1986, the network has reported over 8,300 strandings in coastal areas from North Carolina through Texas. Most of these were loggerheads but nearly 600 of the critically endangered Kemp's ridley sea turtles also were reported. In a number of geographic areas, seasonal peaks in sea turtle strandings correspond to seasonal peaks in shrimp trawling effort.

A number of researchers have interviewed shrimp fishermen. Data gathered during these interviews support the NMFS observer and stranding data and show that in some areas incidental catch rates of sea turtles are relatively high. Similarly, data from sea turtle tagging studies show that many sea turtles are caught in shrimp trawls. From these four sources of data, it is clear that shrimp trawls are a major source of mortality of sea turtles.

## c. Gear Research

In 1978 NMFS began a research program to develop gear or methods to reduce the mortality of sea turtles in shrimp trawls. The program was designed to achieve this goal at minimal costs to shrimp trawlers. By 1981, NMFS developed its turtle excluder device, or TED, to the point where it released 97 percent of the turtles caught in shrimp trawls with no loss of shrimp. Since then NMFS has modified its TED and number of times, making it smaller, lighter and collapsible for easier and safer handling. The NMFS TED also releases debris and unwanted bycatch. In addition to the NMFS TED, other TEDs have been developed. Some of these are as effective, less costly and easier to handle than the NMFS TED.

During this gear research program, NMFS scientists also conducted studies on the relationship between sea turtle mortality and the amount of time a shrimp trawl fishes. This study showed that there is a direct relationship between the percent mortality of sea turtles caught in shrimp trawls and the time towed. Mortality is negligible at tow times up to about 75 minutes. Between 75 and 90 minutes the precent mortality increases to about 15 percent. Beyond 90 minutes there is a linear relationship between mortality and tow time, with percent mortality increasing to about 53 percent at 330 minutes. These times are actual times the trawls fished at depth and do not include trawl setting or retrieval times. Restricting the total time of a tow to 90 minutes results in fishing at depth for about 60 to 75 minutes. This study shows that reduced tow times will result in fewer deaths of sea turtles in shrimp trawls. Tow time restrictions can be a valuable conservation measure if they can be enforced effectively.

## d. Voluntary TED Program

NMFS began a formal program in 1983 to encourage shrimp fishermen to use the TED voluntarily. NMFS built and delivered TEDs to shrimp fishermen who agreed to use them in commercial trawling operations. Gear experts worked with shrimp fishermen to demonstrate how to properly install and

use TEDs. NMFS worked closely with Sea Grant and a number of industry groups to transfer this technology to the shrimp fishing industry. Despite these and other efforts the voluntary program was not successful because sufficient numbers of TEDs were not used on a regular basis. It is unlikely that a sufficient number of shrimp fishermen will use TEDs voluntarily either to reduce sea turtle mortality or unwanted bycatch. Therefore, it is necessary to adopt rules requiring shrimp fishermen to use TEDs or to restrict tow times to protect sea turtles.

**e. Proposed Regulations**

To prevent further declines in the populations of the five species of sea turtles and because of the lack of success of the voluntary TED program, NMFS published proposed regulations on March 2, 1987 (52 FR 6179–6199). Public hearings on the proposed regulations and the Draft Supplemental Environmental Impact Statement were conducted in each state where shrimp trawlers would be affected and in Washington, DC. In addition to comments provided at these hearings, several thousand people provided written comments. The comments are discussed below.

**f. Comments on the Proposed Regulation and Draft Supplemental Environmental Impact Statement**

NOAA and NMFS received thousands of comments on the proposed regulations and the Draft Supplemental Impact Statement both from participants in the public hearings and by letter. These comments covered a broad spectrum and ranged from full support of the TED requirements to complete opposition to the use of TEDs. Some commenters stated that the regulations were not comprehensive enough to ensure adequate protection to sea turtles and others that these requirements would not help turtle populations recover. NMFS and NOAA personnel reviewed all of the comments and combined them into the general categories given below.

Reponses are provided for each of these general categories. These responses address the substance of all individual comments. Additional discussion of these comments is provided in the FSEIS. About 60 percent of the commenters favored at least some TED requirements and about 40 percent were opposed to any TED requirement.

*Comment: I support mandatory use of TEDs.* Many commenters wrote to support the regulations. Most of these indicated that TED requirements are necessary to protect endangered and threatened sea turtles, particularly the Kemp's ridley.

*Response:* NMFS agrees that the available data indicate that sea turtle mortality in shrimp trawls must be reduced significantly. The final regulations require the use of TEDs in offshore waters for all shrimp trawlers 25 feet or longer and restrict tow times to 90 minutes or less for almost all other shrimp trawlers. NMFS is issuing these regulations under the authority of the Endangered Species Act, which requires all federal agencies to use their authorities to carry out programs for the conservation of endangered and threatened species.

*Comment: I oppose the use of TEDS/I will not use a TED.* These were the most numerous comments provided at the public hearings.

*Response*: Most of these commenters provided no reasons to support the comment but some did, for example, TEDs lose shrimp, TEDs are dangerous, TEDs won't save sea turtles. These reasons are addressed below.

*Comment: TEDs are dangerous.* A large number of commenters stated that TEDs were dangerous and would result in many accidents and injuries. TEDs were considerd dangerous because they are heavy, take up too much space, would be in the way when nets are emptied, make the trawl more difficult to handle, especially when setting or retrieving the trawl. Shrimpers on small boats stated that the could not safely handle TEDs.

*Response:* NMFS believers that shrimp trawling has a number of associated hazards, whether or not TEDs are used. Decks of shrimp trawlers are dangerous because of open winches, exposed lines and heavy gear such as trawl doors and nets.

In over 15,000 hours of tesing of TEDs on commercial shrimp trawlers and many more hours of actual use on commercial shrimp trawlers, NMFS is aware of only one injury related to the use of a TED. A crew member stated at a public hearing that he suffered an injury because of a TED. In followup discussions, NMFS learned that the crewman was actually injured when a pelican hook opened while it was being improperly used to hoist a trawl equipped with a TED.

If TEDs are used with the proper caution they will not add to the number of accidents or injuries that occur on shrimp trawlers. Shrimpers concerned about space and weight problems can use either the Matagorda or Georgia TEDs, both of which are lighter, and less bulky and cumbersome than the NMFS or Cameron TEDs. In addition industry has developed a "soft TED", which will be tested off Cape Canaveral, Florida, in the near future. The final regulations address the concern of using TEDs on smaller boats by basing the exemption from using a TED on boat length rather than trawl headrope length. Shrimp trawlers less than 25 feet long are not required to use TEDs. This change also resolves net measurement problems identified by the U.S. Coast Guard and NMFS enforcement personnel.

*Comment: TEDs will cause insurance premiums to increase.* Many commenters stated that their insurance premiums would increase as a result of accidents and injuries resulting from the use of TEDs.

*Response:* NMFS discussed this with a number of insurance companies. At this time insurance companies lack statistical information on accidents and injuries associated with the use of TEDs, and cannot determine what, if any, effect TED use would have on premiums. However, none of these companies or their agents indicated that they would change coverage or premiums simply because TEDs were required by regulation. NMFS is aware of the problems that commercial fishermen have obtaining insurance at reasonable rates. However, there is no indication that requiring TEDs in shrimp trawls will add significantly to these problems.

*Comment: TEDs reduce shrimp production and increase costs.* Many commenters stated that TEDs would reduce shrimp catch. They gave several examples of how TEDs could or would fail: TED escape openings would clog with debris and allow shrimp out; TEDs will increase that amount of time shrimp trawls are out of the water ("down time"), and thus reduce the catch.

*Response:* TEDs now in use are, in part, a product of comments and suggestions made by a number of commercial shrimp fishermen who used earlier versions. TEDs have been used aboard commercial shrimp trawlers fishing on offshore shrimp grounds throughout the U.S. South Atlantic and Gulf of Mexico. Based on several thousand hours of field tests, the NMFS TED works in all areas tested. During this testing there was no indication that TEDs would not exclude sea turtles in any area. NMFS tests showed that its TED did not affect the shrimp catch. These tests compared the shrimp catch in TED-equipped trawls to the catch in trawls without TEDs. If commercial shrimp trawlers properly install and use the NMFS TED there should be no significant loss of shrimp.

Tests have been conducted with the other three qualified TEDs to determine

if these devices have any affect on shrimp catch. In general, these tests have shown that differences in catches between TED-equipped and control nets are not statistically significant.

At one of the public hearings a shrimper stated that while using a NMFS TED he incurred an 18.5 percent loss of revenue. He attributed this loss to the time his trawls were not fishing because of TEDs. During NMFS TED tests there were few instances of lost fishing time because of fouling of, or damage to, the TED. NMFS believes that these tests show that shrimp fishermen should not experience significant losses of fishing time or revenues because of TEDs. Conversely, due to the bycatch reduction features of TEDs, a number of shrimpers have indicated that they could tow longer because TED-equipped nets did not fill up as fast and did not require as frequent emptying as nets without TEDs.

Although many commenters stated that the economic impacts of TED requirements would put shrimpers out of business and have disastrous effects on the local economics of a number of shrimping areas, few data were submitted to substantiate these claims. Based on NMFS analysis, the economic impacts of these regulation will be small compared to the total costs of shrimping.

*Comment: TEDs don't exclude turtles.* Several commenters stated that TEDs would not allow turtles to escape because they would get caught in the TEDs, especially if the TED was clogged or jammed.

*Response:* NMFS has tested its TED extensively in offshore waters. These tests show that the NMFS TED effectively excludes turtles. Clogging and jamming has not been a problem. The University of Georgia Sea Grant program conducted a series of tests of the four qualified TEDs for turtle exclusion in the Cape Canaveral Navigation Channel, Florida. In those tests all four devices successfully excluded sea turtles. NMFS believes that if a TED effectively excludes turtles in offshore waters, it will function as effectively in inshore waters. However, NMFS acknowledges that TEDs have not been tested for turtle exclusion in inshore waters, where shrimpers contend that clogging problems will be the worst. The final regulations do not require shrimpers to use TEDs in inshore waters at this time. Tow time restrictions are substituted for the TED requirement.

*Comment: Shrimpers do not catch/kill any/many sea turtles.* A number of shrimpers commented at the public hearings or in letters that they caught very few sea turtles, especially Kemp's ridleys. They also said that all or nearly all captured sea turtles were released alive, some after resuscitation. Some shrimpers stated that they have never caught a sea turtle despite shrimp trawling for 10 or more years.

*Response:* NMFS believes that most of the sea turtles caught in shrimp trawls are released alive and that most shrimp fishermen attempt to resuscitate unconscious sea turtles. Based on the observer data, NMFS estimates that between 20 and 40 percent of the turtles are dead when they are brought aboard. The mortality of sea turtles in shrimp trawls depends on several factors including the length of the two and the physiological condition of the turtle. NMFS has placed observers on shrimp trawlers for more than 27,000 hours. These observers documented the capture of 884 sea turtles in shrimp trawls fishing on offshore commercial grounds throughout the Gulf of Mexico and the U.S. South Atlantic. Using observer data, NMFS estimates that 47,973 sea turtles are captured and 11,179 are drowned in offshore commercial shrimp trawls in southeast U.S. waters each year. Obviously the rate of sea turtle capture is relatively small (884 in 27,578 hours). Thus for individual shrimp trawlers the capture of a sea turtle will be a relatively uncommon event. However, when the total number of hours of shrimp trawling is considered (several million each year), the total catch and mortality of sea turtles is considerable. NMFS believes the current estimates of incidental catch and mortality to be conservative. These data indicate the need to require shrimp fishermen to use conservation measures to reduce the mortality of sea turtles in shrimp trawls.

*Comment: Bait shrimpers have very short tow times because the shrimp must be landed alive; there is no need to regulate bait shrimpers to protect sea turtles.*

*Response:* The tow time restrictions adopted herein will allow most bait shrimpers to comply with the rules without using TEDs.

*Comment: My interests were not represented during the meetings sponsored by NOAA.* A number of shrimpers stated that they were not represented at the meetings between the shrimp industry and the environmental community that preceded the proposed rules. Several recreational shrimpers and representatives of state natural resource agencies also stated that they should have been included in those meetings.

*Response:* NOAA sponsored the meetings to get recommendations from the shrimp industry and environmental community on ways to provide sea turtles with adequate protection while keeping economic losses to shrimp fishermen to a minimum. The meetings were open to the public. Interested parties and advisors to the participants were allowed to attend all sessions. Following publication of the proposed rules, NMFS held public hearings in each state where shrimp trawlers would be affected and in Washington, DC. Thousands of people attended these hearings. NMFS also held separate meetings with several state agencies and attorneys general. The agency believes that all interested parties were provided an opportunity to participate in the rulemaking process.

*Comment: The available data do not support the proposed regulations.* Many of the commenters, including some members of Congress and State officials, stated that NMFS should have stronger evidence that shrimp trawling results in significant turtle mortality. In general, these people recommended either delaying TED requirements until more information becomes available or not publishing any regulations requiring the use of TEDs. Information needs were identified for the following areas: The extent of incidental capture and mortality of sea turtles in specific geographic areas; sea turtle distribution and abundance in specific geographic areas; the effectiveness of various TEDs in retaining shrimp and releasing sea turtles in various local inshore areas; and the economic effects of TED requirements on shrimp trawlers, other sectors of the shrimp industry, and the economies of various shrimping areas.

*Response:* NMFS agrees that more research is needed and therefore will develop and implement a research program on the distribution, abundance and incidental catch and mortality of sea turtles and additional studies on the sea turtle exclusion and shrimp retention characteristics of TEDs. NMFS is aware of the limited scientific data on the incidental mortality of sea turtle and TED effectiveness in certain areas, particularly inshore waters. There is however a good data base for offshore areas in the southeast United States, showing that more than 11,000 sea turtles die in shrimp trawls each year. Because of this disparity, NMFS agrees that it is not appropriate at this time to require TEDs to be used in both inshore and offshore waters by all shrimp trawlers. However, sea turtles are known to occur in inshore waters. It is very likely a significant number of sea turtles are caught and drowned in nets fished in these waters. NMFS believes that the available information indicates

that sea turtles require additional protection from these impacts. Therefore, NMFS will require the use of TEDs in offshore waters for all shrimp trawlers 25 feet and longer and will restrict tow times for smaller shrimp trawlers in offshore waters and for all shrimp trawlers in inshore waters to 90 minutes or less. These regulations will become effective on or after January 1, 1988, in most areas, as opposed to July 15, 1987, under the proposed regulations.

*Comment:* NMFS should delay publishing final regulations until more research has been done on shrimp retention when using TEDs. Fisheries associations from Louisiana and Texas submitted detailed comments which included recommendations as to additional TED testing that should be done prior to issuing final regulations.

*Response:* NMFS placed observers aboard commercial shrimp trawlers during several thousands hours of testing the NMFS TED for shrimp retention. Data from those tests indicate no significant loss of shrimp. There is little information on shrimp retention of other TEDs. These were discussed briefly in response to an earlier comment.

As stated earlier, NMFS will delay the dates when these regulations will take effect from July 15, 1987, to no earlier than January 1, 1988, except for the Canaveral Area. This delay will give shrimpers more time to test TEDs and learn how to use them.

*Comment: Establish/increase captive breeding and hatchery programs.* A number of commenters suggeted that NMFS, the shrimp industry and the environmental community work together to increase headstart and captive breeding programs for sea turtles, especially the critically endangered Kemp's ridley. Some shrimpers recommended placing a tax on shrimp landings and/or imports to support sea turtle headstart and captive breeding programs.

*Response:* Headstarting by NMFS has been conducted on a large scale only for the Kemp's ridley sea turtle. The only source of Kemp's ridley eggs is from Mexican beaches. Under a cooperative research program, Mexico provides the United States with 1,500 to 2,000 eggs each year for headstarting at the NMFS Galveston Laboratory. NMFS hatches these eggs, raises the hatchlings in captivity for about a year and releases them. Although NMFS has demonstrated that sea turtles can be successfully headstarted, we cannot be sure that such a program increases the size of the wild breeding stock of sea turtles. This part of the program is still in the experimental stage. NMFS anticipates that within the next few years enough data will be available to assess whether this aspect of the program has been successful. In addition, sea turtle scientists have recommended that no more than five percent of the eggs be removed from the wild for headstarting. Until headstarting can be demonstrated to increase the number of sea turtles breeding in the wild, NMFS does not believe that it is prudent to concentrate sea turtle conservation efforts on headstarting. Similar questions exist for captive breeding programs.

*Comment: NMFS should address all sources of impacts to sea turtles, not just shrimp trawling.* A number of commenters stated that NMFS singled out shrimp trawling as the only cause for the decline of endangered and threatened sea turtles. They stated that it was not fair to focus on shrimp trawling and neglect all the other causes. The following were identified by commenters as sources of sea turtle mortality: Pollution of marine waters; disposal of plastics and other debris in the marine environment; dredging operations; military and industrial use of explosives; turtles used for food and other products in foregin countries; destruction and degradation of habitat, particularly nesting beaches; beach lighting; and other fisheries. Several commenters recommended that the agency delay issuing final regulations until all the causes of sea turtles mortality could be addressed.

*Response:* NMFS agrees that all causes of adverse impacts to sea turtles need to be addressed. Most of the causes of mortality to sea turtles are identified and discussed in the Recovery Plan for Marine Turtles and in the preamble to the proposed rule. Many of these activities are under the jurisdiction of other Federal agencies and have been the subject of consultations required by section 7 of the Act and either the Fish and Wildlife Service (FWS) or NMFS. Under section 7, Federal agencies are required to consult with the Secretary of the Interior or the Secretary of Commerce, depending on the species involved, to ensure that their actions are not likely to jeopardize the continued existence of endangered and threatened species, or destroy or adversely modify designated critical habitat. During these consultations the Federal agency and FWS or NMFS review projects to assess the potential impacts to listed species and determine how these impacts can be avoided or minimized. Before the project can proceed, the action agency must find that the activity is not likely to jeopardize the continued existence of endangered or threatened species, or destroy or adversely modify designated critical habitat. Section 7 consultations have been conducted for a number of activities including dredge and fill projects, beach nourishment projects, jetty construction, oil and gas lease sales, oil rig removals, ocean disposal and fishery management plans. FWS also is working with a number of state and local government agencies to protect nesting female and hatchling sea turtles and eggs on beaches.

NMFS believes that available observer data and the estimated annual incidental catch and mortality of sea turtles in shrimp trawls show that this is a significant source of impacts on turtle populations. The best way to reduce these impacts is by shrimp trawlers using TEDs.

NMFS will strengthen its efforts to work with other agencies and groups to address other sources of impacts, such as oil rig removals, beach development, and pollution discharges.

A number of commenters stated Mexico was the principal cause of sea turtle mortality. Mexico also has designated a number of turtle sanctuaries recently. Mexico also provides protection to the Kemp's ridley nesting area at Rancho Nuevo, to prevent poaching of eggs and other impacts to nests, eggs, hatchlings and nesting females. Mexico has indicated that it may require its shrimp trawlers to use TEDs. The United States has offered to provide assistance in training Mexican shrimp fishermen how to use TEDs.

**Final Regulations**

The final regulations will require all shrimp trawlers to use conservation measures when fishing for shrimp. Under these regulations the use of TEDs or tow time restrictions are required in all waters of the Atlantic between the North Carolina—Virginia border and 23°40′N and throughout the U.S. Gulf of Mexico. Based on seasonal requirements, Atlantic and Gulf waters each are divided into two areas. These are called the Canaveral, the Atlantic, the Southwest Florida and Gulf Areas. These areas are defined as follows: (a) Canaveral Area—includes all ocean and tidal waters between 28° N and 29° N in the Atlantic Ocean; (b) Atlantic Area—includes all ocean and tidal waters in the Atlantic Ocean from the North Carolina—Virginia border to 23°40′N, except for waters in the Canaveral Area; (c) Southwest Florida Area—includes all ocean and tidal waters within the region bounded by 23° N to 27° N between 81° W and 84° W; and (d) The Gulf Area—includes

all ocean and tidal waters of the U.S. Gulf of Mexico except for waters in the Southwest Florida Area. These areas are shown in Maps 1 and 2.

*1. TED Requirements and Tow Time Restrictions*

These final rules require all shrimp trawlers to either use a qualified TED or restrict tow times to 90 minutes or less. These requirements are summarized in Table 1. A number of changes (these changes are discussed in greater detail below) have been made to the proposed rules based on the comments provided to the agency.

A. TED Requirements

(i) *Offshore.* All vessels 25 feet or longer trawling for shrimp in offshore waters must use a qualified TED in each trawl as follows: in the Canaveral Area all year beginning October 1, 1987; in the Atlantic Area from May 1 through August 31 each year, beginning May 1, 1988; in the Southwest Florida Area all year beginning January 1, 1988; and in the Gulf Area from March 1 through November 30 each year, beginning March 1, 1988. At the starting dates TEDs will be required in all offshore waters of the Canaveral and Atlantic Areas and from the shore (or baseline of the territorial sea) to 15 nautical miles in the Southwest Florida and Gulf Areas. A year from the starting dates TEDs will be required in all offshore waters of the Southwest Florida and Gulf Areas. Reduced tow times cannot be used in lieu of TEDs for vessels 25 feet and longer.

B. Tow Time Restrictions

(i) *Inshore.* All vessels (regardless of length) trawling for shrimp in inshore waters of the Canaveral, Atlantic, Southwest Florida and Gulf Areas are required to restrict tow times (tow time starts when the trawl doors enter the water and ends when they are removed from the water) to 90 minutes or less all year as follows: In the Canaveral Area all year beginning October 1, 1987; in the Atlantic Area from May 1 through August 31 each year, beginning May 1, 1988; in the Southwest Florida Area all year beginning January 1, 1988; and in the Gulf Area from March 1 to November 30 each year, beginning March 1, 1988. This restriction does not apply to shrimp trawlers using a TED in each net during trawling.

(ii) *Offshore.* All shrimp trawlers less than 25 feet trawling for shrimp in offshore waters at times when and in areas where TEDs are required for larger shrimp trawlers must restrict tow times to 90 minutes or less. The restriction applies as follows: in the Canaveral Area all year beginning October 1, 1987; in the Atlantic Area from May 1 through August 31 each year, beginning May 1, 1988; in the Southwest Florida Area all year beginning January 1, 1988; and in the Gulf Area from March 1 through November 30 each year, beginning March 30, 1988. At the starting dates this restriction will apply in all offshore waters of the Canaveral and Atlantic Areas and from shore to 15 miles in the Southwest Florida and Gulf Areas. A year from the starting dates in the Southwest Florida and Gulf Areas the tow time restriction will apply in all offshore waters of these areas. This restriction does not apply to shrimp trawlers using a TED in each net during trawling.

TABLE 1.—SUMMARY OF FINAL REGULATIONS

| Areas | Trasler size | Requirement | Season | Start | Coverage |
|---|---|---|---|---|---|
| Offshore: | | | | | |
| Canaveral area | >25 ft | TED | All year | 10-1-87 | All waters. |
| Atlantic area | Do | TED | May 1 to August 31 | 05-1-88 | Do. |
| Southwest Florida area | Do | TED | All year | 01-1-88 | Shore to 15 miles.[1] |
| Gulf area | Do | TED | March 1 to November 30 | 03-1-88 | Shore to 15 miles.[2] |
| Canaveral area | <25 ft | 90 minute tow [3] | All year | 10-1-87 | All waters. |
| Atlantic area | Do | do | May 1 to August 31 | 05-1-88 | Do. |
| Southwest Florida area | Do | do | All year | 01-1-88 | Shore to 15 miles.[1] |
| Gulf area | Do | do | March 1 to November 30 | 03-1-88 | Shore to 15 miles.[2] |
| Inshore: | | | | | |
| Canaveral area | All | 90 minute tow [3] | All year | 10-1-87 | |
| Atlantic area | All | do | May 1 to August 31 | 05-1-88 | |
| Southwest Florida area | All | do | All year | 01-1-88 | |
| Gulf area | All | do | March 1 to November 30 | 03-1-88 | |

[1] Will extend to all waters 1-1-89.
[2] Will extend to all waters 3-1-89.
[3] Tow time restrictions do not apply to shrimp trawlers that are using a TED in each net during trawling.

*2. Qualification of TEDs*

Four TEDs have been demonstrated to achieve very high turtle exclusion rates. These are commonly called the NMFS TED, the Cameron TED, the Matagorda TED, and the Georgia TED. The final rules declare these TEDs to be qualified devices and contain a description of their essential design and construction and an illustration of each device. The use of any of these devices fulfills the TED requirements of these regulations.

The rules provide a procedure for testing additional devices and submitting them to NMFS for qualification. The standard for qualification is a 97 percent exclusion rate for the size of sea turtles encountered in the area where the device is intended to be used. All testing for turtle exclusion will be performed under NMFS supervision. Such testing normally will be conducted off Cape Canaveral, Florida, using scientific protocols approved by NMFS. One such protocol is published as an appendix to this rule. NMFS is aware that "Soft TEDs" (i.e., made of webbing-like materials) have been developed recently. These devices will be tested for turtle exclusion off Cape Canaveral in the near future.

*3. Shrimp Efficiency Testing*

A major concern of shrimpers with all TEDs is the possible loss of shrimp. Refinements in TED design may improve shrimp yields or reduce unwanted bycatch. These rules contain a provision for the Regional Director, NMFS, to allow public or private parties to conduct experiments on the effects of

various TEDs on shrimp catch. A research protocol is available from NMFS to aid in comparing shrimp retention or bycatch exclusion rates of the experimental gear to the rates of conventional nets or nets equipped with qualified TEDs.

*4. Reporting Requirements*

The Notice of Proposed Rulemaking (52 FR 6179–6199) contained a collection of information requirement subject to the Paperwork Reduction Act that is under review by the Office of Management and Budget (OMB). That provision would require shrimp fishermen to report pertinent information concerning the capture of sea turtles. If OMB approves the information collection requirement, NMFS will amend the final rule.

*5. Enforcement Policy*

The rule contains a statement of the Secretary's policy with respect to the use of civil penalties to enforce the prohibitions on taking of endangered and threatened sea turtles by shrimp trawlers that have observed the requirements of these rules. Briefly, the Secretary will not subject shrimp fishermen in the Canaveral, Atlantic, Southwest Florida and Gulf Areas who comply with this rule to civil penalties under the Act for the unintentional incidental capture or mortality of endangered or threatened sea turtles in shrimp trawls.

*6. Exemptions*

Shrimp trawlers intending to fish for royal red shrimp (or rock shrimp in the Atlantic Ocean) are exempt from the TED requirements and tow time restrictions provided that 90 percent of all shrimp offloaded from, or on board, the trawler are royal red shrimp (or rock shrimp from the Atlantic Ocean). The reason for this exemption is that turtles are rarely encountered in the very deep waters where these fisheries take place.

A single "test net" having a headrope length of 20 feet or less also is exempt from the TED requirement (but not tow time restrictions) so long as the test net is independent of the primary net or nets. A test net is considered to be independent if it is pulled immediately in front of a primary net or is not connected to a primary net in any way. The reasons for exempting "test nets" are that TEDs are not efficient, both in terms of turtle exclusion and shrimp retention, when used on small nets and that small nets are towed for relatively short periods, reducing the risk of sea turtle mortality.

**Differences Between the Proposed and Final Rules**

Several changes were made to the proposed rules as a result of comments received from the public. The major differences are for where TEDs are required, imposition of tow time restrictions, which shrimp trawlers must use TEDs, and starting dates.

*1. TED Requirements*

The proposed rules would require the use of TEDs in most inshore waters of the Atlantic and Gulf. In response to the thousands of commenters who indicated that there are no data on the incidental catch and mortality of sea turtles in shrimp trawls in inshore waters, NMFS has dropped TED requirements for all inshore waters. However all shrimp trawls in inshore waters will be required to restrict tow times to 90 minutes or less. The final regulations will allow shrimp trawlers to use qualified TEDs in inshore waters in place of tow time restrictions.

*2. Tow Time Restrictions*

The proposed rules contained no restrictions on tow times. Many commenters suggested limits on tow times as being the most effective alternative to TEDs. NMFS believes that requiring the use of TEDs in shrimp trawls would provide a most effective method of reducing sea turtle drownings in shrimp trawls. However, NMFS scientists have demonstrated that there is a relationship between tow time and percent mortality of sea turtles caught in shrimp trawls. NMFS believes that tow time restrictions can be an effective technique to reduce sea turtle mortality associated with shrimp trawling.

Although NMFS has no observer data, sea turtles do occur in inshore waters and NMFS believes that they are incidentally caught and drowned in shrimp trawls in inshore waters. NMFS also believes that most inshore shrimp trawlers are smaller craft that generally do not tow for long periods. Tow time restrictions admittedly are difficult to enforce. However, NMFS believes that in many inshore areas tow time restrictions can be enforced effectively, but that in many offshore areas tow time restrictions will be much more difficult to enforce. To provide protection for sea turtles in inshore waters, NMFS has determined that restricting tow times to 90 minutes or less (total time from setting to retrieving trawls, which equals 60 to 75 minutes towing time at depth) is necessary until additional data on incidental take and mortality of sea turtles in inshore waters are available. Tow time restrictions apply to all shrimp trawlers in inshore waters. In addition NMFS is requiring shrimp trawlers smaller than 25 feet in length to restrict tow times in offshore waters where and when larger trawlers are required to use TEDs. Since most shrimp trawlers less than 25 feet long generally fish near shore, this restriction can be effectively enforced. The tow time restriction does not apply to shrimp trawlers using a TED in each net during trawling.

*3. Vessels Required to Use TEDs*

The proposed rules would require the use of TEDs on shrimp trawls with a headrope 30 feet or longer. Responding to comments concerning the potential danger of using TEDs on small trawlers and on difficulties associated with enforcement, NMFS based TED requirements on shrimp trawler length. All shrimp trawlers 25 feet or longer are required to use TEDs in offshore waters. This length was selected because there is no doubt that TEDs can be used safely on vessels 25 feet or greater in length. Because there are no safety considerations associated with tow time restrictions, all shrimp trawlers are required to abide by them as specified in the regulations.

*4. Starting Dates*

There are several differences in starting dates for TED requirements between the proposed and final regulations. The proposed rules would have required TEDs to be used as early as July 15, 1987, in offshore waters of the Atlantic and Gulf. A number of commenters requested that TED requirements be delayed to allow shrimp fishermen sufficient time to obtain and learn to use TEDs. In response to these comments NMFS has delayed TED requirements until at least January 1, 1988, except for the Canaveral Area, where TEDs will be required on October 1, 1987.

*5. Areas*

Under the proposed rules there were no TED requirements for waters off North Carolina north of 35°N, waters south of 28°N off the Atlantic coast of Florida and for Gulf of Mexico waters north of 27°N on the Florida coast (near Englewood, Florida) to Mobile Bay. The final regulations require the use of TEDs and tow time restrictions in all of these waters. These changes are made because sea turtles and shrimping both occur in these waters. Under the proposed regulations, TEDs would have been required initially in the Gulf of Mexico from shore to the 10 fathom contour and then would extend out to the 15 fathom contour one year later.

NMFS has determined that it would be very difficult to enforce the requirement based on depth contours. Therefore, in the Gulf of Mexico, these regulations will be effective initially out to 15 nautical miles and one year later in all waters.

**Other Sources of Impacts to Sea Turtles**

The Recovery Plan for Marine Turtles identifies a number of sources of significant impacts to sea turtles. In addition to incidental capture and mortality in shrimp trawls, the plan identifies the following sources of impacts: Pollutants from industrial and residential development, including oil, pesticides, herbicides and PCBs; exploratory oil and gas drilling; ocean dumping, including plastics; dredge and fill operations; power boats; harvest for commercial or other purposes; predation of nest and hatching; and destruction or loss of habitat. To promote the recovery of sea turtles all of these sources of mortality must be addressed. NMFS will work with federal, state and private agencies to implement actions to reduce or alleviate the impact burden on sea turtles. In addition we will continue our international efforts to conserve sea turtles. We have worked with a number of countries to transfer TED technology to foreign shrimpers and will continue these efforts.

**Evaluation Program**

NOAA will conduct a detailed evaluation to be completed within two years of January 1, 1988, of the effectiveness of the regulation contained in this rule. This study will include an evaluation as to whether the qualified TEDs are effectively excluding turtles, whether there are alternative performance/design standards for qualifying TEDs that would be acceptable and what their cost would be, and whether the testing and qualifying procedures for TEDs are the most efficient possible.

*Classifications*

A Final Environmental Impact Statement covering portions of this action was prepared in 1978. An Environmental Assessment covering prior voluntary efforts to encourage TED usage was prepared in 1983. A Final Supplemental Environmental Impact Statement concluded that there would be a significant positive impact on the quality of the human environment as a result of adopting these rules. Copies of the environmental documents can be obtained from the Regional Director at the address given above.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. An initial regulatory flexibility analysis (RFA) was prepared as part of the initial regulatory impact review (RIR) which concluded that the proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities. The final rule contains revisions to the proposed rule which will substantially reduce the economic impacts on small entities. These changes are discussed in the final RIR/RFA which can be obtained from the Regional Director (see "Addresses").

By 1989, about 7,000 U.S. shrimp trawlers will be required to purchase and use TEDs. The cost of TEDs ranges between $200 and $400. Each of the qualified TEDs have an expected life of two years. The average annual cost to the industry is expected to be between $2.6 and $5.2 million. NMFS believes that the tow time restrictions will not result in additional costs to the industry, because nearly all of the vessels affected by these requirements already use reduced tow times. A few shrimp fishermen may incur additional fuel costs resulting from more frequent setting and hauling of their trawls.

The Administrator has determined that this rule is consistent to the maximum extent practicable with the approved coastal zone management programs of six southeastern states.

Neither this rule nor the Act preclude any state from adopting more stringent sea turtle protective measures. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act of 1972, 16 U.S.C. 1457.

**List of Subjects in 50 CFR Parts 217, 222, and 227**

Endangered species, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 23, 1987.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator For Fisheries.*

For the reasons set out in the preamble, 50 CFR Parts 217, 222, and 227 are amended as follows:

## PART 217—GENERAL PROVISIONS

1. The authority citation for Part 217 continues to read as follows:

**Authority:** 16 U.S.C. 1521–1543 and 16 U.S.C. 742a *et seq.*

**§§ 217.1, 217.2, 217.3, and 217.4 [Amended]**

2. In Subpart A of Part 217, the reference to "Parts 217 through 222" is removed and "Parts 216 through 227" is added in its place in the following places: § 217.1, § 217.2, § 217.3, § 217.4, introductory text, and in paragraph (a).

3. In § 217.12, the following definitions are added in alphabetical order to read as follows:

**§ 217.12 Definitions.**

"*Atlantic Area*" means all ocean and tidal waters off the southeast Atlantic States from 36°33'00.8'N. latitude (North Carolina or Virginia border) south and west to a line at 81°W. longitude, except for waters within the Canaveral Area, as defined in this section.

"*Authorized officer*" means (1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; (2) any certified enforcement officer of the National Marine Fisheries Service; (3) any officer designated by the head of any Federal or State agency that has entered into an agreement with the Secretary and Commandant of the Coast Guard to enforce provisions of the Act; (4) any Coast Guard personnel accompanying and acting under the direction of any person described in Subparagraph (1) of this definition.

"*Canaveral Area*" means all ocean and tidal waters off the east coast of Florida between 28°N. latitude and 29°N. latitude.

"*Gulf Area*" means all ocean and tidal waters in the Gulf of Mexico except the southwest Florida Area, as Defined in this section.

"*Inshore*" means marine or tidal waters landward of the baseline from which the territorial sea of the United States is measured and marine or tidal waters on the mainland side of any baselines on offshore islands.

"*Length*" in reference to a shrimp trawler, means the distance from the tip of the vessel's bow to the tip of its stern.

"*Offshore*" means waters seaward of the baseline from which the territorial sea of the United States is measured.

"*Shrimp*" means the following species of the order Crustacea:

(1) Brown shrimp (*Penaeus aztecus*).

(2) White shrimp (*P. setiferus*).

(3) Pink shrimp (*P. duorarum*).

(4) Rock Shrimp (*Sicyonia brevirostris*).

(5) Royal red shrimp (*Hymenopenaeus robustus*).

(6) Seabob shrimp (*Xiphopenaeus kroyeri*).

"*Shrimp trawler*" means any fishing vessel which is equipped with trawl nets and fishes for shrimp, or whose on-board or landed catch of shrimp is over one percent by weight of all fish on board.

"*Southwest Florida Area*" means the ocean and tidal waters off Florida from

23°40' N. Latitude to 27° N. latitude between 81° W. longitude and 84° W. longitude.

*"Tow time"* means the interval from trawl doors entering the water to trawl doors being removed from the water.

## PART 222—ENDANGERED FISH OR WILDLIFE

4. The authority citation for Part 222 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543.

5. A new Subpart D is added to read as follows:

### Subpart D—Incidental Capture of Endangered Sea Turtles

**§ 222.41 Policy regarding incidental capture of sea turtles.**

Shrimp fishermen in the southeastern United States and the Gulf of Mexico who comply with rules for threatened sea turtles specified in § 227.72(e) of this subchapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles by shrimp trawl gear.

## PART 227—THREATENED FISH AND WILDLIFE

6. The authority citation for Part 227 continues to read as follows:

**Authority:** 16 U.S.C. 1531 *et seq.*

7. In § 227.72, the headings for reserved paragraphs (e)(2) and (e)(3) are removed and new paragraphs (e)(2) through (e)(7) are added to read as follows:

**§ 227.72 Exceptions to prohibitions.**

* * * * *

(e) * * *

(2) *Gear requirements.* (i) Except as provided in paragraphs (e)(2)(ii), (e)(2)(iii) and (e)(2)(iv) of this section, a qualified turtle excluder device (TED) must be carried and used in each net during trawling by a shrimp trawler 25 feet or longer in length fishing for white, brown, pink, or seabob shrimp (or for rock shrimp in the Gulf of Mexico) in areas and during periods as follows (see Table 1 for a summary of the requirements and Maps 1 and 2 for depictions of the areas):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year, commencing October 1, 1987.

(*2*) Atlantic Area, offshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore to 15 nautical miles—all year, commencing January 1, 1988.

(*2*) Gulf Area, offshore to 15 nautical miles—March 1 through November 30, each year, commencing March 1, 1988.

(*3*) Southwest Flordia Area, offshore—all year, commencing January 1, 1989.

(*4*) Gulf Area, offshore—March 1 through November 30, each year, commencing March 1, 1989.

(ii) In the Southwest Florida and Gulf Areas a shrimp trawler fishing for or possessing royal red shrimp is exempt from the TED requirement provided that 90 percent of all shrimp offloaded from, or on board, the trawler are royal red shrimp.

(iii) In the Canaveral and Atlantic Areas, a shrimp trawler fishing for or possessing rock shrimp or royal red shrimp is exempt from the TED requirement provided that 90 percent of all shrimp offloaded from, or on board, the trawler are rock shrimp or royal red shrimp.

(iv) A single test net having a headrope length of 20 feet or less is exempt from the TED requirement provided that the test net is pulled immediately in front of any other net or is not connected to another net in any way.

(3) *Tow time restrictions.* (i) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler, regardless of length, fishing for white, brown, pink, or seabob shrimp (or rock shrimp in or from the Gulf or Southwest Florida Areas) must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements and Maps 3 and 4 for depictions of the areas):

(A) Atlantic Ocean:

(*1*) Canaveral Area, inshore—all year, commencing October 1, 1988.

(*2*) Atlantic Area, inshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, inshore—all year, commencing January 1, 1988.

(*2*) Gulf Area, inshore—March 1 through November 30, each year, commencing March 1, 1988.

(ii) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler less than 25 feet in length fishing for white, brown, pink, or seabob shrimp must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements and Maps 1 and 2 for depictions of the areas):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year, commencing October 1, 1987.

(*2*) Atlantic Area, offshore—May 1 through August 31, each year, commencing May 1, 1988.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore to 15 nautical miles—all year, commencing January 1, 1988.

(*2*) Gulf Area, offshore to 15 nautical miles—March 1 through November 30, each year, commencing March 1, 1988.

(*3*) Southwest Florida Area, offshore—all year, commencing January 1, 1988.

(*4*) Gulf Area, offshore—March 1 through November 30, each year, commencing March 1, 1989.

(iii) In the Southwest Florida and Gulf Areas a shrimp trawler fishing for or possessing royal red shrimp is exempt from the tow time restrictions provided that 90 percent of all shrimp offloaded from, or on board, the trawler are royal red shrimp.

(iv) In the Atlantic and Canaveral Areas, a shrimp trawler fishing for or possessing royal red or rock shrimp is exempt from the tow time restriction provided that 90 percent of all shrimp offloaded from, the trawler are royal red or rock shrimp.

TABLE 1.—WATERS WHERE TEDS ARE REQUIRED ON SHRIMP TRAWLERS 25 FEET OR LONGER IN LENGTH

| Area | Start date | Season |
|---|---|---|
| Atlantic Ocean: | | |
| Canaveral Area—offshore | October 1, 1987 | All year. |
| Atlantic Area—offshore | May 1, 1988 | May 1 through August 31, each year. |
| Gulf of Mexico: | | |
| Southwest Florida Area—offshore to 15 nautical miles | Jan. 1, 1988 | All year. |
| Gulf Area—offshore to 15 nautical miles | March 1, 1988 | March 1 through November 30, each year. |
| Southwest Florida Area—offshore | Jan. 1, 1989 | All year. |
| Gulf Area—offshore | March 1, 1989 | March 1 through November 30, each year. |

TABLE 2.—90 MINUTE TOW TIMES [1]

| Area | Start date | Season | Vessel sizes |
|---|---|---|---|
| Atlantic Ocean: | | | |
| Canaveral Area—inshore | October 1, 1988 | All year | All. |
| Atlantic Area—inshore | May 1, 1988 | May 1 through August 1, each year | All. |
| Gulf of Mexico: | | | |
| Southwest Florida Area—inshore | January 1, 1988 | All year | All. |
| Gulf Area—inshore | March 1, 1988 | March 1 through November 1, each year. year | All. |
| Atlantic Ocean: | | | |
| Canaveral Area—Offshore | October 1, 1987 | All year | <25 feet. |
| Atlantic Area—offshore | May 1, 1988 | May 1 through August 31, each year | <25 feet. |
| Gulf of Mexico: | | | |
| Southwest Florida Area—offshore to 15 nautical miles. | January 1, 1988 | All year | <25 feet. |
| Gulf Area—offshore to 15 nautical miles | March 1, 1988 | March 1 through November 30, each year | <25 feet. |
| Southwest Florida area—offshore | January 1, 1989 | All year | <25 feet. |
| Gulf Area—offshore | March 1, 1989 | March 1 through November 30, each year | <25 feet. |

[1] Tow time restri ;tions do not apply to shrimp trawlers using a qualified tED in each net during trawling.

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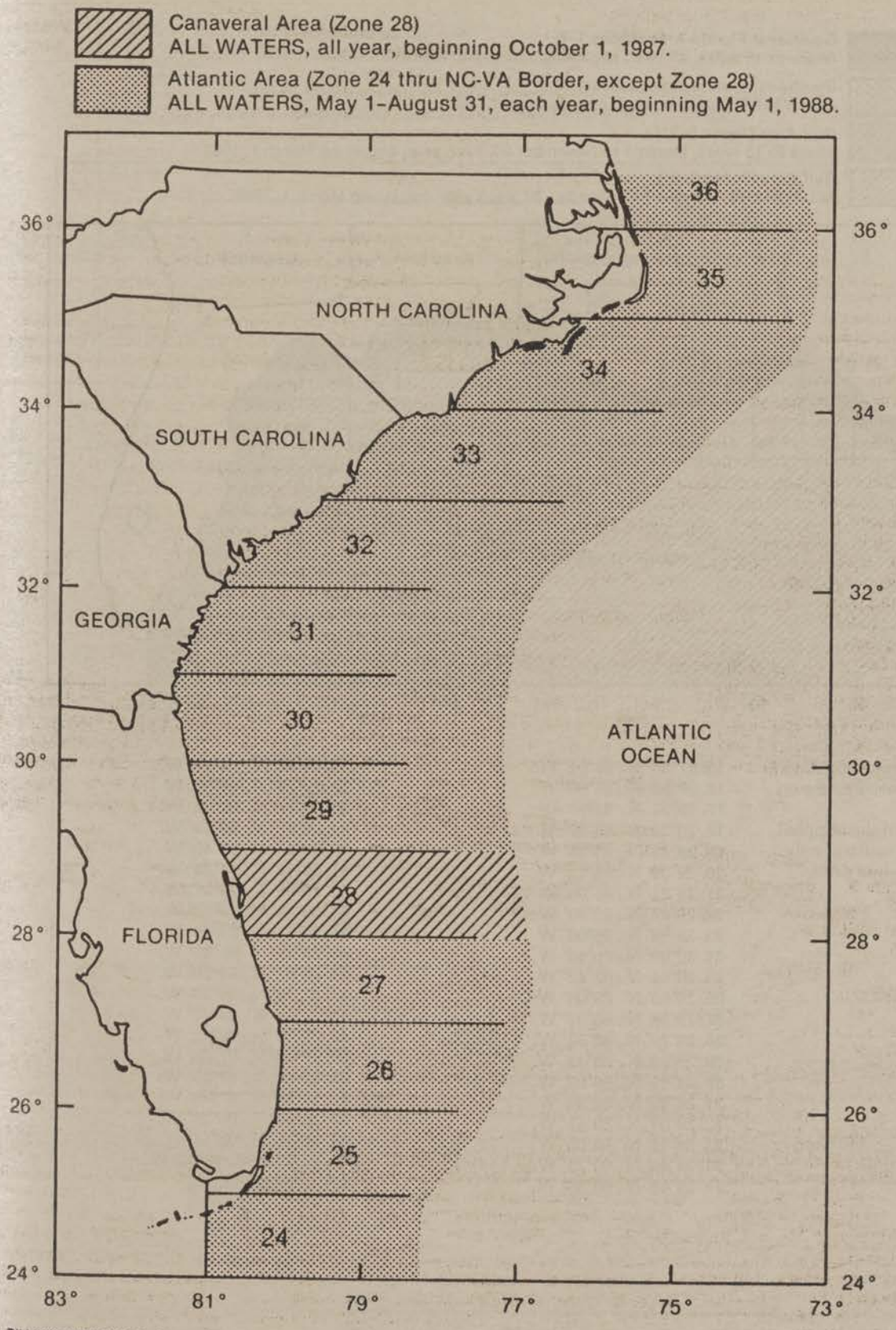
MAP 1. OFFSHORE ATLANTIC WATERS WHERE TEDS ARE REQUIRED

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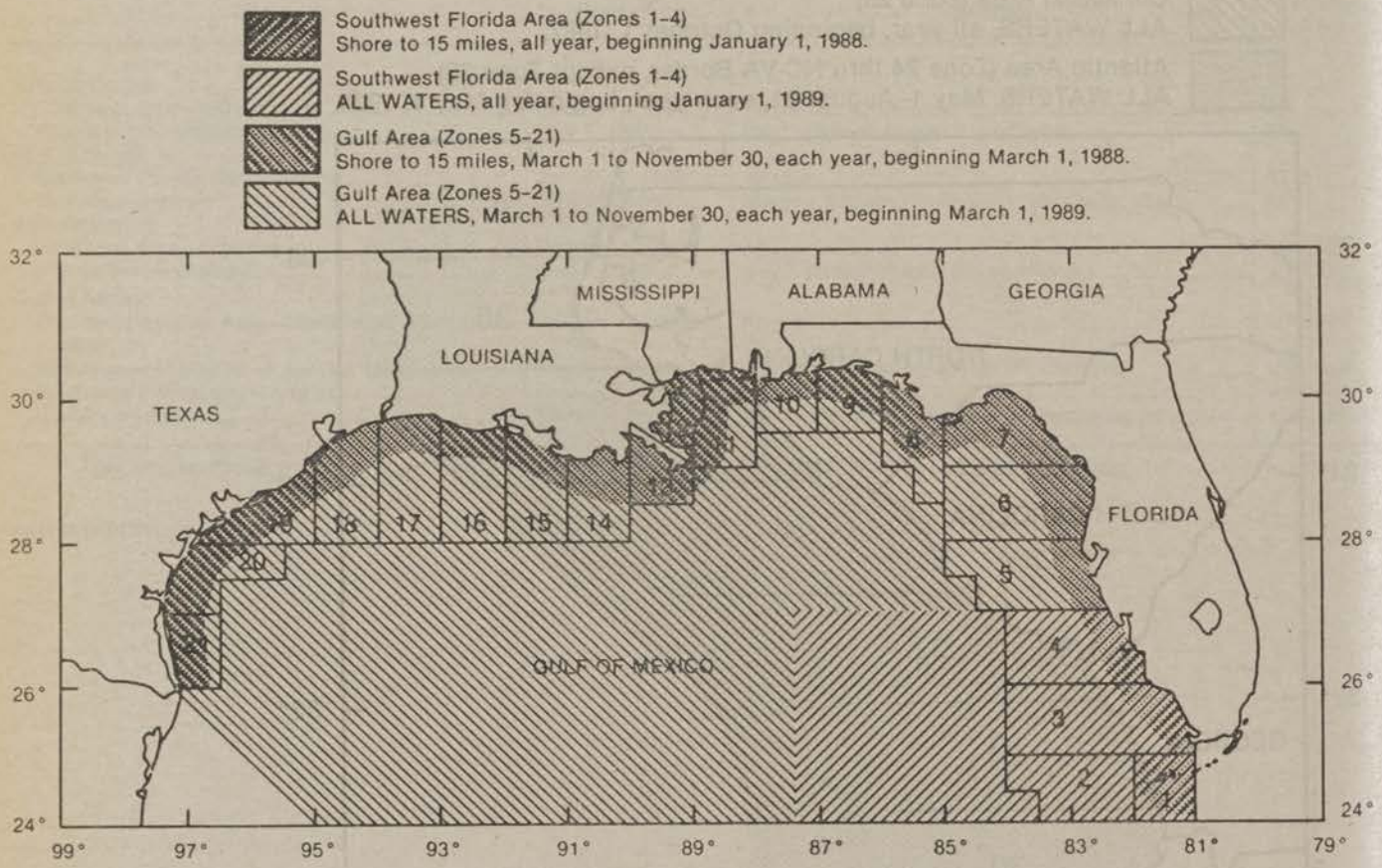
MAP 2. OFFSHORE GULF OF MEXICO WATERS WHERE TEDS ARE REQUIRED




**Note:** The numbered zones on map 2 correspond to the numbered zones on map 4.

The seaward margin of the stippled area on Map 2 is the 15 nautical mile line. The following 55 points are connected by this line.

1. 24°28′ N., 81°00′ W.
2. 24°18′ N., 81°42′ W.
3. 24°17′ N., 82°00′ W.
4. 24°23′ N., 82°56′ W.
5. 24°38′ N., 83°12′ W.
6. 24°53′ N., 82°55′ W.
7. 24°51′ N., 82°07′ W.
8. 24°54′ N., 81°48′ W.
9. 25°06′ N., 81°25′ W.
10. 25°32′ N., 81°33′ W.
11. 25°43′ N., 81°55′ W.
12. 26°11′ N., 82°05′ W.
13. 26°20′ N., 82°25′ W.
14. 27°11′ N., 82°49′ W.
15. 27°30′ N., 83°01′ W.
16. 27°52′ N., 83°08′ W.
17. 28°32′ N., 82°57′ W.
18. 29°22′ N., 83°37′ W.
19. 29°45′ N., 83°54′ W.
20. 29°39′ N., 84°12′ W.
21. 29°21′ N., 85°00′ W.
22. 29°27′ N., 85°30′ W.
23. 29°59′ N., 86°00′ W.
24. 30°09′ N., 86°43′ W.
25. 30°04′ N., 87°12′ W.
26. 29°58′ N., 88°00′ W.
27. 29°58′ N., 88°32′ W.
28. 29°29′ N., 88°52′ W.
29. 29°08′ N., 88°43′ W.
30. 28°45′ N., 89°00′ W.
31. 28°40′ N., 89°30′ W.
32. 29°03′ N., 89°47′ W.
33. 28°52′ N., 90°05′ W.
34. 28°48′ N., 90°23′ W.
35. 28°48′ N., 90°55′ W.
36. 29°01′ N., 91°24′ W.
37. 29°13′ N., 91°50′ W.
38. 29°17′ N., 92°22′ W.
39. 29°31′ N., 93°19′ W.
40. 29°26′ N., 93°49′ W.
41. 29°14′ N., 94°28′ W.
42. 29°05′ N., 94°37′ W.
43. 28°44′ N., 95°07′ W.
44. 28°31′ N., 95°30′ W.
45. 28°19′ N., 96°00′ W.
46. 28°07′ N., 96°16′ W.
47. 27°59′ N., 96°30′ W.
48. 27°43′ N., 96°47′ W.
49. 27°30′ N., 96°52′ W.
50. 27°16′ N., 97°03′ W.
51. 27°00′ N., 97°05′ W.
52. 26°45′ N., 97°02′ W.
53. 26°30′ N., 96°57′ W.
54. 26°15′ N., 96°54′ W.
55. 25°59.5′ N., 96°52′ W.

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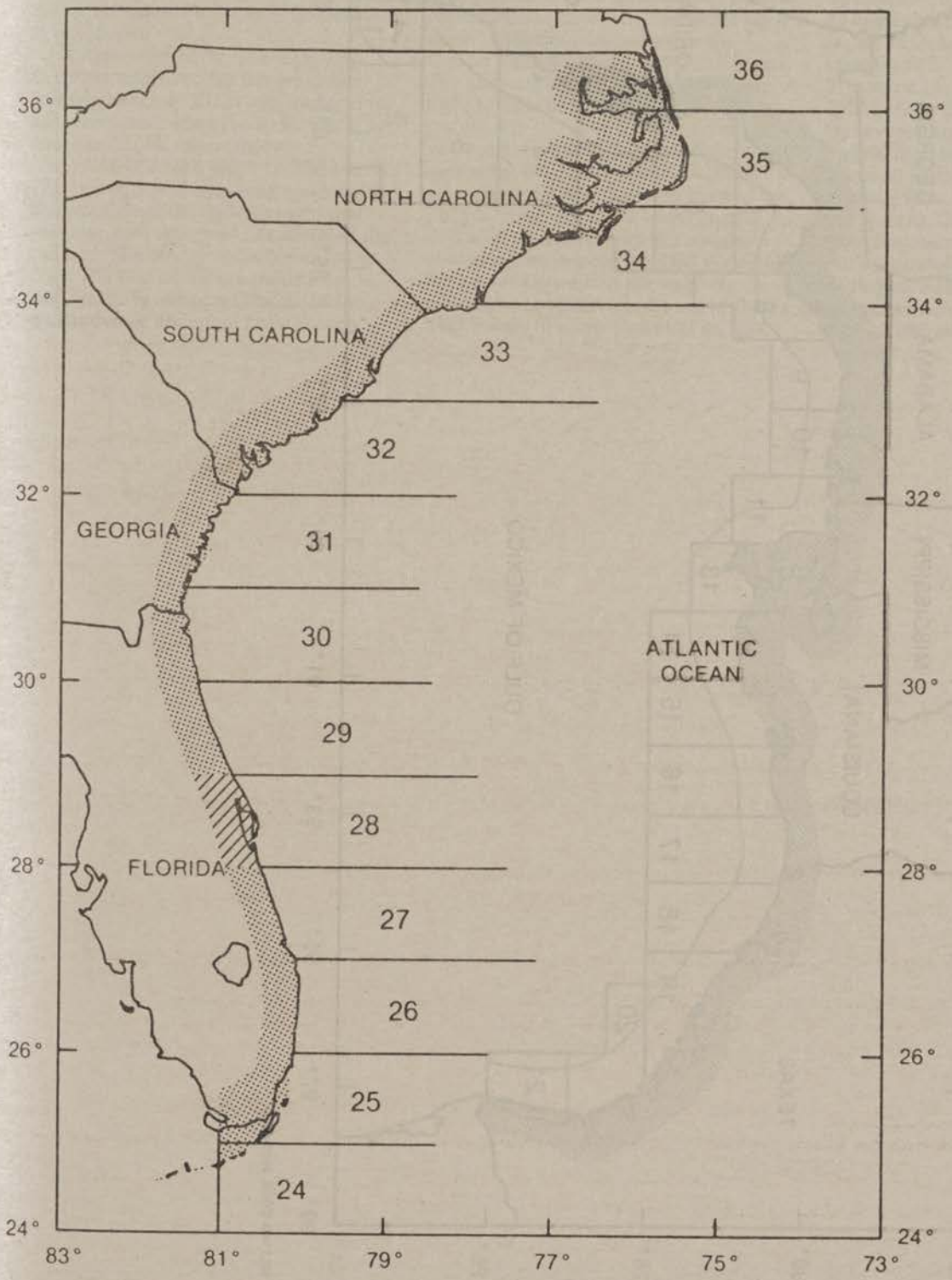
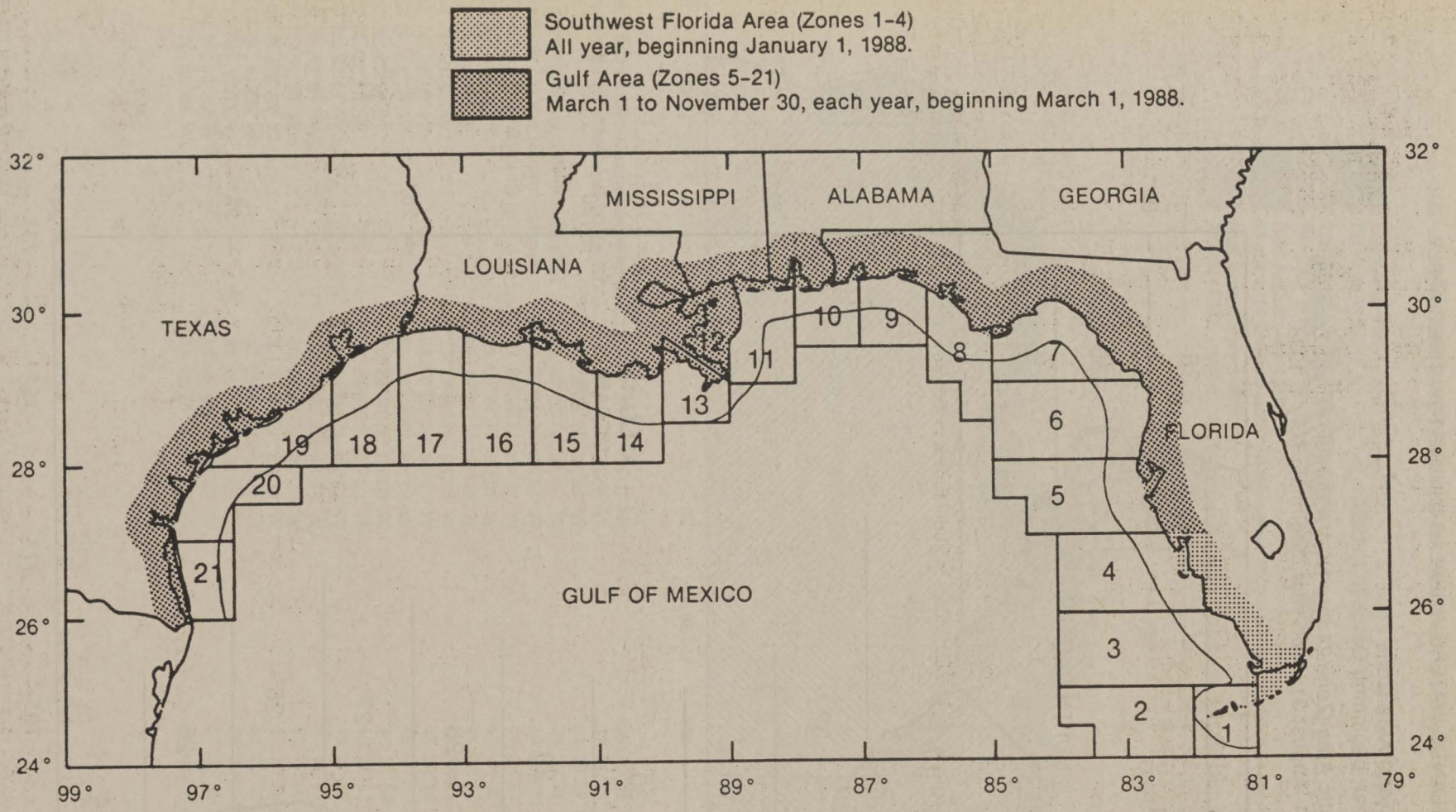
MAP 3. INSHORE ATLANTIC WATERS WHERE 90 MINUTE TOW TIMES APPLY

Canaveral Area (Zone 28)
All year, beginning October 1, 1987.

Atlantic Area (Zone 24 thru NC-VA Border, except Zone 28)
May 1-August 31, each year, beginning May 1, 1988.



MAP 4. INSHORE GULF OF MEXICO WATERS WHERE 90 MINUTE TOW TIMES APPLY

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(4) *Qualified turtle excluder devices*—(i) *General.* In a qualified TED, the space between deflector bars cannot exceed four inches. Any other specification of dimension or strength of construction materials is a minimum requirement; i.e., a component that is larger or more durable than specified in paragraph (e)(4)(ii) of this section meets the requirement. Floats may be attached to any device.

(ii) *Approved TEDs.* The following TEDs are approved for use wherever and whenever a TED is required and for use where and when the 90 minute tow time would otherwise apply.

(A) *NMFS TED (Figure 1).* The NMFS TED consists of two oblong end hoops holding a diagonal deflector grid that are sewn into the trawl net ahead of the cod end. The device has a top-opening door. The end hoops are made from ½-inch welded steel pipe. The deflector grid and door are made from ¼-inch (inside diameter) welded galvanized pipe. The device may be rigid or collapsible and can be constructed using fiberglass rod or aluminum pipe of similar strength. The rigid version has rods welded to the front and rear hoops to align the deflector grid and to support the weight of the net and its catch. In the collapsible version, ⅛-inch steel cables perform these functions. Net webbing is sewn to the door frame and to the bottom and both sides of the end hoops. The cod end attaches to the rear hoop. A finfish deflecting apparatus may be installed in the device to eliminate unwanted bycatch. A finfish deflecting apparatus may consist of a webbing accelerator funnel placed in front of the TED diagonal bars and a rectangular grid with approximately 2½ inches between bars behind the TED diagonal bars. Holes are cut in the webbing, which has been stretched around the TED frame, to allow finfish to escape. When a sea turtle enters the net, it passes through the front hoop and is deflected upwards by the grid. The turtle is then able to open the door and escape. Shrimp pass through the grid to be retained in the code end. The minimum dimensions for a NMFS TED used in the Gulf of Mexico Area and the Southwest Florida area are end hoops-20 inches high by 34 inches wide, door frame 25 inches by 25 inches, door opening 10 inches above the rear hoop. The minimum dimensions for a NMFS TED used in the Atlantic Area and the Canaveral Area are end hoops 30 inches, high by 45 inchs wide, door frame 30 inches by 30 inches, door opening 12 inches above the rear hoop. In all areas, the deflector grid angle must measure between 30° and 45° from the horizontal when the device is deployed. NMFS TEDs of lesser dimensions that were acquired prior to July 1, 1987, may continue to be used.

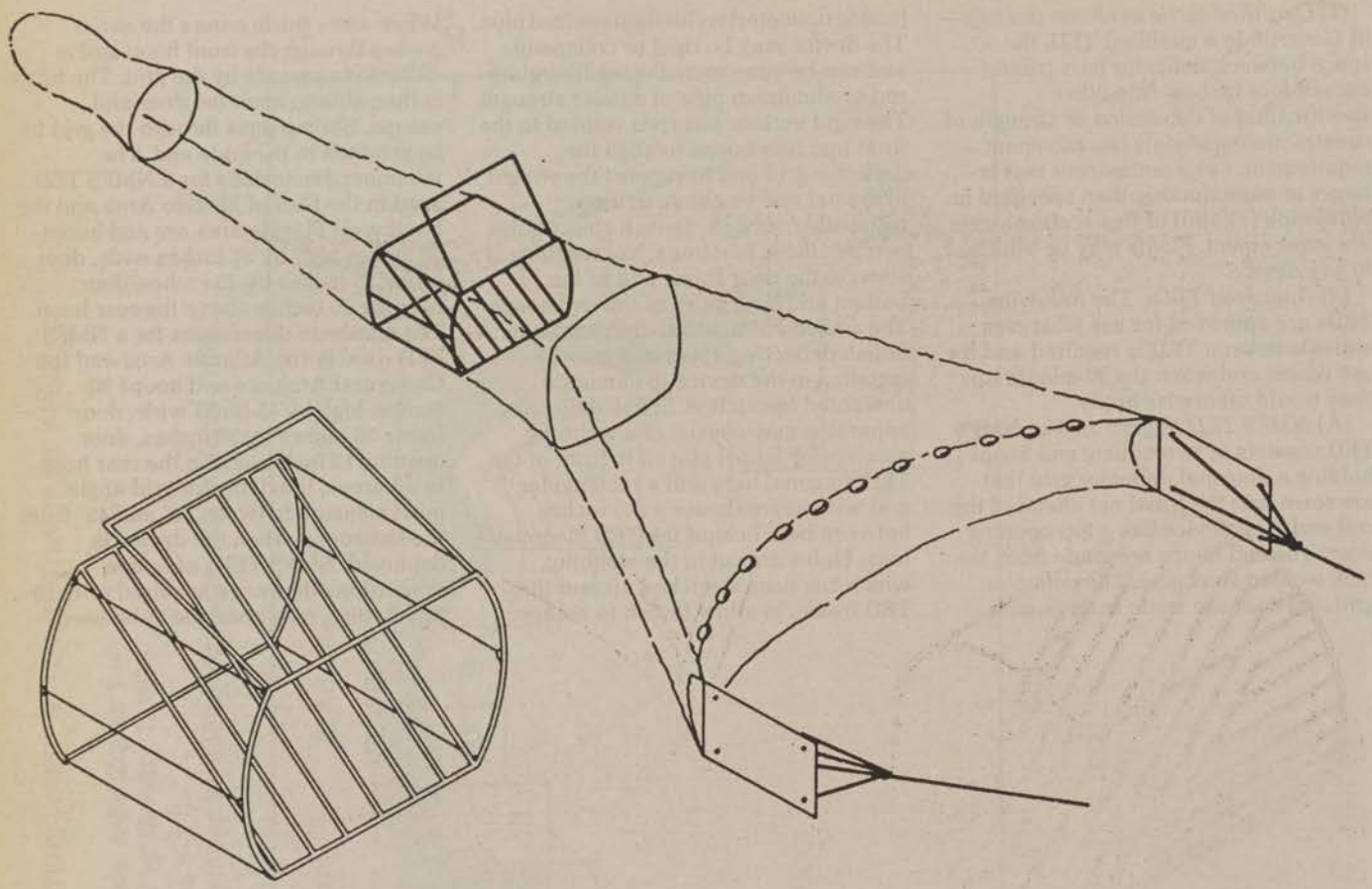

Figure 1 (NMFS TED)

(B) *Cameron TED (Figure 2).* The Cameron TED is a rigid device similar to the NMFS TED in both form and function. It uses round end hoops instead of oblong ones. It is made from ½-inch aluminum rod and is sewn into the trawl net ahead of the cod end. The device may be constructed of steel pipe, fiberglass rod or other materials of similar strength. This TED does not use a movable door. Instead, a turtle escape opening is cut in the top mesh of the net above the deflector grid. The minimum dimensions for a Cameron TED used in the Gulf Area and the Southwest Florida Area are 32-inch inside diameter end hoops and a 32-inch top mesh opening. The minimum dimensions for a Cameron TED used in the Atlantic Area and the Canaveral Area are 35 inch inside diameter end hoops and a 35 inch top mesh opening. For all areas, the deflector grid must be angled between 30° and 45° from horizontal. Cameron TEDS of lesser dimensions that were acquired prior to July 1, 1987, may continue to be used. Cameron TEDs, as originally designed, used a quick release hoop fastener. This feature may not be used. A Cameron TED must be sewn into the net to be a qualified device.

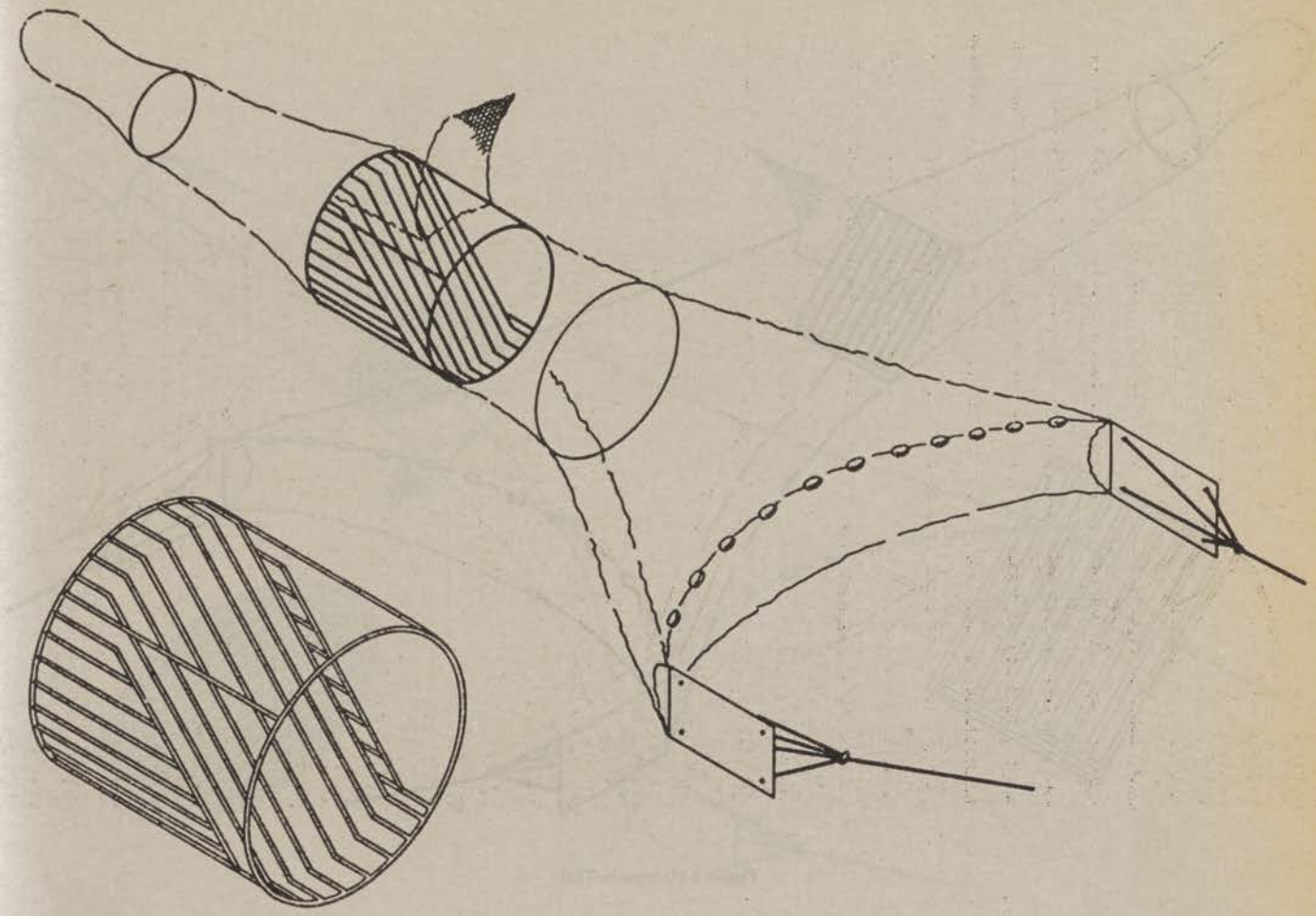

Figure 2 (Cameron TED)

(C) *Matagorda TED (Figure 3).* The Matagorda TED is a single, rigid, rectangular deflector grid that may be made from a variety of materials including ¼-inch steel pipe, ½-inch aluminum rod, or fiberglass rod of comparable strength. Unlike the NMFS or Cameron TEDs, the Matagorda TED does not use two end hoops to position the deflector grid. The grid itself must be sewn into the net ahead of the cod end so as to operate at a 30° to 45° angle from the horizontal when pulled through the water. The angled grid deflects turtles either upward or downward to allow them to escape through an opening in the net mesh. The minimum dimensions for a Matagorda TED used in the Gulf Area and the Southwest Florida Area are a deflector grid 28 inches wide, by 36 inches long, and a minimum release opening of 32 inches. The minimum dimensions for a Matagorda TED used in the Atlantic Area and the Canaveral Area are a deflector grid 30 inches wide by 42 inches long, and a minimum release opening of 35 inches.

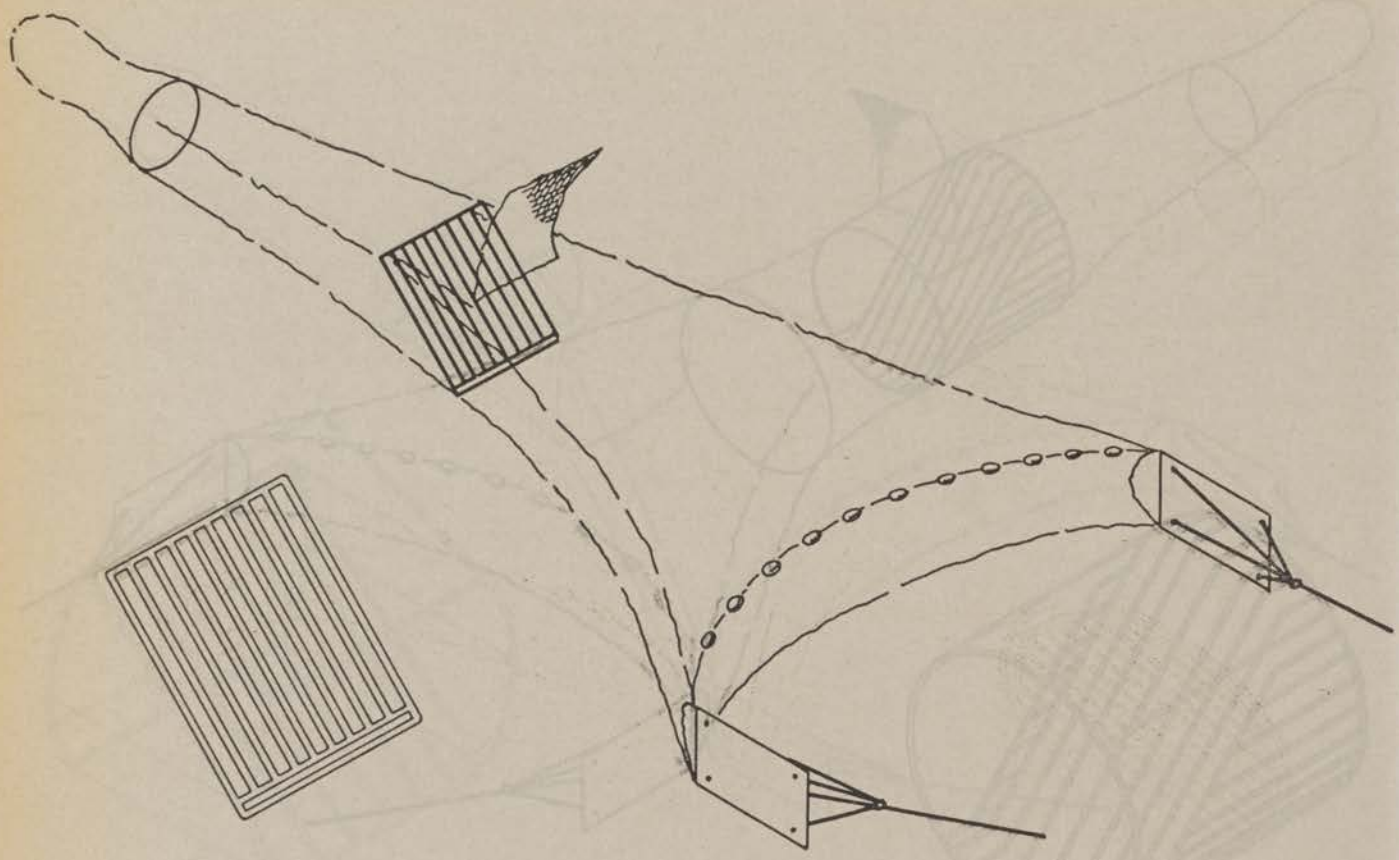

Figure 3 Matagorda TED

(D) *Georgia TED (Figure 4).* The Georgia TED is a single, rigid, oval deflector grid similar to the Matagorda TED in form and function. It may be made from ⅛–inch steel pipe, ½–inch aluminum rod, or fiberglass rod of comparable strength. Like the Matagorda TED, the grid must be sewn into the net ahead of the cod end so as to operate at a 30° to 45° angle from the horizontal when pulled through the water to allow turtles to escape either upward or downward through an opening in the net mesh. The minimum dimensions for a Georgia TED used in the Gulf Area and the Southwest Florida Area are a 28–inch smallest inside diameter and a minimum release opening of 32 inches. The minimum dimensions for a Georgia TED used in the Atlantic Area and the Canaveral Area are a 30–inch smallest inside diameter and a minimum release opening of 35 inches. A variation of the Georgia TED uses removable deflector bars (inside a hoop) or varying spacing which are bolted to a permanently affixed second hoop. This feature may be used only if the deflector bar hoop is also laced to the net and the permanently attached hoop so that it cannot be easily removed at sea. Deflector bars can be spaced no more than 4 inches apart. Georgia type TEDs that were acquired prior to July 1, 1987, may continue to be used as long as they meet minimum size standards and both hoops are permanently affixed to the trawl net.

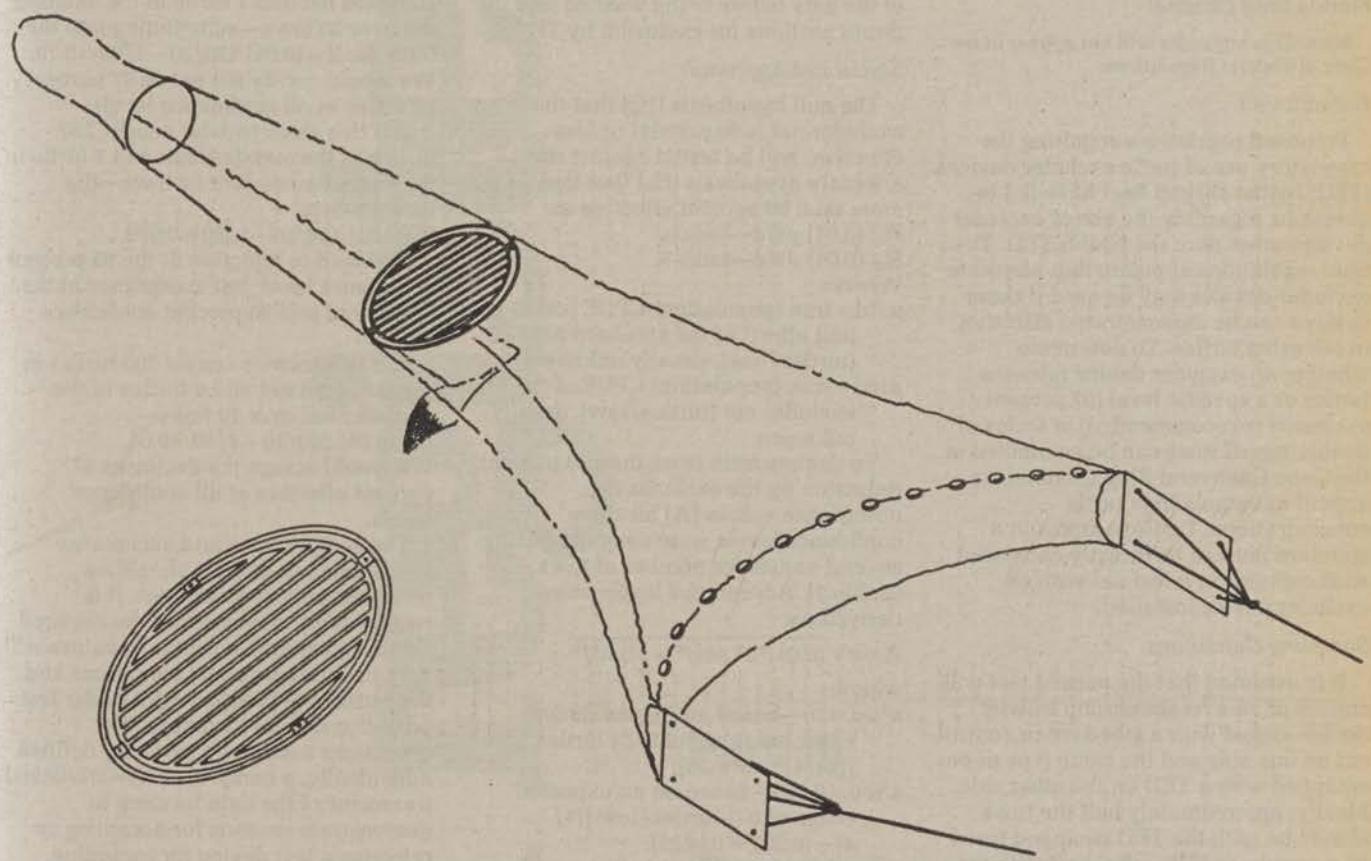

Figure 4 (Georgia TED)

(iii) *Other TEDs.* Additional devices may be approved as qualified TEDs if they demonstrate a turtle exclusion rate of 97 percent according to a NMFS-approved scientific protocol published in the **Federal Register.** One such protocol was published on June 29, 1987. Turtle exclusion testing must be conducted under the supervision of the Assistant Administrator or a designee. A person interested in testing a TED should contact the Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149.

(iv) *Fishing efficiency experiments.* From time to time, the Director, Southeast Region, NMFS, may authorize public or private experimentation to develop alternative turtle excluder devices or to determine effects on shrimp fishing efficiency. A research protocol is available for such purposes. Requests for approval of experimental programs should be addressed to the Director, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, FL 33702.

(5) [Reserved]

(6) *Prohibitions.* It is unlawful for any person to do any of the following:

(i) Fail to use a qualified TED in each net during trawling on a vessel 25 feet or longer in length in an area where and at a time when a TED is required pursuant to this part;

(ii) Fail to restrict a tow time to 90 minutes in an area and at a time such restriction applies, unless a qualified TED is being used in each net during trawling.

(iii) Land from or possess on board a vessel white, brown, pink, or seabob shrimp in quantities exceeding 10 per cent of the total shrimp landed or on board after having fished for royal red shrimp (or for rock shrimp in the Atlantic Ocean) in a TED required area without using a qualified TED in each net during trawling;

(iv) Fail to follow sea turtle handling and resuscitation procedures specified in paragraph (e)(1)(i) of this section; or

(v) Fail to comply with instructions and signals issued by an authorized officer. Enforcement procedures and signals used in the Gulf of Mexico shrimp fishery are listed at 50 CFR Part 658. These procedures will be used to enforce the rules of this section in all geographic areas.

(7) *Enforcement policy regarding incidental capture of threatened sea turtles.* Shrimp fishermen in the southeastern United States and the Gulf of Mexico who comply with the rules of paragraph (e) of this section will not be subject to civil penalties under the Act for incidental capture of threatened sea turtles by shrimp trawl gear.

## Appendix—Recommended Statistical Procedures for Evaluating Turtle Excluder Devices in the Cape Canaveral, Florida Ship Channel

Note: This appendix will not appear in the Code of Federal Regulations.

*Introduction*

Proposed regulations requiring the mandatory use of turtle excluder devices (TED) by the shrimp fleet have led to questions regarding the use of excluder devices other than the NMFS TED. The final regulations stipulate that alternate excluder devices may be used if these devices can be demonstrated effective in releasing turtles. To determine whether an excluder device releases turtles at a specific level (97 percent exclusion is recommended), a series of double-rigged tows can be conducted in the Cape Canaveral Ship Channel, an area of extremely high turtle concentrations. Turtle captures in a standard net can be directly compared with captures in a test net with an excluder device installed.

*Sampling Guidelines*

It is assumed that the normal test will consist of an average shrimp trawler double-rigged with a standard or control net on one side and the same type of net equipped with a TED on the other side. Ideally, approximately half the tows should be with the TED equipped trawl on one side and the other half with the trawls reversed.

The two nets must shown to fish the same. That is, before a TED is incorporated into the test trawl, both the standard and test trawl must be adjusted to fish the same. In other words, there should be no significant difference in turtle, shrimp or finfish catch between the two nets. Any difference between the two nets should not be significant at the 95 percent confidence level with 4 degrees of freedom (i.e., 5 paired tows)

All tests should be done in the Cape Canaveral Channel during February and March. Historical turtle capture rates have been shown to be high during this period. Tests conducted during other seasons of the year likely will require a large number of paired tows because of the expected lower number of turtles.

Paired tows of 30 minutes are recommended. Longer tows are permissible, but conditions in the Channel make longer tows very difficult. Shorter tow durations are not recommended because of the tendency of turtles to remain in the front portion of the nets before being washed into the throat sections for exclusion by TEDs.

*Statistical Approach*

The null hypothesis ($H_o$) that the excluder net is 96 percent or less effective, will be tested against the alternate hypothesis ($H_a$) that the net is more than 96 percent effective as:

$H_o$: (0.04) $\mu$std—ted$\leq$0.

$H_a$: (0.04) $\mu$std—ted$>$0.

Where:

$\mu$std = true (population) CPUE (catch per unit effort) of the standard net (turtles/tow), usually unknown

$\mu$ted = true (population) CPUE of the excluder net (turtles/tow), usually unknown

To demonstrate more than 96 percent reduction by the excluder net, acceptance values (A) for three confidence levels were computed using several values for number of tows (Table 1). Acceptance levels were derived as:

$$A = z\sqrt{(0.04)^2 s^2 \text{std}/n + s^2 \text{ted}/n}$$

where:

$s^2$std = 36—based on the maximum expected range of 0–24 turtles/tow [$(24/4)^2 = 6^2 = 36$];

$s^2$ted = 0.065—based on an expected range of 0–1 turtles/tow [$(1/4) = (0.25)^2 = 0.0625$];

z = 95th, 90th, 80th percentile z scores (1.645, 1.282, 0.84)

For a device being tested to be accepted as being more than 96 percent effective at reducing turtle captures, the test statistic B would have to exceed the acceptance value (A) at the specified level and sample size. A formula for computing a test statistic B, which can be used to accept or reject a device as being more than 96 percent effective, is given as:

$B = (0.04)\ \bar{x}\text{std} - \bar{x}\text{ted}$

where:

$\bar{x}$ std = observed CPUE of the standard net;

$\bar{x}$ ted = observed CPUE of the excluder net:

Essentially, the test statistic B computed for a given number of paired tows would be compared to the acceptance values (A) in Table 1 to determine if the values were exceeded. If B exceeds these values (A), then the device being tested would be accepted as excluding 97 percent of the turtles.

Some examples of how Table 1 and the B statistic would be used follow:

1. A trawler catches 120 turtles in the standard net and 1 turtle in the excluder net over 20 tows—substituting into the formula: $B = (0.04)\ 120/20 - 1/20 = 0.19$. We would certify the net as 97 percent effective at all confidence levels.

2. If this same trawler caught 120 turtles in the standard net and 1 turtle in the excluder net over 50 tows—the computation,
$B = 0.04)\ 120/50 - 1/50 = 0.076$,
would lead to rejection at the 95 percent confidence level, but acceptance at the 80 percent and 90 percent confidence levels.

3. If this trawler caught 200 turtles in the standard net and 4 turtles in the excluder net over 10 tows—
$B = (0.04)\ 200/10 - 4/10 = 0.04$.
We would accept the device as 97 percent effective at all confidence levels.

The sample sizes and acceptance levels given in Table 1 should be reviewed only as guidelines. It is reasonable to assume that the required sample sizes and acceptance values will vary depending on test conditions and the number of turtles caught under test conditions. In all instances, test conditions need to be carefully defined and, ideally, a comprehensive statistical treatment of the data be done to demonstrate reasons for accepting or rejecting a test device for excluding turtles at the desired 97 percent level.

TABLE 1. ACCEPTANCE LEVEL (A) WHICH MUST BE EXCEEDED BY THE TEST STATISTIC B* FOR CERTIFICATION THAT AN EXCLUDER DEVICE IS 97 PERCENT EFFECTIVE. THE ACCEPTANCE LEVEL WILL VARY ACCORDING TO SAMPLE SIZE AND REQUIRED CONFIDENCE LEVEL.

| 90% Confidence Level | |
|---|---|
| No. of tows | Acceptance Level A |
| 10 | 0.14049 |
| 20 | .09934 |
| 30 | .08111 |
| 40 | .07025 |
| 50 | .06283 |
| 60 | .05737 |

* $B = (0.04)\ \bar{x}_{std} - \bar{x}_{ted}$

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federal register

Monday
June 29, 1987

Part III

# Department of the Interior

## Minerals Management Service

**Tentative Terms and Conditions for a Proposed Sulphur and Salt Sale and Outer Continental Shelf (OCS) Central Gulf of Mexico, Proposed Sulphur and Salt Lease Sale; Notices**

Billing Code: 4310-MR

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Tentative Terms and Conditions for a Proposed Sulphur and Salt Sale

AGENCY: Minerals Management Service, Interior.

ACTION: Request for Comments

SUMMARY: The Minerals Management Service (MMS) is currently planning to conduct a sulphur/salt sale in the Gulf of Mexico (Gulf) in January 1988. To aid interested participants in making sale-related decisions, this Notice outlines the tentative terms and conditions for leases which may be issued as a result of such a sale--tract size, minimum bid level, royalty rate, annual rental, annual minimum royalty, and primary lease term.

This solicitation requests comments and recommendations from interested parties on the tentative terms and conditions. Moreover, because of recent developments in the sulphur market (e.g., declining prices), MMS requests that responses include comments as to the economic feasibility and/or desirability of holding a sulphur/salt sale in January 1988 or delaying such an action.

DATE: Comments should be postmarked or hand delivered no later than the close of business, [on the 30th calendar day following publication of this Notice].

ADDRESS: Request for Comments on Terms and Conditions for a Proposed Sulphur and Salt Sale, Director, Minerals Management Service, U.S. Department of the Interior, 12203 Sunrise Valley Drive, MS-643, Reston, Virginia 22091.

For Further Information Contact: Gary L. Lore, Minerals Management Service, MS-643, Reston, Virginia 22091, (703)648-7873.

SUPPLEMENTARY INFORMATION:

Background

Since 1976, sulphur consumption in the United States has exceeded supply. The price of sulphur rose in response to the supply shortfall to the point where the sulphur producing industry showed interest in expanding existing Outer Continental Shelf (OCS) operations and initiating new ones. A June 3, 1986, Federal Register Notice responded to this interest by requesting comments on the desirability of conducting a Federal OCS sulphur and salt lease sale in the Gulf. The Notice included a brief history of sulphur and salt leasing in the Central and Western Gulf. Respondents were asked to provide information on production technology and possible leasing strategies in recognition of the fact that the economics and technology of sulphur production have greatly changed since the last sulphur lease sale in 1969. Subsequently, a Call for Information and Nominations was published in the Federal Register on October 17, 1986. Information was requested on lease terms and conditions, suggested period of lease, and current and projected sulphur market data and information and the contribution potential OCS sulphur resources could make to domestic supply. Two sulphur producing companies submitted nominations, comments, and recommendations. Although the Call included the entire Central and

Western Gulf planning areas, there was no interest expressed for offshore Texas or Alabama. The responses to both Notices have led to the issuance of this further request for comments.

Purpose of the Request

The purpose of this Notice is to assist the Secretary of the Interior in carrying out his responsibilities under the OCS Lands Act, as amended (the Act) and regulations appearing at 30 CFR 256 with regard to a proposed OCS sulphur and salt lease sale. This information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decisionmaking in the leasing process.

Description of Preliminary Terms and Conditions

This section identifies and discusses the following terms and conditions: tract size, minimum bid, royalty rates for both sulphur and salt, annual rental, annual minimum royalty, and primary lease term.

(1) Tract Size

Under the Act, the Secretary can prescribe any tract size. This issue includes not only the number of acres but also the configuration of the tract or bidding unit (e.g., by structure only).

In the first sulphur sale in 1954, the standard oil and gas protraction diagram block size of 5,000 acres was used. In the last two sulphur sales in 1965 and 1969 the choice of tract size was tied primarily to historical data showing: (1) sulphur deposits are usually confined to smaller acreage than quarter blocks and (2) the concern that offering whole blocks might



have some depressing effect on leasing and bonus bids in case of a subsequent oil and gas lease sale. In both salt sales, half blocks were offered (i.e., 2,500 acres). Current oil and gas block sizes in the Gulf are usually 5,000 acres (shallow water Louisiana) or 5,760 acres (deepwater Louisiana and Texas), but may be smaller.

In response to the Call for Information and Nominations, two companies recommended either leasing less than full blocks, e.g., quarter blocks, or the projected surface area of the salt dome. This latter would be determined by first using seismic methods for delineation and then vertically projecting to the surface the area covered by the prospective portion of the dome.

We have tentatively decided to offer each potential sulphur deposit as a single bidding unit with the bidding unit to be described on the basis of quarter blocks. Determination of lease status and use conflicts can be more readily administered if the standard lease grid is used. Such action would reduce extraneous acreage and eliminate or reduce the need for unitization regulations or relinquishment of extraneous acreage.

(2) Minimum Bid

Under the Act, the Secretary can prescribe a minimum bid level. In the first two sulphur sales, the minimum bid was $10 and $25 per acre, respectively. No minimum bid was required in the last sulphur sale. Both salt sales required minimum bids of $5 per acre.

One company recommended adoption of a low minimum bid per acre. If quarter blocks are offered, it suggested a minimum bid of approximately $40 per

acre. If whole blocks are offered, a minimum bid should be approximately $10 to 15 per acre. Conversely, the other suggested that the minimum bid be competitive with those in other active areas. Currently, it claims that bonuses are averaging $55 per acre.

Setting the minimum bid at a constant amount per tract is preferred. It is simple to administer and should ensure that only tracts with economic values above the minimum bid will receive bids. This is desirable from an economic efficiency perspective as DOI should lease the more valuable tracts first. A minimum bid of $144,000 per bidding unit, regardless of size, would be consistent with the pre-1983 oil and gas minimum bid level of $25 per acre and corresponds closely with the level employed in the 1954 and 1965 Federal sulphur sales.

(3) Royalty Rate for Sulphur and Salt

A royalty rate of at least 5 percent of the gross production value of the sulphur at the wellhead is required by the Act, whereas the Secretary can prescribe any royalty rate for salt. The royalty rate for oil and gas in shallow water where the salt domes are located is 16-2/3 percent. In the 1954, 1965, and 1969 sulphur lease sales, the royalty rates were 7.5, 10, and 15 percent, respectively. In both salt sales, the royalty rate was set at 3 cents per short ton. In addition to the standard royalty rate on past sulphur leases, there was a floor or "minimum royalty" based on the volume of production which was independent of the price of sulphur. This floor royalty was set on a dollar per long ton basis, e.g., $1.50, $2, and $3, respectively. Neither oil and gas nor salt have a similar floor royalty. Royalty



for these commodities is based solely on the value or amount of production which exceeds the minimum annual rental rate.

One company recommended a royalty rate of 5 percent in line with hard-rock minerals. Royalty rates for sulphur, according to the other company, should vary inversely with the water depth and proportionately with the amount of sulphur discovered. It suggested a sliding royalty scale by water depth with royalty rates in the realm of one-sixth to one-sixteenth. Further, it maintains that a salt royalty should not be charged because there is no sale value. If a salt royalty is required, 3 cents per short ton is a fair royalty and consistent with present practices.

Because the salt will be used primarily for the production of sulphur on the same lease, we tentatively have decided to add a percentage increase into the sulphur royalty to account for the royalty on salt instead of having a separate royalty for salt. Setting a combined sulphur and salt royalty rate at 16-2/3 percent based on sulphur should simplify royalty accounting procedures and collections.

(4) Annual Rental and Annual Minimum Royalty

The annual rental rate is paid at the beginning of each year, from the time the lease is issued until the year following a producible discovery. The annual rental rate was $2 per acre in the first sulphur sale and $3 per acre in the second and third sulphur sales and the two salt sales. The minimum royalty, on the other hand, is paid at the end of each year following determination that a discovery has been made until the actual royalty on production exceeds the minimum royalty. Hence, it begins when rental

payments end. The annual rental and minimum royalty on oil and gas leases is $3 per acre. On sulphur leases, the annual minimum rental was used in lieu of the annual minimum royalty after a discovery. For salt, the annual minimum royalty previously was set at $5,000 per lease which was equivalent to $2 per acre. Under the Act, both the annual rental and annual minimum royalty are left to the Secretary's discretion.

One respondent recommended an annual rental of no more than 50 cents per acre for the first 5 years and then $1 per acre for the remaining life of the lease. It also suggested that the minimum royalty be double the minimum rental rate.

We have tentatively decided that the annual rental rate should be $3 per acre consistent with previous salt and sulphur leases and with oil and gas leases. For ease of administration and to encourage production, the annual minimum royalty should be set at the same level as the annual rental rate. Moreover, to avoid confusion with past use of this term within the context of sulphur (i.e., as a floor royalty), the rentals will apply as long as the lease is held, but payments may be credited against royalties when production begins, as is the case for oil and gas.

(5) Primary Lease Term

The primary lease term should be set to encourage diligent exploration and development and to discourage companies from holding undrilled leases in their inventories. The Act permits a maximum term of up to 10 years for sulphur leases. The three previous sulphur sales used 10-year terms, while the previous salt sales had 5-year terms.



One company recommended a 10-year initial lease term with 10-year automatic renewals if development or production is underway.

A 10-year lease term is consistent with past precedent and allows lessees greater flexibility to react to sulphur price declines or increases. However, long primary lease terms tend to encourage lessees to delay exploration in anticipation of price increases. In view of the small number of exploration wells needed per salt dome to determine the presence of a sulphur deposit and the fact that shallow water drilling requires less time, a 5-year term would probably be adequate to accomplish both exploration and the start of development or delineation. A 5-year term would encourage bidding on only the most promising acreage and leave remaining tracts in the Government's inventory for future leasing. Alternatively, an extension beyond 5 years could be granted in those cases where drilling has been begun by the end of the fifth year. We are undecided at this time which of the two time intervals to choose.

Current and Projected Sulphur Market

Frasch sulphur prices have declined over the last 6 months from a high of $152 per long ton free on board (FOB) in December 1986 to $132.50 per long ton FOB at Tampa in June 1987. It is this decline in prices that has us questioning the desirability and the economic feasibility of holding a sulphur sale now. Because of this uncertain market situation, we are also soliciting comments on the desirability of holding a sale in January 1988 or the need to delay a sale until market conditions are clarified and adequate interest is expressed.

Instructions to Commenters

To assist in the determination of policy direction regarding terms and conditions to be used when leasing sulphur and salt and the decision as to whether and when to lease such commodities, each respondent is requested to offer comments on each of the questions presented. Comments and suggestions should include supporting rationale. So that all options can be fully evaluated, respondents are requested to provide sufficient details in describing, recommending, or supporting new options.

Information is requested on the following specific items in relation to sulphur and salt leasing. Respondents are advised that the names of commenters will become a matter of public record as will comments offered in response to this Notice. It is suggested that responses to the items below which are considered proprietary by the respondent be clearly identified so that they may be safeguarded accordingly. For those disagreeing with or suggesting a different term or condition, please give full justification for your opinion. This is to aid us in our deliberations.

Comments are requested on the following specific items:

1. Should the following lease terms and conditions be used in leasing sulphur and salt? If not, why not and what would you substitute in lieu of our preliminary findings?

   a. Tract (Bidding Unit) Size - offer each potential sulphur deposit as a single bidding unit with the bidding unit to be described on the basis of quarter blocks.

   b. Minimum Bid Level - $144,000 per bidding unit



   c. Royalty Rate for Sulphur - 16-2/3 percent (includes salt royalty)

   d. Annual Rental - $3 per acre

   e. Annual Minimum Royalty - $3 per acre

   f. Primary Lease Term - 5 or 10 years

2. We wish to find out whether industry will participate in a sulphur and salt lease sale in January 1988, and we seek comments on whether the sale should be held at that time or postponed for further consideration.

Wm D Ekstrom

Director, Minerals Management Service

6/24/87

Date

[FR Doc. 87-14714 Filed 6-26-87; 8:45 am]
BILLING CODE 4310-MR-C

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf (OCS)
Central Gulf of Mexico
Proposed Sulphur and Salt Lease Sale

Finding of No Significant Impact

Action: Analyze potential impacts to the environment of the OCS and nearby coastal areas of the Central Gulf of Mexico which could occur from the mining of sulphur and salt resulting from the leasing of the proposed sale area as defined by the Area Identification. The potential environmental effects of the leasing, exploration, mining, and transportation of sulphur and salt were analyzed in the environmental assessment, "Environmental Assessment, Proposed Central Gulf of Mexico OCS Sulphur/Salt Lease Sale."

Finding: I have considered the potential impacts of activities associated with holding an OCS Sulphur and Salt Lease Sale in the Central Gulf of Mexico and the mineral development of leases issued pursuant thereto. Based on the environmental assessment, I find that the proposed action or alternatives to that action will not significantly (40 CFR 1508.27) affect the quality of the human environment. The preparation of an Environmental Impact Statement is not required.

Documents included with this finding: Summary of the Environmental Assessment.

Wm D. Bettenberg
Director, Minerals Management Service

6/27/87
Date

SUMMARY

OF THE

ENVIRONMENTAL ASSESSMENT

PROPOSED CENTRAL GULF OF MEXICO
OUTER CONTINENTAL SHELF (OCS)
SULPHUR/SALT LEASE SALE

Prepared by the
Minerals Management Service
Gulf of Mexico OCS
Regional Office

June 1987

Complete copies are available by contacting:

The Minerals Management Service
Public Information Unit
1201 Elmwood Park Blvd.
New Orleans, Louisiana 70123-2394
Phone (504) 736-2519

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## SUMMARY OF THE ENVIRONMENTAL ASSESSMENT

### DESCRIPTION OF THE PROPOSED ACTION

The proposed action is to offer for lease 51 bidding units containing a total of 153 blocks (about 725,000 acres) of submerged land in the Central Gulf of Mexico for the exploration, development, and production of sulphur and salt. This would help increase domestic sulphur production and thereby lower this Nation's dependence on foreign imports which currently amounts to 17-20 percent of its sulphur supplies, mostly from Canada and Mexico. The need for the proposal results from the mandate of the Outer Continental Shelf (OCS) Lands Act which provides that the OCS be made available for mineral development. Specifically, this proposal would allow the sulphur production industry to explore and develop sulphur leases in a diligent manner and allow Minerals Management Service (MMS) to make reasoned decisions regarding several methods for developing resources on the OCS. Also offered for consideration is a proposed archaeological resource stipulation, a military areas stipulation, and an operational constraints stipulation.

The analysis of impacts is based on a development scenario formulated to provide a set of assumptions and estimates of the amounts and timing of exploration, development, and production operations and facilities both offshore and onshore. The following major assumptions and estimates are included in the scenario:

The discovery, development, and production of 55 million long tons of sulphur during the period 1989-2022.

The drilling of 60 exploration and delineation wells during the period 1989-1995.

The installation of 9 production platforms, 3 power plant platforms, 6 auxiliary platforms, and the drilling of 324 development and 576 sidetrack wells during the period 1992-2012.

Sulphur production beginning in 1992, reaching peak annual production during the period 1998-2011, and ending in 2022.

All sulphur production transported by barge to existing gulf coast ports.

Forty miles of pipeline to carry fuel and water.

The construction of possibly two pipeline landfalls to carry water and gas to offshore mining sites.

Onshore support provided from facilities existing prior to the proposed action.

One salt (brine) well to be drilled per mine and the salt used in the sulphur mining process.



## ALTERNATIVES CONSIDERED

Delete Tracts With Active Oil and Gas Leases

This alternative would delete 125 of the 153 blocks proposed for offering in this action, and all of the 51 bidding units except 2 would be affected, 34 of which would be completely eliminated. This alternative is offered since there is a possibility that sulpnur operations could have some impact on existing oil and gas operations in the vicinity of the tracts offered in this proposal despite the mitigating measures which would be applied to minimize conflicts and protect the environment under 30 CFR 250.

Delete All Tracts With Pipelines

This alternative would delete 128 blocks which contain oil or gas pipelines from the proposed sale. The adoption of this alternative would affect 49 of the 51 bidding units in the proposed sale, 34 of which would be completely eliminated. This alternative is offered since there is a possibility that sulphur mining operations could have adverse effects on oil or gas pipelines despite measures to prevent such conflicts which would be enforced under 30 CFR 250.

Delete the Military Area

This alternative would delete one tract (Main Pass South and East Addition, Block 289) which is within a large area used by the U.S. Air Force for rocket and missile testing. The block is on the extreme western edge of the test area. This alternative is offered since there is a slight possibility of conflicts between military operations and possible sulphur operations. The adoption of this alternative would preclude the need to consider the proposed military areas stipulation.

Delay the Sale

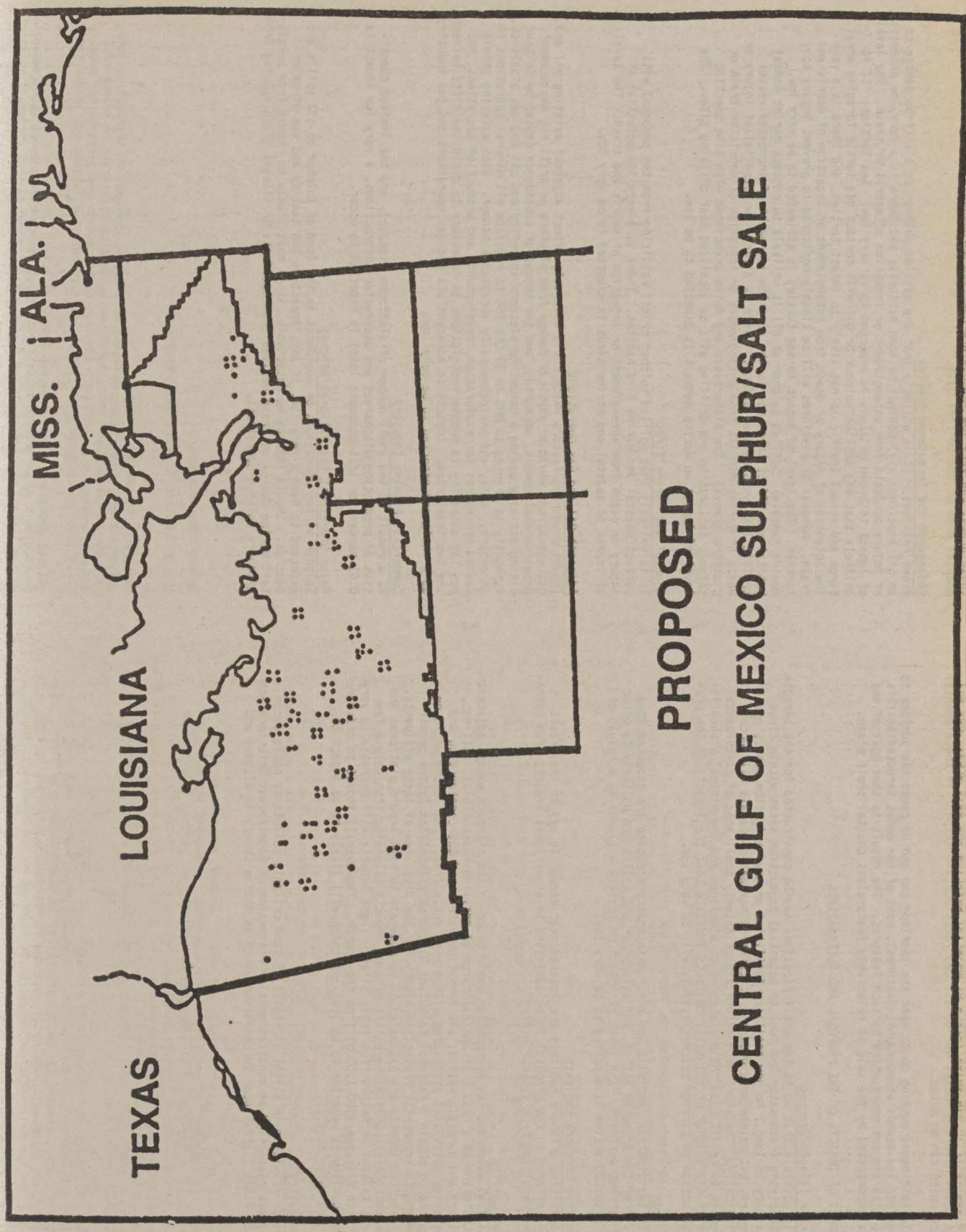
There are no known issues which might cause a delay in the sale at this time, but it is possible that a delay could occur for reasons that may arise before the sale has taken place. Delaying the sale would withhold from leasing the nominated blocks in the sale area for an indefinite period of time.

No Action

This alternative is equivalent to cancellation of the sale. Sulphur/salt sales are scheduled in the Gulf of Mexico Region on a need basis. Therefore, the opportunity would be foregone for development in the near term of the estimated 55 million long tons of sulphur that could have resulted from this sale.

### DESCRIPTION OF THE ENVIRONMENT

The tracts offered in this proposed action are all located in the Central Gulf of Mexico Planning Area which is located mostly south of Louisiana, but extends eastward around the delta of the Mississippi River to waters south of Mississippi and Alabama (see map). Tracts offered extend from 3 miles from shore, adjacent to Louisiana State waters east of the Mississippi Delta, to as far as 95 miles from shore in the area generally south of western Louisiana. Water depths range from 5 meters for blocks near shore to 105 meters in the more distant blocks.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PROPOSED
CENTRAL GULF OF MEXICO SULPHUR/SALT SALE

Sulphur deposits targeted for development as a result of this lease sale are located in cap rock found on top of salt domes which have been pushed up through deep sediments in the thick layers of material covering the sale area. Not all salt domes have cap rocks, nor do all cap rocks contain sulphur in the elemental state which can be mined.

While salt domes pushing up to near the seafloor can and do cause the surface to rise into low mounds (topographic features), most of the domes targeted in this sale area are not represented by such features. The result is that most of the area encompassed by the sale is relatively featureless coastal shelf plain.

SUMMARY OF IMPACTS OF THE PROPOSAL AND ALTERNATIVES

Barrier Islands/Beaches
It is possible that up to two small pipelines may be constructed for the purpose of supplying fresh water and fuel to potential production sites within close proximity to land. No new ancillary facilities or new navigation canals are expected, but maintenance dredging of existing navigation canals will occur periodically. The short-term nature and relatively small area of disturbance expected to result from the emplacement of pipelines and the minimal probabilities of any sulphur or oil spill contacts indicate that the impacts of the proposed action on barrier beaches/islands will be very low.

Wetlands
Up to two pipeline landfalls and minor maintenance dredging are expected as a result of the proposed action, and sulphur or oil spills are unlikely to occur and contact wetlands. The level of impact on coastal wetlands as a result of the proposed action is expected to be very low.

Sensitive Offshore Habitats
No sensitive offshore habitats are located near enough to any of the tracts being offered in the proposal to be subjected to significant impacts from operations resulting from sulphur mining.

Water Quality
Localized water quality degradation would occur in the offshore waters adjacent to Louisiana as a result of the discharge of drilling muds, fluids, cuttings, sanitary and domestic wastes, and formation waters and the construction and pipelaying activities associated with mining activities. The lessee would be required to obtain a National Pollutant Discharge Elimination System permit from the Environmental Protection Agency for the discharge of these effluents. The expected impacts are estimated to be moderate to high around platforms and construction sites with the extent of such impacts extending from only a few meters to tens of meters from these sites. These impacts will decrease to very low with distance (500-1,000m) from the source. The overall impact to offshore water quality is expected to be low, and there will likely be no impact to onshore water quality.

Air Quality
Impacts resulting in slight increases of some criteria pollutants could occur in areas classified as nonattainment or Prevention of Significant Deterioration (PSD) Class I areas near to operations such as Mobile County in Alabama and



St. Bernard, Plaquemines, St. Mary, Lafourche, St. Charles, Jefferson, Orleans, and St. John the Baptist Parishes in Louisiana. Low impacts are expected in these areas, and very low impacts are expected throughout the remainder of the coastal area of the Central Gulf.

Endangered and Threatened Species
Brown Pelicans: It is unlikely that any spilled sulphur or oil (from damage to an oil pipeline) will contact pelican habitats, and there is a very low potential of injury or death from entanglement or ingestion of debris or trash. The level of impact to brown pelicans is expected to be very low. Sea Turtles: It is unlikely that any spilled sulphur or oil will contact sea turtle foraging areas. Barge and vessel traffic is not likely to impact turtles, and there is a very low potential of injury or death from entanglement or ingestion of debris and trash. Removal of platforms will be closely monitored to prevent injury to turtles. The level of impact to sea turtles is estimated to be very low. Marine Mammals: Spilled sulphur or oil is unlikely to contact marine mammal habitat and affect them, nor is the very low increment of increased vessel traffic likely to have an effect. There is a very low potential of injury or death of marine mammals from entanglement or ingestion of debris or trash or platform removal. The disturbance and noise associated with site specific seismic exploration and drilling will be localized near drilling sites. The level of impact on marine mammals is expected to be low.

Coastal and Marine Birds
It is unlikely that spilled sulphur or oil resulting from the proposal will contact coastal and marine bird habitat. There is a very low potential of injury or death from entanglement or ingestion of debris and trash. The level of impact on coastal and marine birds is expected to be very low.

Adjacent Oil and Gas Operations
Impact producing factors which could adversely affect adjacent existing oil and gas operations would be physical damage from platform or drill rig emplacement, pipeline emplacement, anchoring, and the threat of subsidence caused by sulphur mining activity posing a threat to platform integrity and oil and gas pipelines. Authority is granted to MMS in 30 CFR 250 to regulate all mineral operations in an orderly, safe, and environmentally acceptable manner. With existing permit review procedures for exploration, development, and production operations, MMS has the authority to impose restrictions as necessary to avoid conflicts between the two industries. Impacts to adjacent oil and gas operations and gas industry as a whole are expected to be very low.

Commercial Fishing Industry
As a result of the small number of platforms expected, and the limited quantities of production discharges and underwater obstructions, a very low impact (a 0.01 percent or less economic loss) is expected to occur.

Major Shorefront Recreational Beaches
Sulphur mining operations or accidents in the form of sulphur or oil spills are expected to have a very low, if any, impact on the quality and use of major beaches. Should impacts be detectable, it is most likely to result from persistent marine debris or trash derived from accidents or illegal trash dumping from offshore sulphur operations.

Archaeological Resources

Onshore sites are unlikely to be contacted or affected by the proposal. Should an interaction between sulphur operations and an offshore archaeological site take place, significant or unique archaeological information could be lost. The potential for such an interaction occurring due to operations is very low, thus the level of impact is expected to be very low.

Socioeconomic Conditions

The impact on local employment, income, and population due to the proposal is expected to occur throughout the region from 1989-2022. The total projected direct employment for the proposed sulphur sale is 327, mostly within currently operating sulphur processing plants. Projected payroll is estimated at $145 million. The sale will attract no new residents to the region, but instead will provide employment to existing residents, possibly displaced oil and gas workers. Thus, the expected level of impact on local employment, income, and population is expected to be very low.

Impacts of Alternatives

Delete Tracts With Active Oil and Gas Leases: The adoption of this alternative would reduce the potential conflicts of future sulphur operations on existing or planned oil and gas operations from very low to essentially nonexistent. The deletion of the 128 tracts in this alternative would prevent the recovery of any producible quantities of sulphur that these tracts might contain.

Delete all Tracts with Pipelines: The adoption of this alternative would reduce the impacts to existing pipelines, and thus the possibility of oil spills related to pipeline damage, from very low to nonexistent. The size of the sale would be reduced by 82 percent, and, to the extent that these prospects have producible quantities of sulphur, adoption of this alternative would prevent its recovery at this time.

Delete the Military Area: The adoption of this alternative would reduce the already very low potential for space-use conflicts between sulphur operations and military operations from low to nonexistent. To the extent that this tract contains producible quantities of sulphur, adoption of this alternative would prevent its recovery at this time.

PROPOSED MITIGATING MEASURES

The necessary mitigating measures to conduct sulphur operations in a safe and environmentally acceptable manner are contained in current regulations (30 CFR 250). Additional mitigating measures are proposed in order to better define the requirements to be imposed in certain cases to protect resources or minimize conflicts. The measures proposed for adoption for this sale are:

Archaeological Resource Stipulation: The lease stipulation reduces the potential for a harmful interaction between mining operations and an archaeological site by locating offshore sites prior to lease development, thereby making avoidance or mitigation of impacts possible.

Military Areas Stipulation: The military stipulation reduces potential impacts, particularly in regards to safety, by placing strict coordination requirements on lessees operating within military operating areas.

Operational Constraints Stipulation: This stipulation informs the lessee that MMS will require a case-by-case analysis of any action the lessee might undertake during exploration, development, or production activities to assure that the action would not unduly interfere with either approved or existing oil and gas operations on the lease.

[FR Doc. 87-14713 Filed 6-26-87; 8:45 am]

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**H.J. Res. 17/Pub. L. 100–57**

To designate the third week in June 1987 as "National Dairy Goat Awareness Week." (June 25, 1987; 101 Stat. 373; 1 page) Price: $1.00

**H.J. Res. 178/Pub. L. 100–58**

Designating June 25, 1987, as "National Catfish Day." (June 25, 1987; 101 Stat. 374; 1 page) Price: $1.00

## CFR CHECKLIST

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|---|---|---|
| 1, 2 (2 Reserved) | $9.00 | Jan. 1, 1987 |
| 3 (1986 Compilation and Parts 100 and 101) | 11.00 | [1] Jan. 1, 1987 |
| 4 | 14.00 | Jan. 1, 1987 |
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| 1-1199 | 25.00 | Jan. 1, 1987 |
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| **7 Parts:** | | |
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| 52 | 23.00 | Jan. 1, 1987 |
| 53-209 | 18.00 | Jan. 1, 1987 |
| 210-299 | 22.00 | Jan. 1, 1987 |
| 300-399 | 10.00 | Jan. 1, 1987 |
| 400-699 | 15.00 | Jan. 1, 1987 |
| 700-899 | 22.00 | Jan. 1, 1987 |
| 900-999 | 26.00 | Jan. 1, 1987 |
| 1000-1059 | 15.00 | Jan. 1, 1987 |
| 1060-1119 | 13.00 | Jan. 1, 1987 |
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| 1900-1944 | 25.00 | Jan. 1, 1987 |
| 1945-End | 26.00 | Jan. 1, 1987 |
| 8 | 9.50 | Jan. 1, 1987 |
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| 500-End | 24.00 | Jan. 1, 1987 |
| 11 | 7.00 | Jan. 1, 1986 |
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| 400-End | 14.00 | Jan. 1, 1987 |

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[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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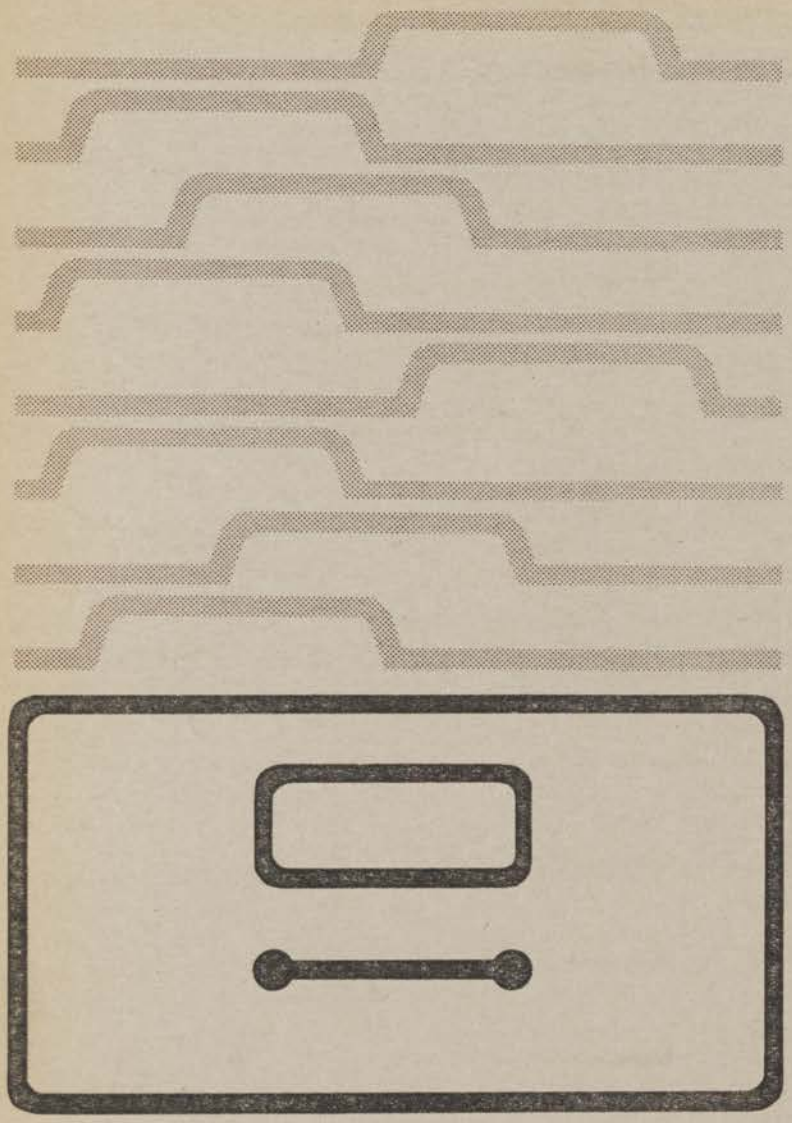

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