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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1620

Thrift Savings Plan; Thrift Savings Plan Eligibility

AGENCY: Federal Retirement Thrift Investment Board.
ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing in Title 5 of CFR, Part 1620, Subparts E and F, interim regulations concerning eligibility of certain individuals to contribute to the Thrift Savings Plan (Plan). Subpart E provides rules for participation in the Plan by bankruptcy judges and magistrates who elect to receive an annuity under the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100–659 (November 15, 1988), and who are authorized by section 7 of that Act to participate in the Plan. Subpart F provides rules for participation in the Plan by justices and judges appointed under Article III of the United States Constitution, as authorized by section 401 of the Federal Employees Health Benefits Amendments Act of 1988, Public Law 100–654 (November 14, 1988).

DATES: Interim rules are effective November 15, 1988. Comments must be received on or before October 10, 1989.

ADDRESS: Comments may be sent to Theresa Barnes-Pirko, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Theresa Barnes-Pirko, (202) 523–6367.

SUPPLEMENTARY INFORMATION: Part 1620, Subpart E, contains the rules for participation in the Plan by certain bankruptcy judges and magistrates. Subpart F contains the rules for participation in the Plan by Article III justices and judges.

Section 1620.70 describes the scope of Subpart E. Section 1620.71 contains the definitions used in this subpart.

Section 1620.72 states the rules for Plan contributions by bankruptcy judges and magistrates who have chosen to receive an annuity under the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100–659 (Act). These judges and magistrates may make contributions of up to 5 percent of basic pay per pay period. They are not entitled to receive Government basic or matching contributions. Previous Government basic or matching contributions are not forfeited. However, they do affect the basic annuity through the offset described in § 1620.76.

Section 1620.73 states that all Plan contributions made by bankruptcy judges or magistrates who have chosen to receive an annuity under the Act may be invested only in the G Fund. Amounts invested in the C and F Funds at the time a participant makes that choice will be transferred into the G Fund.

Section 1620.74(a) states that bankruptcy judges or magistrates who leave Government service entitled to an immediate annuity under 28 U.S.C. 377 or section 2(c) of the Act, or who leave entitled to a disability annuity under those sections, may withdraw their Plan account balances as an immediate annuity, a deferred annuity, one or more substantially equal payments, or a transfer to an Individual Retirement account (IRA) or other eligible retirement plan. Section 1620.74(b) states that bankruptcy judges or magistrates who leave Government service entitled to an annuity under 28 U.S.C. 377(c) or section 2(c) of the Act, but who leave before reaching age 65, may withdraw their Plan account balances as an immediate annuity, a deferred annuity, one or more substantially equal payments to begin no earlier than the date of entitlement to an immediate annuity under 28 U.S.C. 377 or section 2(c) of the Act, or a transfer to an IRA or other eligible retirement plan. Section 1620.74(c) states that bankruptcy judges or magistrates who leave before becoming eligible for an annuity under 28 U.S.C. 377 or section 2(c) of the Act are required to transfer their Plan accounts to an IRA or other eligible retirement plan.

Section 1620.75 describes the spousal rights that apply to bankruptcy judges and magistrates who have chosen to receive an annuity under 28 U.S.C. 377 or section 2(c) of the Act. The rights of spouses and former spouses are stated at 5 U.S.C. 8435 and 8467. They include the right to consent to the participant's choice of a withdrawal from other than designated type of joint and survivor annuity, and to consent to a loan to the participant.

Section 1620.76 states that a bankruptcy judge's or magistrate's annuity under 28 U.S.C. 377 or section 2(c) of the Act will be offset by the total amount of Government basic or matching contributions made to the judge's or magistrate's Plan account. The Administrative Office of the United States Courts is responsible for determining the rules for the offset.

Section 1620.80 describes the scope of subpart F, which deals with Plan contributions by justices and judges appointed under Article III of the United States Constitution. Section 1620.81 contains the definitions used in this subpart.

Section 1620.82 describes the rules that apply during the initial and subsequent election periods. Any appointed justice or judge who is receiving basic pay during the 60-day period following the enactment of Public Law 100–654, which runs from November 15, 1988 through January 13, 1989, may elect to make contributions to the Plan. Those elections are to be effective no later than the next pay period after the agency receives a properly completed election form. Justices and Judges appointed after January 13, 1989 are subject to the same eligibility and election rules as other Plan participants, which are found in 5 CFR, Part 1600, including the rules requiring mandatory waiting periods before making a Plan election if the justice or judge was not previously eligible to make Plan contributions.

Section 1620.83 indicates that justices and judges may contribute up to 5 percent of basic pay per pay period to the Plan, and are not eligible to receive Government basic or matching contributions.

Section 1620.84 states that justices and judges may invest solely in the G

Fund. Amounts invested in the C or F Funds at the time a participant becomes subject to this subpart will be transferred into the G Fund.

Section 1620.85 describes the Plan withdrawal options available to justices and judges. Justices and judges who retire under 28 U.S.C. 371(a), (b) or 372(a), may withdraw their Plan accounts as an immediate annuity, a deferred annuity, one or more substantially equal payments, or a transfer to an IRA or other eligible retirement plan. A justice or judge who leaves Government service before meeting the age and service requirements found at 28 U.S.C. 371(c) may only transfer his or her Plan account to an IRA or other eligible retirement plan.

Section 1620.86 describes the rights of spouses of justices and judges. These rights are set forth in 5 U.S.C. 8351(b)(7) and include the right to receive notice of a withdrawal of the justice's or judge's Plan account or of a Plan loan.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only the bankruptcy judges and magistrates who elect to receive retirement benefits under the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Pub. L. 100–659, the Article III justices and judges who contribute to the Thrift Savings Plan, and the agencies responsible for coordinating pay and benefits for these justices, judges and magistrates.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. It is necessary for these regulations to be effective as of November 15, 1988, which is the day on which Article III justices and judges were eligible to elect to make contributions to the Thrift Savings Plan.

List of Subjects in 5 CFR Part 1620

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

Accordingly, 5 CFR Part 1620 is amended as follows:

1. The authority citation for Part 1620 is revised to read as follows:

PART 1620—CONTINUATION OF ELIGIBILITY

Authority: 5 U.S.C. 8474, Pub. L. 100–238, Pub. L. 99–591, Pub. L. 100–659.

2. Part 1620 is amended by adding subparts E and F, to read as follows:

* * * * *

Subpart E—Bankruptcy Judges and Magistrates

Sec.

Subpart F—Article III Justices and Judges

Subpart E—Bankruptcy Judges and Magistrates

§ 1620.70 Scope.

This subpart applies to any bankruptcy judge or magistrate who has chosen to receive an annuity under 28 U.S.C. 377 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100–659. Such a bankruptcy judge or magistrate may participate in the Plan only as allowed in the following regulations. A bankruptcy judge or magistrate who is not covered by 28 U.S.C. 377 or section 2(c) of the Act may participate in the Plan as allowed under either 5 U.S.C. 8351, if a CSRS employee, or 5 U.S.C. 8430–8440, 8471–8479, if a FERS employee.

§ 1620.71 Definitions.

As used in this subpart, these terms have the following meanings:

Account balance means the total amount of money in an individual account;

Act means the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100–659;

Bankruptcy judge or *judge* means an individual described in 28 U.S.C. 377(h)(1), as added by the Act;

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

CSRS means the Civil Service Retirement System established by subchapter III of chapter 83 of title 5, U.S.C., and any equivalent Government retirement plan;

CSRS employee means any employee covered by CSRS or any equivalent Government retirement plan;

Employee contributions means any contributions made under 5 U.S.C. 8432(a) or 5 U.S.C. 8351(a);

Employer contributions means Government basic contributions and Government matching contributions;

FERS means the Federal Employees' Retirement System established by chapter 84 of title 5, U.S.C., and any equivalent Government retirement plan;

FERS employee means any employee covered by FERS or any equivalent Government retirement plan;

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Government basic contributions means any contributions made under 5 U.S.C. 8432(c)(1) or 5 U.S.C. 8432(c)(3);

Government matching contributions means any contributions made under 5 U.S.C. 8432(c)(2);

Investment Fund means the G Fund, the F Fund, or the C Fund;

Judges' annuity means an annuity under 28 U.S.C. 377 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100–659;

Magistrate means an individual appointed pursuant to 28 U.S.C. 631;

Participant means any person with an individual account in the Thrift Savings Fund;

Recordkeeper means the organization designated by the Board as the Plan's recordkeeper;

Thrift Savings Fund or *Fund* means the Fund described in 5 U.S.C. 8437;

Thrift Savings Plan or *Plan* means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C 8431–8440, 8471–8479.

§ 1620.72 Plan contributions after choosing judges' annuity.

(a) A judge or magistrate who has chosen to receive a judges' annuity is entitled to contribute to the Plan. Except as otherwise provided in this subpart, these judges and magistrates are covered by the same rules and regulations as apply to CSRS participants in the Plan.

(b) (1) Judges and magistrates who have chosen to receive a judges' annuity may elect to contribute up to 5 percent of their basic pay per period to the Plan. Basic pay has the same meaning as under 5 U.S.C. 8431. Amounts received under a judges' annuity are not basic pay, and no Plan contributions may be made from those annuity payments.

(2) Retirement under 28 U.S.C. 377, including removal from office under section 377(d) on the ground of mental or physical disability, is a separation from service.

(c) A judge or magistrate who has chosen to receive a judges' annuity is not entitled to receive employer contributions under 5 U.S.C. 8432(c). This limitation does not apply retroactively or in any other way cause a judge or magistrate who previously was eligible to receive employer contributions under 5 U.S.C. 8432(c) to forfeit those contributions. However, as indicated in § 1620.76 below, the judge or magistrate may receive a reduced annuity under 28 U.S.C. 377 or section 2(c) of the Act as a result of such contributions.

(d) A judge or magistrate who has chosen to receive a judges' annuity may invest new contributions made after such choice only in the G Fund.

§ 1620.73 Mandatory transfer of money to G Fund after choosing judges' annuity.

A judge or magistrate who has chosen to receive a judges' annuity may invest his or her existing account balance only in the G Fund. Following the receipt of notice by the Plan recordkeeping that a judge or magistrate has chosen to receive a judges' annuity, the judge's or magistrate's entire account balance will be invested in the G Fund. Any money invested in the C or F Funds will be transferred to the G Fund at the time of the next available disbursement cycle for the transfer of money out of the C and F Funds.

§ 1620.74 Election of Plan benefits after choosing judges' annuity.

(a) A judge or magistrate who has chosen to receive a judges' annuity and who separates after age 65 entitled to an immediate annuity under either section 28 U.S.C. 377 or section 2(c) of the Act, or who separates at any age entitled to a disability annuity under 28 U.S.C. 377(d), may elect to receive his or her Plan account as provided in 5 U.S.C. 8433(b).

(b) A judge or magistrate who has chosen to receive a judges' annuity and who separates before reaching age 65, but who is entitled to receive an annuity under 28 U.S.C. 377(c) or section 2(c) of the Act upon reaching age 65, may elect to receive his or her Plan account as provided in 5 U.S.C. 8433(c). However, the period described in section 8433(c)(3) will be the period that begins on or after the date on which the judge's or magistrate's annuity under 28 U.S.C. 377 or section 2(c) of the Act commences.

(c) A judge or magistrate who has chosen to receive a judges' annuity and who separates before becoming eligible under 28 U.S.C. 377 or section 2(c) of the Act for an immediate annuity or an annuity upon reaching 65 is required to transfer his or her Plan account balance to an eligible retirement plan as defined in 26 U.S.C. 402(a)(5)(E)(iv).

§ 1620.75 Spousal rights.

(a) A spouse or former spouse of a judge or magistrate who is a Plan participate and who has not chosen a judges' annuity retains the rights provided under 5 U.S.C. 8351, if the judge or magistrate is a CSRS employee, or under 5 U.S.C. 8435 and 8467, if the judge or magistrate is a FERS employee.

(b) A spouse or former spouse of a judge or magistrate who is a Plan participant and who has chosen a judges' annuity is entitled to whatever rights are provided under 5 U.S.C. 8435 and 8467 with respect to the judge's or magistrate's entire Plan account. Section 5 U.S.C. 8351 does not aply to a spouse or former spouse of a judge or magistrate who has chosen a judges' annuity, even if the judge or magistrate was a CSRS employee before choosing a judges' annuity.

§ 1620.76 Offset of judges' annuity.

Under rules to be established by the Administrative Office of the United States Courts, the annuity received by a judge or magistrate under 28 U.S.C. 377 or section 2(c) of the Act will be reduced by the amount of employer contributions to the Plan made on behalf of the judge or magistrate.

Subpart F—Article III Justices and Judges

§ 1620.80 Scope.

This subpart applies to any justice or judge of the United States, as defined in 28 U.S.C. 451.

§ 1620.81 Definitions.

As used in this subpart, these terms have the following meanings:

Account balance means the total amount of money in an individual account;

Act means the Federal Employees Health Benefits Amendments Act of 1988, Public Law 100–654 (November 14, 1988);

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

CSRS means the Civil Service Retirement System established by subchapter III of chapter 83 of title 5, U.S.C., and any equivalent Government retirement plan;

CSRS employee means any employee covered by CSRS or any equivalent Government retirement plan;

Election period means the last calendar month of an open season and is the earliest period in which an election to make or change a contribution during that open season can become effective;

Employee contributions means any contributions made under 5 U.S.C. 8432(a) or 5 U.S.C. 8351(a);

Employer contributions means Government basic contributions and Government matching contributions;

FERS means the Federal Employees' Retirement System established by Chapter 84 of Title 5, U.S.C., and any equivalent Government retirement plan;

FERS employee means any employee covered by FERS or any equivalent Government retirement plan;

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Government basic contributions means any contributions made under 5 U.S.C. 8432(c)(1) or 5 U.S.C. 8432(c)(3);

Government matching contributions means any contributions made under 5 U.S.C. 8432(c)(2);

Investment Fund means the G Fund, the F Fund, or the C Fund;

Judge means a judge of the United States, as defined in 28 U.S.C. 451;

Justice means a justice of the United States, as defined in 28 U.S.C. 451;

Open season means the period during which participants may elect to begin making contributions to the Thrift Savings Plan, or change the rate of contributions, or discontinue (without losing the right to recommence contributions the next open season) the amount currently being contributed to the Thrift Savings Plan;

Participant means any person with an individual account in the Thrift Savings Fund;

Recordkeeper means the organization designated by the Board as the Plan's recordkeeper;

"Thrift Savings Plan" or *"Plan"* means the Fund described in 5 U.S.C. 8437;

"Thrift Savings Plan" or "Plan" means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C. 8431–8440, 8471–8479.

§ 1620.82 Periods for Making or Changing Contributions.

(a) *Initial Election Period.* Any justice or judge who is receiving basic pay may elect to make contributions to the Plan during a special election period beginning on November 15, 1988 and continuing through January 13, 1989, which is the 60-day period immediately following the effective date of the Act. Any properly completed election forms that are accepted by the payroll office during this 60-day period will be effective no later than the next pay period beginning after the date of acceptance.

(b) *Subsequent Election Periods.* For every election period that begins after the beginning date of the initial election period described in paragraph (a) of this action, including the election period from January 1, 1989 through January 31, 1989, justices and judges are subject to the provisions of 5 U.S.C. 8432(b) and Part 1600 of 5 CFR, and may choose to stop, start, or change their rate of contribution to the Plan in accordance with those provisions and applicable regulations. Accordingly, justices and judges who are appointed after January 13, 1989, and who were not previously eligible to make contributions to the Plan, must wait until the second election period after they are appointed to make contributions to the Plan.

§ 1620.83 Contributions to the Plan.

(a) Pursuant to section 401 of the Act, justices and judges may contribute an amount up to 5 percent of basic pay per pay period to the Plan. For purposes of these contributions, "basic pay" has the same meaning as that contained in 5 U.S.C. 8431. Salary or annuity payments received under 28 U.S.C. 371 (a), (b), and 372(a), are not "basic pay."

(b) A justice or judge contributing to the TSP is not entitled to receive employer contributions under 5 U.S.C. 8432(c). However, any employer contributions previously made on behalf of a justice or judge while he or she served as a FERS employee will remain identified as employer contributions for recordkeeping purposes.

(c) A justice or judge contributing to the Plan may invest new employee contributions only in the G Fund.

§ 1620.84 Investment choices.

A justice or judge contributing to the Plan may invest his or her existing account balance only in the G Fund. Following the receipt of notice by the Plan recordkeeper that a participant has become subject to section 401 of the Act and to these regulations, the justice's or judge's entire account balance will be invested in the G Fund. Any money which is invested in the C or F Funds will be transferred to the G Fund at the time of the next available disbursement cycle for the transfer of money out of the C and F Funds.

§ 1620.85 Election of Plan benefits.

(a) A justice or judge who retires under section 371 (a) or (b) or section 372(a) of Title 28, may elect to receive his or her Plan account as provided in 5 U.S.C. 8433(b).

(b) A justice or judge who resigns or separates before having met the age and service requirements listed in section 371(c) of Title 28 is required to transfer his or her Plan account balance to an eligible retirement plan as defined in 26 U.S.C. 402(a)(5)(E)(iv).

§ 1620.86 Spousal rights.

For purposes of amounts held in the Plan, a spouse or former spouse of a justice or judge who is a Plan participant is entitled to the rights provided under 5 U.S.C. 8351(b)(7).

[FR Doc. 89–18688 Filed 8–9–89; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89–101]

7 CFR Part 301

Black Stem Rust

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising the Black Stem Rust Quarantine and Regulations by restricting the interstate movement of certain regulated articles to areas where they will not present any risk of crop damage, and by protecting certain areas from possible infestation. This action is being taken to reflect the fact that rust-susceptible alternate host plants have been largely eradicated from the northern small grain producing states where black stem rust would be harmful to crops, and because preventative measures are necessary to prevent its re-introduction through plant hosts. The revised regulations will prevent the re-introduction of rust-susceptible alternate host plants into protected areas by prohibiting the entry of certain plants and by prescribing the conditions under which other regulated articles may be moved interstate.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas G. Flanigan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Black Stem Rust and Quarantine Regulations in 7 CFR Part 301, § 301.38 *et seq.* (referred to below as the regulations), quarantine the conterminous 48 states and the District of Columbia and govern the interstate movement of certain plants of the genera *Berberis, Mahoberberis,* and *Mahonia* in order to prevent the development of new races of black stem rust, a destructive plant disease affecting small grains.

Black stem rust is one of the most destructive plant diseases of small grains known to exist in the United States. The disease is caused by a fungus which reduces the quality and yield of wheat, oats, barley, and rye crops by robbing host plants of food and water. The fungus lives on a variety of host plants that are species of the genera *Berberis, Mahoberberis,* and *Mahonia,* and can spread from host-to-host by way of wind-borne spores.

The regulations were originally issued as part of a cooperative federal-state black stem rust eradication program. The eradication phase of the cooperative program officially ended in 1981. However, APHIS agreed to continue the quarantine on the basis that the states perform nursery inspections to detect whether any rust-susceptible varieties are present.

On April 28, 1989, we published in the **Federal Register** (54 FR 18288–18296, Docket No. 88–118), a document proposing to completely revise the regulations by removing the eradication area provisions and adding provisions authorizing the Administrator to designate states or counties as protected areas if they meet certain criteria, and by setting forth conditions governing the interstate movement of *Berberis, Mahoberberis,* and *Mahonia.* Under the

proposed rule, interstate movement of all *Berberis, Mahoberberis,* and *Mahonia* would be allowed from, to, and between non-protected areas without restriction. Rust-resistant varieties would be allowed to move into or through protected areas if accompanied by a certificate verifying that the plants are rust resistant. Interstate movement of rust-susceptible *Berberis, Mahoberberis,* and *Mahonia* into or through protected areas would be prohibited, except with a limited permit (which would be issued under narrow circumstances, as described in the regulations). The protected areas would be responsible for issuing the certificates required for interstate movement, and for inspecting every plant nursery within the state at least once each year to ensure that they are free of rust-susceptible plants.

We are adopting the provisions of the proposed rule based on the reasons set forth in the proposal and in this supplementary information section.

Comments

Our proposal invited the submission of written comments postmarked or received on or before May 15, 1989.

We received 10 comments addressing the proposed rule that were timely. Two of the comments were from nurseries. The other comments we received were from state Departments of Agriculture for the following states: Colorado, Iowa, Kansas, Missouri, Nebraska, Pennsylvania, South Dakota, and Wyoming.

Both nurseries supported our proposal but added that the quarantine could safely be lifted even in grain producing areas since no commercially produced barberry plants pose any threat to grain crops in the United States. We disagree with the two commenters. Although many grains grown in the United States today are resistant to existing races of the black stem rust organism, spores from different black stem rust organisms hosted by rust-susceptible varieties of *Berberis, Mahoberberis,* and *Mahonia* may combine, resulting in new strains of black stem rust capable of successfully attacking small grain crops. We believe it is necessary to maintain restrictions on the interstate movement of host plants in order to protect small grain crops from this risk.

Of the 8 states that commented on the proposed rule, 5 generally supported the proposal and 3 opposed allowing any interstate movement of rust-susceptible varieties.

Those states generally in favor of the proposed changes also noted the need for APHIS to compile and publish reference materials, such as training materials and illustrated guides for the identification of susceptible and resistant varieties, for use by the states in enforcing the regulations. Both the Central Plant Board and the Eastern Plant Board have adopted resolutions to this effect. The materials currently issued by APHIS for use in identifying varieties of *Berberis, Mahoberberis,* and *Mahonia* include most plants of these genera, however they need to be updated to include the newer varieties that have been identified as rust-resistant or rust-susceptible since those materials were last published. We are requesting that funds be authorized for this effort in the coming fiscal year so that we may prepare and issue revised materials to assist in detecting and identifying these regulated articles.

The commenters generally supportive of the proposed changes also raised the following concerns:

The Kansas State Board of Agriculture stated that contrary to our statement in the supplementary information accompanying the proposed rule (see 54 FR 18288), varieties of small grains are being grown in the United States today that are not resistant to black stem rust. Rather, the small grains that have been developed and that are being grown today mature earlier and are exposed to wind-borne black stem rust spores at a more advanced stage of development. As a result, they are less affected by the organism. Because of the lessened economic impact of black stem rust on current grain crops, the comment noted that some wheat breeders are not including black stem rust resistance in their breeding programs and should. We agree that it would be to their benefit to do so; however, we do not regulate wheat breeding programs.

The Department of Agriculture for the Commonwealth of Pennsylvania commented that requiring inspection of the area within one-half mile of a nursery growing any rust-resistant plants of *Berberis, Mahoberberis,* and *Mahonia* from seed is excessive. The comment stated that inspecting the area within one-quarter mile of such a nursery is adequate. APHIS's Biological Assessment and Support Staff has determined that a distance of 300 meters will protect plants from pollination by unwanted spore types. The one-half mile distance proposed is equal to twice that distance plus an additional ten percent of that distance. As explained in the supplementary information accompanying the proposed rule, we believe that because the seeds may be wind-borne, the half mile inspection requirement adds a desirable margin of safety against the germination of new rust-susceptible varieties near the nursery. No change is made in the final rule as a result of the comment.

Pennsylvania also commented that in addition to USDA testing for rust susceptibility of *Berberis, Mahoberberis,* and *Mahonia* plant varieties, USDA should continue to identify black stem rust races and the geographic areas where they occur. The Agricultural Research Service of the U.S. Department of Agriculture provides the service of identifying new strains of black stem rust. Information concerning identification of black stem rust races may be obtained by writing to the Agricultural Research Service, Cereal Rust Laboratory, University of Minnesota, St. Paul, Minnesota 55108, attention: Alan Roelfs.

South Dakota commented that while states have authority to stop intrastate sales or regulated articles for violations of state regulations, APHIS must impose and enforce penalties for interstate movements of regulated articles that violate the regulations. Although the proposed regulations do not impose penalties for violations, they do provide enforcement mechanisms that may be invoked by those states that are designated as protected areas or that encompass protected areas, and by APHIS, in non-protected areas. The proposal provides that a certificate that has been issued for interstate movement of regulated articles may be withdrawn if the certificate holder fails to comply with the regulations. Under the proposal, regulated articles cannot be moved into or through a protected area without the required certificate. The certificates are federal documents; however, under the terms of the proposed rule and in accordance with a cooperative arrangement with those states that are designated as protected areas, state employees would be authorized to issue and withdraw the certificates in protected areas. The proposal also provides that a compliance agreement between a state that is a protected area or that encompasses a protected area may be cancelled by an inspector for noncompliance. Under the regulations as proposed, and in accordance with the memorandum of understanding an inspector includes any person, including state employees, authorized by the Administrator to enforce the regulations.

South Dakota commented that all the northern wheat producing states should be included in the protected area, and, accordingly, Wyoming and Colorado should be included as protected areas.

In its comment to us, Wyoming's Department of Agriculture requested that Wyoming be designated as a

protected area and added to § 301.38(c)(1) if the regulations are adopted as a final rule. The Administrator believes that Wyoming, currently listed as an "Eradication area" under § 301.28–2a, meets the criteria set forth in the proposed rule for a state to be designated as a protected area. Therefore, we will publish in the **Federal Register**, for public comment, a document proposing to add Wyoming to the regulations as a protected area.

Colorado does not meet the criteria to be designated as a protected area, however, and has not requested to be so designated. Colorado does not maintain a program regulating the growth or intrastate movement of *Berberis, Mahoberberis,* and *Mahonia* and, under the criteria set forth in § 301.38–3, is ineligible for "protected" status.

In addition to its request to be designated as a protected area, Wyoming expressed opposition to our proposal claiming that the proposed changes would result in the rapid reintroduction of rust-susceptible varieties of *Berberis, Mahoberberis,* and *Mahonia* into the state, even if it is designated as protected. This reintroduction would occur as a result of private movement of rust-susceptible varieties between Colorado's retail discount nursery trade and residents of Wyoming's wheat producing area, owing to the large price differential between Wyoming nursery stock and Colorado-grown nursery stock. The comment stated that APHIS and the protected areas could not assure that the protected areas would be safe from the reintroduction of rust-susceptible varieties through illegal acts or negligence, and that once sold to retail customers the plants' movement becomes virtually impossible to track.

Allowing retail sales of susceptible varieties in nearby non-protected states would result in reinfestation of adjacent protected areas through retail sales, according to Wyoming's Department of Agriculture. For these reasons, Wyoming stated that it is completely opposed to allowing interstate movement of rust-susceptible *Berberis, Mahoberberis,* and *Mahonia* anywhere in the United States. The comments we received from the Departments of Agriculture for Nebraska and Missouri shared this view.

We do not agree. We do not believe there is any economic risk in allowing the interstate movement of rust-susceptible varieties of *Berberis, Mahoberberis,* and *Mahonia* to, from, or through non-wheat producing areas, and that this movement need not be restricted. The regulations, as proposed, provide effective safeguards against the reintroduction of rust-susceptible *Berberis, Mahoberberis,* and *Mahonia* into the protected areas. Interstate movement of rust-susceptible plants is prohibited, except in non-protected areas. In order to ensure that only rust-resistant varieties are moved interstate into or through protected areas, the regulations require that they be moved interstate only if accompanied by a certificate, issued upon inspection of the regulated articles or in accordance with the terms of a compliance agreement. Wyoming's particular concerns should be allayed upon qualifying to be designated as a protected area. No change is made in the final rule on the basis of these comments.

The Colorado Department of Agriculture commented that even if the proposed regulations would not jeopardize the eradication efforts of the protected states, APHIS should provide the support needed to conduct the activities necessary to be designated as a protected area. These activities include nursery inspections and the issuance of the certificates required for interstate movement of regulated articles. We do not agree with this comment. APHIS concluded its eradication efforts in 1981. At that time, the states that were designated "Eradication areas" in the regulations agreed to continue the nursery inspection program under the cooperative federal-state black stem rust program, in order to ensure that rust-susceptible varieties were not reintroduced into the state. On that basis, APHIS agreed to continue the quarantine. Under the proposed rule, in order to be designated as protected areas, states must be responsible for issuing and withdrawing certificates and enforcing compliance agreements. We do not believe it is appropriate or necessary to promote the effective implementation and enforcement of the regulations to shift responsibility for these activities to APHIS.

Nebraska's Department of Agriculture requested clarification as to whether the certificates that would be issued under proposed § 301.38–5 would be federal or state certificates, and as to whether certificates must be issued for interstate movement of regulated articles from nurseries that are not propagating the material, but are only raising plant material originating from other nurseries (presumably outside the protected area).

The certificates required for interstate movement of regulated articles in protected areas are federal documents. Under the proposed regulations and the cooperative arrangement with states having protected areas, state employees would be authorized to issue and withdraw certificates. Such certificates must be issued for *any* interstate movement of *any* regulated articles moved interstate into or through a protected area, in accordance with the regulations.

On the basis of the foregoing, we are not making any changes in the final rule as a result of the comments we received, except to clarify that state personnel in states having protected areas are responsible for issuing and withdrawing certificates. However, a separate document will be published in the **Federal Register** proposing to add Wyoming as a protected area.

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 rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federal restrictions on interstate movements of plants and plant parts of *Berberis, Mahoberberis,* and *Mahonia* are limited to a protected area that includes 15 states and part of a sixteenth. The principal group affected by this final rule consists of nursery growers of the regulated articles, *Berberis, Mahoberberis,* and *Mahonia.* We are not changing the effect of the substantive interstate movement restrictions applicable to growers within this protected area from those of the current regulations, and therefore, they will not be affected by this revision of the regulations.

In the non-protected areas, growers will be able to sell and transport interstate, to non-protected areas, all varieties of *Berberis, Mahoberberis,* and *Mahonia* without certification or inspection requirements. Some potential benefit may run to nursery growers in the non-protected areas, since such interstate sales of rust-susceptible varities would be allowed within those areas. Also, the waiting period applicable to new varieties of *Berberis* is eliminated for articles moving only in the non-protected areas. This relieves

certain growers from the monetary losses resulting from developing new hybrids which are subsequently found to be rust-susceptible, and therefore may only be sold intrastate in non-eradication areas under the existing regulations.

Based upon Small Business Administration (SBA) statistics and the 1982 Census of Agriculture statistics, the most recent statistics available to us, we estimate that 71 percent of the 13,217 growers of nursery products in the United States (9,384), are located in the non-protected areas, and that 29 percent (3,833) are in the protected areas. Our projections indicate that of this total, 96 percent are small businesses, as classified by the SBA in its Standards (those with $500,000-or-less in annual receipts). As we stated in the supplementary information accompanying the proposed rule (see 54 FR 18292), we do not have statistics indicating the number of small nursery growers dealing in plants of the restricted genera and the proportion of their revenues derived from such plants. Nevertheless, we believe that most growers of nursery products grow rust-resistant varieties primarily, so they can sell them to a broader market and ship interstate.

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

Executive Order 12372

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

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and given OMB control number 0579–0022.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Black stem rust, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we are revising 7 CFR Part 301, Subpart—Black Stem Rust, as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Black Stem Rust

Sec.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, 164–167; and 450; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.38 Notice of quarantine; restrictions on interstate movement of regulated articles.

The conterminous 48 states and the District of Columbia are quarantined in order to prevent the spread of black stem rust. No person shall move interstate any regulated article except in accordance with this subpart.[1]

§ 301.38–1 Definitions.

In this subpart the following definitions apply:

Administrator. The Administrator, Animal and Plant Health Inspection Service (APHIS), or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculure.

Black stem rust. The disease commonly known as the black stem rust of grains (*Puccinia graminis*).

Certificate. A document in which an inspector, or a person operating under a compliance agreement, affirms that a specified regulatory article has met the criteria in § 301.38–5(b) of this subpart and may be moved interstate to any destination.

Compliance agreement. A written agreement between a state that is a protected area or that encompasses a protected area and a person who moves regulated articles interstate, or in a non-protected area between APHIS and such person, in which that person agrees to comply with this subpart.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes, and that the regulated article is eligible for interstate movement under the conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the introduction of rust-susceptible varieties of the genera *Berberis, Mahoberberis,* and *Mahonia* into protected areas.

Inspector. Any APHIS employee or other person authorized by the Administrator in accordance with law to enforce this subpart.

Interstate. From any state into or through any other state.

Limited permit. A document issued by an inspector to allow the interstate movement into or through a protected area of regulated articles not eligible for certification under this subpart to a specified destination outside the protected area.

Moved (movement, move). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved. "Movement" and "move" shall be construed in accordance with this definition.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

Protected area. Those states or counties designated in § 301.38–3(c) of this subpart.

Rust-resistant plants. All plants of the genera *Berberis, Mahoberberis,* and *Mahonia* species, and their progeny, that have proven resistant to black stem rust during testing by the United States Department of Agriculture,[2] and that are

[1] Any properly identified employee of the Animal and Plant Health Inspection Service is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 10 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

[2] Testing is performed by the Agricultural Research Service of USDA as follows: In a greenhouse, the suspect plant, or test subject, is placed under a screen with a control plant, *i.e.*, a known rust-susceptible variety of *Berberis, Mahoberberis,* or *Mahonia.* Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100% humidity, causing spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20–80% relative humidity. This test procedure is repeated 12 times. If in all 12 tests, the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, USDA will declare the test plant variety rust-resistant. The tests must be performed on new growth, just as the leaves are unfolding.

listed as rust-resistant under §§ 301.38–2 (b) and (c).

Rust-susceptible plants. All plants of the genera *Berberis, Mahoberberis,* and *Mahonia* species not listed as rust-resistant under §§ 301.38–2 (b) and (c).

Regulated article. Any article listed in § 301.38–2 (a) through (d) of this subpart or otherwise designated as a regulated article in accordance with § 301.38–2(e) of this subpart.

Seedling. Any plant of the genera *Berberis, Mahoberberis,* and *Mahonia* grown from seed and having less than 2 years' growth.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory or possession of the United States.

Two years' growth. The growth of a plant during all growing seasons of 2 successive calendar years.

§ 301.38–2 Regulated articles.

The following are regulated articles: [3]

(a) All seedlings and plants of less than 2 years' growth of the genus *Berberis.*

(b) All plants, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Berberis* species.

B. aridocalida
B. beaniana
B. buxifolia
B. buxifolia nana
B. calliantha
B. candidula
B. cavallieri
B. chenaulti
B. chanaulti "Apricot Queen
B. circumserrata
B. concinna
B. coxii
B. darwini
B. dasystachya
B. dubia
B. feddeana
B. formosana
B. franchetiana
B. gagnepaini
B. gilgiana
B. gladwynensis
B. gyalaica
B. heterophylla
B. horvathi
B. hybrido-gagnepaini
B. insignis
B. julianae
B. julianae "Nana"
B. julianae "Spring Glory"
B. koreana
B. lempergiana
B. lepidifolia
B. linearifolia
B. linearifolia var. "Orange King"
B. lologensis
B. manipurana
B. media "Park Juweel"
B. mentorensis
B. pallens
B. potanini
B. Renton
B. replicata
B. sanguinea
B. sargentiana
B. sikkimensis
B. stenophylla
B. stenophylla diversifolia
B. stenophylla irwini
B. stenophylla gracilis
B. stenophylla nana compacta
B. taliensis
B. telomaica artisepala
B. thunbergii
B. thunbergii aurea
B. thunbergii argenteo marginata
B. thunbergii atropurpurea
B. thunbergii atropurpurea erecta
B. thunbergii atropurpurea erecta Marshalli
B. thunbergii atropurpurea "Golden Ring"
B. thunbergii atropurpurea "Knight Burgundy
B. thunbergii atropurpurea nana
B. thunbergii atropurpurea "Redbird"
B. thunbergii atropurpurea "Rosy Glow"
B. thunbergii "Bagatelle"
B. thunbergii "Dwarf Jewell"
B. thunbergii erecta
B. thunbergii "globe"
B. thunbergii "golden"
B. thunbergii "Helmond Pillar"
B. thunbergii "Kobold"
B. thunbergii maximowiczi
B. thunbergii minor
B. thunbergii pluriflora
B. thunbergii "Sparkle"
B. thunbergii "Thornless"
B. thunbergii "Upright Jewell"
B. thunbergii variegala
B. thunbergii xanthocarpa
B. triacanthophora
B. triculosa
B. verruculosa
B. virgatorum
B. workingensis
B. xanthoxylon

(c) All plants, seedlings, fruits, and other plant parts capable of propagation from the following rust-resistant *Mahoberberis* and *Mahonia* species, except *Mahonia* cuttings for decorative purposes:

(1) Genera *Mahoberberis:*
M. aqui-candidula
M. aqui-sargentiae
M. miethkeana

(2) Genera *Mahonia:*
M. amplectens
M. aquifolium
M. aquifolium atropurpurea
M. aquifolium compacta
M. aquifolium compacta "John Muir"
M. aquifolium "Donewell"
M. aquifolium "Kings Ransom"
M. aquifolium "Orangee Flame"
M. aquifolium "Winter Sun"
M. "Arthur Menzies"
M. bealei
M. dictyota
M. fortunei
M. "Golden Abundance"
M. japonica
M. lomarifolia
M. nervosa
M. pinnata
M. pinnata "Ken Hartman"
M. piperiana
M. pumila
M. repens

(d) All plants, seeds, fruits, and other plant parts capable of propagation from rust-susceptible species and varieties of the gnera *Berberis, Mahoberberis,* and *Mahonia,* and seedlings from rust-susceptible species and varieties of the genera *Mahoberberis* and *Mahonia,* except *Mahonia* cuttings for decorative purposes.

(e) Any other product or article not listed in paragraphs (a) through (d) of this section, that an inspector determines presents a risk of spread of black stem rust. The inspector must notify the person in possession of the product or article that it is subject to the provisions of this subpart.

§ 301.38–3 Protected areas.

(a) The Administrator may designate as a protected area in paragraph (c) of this section any state that has eradicated rust-susceptible plants of the genera *Berberis, Mahoberberis,* and *Mahonia* under the cooperative federal-state eradication program. In addition, the state must employ personnel with responsibility for the issuance and withdrawal of certificates in accordance with § 301.38–5, and maintain and enforce an inspection program under which every plant nursery within the state is inspected at least once each year to ensure that they are free of rust-susceptible plants. During the requisite nursery inspections, all nursery stock shall be examined to determine that it consists only of rust-resistant varieties of the genera *Berberis, Mahoberberis,* and *Mahonia,* and that the plants are true to type. Plants that do not meet this criteria must be destroyed. If a nursery within the state raises plants of the genera *Berberis, Mahoberberis,* and *Mahonia* from seed, the state must conduct a visual inspection to verify that no wild or domesticated rust-

[3] Permit and other requirements for the interstate movement of black stem rust organisms are contained in Part 330 of this chapter.

susceptible plants are growing within one-half mile of the nursery.[4]

(b) The Administrator may designate as a protected area any county within a state, rather than the entire state, if areas within the state have eradicated rust-susceptible plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* under the cooperative federal-state program, and;

(1) The state employs personnel with responsibility for the issuance and withdrawal of certificates in accordance with § 301.38–5;

(2) The state is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles, as determined by the Administrator; and

(3) The state maintains and enforces an inspection program under which every plant nursery within the county is inspected at least once each year to ensure that plant nurseries within that area are free of rust-susceptible plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia*. During the requisite nursery inspections, all nursery stock shall be examined to determine that it consists only of rust-resistant varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, and that the plants are true to type. Plants that do not meet this criteria must be destroyed. If a nursery grows plants of *Berberis*, *Mahoberberis*, and *Mahonia* from seed, the state must conduct a visual inspection to verify that no wild or domesticated rust-susceptible plants are growing within one-half of the nursery.[4]

(c) The following are designated as protected areas:

(1) The states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, West Virginia, and Wisconsin.

(2) The following counties in the State of Washington: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, Yakima.

(d) Each state that is a protected area or that encompasses a protected area must submit annually to the Administrator a written statement, signed by an inspector, assuring APHIS that all nursery inspections have been performed in accordance with this section. The statement must be submitted by January 1st of each year, and must include a list of the nurseries inspected and found free of rust-susceptible plants.

(e) The Administrator may remove a protected area from the list of designated protected areas in paragraph (c) of this section if he or she determines that it no longer meets the criteria of paragraph (a) or (b)(1)–(3) of this section. A hearing will be held to resolve any conflict as to any material fact. Rules of practice for the hearing shall be adopted by the Administrator.

§ 301.38–4 Interstate movement of regulated articles.

(a) *Non-protected areas.* (1) Interstate movement of regulated articles into or through any state or area that is not designated a protected area under § 301.38–3(c) is allowed without restriction under this subpart.

(b) *Protected areas*—(1) *Prohibited movement.* The following regulated articles are prohibited from moving interstate into or through any protected area:

(i) All *Berberis* seedlings and plants of less than 2 years' growth, and rust-susceptible *Berberis* plants, seeds, fruits, and other plant parts capable of propagation.

(ii) Rust-susceptible *Mahoberberis* and *Mahonia* plants, seedlings, seeds, fruits, and other plant parts capable of propagation.

(2) *Restricted movement:* The following regulated articles may be moved interstate into or through a protected area with a certificate issued and attached in accordance with §§ 301.38–5 and 301.38–7 of this subpart:

(i) Plants of at least two years' growth, seeds, fruits, and other plant parts capable of propagation of the genus *Berberis* that are designated as rust-resistant in § 301.38–2(b) of this subpart;

(ii) Plants, seedlings, seeds, fruits, and other plant parts capable of propagation of the genera *Mahoberberis* and *Mahonia* that are designated as rust-resistant in § 301.38–2(c) of this subpart.

(c) An inspector may issue a limited permit to allow a regulated article not eligible for certication under § 301.38–4(b)(2) to move interstate into or through a protected area to a specified destination that is stated in the permit and is outside the protected area, if the requirements of all other applicable federal domestic plant quarantines are met. A regulated article moved interstate under a limited permit must be placed in a closed sealed container that prevents unauthorized removal of the regulated article, and that remains sealed until the regulated article reaches the final destination stated in the permit. At the final destination, the sealed container must be opened only in the presence of an inspector or with the authorization of an inspector obtained expressly for that shipment.

(d) The United States Department of Agriculture may move any regulated article interstate into or through a protected area in accordance with the conditions determined necessary to prevent the introduction or spread of black stem rust in protected areas, as specified in a Departmental permit issued for this purpose.

§ 301.38–5 Assembly and inspection of regulated articles: issuance and cancellation of certificates.

(a) Any person, other than a person authorized to issue certificates under paragraph (c) of this section, who desires to move interstate a regulated article that must be accompanied by a certificate under § 301.38–4(b), shall, as far in advance of the desired interstate movement as possible (and no less than 48 hours before the desired interstate movement), request an inspector [5] to issue a certificate. To expedite the issuance of a certificate, an inspector may direct that the regulated articles be assembled in a manner that facilitates inspection.

(b) An inspector [5] may issue a certificate for the interstate movement of a regulated article if he or she:

(1) Determines, upon examination, that the regulated article may be moved interstate in accordance with § 301.38–4; and

(2) Determines that the regulated article may be moved interestate in accordance with all other federal

[4] Persons performing the inspection must be able to recognize rust-susceptible varieties of *Berberis*, *Mahoberberis*, and *Mahonia*. Inspectors must work side by side, 10 to 20 feet apart, and walk outward, away from the nursery, a distance of one half mile measured from the edge of the nursery, and observe all plants growing in the half-mile band. The distance between the inspectors may vary within this range depending upon the visibility of plant growth. In areas with low brush and flat terrain, the inspectors may be the maximum distance of 20 feet apart if they can observe all plants growing within ten feet of them. In areas of high plant growth or hilly terrain, the inspectors must be closer together due to limited or obstructed visibility. Each inspector must observe all plants growing between themselves and the mid-point of the distance between themselves and the next inspector. This process must be repeated so that the entire band, measured from the border of the nursery to the circumference of an imaginary circle having the nursery as its mid-point, is visually inspected in this manner.

[5] Services of an inspector may be requested by contacting a local APHIS office (listed in telephone directories under Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine). The addresses and telophone numbers of local offices may also be obtained by writing to the Administrator, c/o Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates for interstate movement of regulated articles may be issued by an inspector [5] to a person operating under a compliance agreement for use with subsequent shipments of regulated articles to facilitate their movement. A person operating under a compliance agreement must make the determinations set forth in paragraph (b) of this section before shipping any regulated articles.

(d) Any certificate that has been issued may be withdrawn by an inspector, orally or in writing, if he or she determines that the holder of the certificate has not complied with the conditions of this subpart for the use of the certificate. If the withdrawal is oral, the inspector will confirm the withdrawal and the reasons for the withdrawal, in writing, within 20 days of oral notification of the withdrawal. Any person whose certificate has been withdrawn may appeal the decision, in writing within 10 days after receiving written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate was wrongfully withdrawn. A hearing will be held to resolve any conflict as to any material fact. An appeal shall be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision shall be stated. In a non-protected area, appeal shall be made to the Administrator. The Administrator shall adopt rules of practice for the hearing. The certificate will remain withdrawn pending decision of the appeal.

§ 301.38–6 Compliance agreements and cancellation.

(a) Any state that is a protected area or that encompasses a protected area may enter into a written compliance agreement with any person who grows or handles regulated articles in the protected area, or moves interstate regulated articles from the protected area, under which that person agrees to comply with this subpart, to provide inspectors with information concerning the source of any regulated articles acquired each year, and to prevent the unauthorized use of certificates issued or future use under the compliance agreement.[6]

(b) A compliance agreement may be cancelled by an inspector, orally or in writing, whenever he or she determines that the person who has entered into the compliance agreement has failed to comply with the agreement or this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed, in writing, within 20 days of oral notification of the cancellation. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. A hearing will be held to resolve any conflict as to any material fact. An appeal shall be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision shall be stated. In a non-protected area, appeal shall be made to the Administrator. The Administrator shall adopt rules of practice for the hearing. The compliance agreement will remain cancelled pending decision of the appeal.

§ 301.38–7 Attachment and disposition of certificates.

(a) The certificate required for the interstate movement of a regulated article must, at all times during the interstate movement, be attached to the outside of the container containing the regulated article except as follows:

(1) The certificate may be attached to the regulated article itself if it is not in container; or

(2) The certificate may be attached to the accompanying waybill or other shipping document if the regulated acticle is identified and described on the certificate or waybill.

(b) The carrier must furnish the certificate to the consignee at the destination of the regulated article.

§ 301.38–8 Costs and charges.

The services of an inspector [4] during normal business hours, Monday through Friday, 8 a.m. to 4:30 p.m., will be furnished without cost of persons requiring the services. The United States Department of Agriculture will not be responsible for any other costs or charges.

[6] In non-protected areas, compliance agreements may be arranged by contacting a local office of the Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine, or by writing to the Administrator, c/o Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, Room 646, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

Done in Washington, DC, this 7th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–18734 Filed 8–9–89; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV–89–079]

Fresh Pears, Plums and Peaches Grown in California; Modification of Grade Requirements for Pears for the 1989 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes grade requirements for organically grown Bartlett or Max-Red (Max-Red Bartlett and Red Bartlett) pears (produced without application of synthetically compounded fertilizers, pesticides and growth regulators) grown in California, for the 1989 season. Shipments of organically grown pears of these varieties would be required to grade at least U.S. Combination grade, with at least 50 percent, by count, grading U.S. No. 1 and the balance of each lot grading at least U.S. No. 2. The committee believes that a limited market exists for organically grown pears, and that handlers should be given the opportunity to meet the needs of the market. Non-organically grown pears must continue to grade at least U.S. Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1, with the balance of the fruit grading at least U.S. No. 2.

DATES: This interim final rule becomes effective August 4, 1989 and specifies less restrictive grade requirements for organically grown Bartlett or Max-Red (Max-Red Bartlett or Red Bartlett) pears shipped during the 1989 season. Comments received by September 3, 1989 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments should be sent to: Docket Clerk, U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Division, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all material should be submitted and will be available for public inspection in the office of the

Docket Clerk during regular business hours. The comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, F&V, AMS, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–5464.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR Part 917) regulating the handling of fresh pears, plums and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on 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 Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of pears subject to regulation under the pear, plum and peach marketing order (7 CFR Part 917), and there are approximately 300 producers of pears in the regulated area. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California pears may be classified as small entities.

Shipments of California pears are regulated by grade, size and pack under Pear Regulation 12 (7 CFR 917.461). Because these regulations do not change substantially from season to season, they have been issued on a continuing basis, subject to amendment, modification or suspension as may be recommended by the Pear Commodity Committee (committee) and approved by the Secretary.

Fresh California pears shipped during the 1988 season totalled approximately 127.4 million pounds. The packinghouse door value of the pears in 1988 was approximately $20.2 million.

This interim final rule is based upon a unanimous recommendation of the committee and other available information. Recent consumer interest in "natural" or "organic" foods offers a potentially viable new market for pear producers—one which the committee would like to meet. This action would provide additional opportunities for producers to utilize organic cultural practices to meet consumer demand in these markets.

For the purposes of this rulemaking action, "organically grown" pears should be defined as pears which are produced, harvested, distributed, stored, processed and packaged without the application of synthetically compounded fertilizers, pesticides or growth regulators. No synthetically compounded fertilizers, pesticides or growth regulators shall be applied by the grower to the orchard in which the pears are grown for 12 months prior to the appearance of flower buds and throughout the entire growing and harvest season for pears. This definition is consistent with applicable provisions of the term "organically grown" as defined in section 26569.11(a) (1) and (2) of the California Health and Safety Code, as enacted by the California Organic Food Act of 1979, as amended.

Currently, as specified in paragraph (a)(1) of § 917.461, no handler is permitted to ship any package or container of Bartlett or Max-Red (Max-Red Bartlett or Red Bartlett) pears unless the pears grade at least U.S. Combination with no less than 80 percent, by count, of the pears grading at least U.S. No. 1. Organically grown pears usually have more russetting and other appearance defects than non-organically produced fruit. Hence, it is difficult for organically produced fruit to meet the current requirements. This interim final rule permits the shipment of organically grown pears, during the 1989 season, grading at least U.S. Combination with no less than 50 percent, by count, U.S. No. 1 pears and the balance of the pears must grade at least U.S. No. 2 quality. The relaxation will permit the shipment of fruit with more appearance defects and enable all handlers of organically grown pears to meet the needs of their buyers. Such defects do not affect the eating quality of the fruit. Size, container and pack requirements as specified in paragraphs (a)(2) through (a)(6) of § 917.461 would apply to such organically grown pears.

Field officers of the committee will closely monitor the packing of organically grown pears during the 1989 season. Handlers who intend to ship organic pears in accordance with these relaxed grade requirements shall provide, upon the request of the Committee, with the approval of the Secretary, information indicating that the pears were grown in accordance with the provisions of § 917.461(b)(5). The committee, with the approval of the Secretary, has the authority to require handlers to furnish information as may be necessary to perform its duties under the marketing order. Most producers of organic fruit in the production area are members of associations that certify that produce is grown without the aid of synthetically compounded fertilizers, pesticides or growth regulators. Additionally, the California Department of Food and Agriculture (CDFA) currently requires that all agricultural producers register their chemical use.

This marketing experiment is in place for the 1989 season only. The committee will meet to discuss the grade relaxation experiment, and whether to recommend that the relaxed standards for organic pears be continued in subsequent seasons.

This interim final rule will allow producers of organically grown pears to market a larger portion of their production. Without grade relaxation, an estimated 1,500 packages would be shipped under current regulations. With the grade relaxation specified in this interim final rule, approximately 3,000 packages of organic pears are expected to be shipped. This amount represents an estimated one tenth of one percent of the entire California pear market. The relatively small increase in appearance defects and number of packages shipped are not expected to adversely effect market conditions for non-organically grown pears, particularly since organic fruit is normally sold in specialty markets. Further, information obtained on the marketing of organically grown pears during the 1989 shipping season would be used for evaluating the desirability of authorizing such shipments on a continuing basis.

This action also deletes obsolete wording from the introductory text of § 917.461. Provisions are also added to paragraph (b) of § 917.461 defining "organic pears" and indicating that "U.S. No. 2" means the same as defined in the United States Standards for

Summer and Fall Pears (7 CFR 51.1260–51.1280).

Based on available information, the Administrator of the AMS has determined that this interim final rule will not have a significant impact on a substantial number of small entities.

After consideration of all relevant information presented, including the committee's recommendation, and other information, it is found that the modification of the grade requirements, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Shipments of 1989 organically grown California pears are expected to begin around August 5, 1989; (2) this action relaxes grade requirements by allowing shipments of such organically grown pears with at least 50 percent U.S. No. 1 Grade and the remainder of the package containing U.S. No. 2 Grade pears; (3) handlers are aware of this action discussed at a public meeting and need no additional time to operate under the relaxed requirements; and (4) no useful purpose would be served by delaying the effective date of the relaxed requirements.

The committee's recommendation, and all written comments timely received in response to this publication will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 917

Marketing agreement and order, Pears, Plums and Peaches, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is amended as follows:

Note: This action will appear in the *Code of Federal Regulations.*

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

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

2. Section 917.461 is amended by revising the introductory text of (a) paragraphs (a)(1) and (b)(3), and by adding paragraph (b)(5) to read as follows:

§ 917.461 Pear Regulation 12.

(a) No handler shall ship:

(1) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears which do not grade at least U.S. Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1: *Provided*, That for the 1989 crop year, no handler shall ship organic pears of these varieties unless they grade at least U.S. Combination with not less than 50 percent, by count, grading at least U.S. No. 1 and the remainder grading at least U.S. No. 2. Handlers who intend to ship organic pears in accordance with this paragraph shall provide, upon request of the committee, with the approval of the Secretary, information to indicate that the pears were grown in accordance with the provisions of paragraph (b)(5) of this section.

* * * * *

(b) * * *

(3) "U.S. No. 1", "U.S. No. 2", "U.S. Combination", and "Standard Pack" means the same as defined in the United States Standards for Summer and Fall Pears (7 CFR 51.1260 to 51.1280).

* * * * *

(5) "Organic pears" means pears which are produced, harvested, distributed, stored, processed and packaged without application of synthetically compounded fertilizers, pesticides, or growth regulators. In addition, no synthetically compounded fertilizers, pesticides, or growth regulators shall be applied by the grower to the field or area in which the pears are grown for 12 months prior to the appearance of flower buds and throughout the entire growing and harvest season for pears.

Dated: August 4, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–18665 Filed 8–9–89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–55–AD; Amdt. 39–6294]

Airworthiness Directives: British Aerospace Model BAe/DH/BH/HS 125 Series Airplanes Equipped With Garrett TFE731 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe/DH/BH/HS 125 series airplanes equipped with Garrett TFE731 engines, which requires inspection and additional insulation of certain electrical contactor bodies. This amendment is prompted by a report of an electrical overheat due to a battery shorting to ground through the electrical contactors. This condition, if not corrected, could lead to grounding of the contractors and possible electrical fire.

EFFECTIVE DATE: September 15, 1989.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 431–1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to certrain British Aerospace Model BAe/DH/BH/HS 123 series airplanes equipped with Garrett TFE731 engines, which requires inspection and additional insulation of certain electrical contactor bodies, was published in the **Federal Register** on May 9, 1989 (54 FR 19907).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters supported the rule, but one commenter (the manufacturer) suggested that paragraph B. be changed to include Hartman contactors, Part Numbers A848KHS and A848KSS, as parts which should not be installed unless modified in accordance with the service bulletin. The FAA concurs and has added those part numbers to paragraph B. of the final rule. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

After careful review of the available data, including the comments noted

above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described above.

It is estimated that 285 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required parts will be provided by the manufacturer at no charge. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $34,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, 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) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace (BAE), PLC: Applies to Model BAe/DH/BH/HS 123 series airplanes equipped with Garrett TFE731 engines, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent an electrical fire caused by grounding of certain electrical contactors, accomplish the following:

A. Within 120 days after the effective date of this AD, inspect and modify Hartman electrical contactor components, in accordance with paragraph 2.A of British Aerospace Service Bulletin 24-268-3223A&B, Revision 2, dated February 28, 1989.

B. After the effective date of this AD, Hartman contactors having Part Numbers A848MAS, A848KHS, or A848KSS shall not be installed on any airplane unless modified in accordance with paragraph 2.B. of British Aerospace Service Bulletin 24-268-3223A&B, Revision 2, dated February 28, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 15, 1989.

Issued in Seattle, Washington, on August 1, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-18712 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-27]

Amendment to Control Zone, Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Miami, FL, Control Zone adds an arrival area extension. The extension will provide additional controlled airspace for protection of Instrument Flight Rules (IFR) aircraft executing a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway 9L at the Miami International Airport based on the Cook NDB.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On June 28, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Miami, FL, Control Zone (54 FR 27184). This amendment would add an arrival area extension to provide controlled airspace for protection of IFR aircraft executing an NDB SIAP planned for Runway 9L at the Miami International Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations adds an arrival area extension to the Miami, Florida, Control Zone. This action will provide additional controlled airspace for protection of IFR aircraft executing a new NDB Runway 9L Standard Instrument Approach Procedure to the Miami International Airport based on the Cook NDB.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; Februrary 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a

routine matter that will not affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Miami, FL [Amended]

Following the phrase, "* * * Miami International Airport (Latitude 25°47'34" N; Longitude 80°17'10" W)"; insert the phrase, "within 2.5 miles each side of the 267° bearing from the Cook NDB, extending from the 6-mile radius area to 4 miles west of the NDB."

Issued in East Point, Georgia, on July 25, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-18718 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-26]

Amendment to Transition Area, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Orlando, FL, Transition Area adds an arrival area extension northeast of the Orlando Executive Airport. This action is necessary to provide airspace protection for instrument flight rules (IFR) aircraft executing the instrument landing system (ILS) Runway 25 localizer approach. This procedure is being modified in order to accommodate a new ILS standard instrument approach procedure (SIAP) at Orlando International Airport.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On June 19, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Transition Area, Orlando, FL (54 FR 25730). This action would add an arrival area extension northeast of the Orlando Executive Airport to provide airspace protection for IFR aircraft executing the ILS Runway 25 localizer approach. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the Orlando, FL, Transition Area by adding an arrival area extension northeast of the Orlando Executive Airport. This action is necessary to provide airspace protection for IFR aircraft executing the ILS Runway 25 localizer approach. This procedure is being modified in order to accommodate a new ILS SIAP at Orlando International Airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Orlando, FL [Amended]

Following the phrase in the existing description which states, * * * 14 miles northwest of the VORTAC;" add the following: "within five miles each side of the ILS localizer northeast course extending from the 8.5-mile radius area to 10 miles northeast of the airport;".

Issued in East Point, Georgia, on July 28, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-18720 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-23]

Revision of Transition Area, Swainsboro, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Swainsboro, GA, transition area. The Swainsboro very high frequency omnidirectional range station (VOR) is planned to be decommissioned, thus, eliminating the need for the existing arrival area extension based on the VOR. A new standard instrument approach procedure (SIAP) has been developed predicated on the Emanuel County nondirectional radio beacon (NDB). This revision increases the radius of the transition area to provide additional airspace protection for instrument flight rules (IFR) aircraft executing the new NDB SIAP plus existing IFR aeronautical operations. Also, a minor correction is made to the geographic position coordinates of the Emanuel County Airport.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On June 9, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Swainsboro, GA, transition area (54 FR 24714). The Swainsboro VOR is planned to be decommissioned, thus, eliminating the need for the existing arrival area extension based on the VOR. A new SIAP has been developed predicated on the Emanuel County NDB. This revision would increase the radius of the transition area to provide additional airspace protection for IFR aircraft executing the new NDB SIAP plus existing IFR aeronautical operations. Also, a minor correction would be made to the geographic position coordinates of the Emanuel County Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Swainsboro, GA, transition area by eliminating an arrival area extension based on the Swainsboro VOR. The transition area radius has been increased to accommodate IFR aeronautical operations including aircraft executing a new SIAP based on the NDB. Also, a minor correction has been made to the geograpahic position coordinates of the Emanuel County Airport.

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

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Swainsboro, GA [Revised]

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Emanuel County Airport (latitude 32°36'27" N, longitude 82°22'05" W).

Issued in East Point, Georgia, on July 25, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89–18717 Filed 8–9–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–AWP–3]

Establishment of Transition Areas, Lovelock, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Aviation Administration (FAA) is correcting errors that appeared in the **Federal Register** on June 28, 1989, (54 FR 27158, 27159). The errors were discovered in the description of the Lovelock VORTAC radial (true) on which the instrument approach is predicated. Also, errors were discovered in the latitude/longitude description of transition areas southeast of Derby Field, Lovelock, NV. This action corrects those errors.

FOR FURTHER INFORMATION CONTACT: Jon L. Semanek, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0433.

§ 71.181 [Corrected]

1. § 71.181 is amended as follows:

Lovelock, NV [Corrected]

On page 27159, in the first column, in § 71.181, under Lovelock, NV [NEW], in the third line, "40°04'05" N., long. 118°33'42" W." should read "40°03'59" N., long. 118°33'51" W." In the fifth line, (317T) should read (349T). In the sixth and seventh lines, "extending to 12 miles north Lovelock VORTAC" should read "extending from the 5 mile radius area to 12 miles north of Lovelock VORTAC". In the ninth line, "40°37'.00" N." should read "40°37'30" N." In the thirteenth line "118°22'00" W." should read "118°22'30" W." In the fifteenth line, "40°05'30" N., long. 118°27'00" W." should read "40°05'05" N., long. 118°28'00" W." In the eighteenth line, "40°01'00" N., long. 118°28'00" W." should read "40°00'00" N., long. 118°30'30" W."

Issued in Los Angeles, CA, on July 28, 1989.

Merle D. Clure,

Asst. Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89–18715 Filed 8–9–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASO–29]

Amendment to Control Zone, Nashville, TN

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Nashville, TN, Control Zone enlarges the existing arrival area extension south of the airport by expanding the area one additional mile to the east. A new runway (2R) has been built at the Nashville International Airport and an associated standard instrument approach procedure (SIAP) has been developed. This additional controlled airspace is required for protection of instrument flight rules (IFR) aircraft executing the new SIAP.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On June 28, 1989, the FAA proposed to amend Part 71 of the Federal Aviation

Regulations (14 CFR Part 71) to amend the Nashville, TN, Transition Area (54 FR 27187). This proposed action would expand the existing arrival area extension south of the airport. This was necessary to provide additional controlled airspace for IFR aircraft executing a new SIAP to a parallel runway (2R) recently constructed at the Nashville International Airport. The existing control zone extension on the south would be expanded to the east one additional mile. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to § 71.171 of Part 71 of the Federal Aviation Regulations amends the Nashville, TN, control zone by enlarging the arrival extension south of the International Airport. The control zone extension is being expanded one additional mile to the east to provide controlled airspace for protection of IFR aircraft executing a recently developed SIAP to a new parallel runway (2R).

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Nashville, TN [Amended]

By changing the phrase in the existing description, "within 1.5 miles each side of the ILS localizer south course, extending from the 5-mile radius zone to the LOM;" to read: "within 1.5 miles west and 2.5 miles east of the BNA ILS localizer south course, extending from the 5-mile radius zone to 7 miles south of the airport;".

Issued in East Point, Georgia, on July 28, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-18719 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 88-ASW-60]

Establishment of Restricted Areas R-6316 Eagle Pass; R-6317 El Sauz; and Alteration of VOR Federal Airway V-13; Texas

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Areas R-6316 located near Eagle Pass, TX; R-6317 located near El Sauz, TX; and alters the description of Federal Airway V-13 located in the vicinity of El Sauz, TX. This action provides for the deployment of a tethered aerostat-borne radar system within each restricted area at the request of the United States Customs Service. This action allows the Customs Service to provide surveillance of airspace from the surface up to 15,000 feet mean sea level (MSL) and to detect low-altitude suspect aircraft attempting to penetrate the airspace. In addition, the Continental Control Area is amended to reflect R-6316 and R-6317.

EFFECTIVE DATE: 0901 u.t.c. September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jesse Bogan, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On March 10, 1989, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish Restricted Areas R-6316 located near Eagle Pass, TX; R-6317 located near El Sauz, TX; R-6318 located near Marfa, TX; and to alter the description of Federal Airway V-13 located in the vicinity of El Sauz, TX (54 FR 10167). This action would allow the Customs Service to provide surveillance of airspace and to detect low-altitude suspect aircraft attempting to penetrate the airspace. The notice of proposed rulemaking (NPRM) for the establishment of R-6316, R-6317 and alteration of Federal Airway V-13 also included the establishment of R-6318. Preparations for the deployment of a tethered aerostat-borne radar system were completed earlier for R-6318. Therefore, the establishment of R-6318 was set forth in a separate final rule action prior to the establishment of R-6316, R-6317 and alteration of Federal Airway V-13. Only those comments specifically related to the establishment of R-6316, R-6317 and alteration of V-13 are listed since this document pertains only to R-6316, R-6317, and V-13.

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments on the proposal were received from the United States Air Force (USAF), the Texas Aeronautical Commission (TAC), and the Aircraft Owners and Pilots Association (AOPA).

The USAF expressed no objection to the proposed establishment of R-6316, R-6317 and alteration of V-13.

The TAC objected to the proposed location of R-6316, in the vicinity of Farm and Market (FM) Road 1021, which would partially block a major Visual Flight Rules (VFR) flyway between Eagle Pass and Laredo, TX, along FM Road 1021. The TAC was concerned with the separation of southeastbound aircraft and northwestbound aircraft both circumnavigating the proposed restricted area to the north since the southern boundary of the restricted area is located adjacent to the United States/Mexico border. The TAC also expressed a concern that the aircraft circumnavigating the proposed restricted area would possibly lose sight of FM Road 1021 during marginal VFR weather. Separation of opposite

direction traffic circumnavigating the restricted area to the north would be maintained by aircraft adhering to hemispherical altitudes. While it is true that aircraft may lose sight of VFR landmarks, e.g., FM Road 1021, during marginal VFR weather while circumnavigating the restricted area, we feel reasonably comfortable with the idea that pilots will be able to establish their aircraft on a heading or course which would allow them to site the FM Road within a relatively short period of time or distance.

The TAC expressed a concern that pilots would be unable to determine the exact location of the aerostat balloon within each restricted area and that the unlit tether cables of the aerostat balloons would be a considerable risk for any VFR pilot flying through the restricted area. The restricted area is designed to completely contain the aerostat balloon and its cables, lighted or unlighted. We recognize pilots' desire to be able to see the balloon and its cable, but pilots must continue to be responsible to remain clear of a restricted area between the designated altitudes and during the time of designation for the restricted area, unless pilots have advance permission to traverse the restricted area.

The TAC recommended that alternate sites be studied before any final decision is made on the exact locations for the aerostat balloons. Prior to the selection of a site for the restricted area, the Customs Service considered several sites for the restricted areas. The sites selected for the establishment of the restricted areas were determined to be the best possible sites for the deployment of the tethered aerostat-borne radar systems.

The AOPA requested that public hearings should be held to allow for user input. Due to the nature of the aerostat program and security, the Customs Service felt that public hearings prior to the establishment of the aerostat restricted areas would not be in the best interest of the aerostat program.

The AOPA requested the aerostat balloons should not be flown prior to being indicated on the aeronautical charts. The U.S. Customs Service is aware that the aerostat balloons cannot be flown until the associated restricted areas become effective and are published on the en route altitude charts.

The AOPA made comment that the FAA should publish Notices to Airmen (NOTAMs) concerning the establishment of the restricted areas. The routine notification procedures for establishing restricted areas coincide with the en route charting dates. This method of notification and establishment of restricted areas has proven to be effective. Therefore, the FAA feels that publishing the establishment of restricted areas in Class II Notices to Airmen in addition to the routine notification procedures is not warranted at this time.

The AOPA requested that the Customs Service should place strobe lights on the aerostat balloons' tether cables. The FAA does not require the Customs Service to place strobe lights on the aerostat balloons' tether cables while the balloons are within the confines of the resricted areas. Also, the Customs Service feels that placing strobe lights on the aerostat balloons' tether cables would pose a dangerous threat to the aerostat balloons during inclement weather, as well as a danger to operators when they retrieve the balloon during lightning activity.

With the exception of that part of the notice which proposed to establish R-6318 and editorial changes, these amendments are the same as those proposed in the notice. A separate action to establish R-6318 was taken prior to this action to establish R-6316, R-6317 and alteration of V-13. Sections 71.123, 71.151, and 73.63 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6E dated January 3, 1989.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations establish Restricted Areas R-6316 in the vicinity of Eagle Pass, TX; R-6317 in the vicinity of El Sauz, TX; and amend the description of Federal Airway V-13 located in the vicinity of El Sauz, TX. The U.S. Customs Service will deploy a tethered aerostat-borne radar system at each location with the capability of detecting low-altitude suspect aircraft attempting to penetrate the airspace at each location. The systems will increase the probability of the interception and interdiction of suspect aircraft and provide low altitude radar coverage for the Customs Service. In order to achieve the aim of the Customs Service, it is necessary to restrict airspace from the surface to 15,000 feet MSL, within a 3-statute-mile radius of a point on the Laughlin very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) 156° radial, 64 miles from the VORTAC, for R-6316 and from the surface to 15,000 feet MSL, within a 3-statute-mile radius of a point on the McAllen very high frequency omni-directional radio range (VOR) 307° radial, 39 miles from the VOR, for R-6317. The Continental Control Area is amended to reflect R-6316 and R-6317.

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

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, VOR federal airways, Continental control area, Restricted areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-13 [Amended]

By removing the words "From Laredo, TX, via INT Laredo 156° and McAllen, TX, 306° radials; McAllen;" and by substituting the words "From McAllen, TX, via"

§ 71.151 [Amended]

3. § 71.151 is amended as follows:

R-6316 Eagle Pass, TX [New]
R-6317 El Sauz, TX [New]

PART 73—SPECIAL USE AIRSPACE

4. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.63 [Amended]

5. § 73.63 is amended as follows:

R-6316 Eagle Pass, TX [New]

Boundaries. A 3-mile radius centered at lat. 28°23'08" N., long. 100°17'10" W.
Designated altitudes. Surface to 15,000 feet MSL.
Time of designation. Continuous.
Controlling agency. FAA, Houston ARTCC.
Using agency. United States Customs Service.

R-6317 El Sauz, TX [New]

Boundaries. A 3-mile radius centered at lat. 26°34'12" N., long. 98°49'06" W.
Designated altitudes. Surface to 15,000 feet MSL.
Time of designation. Continuous.
Controlling agency. FAA, Houston ARTCC.
Using agency. United States Customs Service.

Issued in Washington, DC, on July 27, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-18721 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM86-6-007; Order No. 474-B]

Construction Work In Progress

Issued August 3, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on remand.

SUMMARY: The Federal Energy Regulatory Commission is modifying § 35.26(g)(2) of its regulations which concern the recovery by public utilities of costs for Construction Work in Progress (CWIP). The Commission is responding to the United States Court of Appeals for the District of Columbia Circuit ruling, which affirmed in part but vacated in part the Commission's prior Construction Work in Progress (CWIP) rule (Order No. 474) (52 FR 23948 (June 26, 1987)). The Commission is modifying § 35.26(g)(2) by changing the burden of proof required of a wholesale customer seeking preliminary relief from an alleged price squeeze. This order adopts a revised standard for preliminary relief.

EFFECTIVE DATE: This order becomes effective September 11, 1989.

FOR FURTHER INFORMATION CONTACT:

Andre Goodson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC 20426, (202) 357-8467.

William Longenecker, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC 20426, (202) 376-4444.

Ronald Rattey, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC 20426, (202) 357-8293.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

This proceeding is on remand from the United States Court of Appeals for the District of Columbia Circuit.[1] In response to the Court's mandate, the Commission is modifying § 35.26(g)(2) of its regulations, which concern the recovery by public utilities of costs for Construction Work in Progress (CWIP), by changing the burden of proof required of a wholesale customer seeking preliminary relief from an alleged price squeeze.[2]

Section 35.26(g)(2) is modified by eliminating the requirement that a party seeking preliminary relief make a concrete, substantial showing that it is likely to incur imminent, irreparable harm if the requested non-pollution control/fuel conversion CWIP is allowed. In place of the imminent, irreparable harm standard, a new standard is adopted whereby a party requesting preliminary relief must show that it is likely to be harmed in some way if the requested non-pollution control/fuel conversion CWIP is allowed. Upon such a showing, the Commission will balance the respective interests of the party seeking preliminary relief, the public utility applying for non-pollution control/fuel conversion CWIP, and the public in determining whether to grant the request for preliminary relief.

II. Background

A. The Commission's CWIP Policy Prior to Order No. 474

In 1976, this Commission's predecessor, the Federal Power Commission, adopted a rule whereby a public utility could include CWIP in rate base in three instances: (1) To construct pollution control facilities; (2) to convert oil and gas burning plants to coal burning plants; and (3) where the public utility requesting CWIP was in severe financial distress which could not be alleviated in the absence of CWIP in rate base without materially increasing the cost of electricity to consumers.[3]

In 1983, the Commission modified its CWIP policy and permitted any public utility to include up to 50 percent of non-pollution control/fuel conversion CWIP in rate base in addition to any CWIP related to pollution control or fuel conversion facilities.[4]

On appeal of the Commission's 1983 CWIP rule (Order No. 298), the D.C. Circuit upheld the Commission's policy objectives supporting the rule, but remanded the rule to the Commission for consideration of the rule's potential anticompetitive effects.[5]

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[1] Mid-Tex Electric Cooperative, *et al.* v. FERC, 864 F.2d 156 (D.C. Cir. 1988) (*Mid-Tex III*).

[2] 18 CFR 35.26(g)(2) (1988). *See* Order No. 474, FERC Stats. & Regs., Regs. Preambles ¶ 30,751 (June 18, 1987), 52 FR 23948 (June 26, 1987), *order on reh'g*, Order No. 474-A, FERC Stats. & Regs., Regs. Preambles ¶ 30,765 (Sept. 17, 1987), 52 FR 35695 (Sept. 23, 1987).

[3] Order No. 555, 56 FPC 2939 (Nov. 8, 1976), 41 FR 51392 (Nov. 22, 1976), *order on reh'g*, Order No. 555-A, 57 FPC 6, 42 FR 3022 (1977).

[4] Order No. 298, FERC Stats. & Regs., Regs. Preambles 1982-85 ¶ 30,455 (May 18, 1983), 48 FR 24323 (June 1, 1983), *order on reh'g*, Order No. 298-A, FERC Stats. & Regs., Regs. Preambles 1982-85 ¶ 30,500 (Oct. 4, 1983), 48 FR 46012 (Oct. 11, 1983).

[5] Mid-Tex Electric Cooperative, Inc. v. FERC, 773 F.2d 327 (D.C. Cir. 1985) (*Mid-Tex I*).

Following the court's remand, the Commission promulgated an interim CWIP rule (Order No. 448) that recodified, with certain modifications, many of the provisions of the 1983 CWIP rule pending consideration of the issues remanded to the Commission.[6] In the interim CWIP rule, the Commission also solicited comments on a number of issues related to potential anticompetitive effects of the rule. The court upheld the interim rule.[7]

B. Order No. 474

In 1987, after review of the comments filed in response to the interim CWIP rule, the Commission issued a final CWIP rule (Order No. 474). Order No. 474 continued the Commission's policy of allowing utilities to request up to 50 percent of non-pollution control/fuel conversion CWIP in rate base. However, in response to the Mid-Tex I remand, Order No. 474 also provided for filing requirements and procedures designed to address, mitigate, remedy, and/or prevent non-pollution control/fuel conversion CWIP-related price squeeze and double whammy.[8]

C. The Court's Remand of Order No. 474

In Mid-Tex III, the court affirmed the final CWIP rule (Order No. 474) on all but one issue, holding that "[t]he decisions regarding the anticompetitive problem of double whammy and the case-by-case approach to remedying price squeeze are the products of reasoned decisionmaking."[9] However, the court remanded the CWIP rule to the Commission for further consideration of the appropriate burden of proof required of a wholesale customer seeking preliminary relief from an alleged non-pollution control/fuel conversion CWIP-related price squeeze.[10]

The regulation at issue, § 35.26(g)(2) provides as follows:

(2) *Preliminary relief.* If an intervenor in its initial pleading alleges that a price squeeze will occur as a direct result of the public utility's request for CWIP pursuant to § 35.26(c)(3) of this part and makes a concrete, substantial showing that it is likely to incur imminent, irreparable harm if such CWIP is allowed, the Commission will consider preliminary relief at the suspension stage of the case pursuant to paragraph (g)(4) of this section. Whether or not preliminary relief is granted at the suspension stage will not preclude consideration of further remedies later in the proceedings, if warranted.

Under § 35.26(g)(4) of the regulations, after the requirements of paragraph (g)(2) have been met:

[T]he Commission, depending on the type of showing made including the likelihood, immediacy, and severity of any anticompetitive harm, may:

(i) Suspend the entire rate increase or all or a portion of the non-pollution control/fuel conversion CWIP component for up to five months;

(ii) Allow all or a portion of the non-pollution control/fuel conversion CWIP only prospectively from the issuance of the Commission's final order on rehearing on the matter; or

(iii) Take such other action as is proper under the circumstances.

Mid-Tex had alleged that the imminent, irreparable harm standard for obtaining preliminary relief was unduly stringent. The court did not decide that the standard was impermissible. However, the court was not persuaded by the rule's first rationale that if the Commission suspended an entire rate increase for up to five months, this would constitute a permanent loss of revenues to the utility. The court noted the Commission's authority under § 35.26(g)(4)(i) of its regulations to suspend *less* than the entire rate increase. If the Commission were to suspend only the CWIP component of the rate increase, stated the court, such suspension "would only defer the utility's collection of the revenue, for costs denied as CWIP could be recovered later under AFUDC."[11] Consequently, the court rejected the rule's first rationale because of the Commission's ability to suspend only the CWIP portion of a rate increase, and thereby subject the utility to no permanent loss of revenue.

The court also was not persuaded by the Commission's rationale that the imminent, irreparable harm standard is appropriate because this is the standard for preliminary relief in all of its suspension decisions. The court determined that while the affected wholesale customer may be permanently harmed by a CWIP-induced price squeeze if it cannot obtain preliminary relief, the record indicated that the only harm suppliers would suffer from a suspension of the CWIP portion of the rate increase is a delay in recouping financing charges. The court concluded that the balance of harm to the customer and harm to the supplier seems to favor a less stringent standard than "the traditional stringent standard" that the Commission normally applies in suspension decisions. The court's holding did not preclude the Commission from adopting the imminent, irreparable harm standard provided that it gives a fuller explanation which balances the respective harm suffered by the supplier and the wholesale customer.[12]

III. Discussion

In response to the court's remand,[13] this order modifies § 35.26(g)(2) by revising the standard for obtaining preliminary relief from alleged non-pollution control/fuel conversion CWIP-related price squeeze. The court in Mid-Tex III held that, absent further explanation by the Commission, the imminent, irreparable harm standard for preliminary relief was too stringent. Accordingly, we are amending § 35.26(g)(2) by eliminating the requirement that an intervenor alleging non-pollution control/fuel conversion CWIP-related price squeeze make a concrete, substantial showing of imminent, irreparable harm in order to obtain preliminary relief. In place of the imminent, irreparable harm standard, this order adopts a new standard.

Under the revised § 35.26(g)(2), an intervenor seeking preliminary relief from an alleged non-pollution control/fuel conversion CWIP-related price squeeze must show that it is likely to incur some type of specific harm

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[6] Order No. 448, FERC Stats. & Regs., Regs. Preambles ¶ 30,689 (Feb. 28, 1986), 50 FR 7774 (Mar. 6, 1986).

[7] Mid-Tex Electric Cooperative, Inc. v. FERC, 822 F.2d 1123 (D.C. Cir. 1987) (*Mid-Tex II*).

[8] "Price squeeze" occurs when a utility's wholesale rate (in relation to costs) is higher than its retail rates (in relation to costs), creating the potential for an anticompetitive effect because the wholesale customer is inhibited in its ability to compete at the retail level against the wholesale supplier. *See* FERC Stats. & Regs., Regs. Preambles ¶ 30,751 at 30,726 note 4, 52 FR 23948. "Double whammy" is essentially a situation in which a wholesale customer embarks upon its own or participates in a construction program to supply itself with all or a portion of its future power needs, thereby reducing its future dependence on the CWIP of the rate applicant, but is simultaneously forced to pay to the CWIP rate applicant the CWIP portion of the wholesale rates that reflects existing levels of service or a different anticipated service level. It is argued that this is anticompetitive because it would cause the wholesale customer to essentially subsidize other wholesale customers who would shoulder less of the CWIP burden as a result, thereby putting the first wholesale customer at competitive disadvantages vis-a-vis the utility and the other wholesale customers. *See* FERC Stats. & Regs., Regs. Preambles ¶ 30,751 at 30,726 note 5, 52 FR 23948.

[9] 864 F.2d at 164.

[10] 864 F.2d at 163–65.

[11] 864 F.2d at 164.

[12] *Id.*

[13] The Commission has received comments with respect to the appropriate preliminary relief standard through comments in response to Order No. 448, the requests for rehearing of Order No. 474, and the appeal of Order No. 474. In view of those comments and the court's opinion in Mid-Tex III, the Commission believes that further comment would not enhance the record.

associated with price squeeze if the requested non-pollution control/fuel conversion CWIP is allowed. The intervenor must show that the suspension and refund constraints to which the entire rate change would otherwise be subjected would not provide adequate relief with respect to the CWIP portion of the rate. Upon such a showing by the intervenor, the Commission will balance the following public interest considerations: (1) The harm to the intervenor if it is not granted preliminary relief from the requested CWIP; (2) the harm to the public utility if, during the interim period of preliminary relief, the public utility is required to recover its financing charges later through AFUDC rather than immediately through CWIP; and (3) the interests, identified in Order No. 298 (and affirmed by the court in Mid-Tex I), of mitigating bias against investment in new plants, ensuring accurate price signals, and fostering rate stability. If the balance of interests favors the intervenor, the Commission will grant the intervenor preliminary relief. The appropriate preliminary relief would be determined in accordance with § 35.26(g)(4) of the regulations.

An intervenor must make this showing at the time it files its motion to intervene in order for the Commission to consider preliminary relief at the suspension stage of a rate proceeding. This is necessary because of the time constraints placed on the Commission by the 60-day statutory time limit for Commission action on rate filings.[14] Regardless of the Commission's disposition at the suspension stage, however, the intervenor may request interim relief any time later in the proceeding.

The showing of harm made by the intervenor will affect the relief deemed appropriate by the Commission. In other words, the more the balance of hardships tilts toward the intervenor, the greater the preliminary relief the Commission will consider granting the intervenor. As part of this balancing process, the Commission must also determine that the relief sought would relieve the alleged harm before it grants such relief. Under the new § 35.26(g)(2)(i), an intervenor must show how the harm will be mitigated or eliminated by the type of relief requested. Under this standard, an intervenor would have to make a showing of greater harm in order for the Commission to allow prospective-only collection of non-pollution control/fuel conversion CWIP pursuant to § 35.26(g)(4)(ii) than the intervenor would have to make in order for the Commission to merely suspend all or part of the non-pollution control/fuel conversion CWIP portion of the rate filing.[15]

One type of harm for which preliminary relief might be appropriate would be an instance in which the intervenor alleges that it will be harmed if it passes the CWIP costs through to its own customers. For example, the intervenor could allege that such a pass-through of costs would lead to the loss of customers or inhibit its ability to attract new customers. We would expect the intervenor to show how the relief requested would mitigate the loss of customers or inability to attract new ones. Another type of harm might be a situation in which the wholesale customer absorbs some or all of the CWIP costs rather than passing those costs through to its own customers. For example, the customer might allege that such a circumstance would have deleterious effects on the viability of its business, *i.e.*, it would have to operate at a loss or there would be more than a remote possibility of adverse effects on service reliability. The examples discussed above are not exclusive. Intervenors may make any showing that they deem appropriate. Determinations of whether to grant preliminary relief, and the appropriate relief to be granted, will necessarily be case-specific.

In Mid-Tex I, the court upheld the Commission's policy objectives supporting the CWIP rule.[16] In Mid-Tex III, the court upheld the final rule's approach addressing anticompetitive implications of the CWIP rule,[17] and the court's remand was very narrow in scope, limited to the preliminary relief standard. Therefore, given the fact that the court has upheld, in principle, the Commission's policy of allowing requests for the collection of non-pollution control/fuel conversion CWIP on a generic basis, the revised § 35.26(g)(2) requires more than a bare allegation of harm for preliminary relief to be considered. The Commission believes that to allow preliminary relief as a routine matter upon a mere allegation of harm would serve to undermine the CWIP rule's purpose of generally allowing such CWIP to be collected, subject to refund and other conditions, in order to mitigate bias against investment in new plants. Finally, even if the intervenor is denied preliminary relief at the suspension stage of the proceeding, it may still seek interim relief at any time later in the proceeding.

IV. Effective Date

The change to the Commission's regulations adopted in this order is effective September 11, 1989.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 35, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

By the Commission. Commissioner Stalon concurred with a separate statement to be issued later.

Linwood A Watson, Jr.

Acting Secretary.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

2. In § 35.26, paragraph (g)(2) is revised to read as follows:

§ 35.26 Construction work in progress.

* * * * *

(g) *Anticompetitive procedures.* * * *

(2) *Preliminary relief.* (i) If an intervenor in its initial pleading alleges that a price squeeze will occur as a direct result of the public utility's request for CWIP pursuant to § 35.26(c)(3), makes a showing that it is likely to incur harm if such CWIP is allowed subject to refund, and makes a showing of how the harm to the intervenor would be mitigated or eliminated by the types of preliminary relief requested, the Commission will consider preliminary relief at the suspension stage of the case pursuant to paragraph (g)(4) of this section. In determining whether to grant preliminary relief, the Commission will balance the following public interest considerations:

[14] Under section 205 of the Federal Power Act, rate filings become effective 60 days after filing, absent Commission action within the 60-day period to suspend or reject the rates.

[15] As another example, if an intervenor makes a showing supporting a one-day suspension of the entire rate change filing, it must make some additional showing of harm in order to merit consideration of a longer suspenion of the non-pollution control/fuel conversion CWIP portion of the rate filing.

[16] Mid-Tex I, 773 F.2d at 344–45, 362.

[17] Mid-Tex III, 864 F.2d at 164.

(A) The harm to the intervenor if it is not granted preliminary relief from the requested CWIP;

(B) The harm to the public utility if, during the interim period of preliminary relief, the public utility is required to recover its financing charges later through AFUDC rather than immediately through CWIP; and

(C) Mitigating bias against investment in new plants, ensuring accurate price signals, and fostering rate stability.

(ii) Whether or not preliminary relief is granted at the suspension stage will not preclude consideration of further interim or final remedies later in the preceedings, if warranted.

* * * * *

[FR Doc. 89-18648 Filed 8-9-89; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Parts 270 and 271

[Docket No. RM89-6-000; Order No. 515]

Establishment of Deadlines for First Sellers to Make and Report Refunds

Issued August 3, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations for carrying out wellhead pricing refund requirements under the Natural Gas Policy Act of 1978 (NGPA). This final rule revises §§ 270.101 and 271.805 of the Commission's regulations to establish specific time limits by which first sellers must make refunds of overcollections or unauthorized collections and file refund reports with the Commission.

EFFECTIVE DATE: This final rule is effective September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising its regulations for carrying out wellhead pricing refund requirements under the Natural Gas Policy Act of 1978 (NGPA).[1] The Commission's regulations currently require first sellers of natural gas to make certain refunds "promptly."[2] This final rule revises §§ 270.101 and 271.805 of the Commission's regulations to establish specific time limits by which first sellers must make refunds of overcollections or unauthorized collections and file refund reports with the Commission.

II. Public Reporting Burden

The Commission estimates the public reporting burden for the collection of information in this final rule to average one hour per response.[3] This estimate includes the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Interested persons may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, (202) 357-9205); and to the Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

III. Background

On February 23, 1989, the Commission issued a notice of proposed rulemaking (NOPR)[4] proposing to revise its regulations for carrying out wellhead pricing refund requirements under the NGPA. The NOPR was issued in response to an audit of the Commission's wellhead pricing refund program conducted at the Commission's request by the Office of Inspector General, United States Department of Energy.[5] The audit report concluded that, overall, first sellers do not refund overcharges or file refund reports in a timely manner. The audit report attributed these delays primarily to the lack of specific time limits for first sellers to make refunds and reports for all types of refunds other than for interim collections under § 273.302 of the Commission's regulations,[6] and the absence of penalty actions for late refunds or late reports. The NOPR proposed specific time limits to make and report refunds.

Specifically, the NOPR proposed to require first sellers to pay refunds under § 270.101 within 60 days after being notified that a refund is due or becoming aware that a refund is due, unless the refunds were recovered by purchasers through a billing adjustment. A new provision also would be added in § 270.101(e) to allow recoupment of a refund by purchasers through such a billing adjustment. The NOPR also proposed to require first sellers to file refund reports withn 90 days after being notified of a refund obligation or becoming aware that a refund is due, unless the refund was recovered through a billing adjustment.

Additionally, the NPR proposed to revise the regulations governing stripper wells to specifically require refunds and reports after disqualification of a stripper well.[7] Under the proposal, a provision would be added to § 271.805(f) of the Commission's regulations to require a well operator to comply with the new refund and report provisions, added in § 270.101(e), when a petition for a jurisdictional agency stripper well determination under § 271.806 or a motion contesting disqualification of a stripper well is denied or withdrawn. In

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[1] 15 U.S.C. 3301-3432 (1982).

[2] *See* 18 CFR 270.101(e) (1988).

[3] Many responses are a statement that no refunds are due.

[4] 54 FR 8557; Mar. 1, 1989.

[5] U.S. Department of Energy, Office of Inspector General, The Federal Energy Regulatory Commission's Wellhead Pricing Refund Program, No. 0259 (Sept. 29, 1988).

[6] Section 273.302, which applies to the obligation to refund interim collections, specifies the timing for making and reporting refunds; § 270.101, which applies to all other refund obligations, does not.

[7] Under § 271.805(f), an operator who files either a petition under § 271.806 for jurisdictional agency stripper well determination, or a motion contesting the disqualification of a stripper well, may collect, subject to refund, the stripper well maximum lawful price.

the case of refunds due to disqualification of a stripper well, new provisions in § 271.805(g)(2) also would require that a first seller refund all amounts collected in excess of the maximum lawful price, with interest, within 180 days after the last day of the disqualifying 90-day or 12-month period,[8] unless the first seller has filed a petition for a jurisdictional agency stripper well determination under § 271.806 within 150 days after the last day of the disqualifying period, or unless the refund has been recovered through a billing adjustment in accordance with § 270.101(e). Compliance with the interim collection refund requirements under § 273.302 would not eliminate this refund obligation.

As proposed, § 271.805(g)(2) also would require a first seller to file either a refund report or a statement that no refunds are due, with each to be accompanied by a purchaser concurrence, within 210 days after the last day of the disqualifying 90-day or 12-month period.[9] The first seller would not be required to make a refund report, however, if a refund was recovered by an interstate pipeline purchaser through a billing adjustment.

Nine comments were filed in response to the NOPR.[10] After consideration of the comments, the Commission is adopting the NOPR's proposal with changes as described below.

IV. Discussion

A. Refund Period

1. Section 270.101(e)

The Commission proposed revising the refund regulations in § 270.101(e) to require a first seller to pay refunds within 60 days after being notified that a refund is due or becoming aware that a refund is due, unless the refund is recovered through a billing adjustment. Commenters claim that this 60-day time period is too short. Exxon argues that the Commission should adopt a 120-day time period, while Sellers argue that the period for making refunds or billing adjustments should be 180 days. They and ARCO maintain that a longer period is necessary to retrieve, assemble, and evaluate the records essential to ensuring that the refunds are based on accurate documentation rather than mere estimates.

Sellers also request that the Commission establish procedures for extending the time period whenever a first seller cannot in good faith determine that refunds are due or whenever a first seller cannot make the refunds within the required time period. United argues that the Commission should provide guidelines and procedures to obtain a waiver of the proposed refund time limitations and late refund penalties when the first seller does not have adequate resources or liquidity to make a lump sum payment. Finally, United requests that the Commission provide a means for purchasers to notify the Commission that first sellers have not made timely refunds under § 270.101(e).

The Commission agrees that additional time should be allowed for first sellers to make refunds. The purpose of this rulemaking proceeding is to establish specific time limits on which both the industry and the Commission can rely to accomplish prompt refunds and reports of refunds. However, the Commission also recognizes that first sellers may experience difficulties in verifying and calculating refunds within the proposed 60-day time period. Accordingly, the Commission is revising proposed § 270.101(e)(1) to provide that a first seller must make refunds within 120 days after notice of a refund obligation.[11] This 120-day time period for the first sellers' refund obligation should provide first sellers with sufficient time to calculate and make accurate refunds without the risk of penalty for untimely refunds.

The Commission will not adopt either Seller's proposal to establish procedures for extending the time periods in § 270.101(e)(1) or United's proposal to establish procedures for purchasers to notify the Commission when the first sellers have not made timely refunds because our present regulations already address these concerns. First sellers can file for an adjustment when longer periods of time are needed to make the refunds. On the other hand, purchasers can file a complaint with the Commission when first sellers have not made timely refunds.

2. Section 271.805

The NOPR proposed adding a new § 271.805(g) that would require first sellers to make refunds within 180 days after the last day of a 90-day or 12-month stripper well disqualifying period, and to file refund reports within 210 days after that last day. El Paso requests that these time periods run instead from the time when a first seller becomes aware that a well disqualifies. It claims that it at times experiences data adjustments to production history (metered volumes, number of days of production, and shut in days) to wells tied to its system, and that these data adjustments cause time lags in identification and notification of stripper well disqualification. When these time lags occur, it argues, it could have difficulty, despite its best efforts, meeting the proposed time requirements.

The Commission does not see how additional time for making and reporting refunds from stripper wells is warranted. Under the regulations adopted here, a first seller will have six months from the end of the disqualifying period before refunds will be due.[12] The Commission believes this is an adequate period for data adjustments and adequate time for first seller to verify these refunds.

B. Notification

Several commenters were concerned with the proposed language of § 270.101(e)(1) that would require a first seller to make refunds "after the seller is notified that refund is due or becomes aware that a refund is due". Columbia notes that it is unclear how a purchaser will know when a first seller becomes aware that a refund is due, thus making it unclear when the purchaser must make the refund recovery through a billing adjustment if the first seller fails to make the refund. ARCO suggests that the time period should run from the time the first seller's refund liability is verified, instead of from the time when the first seller is notified that a refund is due or becomes aware that a refund is due. Columbia also requests clarification that purchasers need not determine when the first seller becomes aware that a refund is due and argues that this can be accomplished by (1)

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[8] *See* 18 CFR 271.805(a) and (b) (1988).

[9] When no petition is filed under § 271.806 within 150 days from the last day of the disqualifying period, the first seller must make refunds within 30 days from that date and file a refund report within 60 days of that date.

[10] Individually, ARCO Oil and Gas Company (ARCO); Arkansas Public Service Commission (Arkansas); Columbia Gas Transmission Corporation (Columbia); El Paso Natural Gas Company (El Paso); Exxon Corporation (Exxon); Tennessee Gas Pipeline Company (Tennessee Gas); and United Gas Pipe Line Company (United). Jointly, ANR Pipeline Company and Colorado Interstate Gas Company (ANR & CIG) and 13 sellers of natural gas (Sellers). Sellers include Texaco Inc.; Amoco Production Company; BP Exploration Inc.; Chevron U.S.A. Inc.; Conoco Inc.; Hunt Oil Company; Marathon Oil Co.; Maxus Energy Corporation; Mitchell Energy Corporation; Mobil Natural Gas Inc.; Phillips Petroleum Company; Phillips 66 Natural Gas Company and Shell Oil Company.

[11] There is no change in the NOPR's proposal that the first sellers' refund reports must be filed 30 days after the date that the refund payment is due.

[12] *See* 18 CFR 271.805(g) under which first sellers will have 180 days after the last day of a disqualifying 90-day or 12-month period to make refunds. These six months consist of 90 days to report the disqualification, 60 days to decide whether to file a petition under § 271.806, and an additional 30 days to make the refund.

requiring the first seller to notify the purchaser of a disqualified well, and (2) requiring the purchaser to obtain a refund through a billing adjustment only after the purchaser becomes aware that a refund is due.

Upon consideration of these comments, the Commission is revising the language in § 270.101(e)(1) to specify that the first seller must make refunds after the first seller is notified by Commission staff or the purchaser that refunds are due. The Commission notes that first sellers and purchasers are required to monitor stripper well production and report disqualifications to each other. In addition, a copy of any staff letter notifying a first seller of a refund obligation will be sent to the purchaser. Thus, the Commission believes the purchaser will know when billing adjustments should be used.

C. Billing Adjustments

The Commission proposed in the NOPR that when a first seller fails to make a refund, purchasers may utilize a billing adjustment to recover refunds. The proposed regulations provide that the first seller and purchaser could agree to completion of a billing adjustment within a reasonable period not to exceed 120 days. In the alternative, it is proposed that a purchaser be allowed to make a billing adjustment unilaterally, without the agreement of the first seller. Before the purchaser makes a unilateral billing adjustment, however, the proposed regulations would require the purchaser to provide the first seller written notice of the refund amount and the time period during which the billing adjustment would be completed.

Columbia argues that the Commission should not limit the time period for recovery of an agreed-to billing adjustment to 120 days but instead allow for a certain time period for the first seller and purchaser to negotiate a refund, not to exceed one year. United requests the Commission to establish procedures to obtain a waiver of the 120-day time limit for billing adjustments to avoid undue harm to the first seller. Tennessee Gas recommends that § 270.101(e)(2) be clarified to establish that the 120-day time period during which all agreed-to billing adjustments are to be concluded is to be calculated from the date the first seller is notified of the refund obligation or becomes aware that a refund obligation may be due. In response to these concerns, the Commission is revising the regulations to substitute one year for the 120-day time period for an agreed-to billing adjustment, and to specify a starting date for the one-year term. The revised regulations provide instead that the purchaser can make a billing adjustment, either with or without previous agreement by the seller, within a reasonable period of time not to exceed one year from the date the first seller is notified of a refund obligation. As we noted earlier, first sellers may seek an adjustment based on the facts of a particular situation if more time is needed.

Commenters also raise a number of concerns about the unilateral billing adjustment procedures proposed in the NOPR. Exxon argues that a unilateral billing adjustment by the purchaser should not be permitted until 30 days after the close of the first sellers' refund period. Sellers and ARCO argue that purchasers should not have the right to recover the refund through a unilateral billing adjustment without the first seller's concurrence as to amount and time allowed for recovery. Sellers also argue that the Commission should require the purchaser to pay interest on refund amounts wrongly recouped by the purchaser through a billing adjustment. In the alternative, Sellers seek procedures that may be used to prevent a purchaser from unilaterally making a billing adjustment when the first seller has a good faith belief that no refund is due or that the refund amount is in error.

ARCO argues that the purchaser must provide, in addition to notice to the first seller that the purchaser is invoking the unilateral billing adjustment, sufficient documentation to support the basis on which the purchaser proposes to recoup the funds through the billing adjustment. On the other hand, El Paso requests that the Commission delete the provision in § 270.101(e)(3) requiring the purchaser to notify the first seller of the amount of the refund to be recovered and the time period during which the billing adjustment will be completed. El Paso argues that this requirement would be unduly burdensome, because of the large number of stripper wells in which it is first purchaser, and duplicative, because the first seller already is aware of a refund being due. It requests that the Commission provide instead for unilateral billing adjustments without prior notification from the purchaser.

These arguments regarding unilateral billing adjustments were initially raised and addressed in Order No. 423 when the Commission first established procedures permitting purchasers to use billing adjustments to recover interim collection refunds under § 273.302 of the Commission's regulations. In addition to specifying time periods for refund collection, the final rule adopted here allows purchasers to use virtually the same billing adjustment procedures established in Order No. 423 for all refund obligations other than interim collection refund obligations. The Commission continues to believe that additional protection for first sellers against incorrect billing adjustments is generally unnecessary. The purchasers' notice requirement in the billing adjustment procedures was established in Order No. 423 to guarantee that the rights of producers are protected.[13] The Commission has not seen any evidence that the billing adjustment procedures in the interim collection refund regulations are creating any hardships for sellers or purchasers.[14] The Commission, therefore, concludes that it is unnecessary to modify the unilateral billing adjustment procedures as they apply to all refund obligations in this final rule.

Sellers contend further that a billing adjustment cannot be used if the current purchaser of gas from a well is not the purchaser to whom the refunds are owed. The Commission notes, however, that Order No. 423 stated that a billing adjustment can be made on any other well in which the first seller has an interest that the purchaser is taking gas from. This policy should apply also to all refund obligations covered by this final rule.

Finally, United is concerned about being required to refund to its customers the amounts not yet collected from first sellers. The Commission clarifies that a purchaser is not obligated to make refunds to its customers until it has the refunds from the first seller.

D. First Seller's Refund Report

In both § 270.101(e)(4) and § 271.805(g)(2) of the proposed regulations, the Commission would require the first seller to file a refund report, accompanied by a purchaser's concurrence. Section 271.850(g)(2) would require in the alternative a statement, also accompanied by a purchaser concurrence, that no refunds are due. First sellers would not need to file these refund reports if an interstate pipeline purchaser recovers the refund through a billing adjustment.

ARCO argues that the Commission should sever the purchaser's concurrence from the first seller's refund report and require the purchaser to submit the concurrence independently.

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[13] As noted in Order No. 423, first sellers may avoid billing adjustments by making lump-sum payments within the specified period of time.

[14] Accordingly, the Commission believes it is not necessary to amend § 273.302(e)(1)(iii) as proposed by Exxon.

Sellers argue that the requirement to file a statement that no refunds are due should be eliminated from § 271.805(g)(2). In the alternative, Sellers argue that the Commission at least should eliminate the purchaser's concurrence in § 271.805(g)(2). Sellers also request that the Commission require the purchaser to provide the seller with a statement of concurrence or nonconcurrence within a specific period of time after receiving a refund. Finally, Sellers request that the Commission permit first sellers to file a statement that no concurrence by the purchaser was received whenever the purchaser fails to provide the seller with a concurrence within the specific time limits that Sellers are seeking to have imposed for that purpose.

In response to these concerns, the Commission clarifies that if the purchaser has not submitted a concurrence before the time period to submit the refund report passes, the first seller may file the refund report without the purchaser's concurrence. In this event, the purchaser must then file the concurrence separately with the Commission within 30 days of the first seller's refund report.

In order to monitor the payment of all required refunds, a refund report or a statement that no refunds are due, together with a purchaser's concurrence, is necessary. However, in response to comments by Sellers that the requirement in § 271.805(g)(2) for filing a purchaser's concurrence is burdensome because many sales are made in the spot market and the purchaser may not be aware that some of the gas is subject to a maximum lawful price, the Commission is adding to § 271.805(g)(2) a provision to permit the first seller to submit in lieu of a "no refund due" statement and a purchaser's concurrence, an affidavit stating that it did not collect more than the otherwise applicable MLP.

E. Miscellaneous

1. Purchasers Need Information From First Sellers on a Well-by-Well Basis

Tennessee Gas argues that the Commission's objective of prompt enforcement of all refund obligations (whether under the interim collection refund regulation in § 273.302 or the general refund regulations in § 270.101) cannot be achieved until the Commission (1) recognizes that the purchaser must have well-by-well information available to it from the first sellers in order to verify and enforce refund obligations and recover refunds through billing adjustments, and (2) imposes on all first sellers a continuing obligation to provide purchasers with detailed well information for each well drilled and completed or redrilled in the applicable contract area.

In general, the NGPA established maximum lawful prices for natural gas on a well-by-well basis. The Commission believes that Tennessee Gas, as a prudent purchaser, should require producers to submit such data as part of its own billing procedures to ensure that its payments comply with the NGPA price ceilings. The Commission, therefore, sees no need for a specific requirement for individual well data in the refund regulations established in this final rule.

2. Responsibility for Refunding Excess Severance Taxes

ANR & CIG argue that the NOPR does not address the need to refund excess state production and severance taxes remitted to the appropriate tax authority by a pipeline purchaser on behalf of a first seller. They note that neither §§ 270.101 or 271.805, as they exist or are proposed to be revised, squarely addresses the issue of whether the first seller or the purchaser is responsible for obtaining a refund of excess state taxes which have been remitted by the purchaser. ANR & CIG, therefore, request the Commission to clarify that refunds will include any excess state severance or production taxes remitted by purchasers on behalf of first sellers.

NGPA section 110 and § 271.1102(a) of the Commission's regulations provide that the maximum lawful price may be exceeded only to the extent necessary to recover state severance taxes borne by the first seller. Therefore, the Commission clarifies that if the purchaser paid excess severance or production taxes on behalf of a first seller, the first seller's refund obligation includes amounts attributable to the excess severance or production taxes.

3. Civil Penalty Remedies

In the NOPR, the Commission noted tha most interstate pipelines have not taken advantage of the billing adjustment provisions in Order No. 423 [15] as a remedy to first sellers' almost chronic delays in making refunds. The Commission advised interstate pipelines that corrective action will be pursued if the billing adjustment provisions continue to be ignored. Additionally, the Commission noted its authority under section 504(b)(6) of the NGPA to assess civil penalties for knowing violations of its regulations. The Commission noted that if the problem of delay in refunding persists, it will consider the civil penalty remedy on a case-by-case basis.

El Paso seeks confirmation from the Commission that it would be inequitable to assess a civil penalty against a purchaser when the Commission's regulations assign first sellers the duty of calculating and returning amounts overcollected in a first sale. The Commission does not agree with El Paso's position.

The Commission emphasized in the NOPR that even though a first seller continues to carry the primary responsibility for its refund obligation, purchasers also have an obligation, as part of prudent management, to ensure that they recover and pass through refunds owed to their customers. The Commission stressed that most interstate pipelines have contributed to the problem of delay by not using billing adjustments as a remedy to first sellers' almost chronic delays in making interim collection refunds. As a consequence, the Commission advised interstate pipelines that it intends to pursue corrective action if the billing adjustment provisions continue to be ignored. The Commission, therefore, has made clear in both the NOPR and this final rule that both first sellers and purchasers have an affirmative obligation to ensure prompt refunds.

4. Statute of Limitations

United argues that the imposition of time limits for refunds and the recovery of refunds through billing adjustments has the effect of imposing a statute of limitations on the pipeline's ability to collect these refunds. The Commission points out that the 120-day time period in § 270.101(e) is only a deadline for the first seller to make a lump sum payment of the refund; it does not relieve the first seller of its refund obligation if the refund is not made within the 120-day period. Neither is the purchaser relieved of the obligation to pursue the refund in any manner.

5. Effective Date of Refund Regulations

Exxon argues that no refunds should be due under the final rule until 120 days after its effective date or that the effective date should be 120 days after the final rule is issued. According to Exxon, unless some type of grandfathering is provided for, refunds could literally be due the day the final rule is issued. The Commission believes that 120 days is too long to wait before the final rule in this proceeding becomes effective, and that an effective date of 30 days after publication in the **Federal**

[15] 50 FR 23,609 (June 5, 1989); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,645 (May 30, 1985).

Register is adequate. The deadlines imposed herein are reasonable, and purchasers and sellers have had extensive notice (through the NOPR) of the Commission's intent to adopt them.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.[16] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[17] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.[18] This rule is procedural in nature and merely sets time frames for existing refunds and reporting requirements. Consequently, since this rule falls within the categorical exemptions provided in the Commission's regulations, neither an environmental impact statement nor an environmental assessment is required.[19]

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[20] The Commission is not required to make an RFA analysis if it certifies that a proposed rule will not have a "significant economic impact on a substantial number of small entities."

The final rule revises § 270.101(e) by setting a time limit of 120 days for the seller to refund excess charges and a time limit of 30 days after the refund is due to report refunds to the Commission. Currently, overcharges must be refunded and reported promptly. Thus, this final rule simply provides time frames for the refund and reporting requirements which are already in place.

The final rule also revises § 271.805(g) to specify that refunds due to the disqualification of stripper wells are due within 180 days after the last day of the disqualifying 90-day or 12-month period. A refund report or statement of no refund due for stripper wells is due within 210 days after the last day of the disqualifying 90-day or 12-month period. The reports required by § 270.101(e)(4) and § 271.805(g)(2) will not include any information regarding a refund recovered by an interstate pipeline purchaser through a billing adjustment.

In view of these considerations, the Commission has determined, pursuant to section 605(a) of the RFA, that the filing dates for refunds and refund reports will not have "a significant economic impact on a substantial number of small entities."

VIII. Paperwork Reduction Act Statement

The Paperwork Reduction Act [21] and the Office of Management and Budget's (OMB) regulations [22] require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this final rule are being submitted to OMB for its approval.

The Commission promulgated the information collection provisions of this rule in order to ensure that refunds owed by producers and other first sellers of natural gas are made as quickly as possible and ultimately passed through to residential customers and other end users. These proposals do not change the current requirement to report refunds to the Commission. The provisions clarify the current obligation under §§ 270.101(e) and 271.805 to report refunds, and establish deadlines for first sellers to comply with the existing reporting requirements.

Pursuant to OMB's regulations,[23] the Commission is providing the following information:

(1) The title of the collection of information in this final rule is "Establishment of Deadlines for First Sellers to Make and Report Refunds."

(2) The Commission needs to collect this information to ensure that first sellers are making required refunds to their customers for overcollections or unauthorized collections of prices for first sales of natural gas, pursuant to the NGPA and the Commission's implementing regulations.

(3) Respondents that will provide the needed information will be first sellers of natural gas.

(4) The Commission estimates that: (a) The public reporting burden averages one hour per response; (b) the frequency of responses is based upon the frequency of occurrence of the refunds per year and cannot be projected; and (c) the total annual number of likely responses is 4,000, although some respondents may submit more than one response.

Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Michael Miller at (202) 357-9205). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VIII. Effective Date Statement

This final rule is effective September 11, 1989. However, if OMB has not approved the information collection provisions in this rule by that date, the Commission will issue a notice temporarily suspending the effective date until OMB has approved the reporting requirements.

List of Subjects

18 CFR Part 270

Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 271

Continental Shelf, Natural gas, Price controls, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission revises Parts 270 and 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

PART 270—RULES GENERALLY APPLICABLE TO REGULATED SALES OF NATURAL GAS

1. The authority citation for Part 270 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

2. In § 270.101, paragraph (e) is revised to read as follows:

§ 270.101 Application of ceiling prices to first-sales of natural gas.

* * * * *

(3) *General refund obligation and filing requirements for first sellers.* (1) Any price collected with respect to a first sale of natural gas to which

[16] Regulations Implementing National Environmental Policy Act of 1969, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., ¶ 30,783 (Dec. 10, 1987).

[17] 18 CFR 380.4 (1988).

[18] 18 CFR 380.4(a)(2)(ii) (1988).

[19] *See* CFR 380.4(a)(1) (1988).

[20] 5 U.S.C. 601–612 (1982).

[21] 44 U.S.C. 3501–3520 (1982).

[22] 5 CFR 1320–12 (1988).

[23] 5 CFR 1320.15(a) (1988).

Subchapter H applies is collected subject to a general obligation to refund any portion of the price, together with interest determined in accordance with §§ 154.102 (c) and (d) of this chapter, which is in excess of the maximum lawful price or collection of which is not authorized by Subchapter H. The refund, including interest, must be paid within 120 days after the seller is notified by Commission staff or a purchaser that a refund is due unless the refund is recovered through a billing adjustment as provided in paragraphs (e)(2) or (e)(3) of this section. Compliance with the specific refund requirements of § 273.302 of this chapter will not terminate the general refund obligation under Subchapter H.

(2) A purchaser may not use a billing adjustment to recover a refund required by paragraph (e)(1) of this section before the expiration of the 120-day period for the seller to make the refund. If the seller fails to make a refund within the 120-day period, the purchaser may use a billing adjustment to recover the refund without agreement by the seller. Before making a billing adjustment, the purchaser must provide the seller written notice of the amount of the refund to be recovered and the time period during which the billing adjustment will be completed. The time period for the billing adjustment can be a reasonable period of time not to exceed one year from the date a first seller is notified of a refund obligation.

(3)(i) Except as provided in paragraph (e)(3)(ii) of this section, within 150 days after the seller is notified by Commission staff or a purchaser that a refund is due, the seller must file an original and two copies of a refund report, accompanied by a purchaser's concurrence, containing the information specified in § 273.302(f) of this chapter. A seller is not required to include in a report filed under this paragraph any information regarding a refund recovered by an interstate pipeline purchaser through a billing adjustment.

(ii) If a purchaser does not provide the seller with its concurrence within the time period specified in paragraph (e)(3)(i) of this section, the seller may file the refund report without the purchaser's concurrence.

* * * * *

PART 271—CEILING PRICES

3. The authority citation for Part 271 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

4. In § 271.805, paragraph (f) is revised, paragraph (g) is redesignated as paragraph (h) and a new paragraph (g) is added.

§ 271.805 Continuing qualification.

* * * * *

(f) *Collection subject to refund.* (1) An operator who files a petition or motion under paragraph (e) may collect, subject to refund, the maximum lawful price provided in § 271.802:

(i) From the last day of the 90-day or the 12-month disqualifying period if the petition or motion is filed within 150 days after the last day of the 90-day or the 12-month disqualifying period, or

(ii) In all other cases, after the date the petition is filed.

(2) When the petition or motion filed under paragraph (e) of this section is denied or withdrawn, the operator or purchaser must comply with the provisions of § 270.101(e) of this chapter.

(g) *Refunds due to disqualification.* (1) Unless the seller files a petition under § 271.806 within 150 days after the last day of the disqualifying 90-day or 12-month period, and unless the refund is recovered through a billing adjustment as provided in §§ 270.101(e) (1) and (2) of this chapter, the seller must refund to the purchaser the amount collected in excess of the maximum lawful price, together with interest determined in accordance with §§ 154.102 (c) and (d) of this chapter, within 180 days after the last day of the disqualifying 90-day or 12-month period. Compliance with the specific refund requirements of § 273.302 of this chapter will not terminate the general refund obligation under Subpart H.

(2)(i) Except as provided in paragraph (g)(2)(ii) of this section, within 210 days after the last day of the disqualifying 90-day or 12-month period, the seller must file either:

(A) An original and two copies of a refund report, accompanied by a purchaser concurrence, containing the information specified in § 273.302(f) of this chapter;

(B) A statement, accompanied by a purchaser concurrence, that no refunds are due; or

(C) An affidavit that the seller did not collect more than the otherwise applicable maximum lawful price.

(ii) If a purchaser does not provide the seller with its concurrence within the time period specified in paragraph (g)(2)(i) of this section, the seller may file the refund reports or statements that no refunds are due without the purchaser's concurrence.

(3) A seller is not required to include in a report filed under this paragraph any information regarding a refund recovered by an interstate pipeline purchaser through a billing adjustment.

* * * * *

[FR Doc. 89–18649 Filed 8–9–89; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

[T.D. 89–74]

Administrative Procedures; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: A document was published in the Federal Register (54 FR 31511) on July 31, 1989, amending Part 177, Customs Regulations, by changing certain existing procedures and creating other new procedures that will enhance and expedite Customs dealings with the importing public. This document corrects an error that appears in that document. The document inadvertently omitted the Treasury Decision (T.D.) number. The final rule is T.D. 89–74.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Commercial Rulings Division. (202) 566–5868.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

Approved: August 4, 1989.

[FR Doc. 89–18646 Filed 8–9–89; 8:45 am]

BILLING CODE 4820–02–M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Parts 301 and 309

[CRT Docket No. 89–3–RM]

Satellite Carrier Compulsory License Rules

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Tribunal is amending its rules to provide for the filing of satellite carrier claims with the Tribunal and to establish the rules of procedure for distributing the satellite carrier copyright royalty fees to the proper copyright owners. These regulations implement the provisions of the Satellite Home Viewer Act of 1988.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, (202–653–5175).

SUPPLEMENTARY INFORMATION: The Satellite Home Viewer Act of 1988, effective January 1, 1989, created a new copyright compulsory license. In general, it provides that a satellite carrier may retransmit broadcast signals to the public for private home viewing so long as the satellite carrier pays a statutorily-set copyright royalty fee. The fees are to be paid by the satellite carrier to the Copyright Office semiannually. 17 U.S.C. 119(b)(1).

To implement the Satellite Home Viewer Act, the Tribunal proposed to amend some of its existing regulations, and to adopt new regulations. 54 FR 21451 (May 18, 1989).

The Tribunal received comments from: the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), the Joint Sports Claimants which include Major League Baseball, the National Basketball Association, the National Hockey League and the National Collegiate Athletic Association (JSC), the Motion Picture Association of America (MPAA) and SESAC, Inc., (SESAC).

All comments favored the adoption of the proposed rules. Certain editorial changes were proposed by MPAA and by BMI which the Tribunal has reviewed and accepts.

List of Subjects

37 CFR Part 301

Administrative practice and procedure, Freedom of information, Sunshine Act.

37 CFR Part 309

Claims, Copyright, Satellites.

For the reasons set forth in the preamble, the Tribunal amends 37 CFR Part 301 as follows:

PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

1. The authority citation for Part 301 continues to read as follows:

Authority: 17 U.S.C. 803(a)

2. In Section 301.1, paragraph (d) is revised, and a new paragraph (e) is added as follows:

§ 301.1 Purpose.

* * * * *

(d) To distribute cable television, jukebox and satellite carrier royalties under 17 U.S.C. 111, 116 and 119, respectively, deposited with the Register of Copyrights.

(e) To monitor and assist the negotiation of an adjustment to the satellite carrier royalty rates, and/or to assist and review the arbitration of an adjustment to the satellite carrier royalty rates (17 U.S.C. 119).

3. Section 301.70 is revised as follows:

§ 301.70 Scope.

This subpart governs only those proceedings dealing with the distribution of compulsory cable television, coin-operated phonorecord player (jukebox) and satellite carrier royalties deposited with the Register of Copyrights, according to the terms of 17 U.S.C. (d)(4), 116(c) and 119(b), respectively. It does not govern unrelated rulemaking proceedings. Those provisions of Subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

4. In § 301.71, a new paragraph (c) is added as follows:

§ 301.71 Commencement proceedings.

* * * * *

(c) *Satellite carriers.* In the case of compulsory royalty fees for the secondary transmissions by satellite carriers of television broadcast stations to the public for private home viewing, any person claiming to be entitled to such fees must file a claim with the Tribunal during the month of July of each year in accordance with Tribunal regulations.

5. In § 301.72, a new paragraph (c) is added as follows:

§ 301.72 Determination of controversy.

* * * * *

(c) *Satellite carriers.* After the first day of August each year, the Tribunal shall determine whether a controversy exists among the claimants of satellite carrier compulsory royalty fees. In order to determine whether a controversy exists, the Tribunal may conduct whatever proceedings it feels necessary, subject to the procedures and regulations of Subpart E. The results of this determination shall be announced in the **Federal Register.** If the Tribunal decides that a controversy exists, the **Federal Register** notice shall also announce the commencement of the royalty distribution proceeding, and shall, to the extent feasible, describe the general structure and schedule of the proceeding.

6. A new Part 309, consisting of §§ 309.1 through 309.6 is added as follows:

PART 309 FILING OF CLAIMS TO SATELLITE CARRIER ROYALTY FEES

Sec.

Authority: 17 U.S.C. 119(b)(4).

§ 309.1 General.

This regulation prescribes procedures pursuant to 17 U.S.C. 119(b)(4), whereby persons claiming to be entitled to compulsory license fees for secondary transmissions by satellite carriers of television broadcast signals to the public for private home viewing shall file claims with the Copyright Royalty Tribunal.

§ 309.2 Time of filing.

Commencing with July, 1990, and during July of each succeeding year, every person claiming to be entitled to compulsory license fees for secondary transmissions by satellite carriers during the previous calendar year of television broadcast signals to the public for private home viewing shall file a claim with the Copyright Royalty Tribunal. No royalty fees shall be distributed to any person during the specified period unless such person has filed a claim to such fees during the following calendar month of July. Claimants may file jointly or as a single claim. A performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership or affiliate agreements, for purposes of this filing and fee distribution.

§ 309.3 Content of claims.

Claims filed for satellite carrier compulsory license fees shall include the following information:

(a) The full legal name of the person or entity claiming compulsory license fees;

(b) The full address, including a specific number and street name or rural route, of the place of business of the person or entity;

(c) A general statement of the nature of the copyrighted works whose secondary transmission by satellite carriers for private home viewing provides the basis of the claim; and

(d) Identification of at least one secondary transmission by a satellite carrier for private home viewing establishing a basis for the claim.

§ 309.4 Compliance with statutory dates.

Claims filed with the Copyright Royalty Tribunal shall be considered timely filed only if:

(a) They are received in the offices of the Copyright Royalty Tribunal during normal business hours during the month of July, or

(b) They are properly addressed to the Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 and they are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

§ 309.5 Separate claims required.

If a person or entity intends to file claims for both cable compulsory license fees and satellite carrier compulsory license fees during the same month of July, that person or entity must file his or her claims separately with the Copyright Royalty Tribunal. Any single claim which purports to file for both cable and satellite carrier compulsory license fees will be rejected.

§ 309.6 Forms.

The Copyright Royalty Tribunal does not provide printed forms for the filing of claims.

Dated: August 7, 1989.

Mario F. Aguero,

Acting Chairman,

[FR Doc. 89-18704 Filed 8-9-89; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6741

[CA-940-09-4214-10; CACA-16444]

Partial Revocation of Departmental Order Dated June 24, 1952; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes Departmental Order dated June 24, 1952, insofar as it affects 22.62 acres of land withdrawn for Powersite Classification No. 425. The land is no longer needed for the purpose for which it was withdrawn. This action will open 22.62 acres to surface entry to permit consummation of a U.S. Forest Service exchange. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, Room E-2845, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Departmental Order dated June 24, 1952, which withdrew public land for Powersite Classification No. 425 is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

Plumas National Forest

T. 27 N., R. 9 E., sec. 34, lot 2 (formerly a portion of the SW¼SE¼).

The area described contains 22.62 acres in Plumas County.

2. At 10 a.m. on September 11, 1989, the land shall be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

Dated: August 2, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89-18691 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-40-M

43 CFR Public Land Order 6742

[AK-932-09-4214-10; F-030972]

Partial Revocation of Air Navigation Site No. 140, Candle, for Selection of Land by the State of Alaska

AGENCY: Bureau of Land Management Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Department Order insofar as it affects 54.3 acres of public land withdrawn for Air Navigation Site No. 140 at Candle, Alaska. The land is no longer needed for the purpose for which it was withdrawn. This action will also open the land for selection by the State of Alaska, if such land is otherwise available. If the land is not selected by the State, this order opens the land to metalliferous mining. The land has been and will remain closed to nonmetalliferous mining and mineral leasing pursuant to Public Land Order No. 5180, as amended.

EFFECTIVE DATE: August 10, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-3342.

By virtue of the authority vested in the Secretary of the Interior, by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. The Departmental Order dated April 17, 1940, as amended, which withdrew public land for Air Navigation Site No. 140 is hereby revoked insofar as it affects the following described land:

Candle, Alaska

Beginning at Corner No. 1, approximate latitude 65°55' N., longitude 161°55' W., from which USLM No. 1237 in the Fairbanks Recording Precinct at Candle, Alaska, bears approximately S. 49° W. 2,465 feet; thence from said beginning corner

S. 12°20' E. 750 feet to Corner No. 2;
S. 37° E. 650 feet to Corner No. 3;
S. 44°30' E. 680 feet to Corner No. 4;
S. 60° E. 1,580 feet to Corner No. 5;

(Corners 1 to 5 are all on the right bank of the Keewalik River);

N. 33°30' E. 550 feet to Corner No. 6;
N. 48°41' W. 3,323.3 feet to Corner No. 7;
S. 58°15' W. 239.9 feet to Corner No. 1, the place of beginning.

The area described contains approximately 54.3 acres.

2. Subject to valid existing rights, the land described above is hereby opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 State. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371, 2437-2438; 43 U.S.C. 1635.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described above, for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

4. At 10 a.m. on November 9, 1989, the land will be opened to location and entry under the United States mining laws for metalliferous minerals subject to valid existing rights, the provisions of existing withdrawals, and the requirement of applicable laws. Appropriation of any of the land described in this order under the general mining laws for metalliferous minerals prior to the date and the time of restoration is unauthorized. Any such attempted appropriations, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the

United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: August 2, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89-18690 Filed 8-9-89; 8:45am]

BILLING CODE 4310-JA-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6842]

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 date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: As shown in fifth column.

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

SUPPLEMENTARY INFORMATION: The 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 NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures

On August 25, 1986, FEMA published a final rule in the Federal Register that revised the NFIP floodplain management critera. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP critera and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations 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.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- 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 provision 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 adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

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 and community name	County	Community number	Effective date
Colorado:			
Cripple Creek, City of	Teller	080174	August 15, 1989.
Frisco, Town of	Summit	080245	Do.
Maryland:			
Unincorporated Areas of	Frederick	240027	Do.
North Dakota:			
Beulah, City of	Mercer	380066	Do.
Unincorporated Areas of	Dunn	380026	Do.
Lindaas, Township of	Traill	380300	Do.
Lisbon, City of	Ransom	380091	Do.
Souris, City of	Bottineau	380010	Do.
Wing, City of	Burleigh	380213	Do.
Ohio:			
Mentor, City of	Lake	390317	Do.

State and community name	County	Community number	Effective date
Middleburg Heights, City of	Cuyahoga	390117	Do.
Middletown, City of	Butler	390040	Do.
Mogadore, Village of	Portage	390528	Do.
Mount Healthy, City of	Hamilton	390229	Do.
Mount Vernon, City of	Knox	390311	Do.
New Holland, Village of	Fayette	390448	Do.
New Miami, Village of	Butler	390043	Do.
Newburgh Heights, Village of	Cuyahoga	390119	Do.
North College Hill, City of	Hamilton	390232	Do.
South Dakota:			
Unincorporated Areas of	Davison	460020	Do.
Revillo, Town of	Grant	460031	Do.
Sisseton, City of	Roberts	460072	Do.
Veblen, Town of	Marshall	460146	Do.
Utah:			
Smithfield, City of	Cache	490029	Do.
Spanish Fork, City of	Utah	490241	Do.
Spring City, City of	Sanpete	490119	Do.
Stockton, Town of	Tooele	490144	Do.
Sunset, City of	Davis	490050	Do.
Wyoming:			
Lovell, Town of	Big Horn	560073	Do.
Newcastle, City of	Weston	560057	Do.
Unincorporated Areas of	Park	560085	Do.
Pine Bluffs, Town of	Laramie	560031	Do.
Pinedale, Town of	Sublette	560049	Do.
Saratoga, Town of	Carbon	560012	Do.

Issued August 4, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-18701 Filed 8-9-89; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6843]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in fifth column.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, phone: (800) 638-7418.

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 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.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

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.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State and community name	County	Community No.	Effective date
North Dakota:			
Dunseith, City of	Rolette	380103	July 4, 1989.[1]
Dwight, Township of	Richland	380657	Do.
Eldorado, Township of	Traill County	380645	Do.
Marmarth, City of	Slope	380115	Do.
Walhalla, City of	Pembina	380254	Do.
Wishek, City of	McIntosh	380053	Do.
Ohio:			
Napoleon, City of	Henry	390266	Do.
Newton Falls, City of	Trumbull	390539	Do.
North Lewisburg, Village of	Champaign	390058	Do.
Colorado:			
Central City, City of	Gilpin	080077	July 17, 1989.[1]
Creede, Town of	Mineral	080118	Do.
Unincorporated Areas	Garfield	080205	Do.
Granada, Town of	Prowers	080144	Do.
Montana:			
Boulder, Town of	Jefferson	300035	Do.
Unincorporated Areas	Broadwater	300145	Do.
Chester, Town of	Liberty	300041	Do.
Columbia Falls, City of	Flathead	300024	Do.
Unincorporated Areas	Custer	300147	Do.
Dodson, Town of	Phillips	300053	Do.
Townsend, City of	Broadwater	300131	Do.
White Sulphur Springs, City of	Meagher	300047	Do.
North Dakota:			
Antelope, Township of	Richland	380663	Do.
Arthur, City of	Cass	380156	Do.
Ohio:			
Berea, City of	Cuyahoga	390097	Do.
Brairwood Beach, Village of	Medina	390379	Do.
Clarington, Village of	Monroe	390405	Do.
Pepper Pike, City of	Cuyahoga	390125	Do.
Powhatan Point, Village of	Belmont	390030	Do.
Yorkville, Village of	Belmont	390033	Do.
South Dakota:			
Brandon, City of	Minnehaha	460296	Do.
Unincorporated Areas	Brookings	460004	Do.
Unincorporated Areas	Codington	460260	Do.
Colome, Town of	Tripp	460084	Do.
Corona, Town of	Roberts	460071	Do.
Utah:			
Unincorporated Areas	Wasatch	490164	Do.
Unincorporated Areas	Washington	490182	Do.
Wellsville, City of	Cache	490031	Do.
Wendover, Town of	Tooele	490222	Do.
Woodruff, Town of	Rich	490101	Do.

[1] Suspension withdrawn.

Issued August 4, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-18702 Filed 8-9-89; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 90883-9183]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Interim final rule.

SUMMARY: The Secretary of Commerce issues an interim final rule amending the rule that requires shrimp fishermen in the Gulf of Mexico (Gulf) and the Atlantic Ocean off the coast of the southeastern United States to use Turtle Excluder Devices (TEDs) to reduce incidental captures of endangered and threatened species of sea turtles during shrimp fishing operations. Until September 7, 1989, shrimp fishermen in offshore waters will be allowed to choose between continuing to use TEDs or restricting trawling times to specified 105 minute periods. This proposed trawl time restriction will also apply to vessels less than 25 feet in length that are fishing in offshore waters. The trawl time restriction includes authorized starting times as well as periods during which no trawling is authorized unless TEDs are used. These uniform trawling times will improve enforcement and consequently save more turtles through improved compliance. NOAA Fisheries believes that 105-minute trawl times provide protection to sea turtles during a brief period while the agency considers alternative measures to improve compliance with the sea turtle conservation program. Comments are invited on this interim final rule, particularly as to whether the 105-minute trawl time restriction should be continued, increased, decreased or abolished after September 7, 1989, in light of conservation needs of sea turtle populations and the economics of the shrimp fishing industry.

DATES: *Effective dates.* This interim final rule is effective 12:01 a.m., Eastern Daylight Time, August 8, 1989 (11:01 p.m. Central Daylight Time, August 7, 1989). This rule expires 12:01 a.m., Eastern Daylight Time, September 8, 1989 (11:01 p.m. Central Daylight Time, September 7, 1989).

Comment Period. Comments will be accepted until August 21, 1989.

ADDRESS: Dr. Nancy Foster, Office of Protected Species, NOAA Fisheries, 1335 East-West Hwy., Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles Karnella, (301) 427–2322, or Charles A. Oravetz, (813) 893–3366.

SUPPLEMENTARY INFORMATION:

a. Background

NOAA Fisheries issued regulations (affecting 50 CFR Parts 217, 222, and 227) to protect endangered and threatened sea turtles on June 29, 1987 (hereafter referred to as the TED regulations, 52 FR 24244) under the Endangered Species Act of 1973 (ESA). These regulations did not become effective in most areas until May 1, 1989, due to a delay imposed by Congress. In the Canaveral Area of Florida, however, regulations have been in effect since October 1, 1987. In the Atlantic offshore waters of north Florida, an emergency rule requiring the use of TEDs became effective March 9, 1989 (see 54 FR 7773 (2/23/89)).

When the congressional delay expired on May 1, 1989, the Secretary implemented a 60-day grace period during which only written warnings were given for violations of the regulations, except for repeat or flagrant violations. The purpose of this leniency was to give shrimp fishermen sufficient time to obtain TEDs and install them in their nets. On June 30, 1989, the 60-day grace period expired.

The Eighth District of the United States Coast Guard suspended enforcement of the TED regulations on July 10, 1989, until the Secretary could resolve problems concerning unusual accumulations of sargassum sea grass in the Gulf of Mexico, which allegedly made trawling with TEDs difficult and inefficient. NOAA Fisheries conducted a survey of the Gulf and concluded that the sea grass problem was fairly minor or, at worst, probably limited to a few isolated areas.

On July 20, 1989, the Secretary advised Congress that he would resume enforcement of the TED regulations. The Secretary also noted that he intended to increase a captive breeding program and to establish an advisory committee composed of representatives of the shrimping industry and the environmental community to explore alternative methods of protecting turtles.

Over the weekend of July 22–23, shrimp fishermen in Galveston, Texas and several other Gulf ports blockaded harbors, disrupted navigation, and engaged in other forms of violence to protest enforcement of the TED regulations. At the request of the Coast Guard, high ranking officials from the Department of Commerce, NOAA, and NOAA Fisheries flew to Galveston on July 24, 1989, to meet with the leaders of the protest. That same day, after meeting with concerned Members of Congress, the Secretary announced a 45-day suspension of enforcement of the TED regulations and stated that an effort would be undertaken to amend the regulations to allow shrimp fishermen to limit their trawling times instead of using TEDs.

b. Recent Litigation

The National Wildlife Federation, South Carolina Wildlife Federation, and Florida Wildlife Federation filed suit against the Secretary on July 25, 1989. The plaintiffs claimed that the Secretary had violated the National Environmental Policy Act (NEPA), the Administrative Procedure Act (APA), the Sea Turtle Conservation provisions of the ESA Amendments of 1988, and Section 7 of the ESA, by failing to enforce the TED regulations. On August 3, 1989, the U.S. District Court for the District of Columbia granted summary judgment for the plaintiffs finding that the Secretary lacked "good cause" to suspend enforcement.

The court indicated that the decision to delay adopting any alternative means of protecting sea turtles during the time the agency was attempting to amend the TED regulations was a primary reason for its ruling against the Secretary. The court's order directs the Secretary to either "reinstitute existing TED regulations, or issue interim turtle conservation measures to become effective immediately." The court stayed the effectiveness of its ruling until August 7, 1989, to allow time for any party to appeal.

The Secretary will not appeal. These interim final rules are responsive to the court's order and take effect immediately after the time set for appeal has expired unless there is a further order from the U.S. District Court for the District of Columbia.

c. Existing Rule

The sea turtle conservation regulations published on June 29, 1987, require that shrimp trawlers over 25 feet in length fishing in "offshore waters" of the southeastern United States use TEDs in their nets while fishing. In the Atlantic Area, the offshore requirements are in place from May 1 to August 31, with the exception of Northern Florida where an emergency regulation requires the use of TEDs from March 9, 1989, to November 6, 1989, in both inshore and offshore areas. The emergency rule was promulgated in response to an unusually high number of sea turtle strandings in the area during the fall and winter. Shrimp fishermen in the Gulf are required to use TEDs while fishing in offshore waters from March 1 to November 30. In southwest Florida, vessels are required to use TEDs all year. Shrimp fishermen in the Canaveral Area are required to use TEDs in their nets in both inshore and offshore areas all year. "Offshore waters" means "marine and tidal waters seaward of the 72 COLREGS demarcation line * * *" (see 50 CFR 217.12).

Under the existing regulations, vessels that are under 25 feet in length that are fishing in offshore waters are required to restrict their tow times to 90 minutes. "Tow time" means "the interval from trawl doors entering the water to trawl doors being removed from the water" (see 50 CFR 217.12).

d. Interim Final Rule

NOAA Fisheries is issuing this interim final rule to provide shrimp fishermen in offshore areas the option of restricting their trawling to specified 105-minute periods or using TEDs in their nets. This new trawl time restriction will provide those shrimp fishermen who have adamantly opposed TEDs, and would undoubtedly present a serious compliance problem, with an alternative that will also allow them to continue fishing without violating the Endangered Species Act.

Questions have been raised as to whether the full effects of turtle conservation measures on the livelihoods of shrimp fishermen have been fully evaluated. The Secretary, therefore, wishes to explore alternative methods of conserving sea turtles that may have less serious economic impacts on the shrimp fishing industry. It is hoped that the 15-day comment period will provide an opportunity for various other options to be proposed and evaluated.

The Secretary acknowledges that there are also differing opinions as to the best means to conserve sea turtles. He wishes to evaluate those opinions as well and make a final judgment on conservation measures based on that evaluation. The existing TED regulations may be reinstated or modified after September 7, 1989, and they also may be further modified after the Secretary receives a report on sea turtle conservation from the National Academy of Sciences.

An approach to sea turtle protection involving limited trawling times is believed to be an effective approach. Because there is so much opposition to

the TED regulations, compliance has been very low in some areas. It is, therefore, likely that many turtles are dying in the nets of those trawlers who are refusing to use TEDs. Because a 105-minute trawling period is more palatable to the shrimp fishermen, compliance, and hence sea turtle conservation, is likely to be improved under the trawling period scheme.

The uniform trawling time approach is easier to enforce than the 90-minute tow time restriction in the existing regulations because a violation can be documented based on a single observation that the vessel had trawled during one or more of the 30-minute prohibited period, followed by a boarding to inspect for TED usage and all other applicable law. Only those vessels fishing during a prohibited 30-minute period would have to be boarded, thereby conserving very limited enforcement resources.

There are, admittedly, questions with respect to the efficacy of the trawl time restriction approach. These issues, however, should be addressed during the comment period with the pros and cons of other options.

The 105-minute trawling option has authorized starting times and periods during which no trawling is authorized. Under this interim rule, trawling is permitted during 105-minute intervals followed by a 30-minute period during which trawling is not permitted. For example, trawling will be authorized from 12:00 midnight to 1:45 a.m. (Eastern Daylight Time). From 1:45 a.m. to 2:15 a.m. no trawling is authorized. Trawling may resume at 2:15 a.m. and continue until 4:00 a.m., followed once again by a 30-minute period of no trawling. Nets cannot be in the water prior to the beginning of the trawl period and must be completely out of the water by the end of the 105-minute period. Nets are not considered to be out of the water unless the cod end of the net and the trawl doors are completely out of the water.

Shrimp fishermen using TEDs in their nets are allowed to trawl during the 30-minute prohibited periods. If a shrimp fisherman cannot demonstrate that a qualified TED has been properly installed in each net for the entire duration of the trip, trawling during any 30-minute period will be considered a violation of these regulations. Shrimp fishermen will also be required to haul back their nets at the request of an enforcement officer.

e. Differences Between the Interim Final Rule and the Existing Rule

This interim final rule amends the existing rule as it pertains to offshore waters and also as it pertains to vessels under 25 feet in length. This rule is more restrictive than the existing rule regarding vessels under 25 feet in length in that it would impose a more regimented and enforceable trawl time restriction on those vessels than that allowed under the existing rule. This rule is less restrictive than the existing rule for vessels 25 feet in length or longer in that it provides an alternative method for complying with the Endangered Species Act.

Nothing in this rule affects the portion of the existing rule that documents which TEDs have been approved for use. This proposed rule would, however, rescind the emergency regulation that was promulgated for north Florida on February 23, 1989.

The Endangered Species Act provides that any state law or regulation respecting the taking of an endangered or threatened species may be more restrictive than any Federal regulation implementing the Act. Accordingly, nothing in this regulation supersedes or preempts any state law or regulation providing a greater degree of protection to endangered or threatened species of sea turtles.

f. "Good cause" Under the Administrative Procedure Act (APA)

The APA requires that a Federal agency give general notice of a rulemaking unless the agency "for good cause" finds that notice and prior comment thereon are impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. 553(b)(B)). If the agency makes such a "good cause" finding, it must incorporate that finding and a brief statement of its reasons therefore in the rules issued (5 U.S.C. 553(b)). The APA further permits a Federal agency to give immediate effect to its rules "for good cause" (5 U.S.C. 553(d)(3)).

The Secretary is issuing this rule on an expedited basis in an attempt to defuse a very volatile situation in the Gulf of Mexico. The violent reaction of shrimp fishermen in the Gulf to implementation of the TED regulations and the need to provide immediate protection to endangered and threatened species of sea turtles for the time necessary to amend the existing rules provides the Secretary with "good cause" to modify those rules without seeking prior public comment and to make the modification effective immediately.

g. Compliance With Other Laws

NOAA Fisheries is cognizant of its responsibilities under other existing laws and will seek to comply with all environmental laws, both procedural and substantive, prior to the expiration of this interim rule.

Public comment is requested on this interim final rule. A final rule addressing those comments will be published no later than September 7, 1989.

Classification

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 Supplementary Environmental Impact Statement was prepared for the June 29, 1987 Final Rule. NOAA Fisheries will prepare the appropriate documentation to satisfy the National Environmental Policy Act prior to the expiration of this interim rule on September 7, 1989. Copies of the environmental documents may be obtained from the address given above.

This rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow the procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comment.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

NOAA has determined that this rule is consistent, to the maximum extent practicable, with the approved coastal zone management programs of the affected States. Neither this rule nor the ESA preclude any State from adopting more stringent sea turtle protective measures. This determination will be 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 and 227

Endangered Species, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 4, 1989.

James W. Brennan,

Assistant Administrator for Fisheries.

For reasons set out in the preamble, 50 CFR Parts 217 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.*

2. In § 217.12, the definition of *"tow time"* is removed and the following definition is added in alphabetical order to read as follows:

§ 217.12 Definitions.

* * * * *

"Trip" means the period of time beginning when the vessel leaves a port and ending when the vessel arrives in a port.

* * * * *

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for Part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Section 227.72 is amended by revising paragraphs (e)(2)(i) and (e)(3)(ii); by redesignating paragraphs (e)(3)(iii) and (e)(3)(iv) as (e)(3)(iv) and (e)(3)(v); by adding a new paragraph (e)(3)(iii); by revising paragraphs (e)(6)(i), (e)(6)(ii), and (e)(6)(iii) and by adding a new paragraph (e)(6)(vi); by adding paragraph (e)(9); by revising the title of Table 1 in paragraph (e) to read "Waters Where TEDs Are Required or Trawling Periods Are Restricted"; by removing the column labeled "Vessel sizes" from Table 2 in paragraph (e); by revising the title of Map 1 in paragraph (e) to read "Offshore Atlantic Waters Where TEDs Are Required or Trawling Periods Are Restricted"; and by revising the title of Map 2 in paragraph (e) to read "Offshore Gulf of Mexico Waters Where TEDs Are Required or Trawling Periods Are Restricted"; to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(1) * * *

(2) *Gear requirements.* (i) Except as provided in paragraphs (e)(2)(ii), (e)(2)(iii), (e)(2)(iv), and (e)(3) of this section, a qualified turtle excluder device (TED) must be properly installed at all times during the trip and used in each net during trawling by a shrimp trawler, regardless of length, fishing for white, brown, pink, or seabob shrimp (or for rock shrimp in the Gulf of Mexico) in areas and during periods (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.

(*2*) Atlantic Area, offshore—May 1 through August 31.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30 each year.

* * * * *

(3) *Trawl time restrictions.*

(i) * * *

(ii) 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 may trawl only during the hours and as specified in paragraph (e)(3)(iii) of this section, 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.

(*2*) Atlantic Area, offshore—May 1 through August 31.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30 each year.

(iii) Trawling under paragraph (e)(3)(ii) of this section is permitted during 105-minute periods beginning at midnight Eastern Time, as set out in Table 3. One permitted trawling period is only 60 minutes in length. For the 30-minute periods during which trawling is prohibited, the cod end of the net and the trawl doors must be completely out of the water. Any vessel with a net in the water during a 30-minute prohibited period is in violation of this section unless the operator can demonstrate that a qualified TED is properly installed in the net and has been so installed at all times during the trip.

* * * * *

(6) * * *

(i) Fail to use a qualified TED in each net during trawling in an area where and at a time when a TED is required pursuant to this part;

(ii) Operate with nets or trawl doors in the water during the 30-minute prohibited periods in an area and at a time such a 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 percent of the total shrimp landed or on board after having fished for royal red shrimp (or for rock shrimp in the Atlantic Ocean) in an area and at a time when a qualified TED is required or trawling periods are restricted, without complying with the TED or tow-time requirement.

* * * * *

(vi) Catch or harvest shrimp without complying with the provisions of this section.

* * * * *

(9) *Enforcement.* The operator of, or any person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to haul back a net for his or her inspection for purposes of enforcing the Act and this part.

3 In § 227.72(e) a new Table 3 is added following Table 2 as set forth below:

§ 227.72 [Amended]

TABLE 3—HOURS OF PERMITTED AND PROHIBITED TRAWLING FOR SHRIMP TRAWLERS FOR NET EQUIPPED WITH TEDS

Trawling permitted	Trawling prohibited
Eastern Time Zone	
2400–0145	0145–0215
0215–0400	0400–0430
0430–0615	0615–0645
0645–0830	0830–0900
0900–1045	1045–1115
1115–1215 (only one hour)	1215–1245
1245–1430	1430–1500
1500–1645	1645–1715
1715–1900	1900–1930
1930–2115	2115–2145
2145–2330	2330–2400
Central Time Zone	
2300–0045	0045–0115
0115–0300	0300–0330
0330–0515	0515–0545
0545–0730	0730–0800
0800–0945	0945–1015
1015–1115 (only one hour)	1115–1145
1145–1330	1330–1400
1400–1545	1545–1615
1615–1800	1800–1830
1830–2015	2015–2045
2045–2230	2230–2300

[FR Doc. 89–18676 Filed 8–7–89; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Parts 611 and 672

[Docket No. 81132-9033]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of adjustment to the 1989 specification of total allowable catch for pollock; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces an adjustment to the total allowable catch (TAC) for pollock in the combined Western/Central Regulatory Area of the Gulf of Alaska. The adjustment is necessary to respond to the best available scientific information concerning the biological status of pollock stocks that shows that the TAC is misspecified. This action is intended to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective September 5, 1989. Comments are invited until September 5, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

TACs for groundfish species in the Gulf of Alaska are established annually by the Secretary under authority of the FMP, which was developed by the North Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act. The FMP is implemented by regulations at 50 CFR 611.92 and Part 672. TACs for the 1989 fishing year were specified by the Secretary and were published in the Federal Register on February 13, 1989 (54 FR 6524). The Council determined that the acceptable biological catch (ABC) for pollock for the entire Western/Central Regulatory Area was 60,000 metric tons (mt), recommended that the Secretary implement this amount and recommended that only 6,250 mt of this total should be harvested from the Shelikof Strait area. The Secretary specified a TAC of 6,250 for the Shelikof Strait area and 53,750 mt for the remainder of that regulatory area or a total of 60,000 mt for the entire regulatory area.

The Council's Scientific and Statistical Committee (SSC) had recommended an ABC of 60,000 mt, after reviewing the best available information concerning the status of pollock stocks. Best available information was considered to be the results of the 1987 triennial bottom trawl survey conducted by the Alaska Fisheries Science Center (AFSC). The survey, which was a single source of information, indicated that the total pollock biomass was about 593,000 mt. Using an exploitation rate of approximately 10 percent, the SSC calculated the 60,000 mt ABC.

The 1989 fishery targeted on roe-bearing pollock in Shelikof Strait and elsewhere in the Western/Central Regulatory Area. The Shelikof Strait fishery closed on March 21 and the remainder of the Western/Central Regulatory Area closed on March 23. Whereas in previous years, the roe fishery was conducted predominantly in Shelikof Strait, 1989 was the first fishing year when significant harvests of roe bearing pollock occurred outside Shelikof Strait.

Fishing representatives have expressed concern that the 1989 pollock TAC was underestimated, and that a significant amount of pollock exploitable biomass exists but is not accounted for in the AFSC surveys. At the request of the Council, the AFSC conducted an exhaustive study of data relevant to the status of pollock stocks. The analysis incorporated an analytical synthesis model that combined analyses of catch, abundance, and age composition data. In doing the analysis, the AFSC estimated the age specific selectivity of the survey and fishing gears. In addition, the biomass estimates derived from the model include fish older than age 10 which were previously ignored in estimating exploitable biomass but may contribute to the catch. The SSC recalculated the 1989 ABC using information from the synthesis model. The synthesis model estimate of fish age 3+ in the Gulf of Alaska was 720,000 mt. Therefore, the SSC recommended that ABC be adjusted to 72,000 mt. This recommendation was derived by applying the 10 percent exploitation rate used earlier to the exploitable biomass estimate of 720,000 mt.

The Council reviewed the results of the analysis and the SSC's recommendation at its June 20-23, 1989, meeting. On the basis of the analysis, the Council recommends that the specification of the 1989 pollock TAC be 72,000 mt, for the entire Western/Central Regulatory Area, an increase of 12,000 mt. The Secretary concurs with the Council's recommendation and has determined that the TAC should be adjusted to prevent underharvesting the pollock resource, which would otherwise occur, because the current pollock TAC is currently misspecified.

The Secretary, therefore, proposes that the specification of the 1989 pollock TAC should be adjusted to equal 72,000 mt for the entire Western/Central Regulatory Area. The 12,000 mt increase is not divided between the Shelikof Strait and the rest of this area. This inseason adjustment takes effect 30 days after the Secretary has filed the proposed adjustment with the Office of the Federal Register.

Classification

This action is taken under § 672.22 and Amendment 15 to the FMP that provides for additional fishing opportunities if current information demonstrates a harvest level was set too low. This action is in compliance with Executive Order 12291. Public comments on the necessity for and appropriateness of this action are invited for a period of 30 days.

List of Subjects in 50 CFR Parts 611 and 672

Fisheries.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: August 4, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-18661 Filed 8-4-89; 4:23 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 153
Thursday, August 10, 1989

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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket No. 89-10]

Description of Office, Procedures, Public Information

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: As required by the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) (FOIRA), the Office of the Comptroller of the Currency (OCC) is publishing for comment amendments to its regulations governing the disclosure of information under the Freedom of Information Act (FOIA). The effect of the proposed rulemaking is to implement recent amendments to FOIA contained in FOIRA. Those amendments concern Exemption 7 of the FOIA (concerning law enforcement records) and the provisions of the FOIA concerning fees and fee waivers. In addition, the proposed rulemaking implements Executive Order 12600, which deals with predisclosure notification procedures for confidential commercial information. This proposed rulemaking also makes technical, clarifying changes to the OCC's existing FOIA regulation. This proposed rulemaking, and the OCC's FOIA regulation in general, affect public disclosure of information by the OCC.

DATE: Comments must be received on or before October 10, 1989.

ADDRESSES: Comments should be mailed or delivered to Docket No. 89-*10*, Communications Division, 5th Floor, 490 L'Enfant Plaza East, SW., Office of the Comptroller of the Currency, Washington, DC 20219, Attention: Jacqueline England. (202) 447-1800. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Dean DeBuck, Freedom of Information Officer, (202)447-1800, or Ronald Shimabukuro, Attorney, Legal Advisory Services Division, (202)447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background and General Information

Freedom of Information Reform Act

FOIRA amended FOIA (5 U.S.C. 552) by modifying Exemption 7 and by supplying new provisions relating to charging and waiving fees. FOIRA requires Federal agencies to issue regulations establishing a schedule of fees and procedures for determining when fees should be waived or reduced. The fee schedule is to be in conformance with guidelines issued by the Office of Management and Budget (OMB).

The FOIRA modified Exemption 7 of the FOIA, which exempts from public disclosure certain records or information compiled for law enforcement purposes, in three ways: (1) It added language to allow for an exemption based on a reasonable expectation of any number of specified harms from disclosure; (2) it added explanatory language describing a confidential source; and (3) it provided an exemption from disclosure if release of the information "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." This Notice of Proposed Rulemaking (NPRM) incorporates these FOIRA amendments into the OCC's FOIA regulations at 12 CFR 4.16(b)(7).

The FOIRA also significantly amended the fee provision of the FOIA by establishing five classes of FOIA requesters: (1) Commercial; (2) educational institutions; (3) noncommercial scientific institutions; (4) representatives of the news media; and (5) all others. Commercial requesters will be charged for the direct costs of review, search and duplication of records. Educational institutions, noncommercial scientific institutions and representatives of the news media will be charged fees for direct costs of duplication with the first 100 pages provided free of charge. All other requesters will be charged fees for search and duplication, with two hours of search time and 100 pages of duplication provided free of charge. Prior to the FOIRA, requesters were not classified and charges were made in all cases for search and duplication; *i.e.*, unless fees were specifically waived or reduced, all requesters were charged the same fees.

In addition, the FOIRA amended the FOIA with respect to waiver or reduction of fees. Under FOIRA, documents are to be furnished without a fee or with a reduced fee if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Prior to the FOIRA, the waiver or reduction of fees occurred when an agency determined that such waiver or reduction was in the "public interest because furnishing the information can be considered as primarily benefiting the general public." Proposed § 4.17(g) incorporates the OCC's new schedule for the charging and waiving of fees.

Executive Order 12600

Confidential Commercial Information Executive Order 12600 (52 FR 23781, June 25, 1987) requires each Executive department and agency subject to FOIA to establish procedures to notify submitters of records containing confidential commercial information when those records are requested under FOIA. Under this NPRM, a submitter of confidential commercial information will have an opportunity to make written objections to disclosure and to state all grounds upon which disclosure is opposed. Furthermore, such a submitter will be notified whenever a FOIA requester institutes a suit seeking to compel disclosure of the confidential commercial information provided to the OCC by the business submitter. Proposed § 4.18(d) implements Executive Order 12600.

OMB and Department of Justice (DOJ) Guidelines

The portion of the NPRM dealing with the fee schedule contains the basic requirements of the FOIRA and also reflects OMB's guidelines, which the FOIRA required OMB to publish. OMB's proposed and final guidelines were

published at 52 FR 1982 (January 16, 1987) and 52 FR 10012 (March 27, 1987), respectively. While the numbering system and titles of some subsections in this NPRM differ from the OMB guidelines, the substance of the rule is similar in all material respects.

Proposed § 4.17(g)(2)(vii) is based upon guidelines issued by DOJ. The DOJ guidelines were not published in the Federal Register, but are available upon request from the OCC at the address listed above under the heading "For Further Information Contact". Furthermore, the proposed rule includes numerous editorial changes; for example, portions have been rewritten for clarity and organizational updates have been made to include address changes as well as changes in the names of offices.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that these changes, if adopted as proposed, will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 12291

The OCC has determined that this NPRM does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis will not be required on the grounds that this revision (1) would not have an annual effect on the economy of $100 million or more, (2) would not result in a major increase in the cost of bank operations or governmental supervision, and (3) would not have a significant adverse effect on competition (foreign or domestic), employment, investment, productivity, or innovation.

List of Subjects in 12 CFR Part 4

National banks, Public disclosure, FOIA exemptions, Criminal investigations, Schedule of fees, Waivers or reductions of fees, and notice prior to disclosure.

For the reasons set forth in the preamble, Title 12, Chapter I, Part 4 of the Code of Federal Regulations is proposed to be amended as follows:

PART 4—[AMENDED]

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

Authority: 12 U.S.C. 93, 5 U.S.C. 552.

2. Section 4.13, paragraph (a)(1) is revised to read as follows:

§ 4.13 Forms and instructions.

(a) * * *

(1) *Mailing address.* Freedom of Information Officer, Communications Division, Office of the Comptroller of the Currency, Washington, DC 20219.

* * * * *

3. In § 4.15, paragraphs (a) introductory text and (b) are revised to read as follows:

§ 4.15 Orders, opinions, etc. available to the public.

(a) Subject to the exceptions listed in § 4.16 of this part, the Office of the Comptroller of the Currency (OCC) makes the following documents available to the public—either in publications or upon written request—for inspection and/or copying:

* * * * *

(b) The OCC maintains and makes available to the public, upon written request, for inspection and copying a current index identifying the various documents referred to in paragraphs (a)(1) through (4) and (10) of this section issued, adopted or promulgated after July 4, 1967. The index is located in the Communications Division, Comptroller of the Currency, Sixth Floor, 490 L'Enfant Plaza East, SW., Washington DC 20219.

* * * * *

4. Section 4.16, paragraphs (a) and (b)(7) are revised to read as follows:

§ 4.16 Other records available to public; exceptions.

(a) All records of the OCC, including those referred to in § 4.15 of this part, are available to any person, upon written request, for inspection and copying in accordance with §§ 4.17 and 4.17a of this part, except as provided in paragraph (b) of this section.

(b) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of those records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

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

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

(iv) 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;

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

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

* * * * *

5. Section 4.17 is revised to read as follows:

§ 4.17 Location of public reading rooms, requests for identifiable records; and service of process.

(a) *General.* This section identifies the titles of officers designated to make the initial and appellate determinations with respect to requests, the officer designated to receive service of process, the addresses for delivery of requests, appeals and service of process, and the required content of requests.

(b) *Location of certain records.* All public records of the OCC, except: (1) The public portions of applications by national banking associations to establish a branch or seasonal agency; (2) the public portions of applications to organize a national banking association during the period such applications are in the investigatory process in the respective districts; and (3) records concerning matters delegated to the district offices (such as those listed in § 5.3(c) of this chapter), are available at the location listed in § 4.13(a)(2). During this investigatory period, the public portion of the applications listed in paragraph (b)(2) of this section will be available in the respective districts as listed in § 4.1a(b).

(c) *Information concerning records.* (1) Requests for information, other than blank forms, concerning the following:

(i) Consolidated Reports of Condition (domestic);

(ii) Consolidated Reports of Condition (foreign and domestic);

(iii) Consolidated Large Bank Supplements;

(iv) Special Reports;

(v) Past Due, Nonaccrual and Renegotiated Loans and Lease Financing Receivables; and

(vi) Annual Reports of Trust Assets, should be submitted to:

(A) *Mailing address.* Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

(B) *Location.* Room 6108, 550 17th Street, NW., Washington, DC 20429.

(2) Initial determinations as to whether to grant requests for all records of the OCC available under §§ 4.15 and 4.16 of this part, other than those described in paragraph (c)(1) of this section and other than those described in paragraph (b) of this section as being located in the District Offices, will be made by the Director of Communications or that person's designee. Requests for all records, other than those listed in paragraph (c)(1) of this section and other than those described in paragraph (b) of this section as being located in the District Offices, shall be submitted to:

(i) *Mailing address.* Director of Communications, Comptroller of the Currency, Washington, DC 20219.

(ii) *Location.* Sixth Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

(3) Initial determinations as to whether to grant requests for records described in paragraph (b) of this section as being located in the District Offices shall be made by the Deputy Comptroller for each respective district, or that person's designee. All requests for those records shall be submitted to the respective Deputy Comptroller at the location set forth in § 4.1a(b).

(d) *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to requests for records of the OCC will be made by the Comptroller of the Currency or that person's designee. Requesters shall submit appeals in writing within 35 days of the date of the initial denial and shall state the circumstances, reasons or arguments advanced in support of disclosure of the requested records. Appeals shall be submitted to:

(1) *Mailing address.* Director of Communications, Comptroller of the Currency, Washington, DC 20219.

(2) *Location.* Comptroller of the Currency, Sixth Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

(e) *Service of process.* Service of process by litigants seeking access to records of the OCC will be received by the Chief Counsel, Comptroller of the Currency and shall be served at the following location:

(1) *Mailing address.* Chief Counsel, Comptroller of the Currency, Washington, DC 20219.

(2) *Location.* Office of the Chief Counsel, Comptroller of the Currency, Sixth Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

(f) *Content of request for identifiable records.* A request for records of the OCC available under §§ 4.15 and 4.16 must be in writing and state the full name, address and telephone number of the person requesting access to the records and a reasonable description of the records sought. A reasonable description includes sufficient detail to enable personnel of the OCC who are familiar with the subject area of the request to locate the records with a reasonable amount of effort. A request for records shall also state how the documents released will be used (*See* § 4.17(g)). The OCC may determine from the use specified in the request that the requester is a "commercial use requester."

(g) *Fees for document search, review, and duplication; waiver and reduction of fees*—(1) *Definitions.* (i) *Direct costs* means those expenditures which the OCC actually incurs in searching for and duplicating (and in the case of commercial use requesters, reviewing) documents to respond to a request for information under the Freedom of Information Act (FOIA).

(ii) *Search* means all time spent by personnel of the OCC in locating documents that are responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually and/or by computer.

(iii) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audiovisual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(iv) *Review* means the process of examining documents located in response to a request to determine whether any portion of any document may be withheld. It also includes the processing of any documents for disclosure.

(v) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(vi) *Educational institution,* whether public or private, means a preschool, an elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(vii) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (g)(1)(v) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(viii) *Representative of the news media* means any person actively gathering news for, or a free-lance journalist who reasonably expects to have his or her work product published or broadcast by, an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public.

(2) *Fees.* The OCC may charge fees that recoup the full allowable direct costs it incurs. The OCC may contract with non-government enterprises to locate, reproduce, and/or disseminate records; provided however, that the OCC has determined that the ultimate cost to the requester will be no greater than it would be if the OCC performed these tasks itself. In no case will the OCC contract out responsibilities which the FOIA provides that the OCC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce fees. Fees are subject to change as costs change.

(i) *Searches other than for computerized records.* The OCC shall charge for records at the salary rate(s) (*i.e.*, basic pay plus 16 percent) of the employee(s) making the search. However, where a single class of personnel (*e.g.*, all administrative/clerical, or all professional/executive) is used exclusively, an average rate for the range of grades typically involved may be established at the discretion of the OCC. This charge shall include transportation, at actual cost, of personnel and records necessary to the search.

(ii) *Searches for computerized records.* The fee for searches of computerized records shall be the actual direct cost of the search, including computer time, computer runs, and the operator's salary. The fee for computer printouts will be actual costs.

(iii) *Duplication of records.*

(A) The per-page fee for paper copy reproduction of documents is fifteen cents;

(B) If any other method of duplication is used, the OCC will charge the actual direct cost of duplicating the documents.

(iv) *Review.* The term "review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing

all that is necessary to excise them and otherwise prepare them for release.

(v) *Fees to exceed $25.* If the OCC estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. If so notified by the OCC, the requester will have an opportunity to confer with personnel of the OCC in order to revise the request in hopes of meeting his or her needs at a lower cost. The administrative time limits in subsection (a)(6) of the FOIA (*i.e.*, 10 business days from the receipt of initial requests and 20 business days from the receipt of appeals from an initial denial, plus permissible extensions of these time limits) will begin only after the OCC receives a revised request from the requester.

(vi) *Other services.* Complying with requests for special services is entirely at the discretion of the OCC. The OCC may recover the full costs of providing such services to the extent it elects to provide them.

(vii) *Restriction on assessing fees.* The OCC will not charge fees to any requester, including commercial use requesters, if the ordinary cost of collecting a fee is equal to or greater than the fee itself.

(viii) *Waiving or reducing fees.* The OCC shall waive or reduce fees under this section whenever, in its opinion, disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(A) The following factors will be used in determining whether a waiver or reduction of fees is in the public interest:

(*1*) The subject of the request—Whether the subject of the requested records concerns the operations or activities of the government;

(*2*) The informative value of the information to be disclosed—Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(*3*) The contribution to an understanding of the subject by the general public—Whether disclosure of the requested information will contribute to public understanding of the subject;

(*4*) The significance of the contribution to public understanding—Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(B) If the public interest requirement is met, the OCC will then make a determination on the "commercial interest" requirement, based upon the following factors:

(*1*) The existence and magnitude of a commercial interest—Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(*2*) The primary interest in disclosure—Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is reasonably considered by the OCC to be primarily in the commercial interest of the requester.

(C) The OCC, if the required public interest exists and the requester's commercial interest is not primary in comparison to that public interest, may waive or reduce the fees that would normally be charged to that requester.

(3) *Categories of requesters*— (i) *Commercial use requesters.* The OCC may assess fees for commercial use requesters which recover the allowable costs of search, review, and duplication. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of duplication of documents.

(ii) *Requesters who are representatives of the news media, as well as educational and noncommercial scientific institution requesters.* The OCC will provide documents to requesters in these categories for the cost of duplication alone. No fee will be assessed for the first 100 pages.

(iii) *All other requesters.* The OCC will assess fees for requesters who do not fit into any of the above categories to recover the full reasonable direct cost of search and duplication. No fees will be assessed for the first 100 pages of duplication or the first two hours of search time.

(4) *Interest on unpaid fees.* The OCC may begin assessing interest charges on an unpaid bill for FOIA-related fees on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(5) *Fees for unsuccessful search and review.* The OCC may assess fees for time spent in search and review, even if the records requested are not located or if the records located are exempt from disclosure.

(6) *Aggregating requests.* A FOIA requester(s) may not file multiple requests, each seeking portions of a document or documents, in order to avoid payment of fees. If this is done, the OCC may aggregate the requests and charge accordingly. The OCC will not aggregate multiple FOIA requests on unrelated subjects from the same requester.

(7) *Advance payment of fees.* FOIA requesters must include a statement agreeing to pay all fees that are properly charged by the OCC; however, the OCC will not require a FOIA requester to make an advance payment, unless:

(i) The OCC estimates or determines that the fees the requester may be required to pay are likely to exceed $250. If it appears that the fees will exceed $250, the OCC will notify the requester of the likely cost and obtain satisfactory assurance of full payment, where the requester has a history of prompt payment of FOIA fees; in the case of requesters with no history of payment, the OCC will require an advance payment of the full estimated charges that will be incurred; or

(ii) A requester has previously failed to pay a fee in a timely fashion (within 30 days of the date of the billing). The OCC may require such a requester to pay the full amount owed plus any applicable interest, as provided in paragraph (g)(4) of this section, or demonstrate that the fee owed has been paid. The OCC may also require this type of FOIA requester to make an advance payment of the full amount of the estimated fees before the OCC begins to process a new request, or finishes the processing of a pending request.

(8) *Tolling of administrative time limits.* When the OCC takes action under paragraphs (g)(7) (i) or (ii) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA begin only after the OCC has received the fee payments described.

6. Section 4.18 is amended by adding a new paragraph (d) to read as follows:

§ 4.18 Other rules of disclosure.

* * * * *

(d) *Procedures for protecting the confidentiality of commercial information as required by Executive Order 12600*— (1) *Definitions.* For purposes of this section, the following definitions shall apply:

(i) *Confidential commercial information* means records provided to the OCC by a submitter which arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act (FOIA), because disclosure could reasonably be expected to cause substantial competitive harm to the submitter thereof.

(ii) *Submitter* means any person or entity who provides confidential commercial information to the OCC. The term "submitter" includes, but is not

limited to, national banks and their officers, directors and principal shareholders, as well as corporations, State governments, and foreign governments.

(2) *Notice to submitters of confidential commercial information.* The OCC shall provide a submitter of confidential commercial information with prompt written notice of the receipt of a request seeking access to the submitter's confidential commercial information, whenever required to do so in accordance with paragraph (d)(3) of this section, and except as provided in paragraph (d)(7) of this section. The notice shall either describe the exact nature of the confidential commercial information requested or provide copies of the records or portions of records containing that information.

(3) *When notice is required.* (i) For confidential commercial information submitted to the OCC prior to January 1, 1988, the OCC shall provide the submitter thereof with notice of the receipt of a request for that information whenever:

(A) The records are less than 10 years old and the information has been designated by the submitter as confidential commercial information;

(B) The OCC has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm to the submitter; or

(C) The information is subject to a prior express commitment of confidentiality given by the OCC to the submitter.

(ii) For confidential commercial information submitted on or after January 1, 1988, the OCC shall provide the submitter thereof with notice of the receipt of a request encompassing such information whenever:

(A) The submitter has in good faith designated the information as being of a commercially or financially sensitive nature; or

(B) The OCC has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm to the submitter.

(iii) Notice of a FOIA request seeking confidential commercial information falling within either paragraphs (d)(3) (i) or (ii) of this section shall be required for a period of not more than 10 years after the date of submission, unless the submitter of the confidential commercial information requests, and provides acceptable justification for, a specific notice period of greater duration.

(iv) Whenever reasonably possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the entity that the information in question is in fact confidential commercial information and has not been disclosed to the public.

(4) *Opportunity to object to disclosure.* Through the notice described in paragraph (d)(2) of this section, the OCC shall afford the submitter of confidential commercial information 10 business days within which to provide the OCC with a detailed statement of any objection to disclosure of the information. That statement shall specify all grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, shall demonstrate why the submitter contends that the information is confidential commercial information. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA. When notice is given to a submitter under this section, the requester will be advised that notice has been given to the submitter of the information requested. The OCC will also advise the requester that there will be a delay in its decision of whether to grant or deny access to the information sought. The requester will be further advised that this delay by the OCC may be considered a denial of access to the records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester may agree to a voluntary extension of time so that the OCC may review the submitter's objections to disclosure.

(5) *Notice of intent to disclose.* The OCC shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the confidential commercial information. Whenever the OCC decides to disclose confidential commercial information over the objection of the submitter thereof, the OCC shall forward to the submitter a written notice which shall include:

(i) A statement of the reasons for which the submitter's objections to disclosure were not sustained;

(ii) A description of the confidential commercial information to be disclosed;

(iii) A specified disclosure date, which is 10 business days after the notice of the final decision to release the requested information has been mailed to the submitter. A copy of the disclosure notice shall be forwarded to the requester at the same time; and

(iv) A statement that if the submitter is going to seek injunctive relief, to advise the OCC immediately.

(6) *Notice of FOIA requester's lawsuit.* Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information covered by paragraph (d)(3) of this section, the OCC shall promptly notify the submitter of the confidential commercial information that a lawsuit has been brought.

(7) *Exceptions to the notice requirement.* The notice requirement of this section shall not apply if:

(i) The OCC determines that the information shall not be disclosed;

(ii) The information has been made public by the submitter or has otherwise been officially made available;

(iii) Disclosure is required by law (other than 5 U.S.C. 552);

(iv) The information was acquired in the course of a lawful investigation of a possible violation of criminal law;

(v) The information requested was not designated by the submitter as confidential commercial information pursuant to paragraphs (d)(3)(ii) (A) and (B) of this section, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the OCC has substantial reason to believe that disclosure of the information would result in competitive harm; or

(vi) The designation made by the submitter in accordance with paragraph (d)(3) of this section appears obviously frivolous; except that, in such case, the OCC must provide the submitter with written notice of any final administrative determination to disclose the information, at least 10 business days prior to the specified date when the information is to be disclosed. .

Dated: August 3, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89-18594 Filed 8-9-89; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-116-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 727

series airplanes, which would require inspection of the wing center section front spar web, and repair, if necessary. This proposal is prompted by reports of cracks in the wing center section front spar web. This condition, if not corrected, could lead to fuel leakage and/or depressurization of the cabin.

DATES: Comments must be received no later than October 2, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-116-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington 98124.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Airframe Branch, ANM-120S; telephone (206) 431-1525. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, 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 post card on which the following statement is made: "Comments to Docket Number 89-NM-116-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been several reports of cracks in the wing center section front spar web on Boeing Model 727 airplanes. Cracking has been attributed to fatigue due to repeated pressurization cyles. The cracks, if not detected and repaired, could lead to fuel leakage and/or possible cabin depressurization.

The FAA has reviewed and approved Boeing Service Bulletin 727-57-0177, dated December 22, 1988, which describes procedures for inspection, modification, and repairs of the wing center section front spar web.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection for cracks of the wing center section front spar web, and repair, if necessary, in accordance with the service bulletin previously described.

There are approximately 1,540 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 970 airplanes of U.S. registry would be affected by this AD, that it would take approximately 13 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $504,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727-57-0177, dated December 22, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks in the wing center section front spar, accomplish the following:

A. Prior to the accumulation of 40,000 flight cycles or within the next 2,300 flight cycles after the effective date of this AD, whichever occurs later, unless accomplished within the last 700 flight cycles, and thereafter at intervals not to exceed 3,000 flight cycles, conduct a close visual inspection of the wing center section front spar web for cracks, in accordance with Figure 1 of Boeing Service Bulletin 727-57-0177, dated December 22, 1988.

B. Repair cracks, prior to further flight, in accordance with Figure 2 of Boeing Service Bulletin 727-57-0177, dated December 22, 1988.

C. Modification in accordance with Figure 3, and repair, if necessary, in accordance with Figure 2 of Boeing Service Bulletin 727-57-0177, dated December 22, 1988, constitutes terminating action for the repetitive inspections required by paragraph A., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All person affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon

request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 1, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-18714 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-128-AD]

Airworthiness Directives; Boeing Model 737-200, -300, and -400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 737-200, -300, and -400 series airplanes, which currently requires testing of the engine fire/overheat detection system following any electrical transfer, to verify that the system is operating properly. This action would require modification of the fire/overheat detector module to minimize the risk of the fire/overheat detection system becoming inoperative following an electrical power transfer. This proposal is prompted by the development of a design modification to the fire/overheat detection module that eliminates the basic cause of the system becoming inoperative. This condition, if not corrected, could result in a situation where a propulsion system overheat or fire may not be annunciated to the flightcrew, which could jeopardize continued safe flight and landing.

DATES: Comments must be received no later than October 2, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-128-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Simonson, Propulsion Branch, ANM-140S; telephone (206) 431-1965. Mailing address: FAA Northwest Mountain Region 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, 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 post card on which the following statement is made: "Comments to Docket Number 89-NM-128-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 30, 1989, the FAA issued AD 89-08-12, Amendment 39-6187 (54 FR 14642; April 12, 1989), applicable to certain Boeing Model 737-200, -300, and -400 series airplanes, to require testing of the engine fire/overheat detection system following any electrical power transfer, and verification that the system is operating properly. That action was prompted by reports from Boeing that indicated that the fire/overheat detection system could become inert after a transfer of electrical power. This condition, if not corrected, could result in a situation where a propulsion system overheat or fire may not be annunciated to the flightcrew, which could jeopardize continued safe flight and landing.

Since issuance of that AD, a modification to the fire/overheat detection module has been developed to minimize the risk that the fire/overheat detection system will become inert following an electrical power transfer.

The FAA has reviewed and approved Boeing Service Bulletin 737-26-1063, dated May 18, 1989, which identifies Walter Kidde modifications of the fire detection module, that increase reliability of the fire/overheat detection system following electrical power application, transfer, or interruption.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 89-08-12 to require modification of the fire/overheat detection module in accordance with the service bulletin previously described. Accomplishment of this modification would constitute terminating action for the existing testing requirement.

There are approximately 400 Model 737-200, -300, and -400 series airplanes of the affected design in the worldwide fleet. It is estimated that 175 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3.25 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The parts required to accomplish this modification will be provided by Walter Kidde at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $22,750.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the

regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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. Section 39.13 is amended by revising AD 89–08–12, Amendment 39–6187 (54 FR 14642; April 12, 1989), as follows:

Boeing: Applies to Boeing Model 737–200, –300, and –400 series airplanes, as listed in Service Bulletin 737–26–1063, dated May 18, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To reduce the potential for dispatching an airplane with an inoperative fire/overheat system, accomplish the following:

A. Within 10 days after April 24, 1989 (effective date of Amendment 39–6187), inspect the engine fire/overheat detection module to determine that part number.

1. If part number 10–61096–41, –71, –81, –91, –92, or 10–62061–1, –2, –3, –11, or –12 is installed, add the following Engine Fire Detection System Test Procedure to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM:

a. Prior to engine start, accomplish fire/overheat warning system test.

b. After engine start, and with the electrical power supply system in the flight configuration, accomplish the fire/overheat warning system test.

c. In the event of an electrical power supply configuration change inflight (e.g., generator failure), perform the fire/overheat warning system test. In the event that this test is unsuccessful, land at the nearest suitable airport.

2. If part numbers other than those listed in paragraph A.1., above, are installed, no further action is required.

B. Within 30 days after the effective date of this amendment, modify the engine fire/overheat detection module, in accordance with Boeing Service Bulletin 737–26–1063 dated May 18, 1989. Once this modification is accomplished, the limitation required by paragraph A.1., above, may be removed from the AFM.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 1, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–18713 Filed 8–9–89; 8:45am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–AWP–18]

Proposed Amendment to San Jose, CA Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the effective hours of the San Jose, California control zone. The San Jose control zone is currently described as a full-time control zone. The control zone does not meet fulltime control zone criteria; thus there is a need for an amendment to part-time status.

DATE: Comments must be received on or before September 22, 1989. Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the office of the Manager, Airspace and Procedures Branch, Air Traffic Division, Airspace and Procedures Branch, AWP–530, at the above address.

FOR FURTHER INFORMATION CONTACT: Jon L. Semanek, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0433.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AWP–18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, AWP–530, at 15000 Aviation Boulevard, Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, AWP–530 at the

above address. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the San Jose, California control zone. The San Jose control zone is currently described in FAA Handbook 7400.6E as a full-time control zone. The control zone does not meet full-time control zone criteria; thus there is a the need for an amendment to part-time status. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, Federal Aviation Administration proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

San Jose, CA [Revised]

Within a 5 mile radius of San Jose Municipal Airport (latitude 37°21'42" N./ longitude 121°55'39" W.), excluding the portion NW of a line from latitude 37°25'45" N/longitude 121°56'36"W.; to latitude 37°19'30"N./longitude 122°00'10"W. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will therefore be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California on July 26, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division.

[FR Doc. 89–18716 Filed 8–9–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the Colorado permanent regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to permit information requirements, ownership and control, permit rescission, permitting, coal exploration, archaeology and cultural resources, civil penalties, restriction on financial interests of State employees, diversions, siltation structures, impoundments, hydrologic balance protection, inspection and enforcement, use of explosives, excess spoil, coal mine waste, backfilling and grading, previously mined area, prime farmland, reclamation plan, and fish and wildlife. The amendment is intended to revise the State program so that it will remain consistent with the corresponding Federal standards, provide additional safeguards, and clarify ambiguities within the State program.

This notice sets forth the times and locations that the Colorado program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., m.d.t. September 11, 1989. If requested, a public hearing on the proposed amendment will be held on September 5, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on August 25, 1989.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the Colorado program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, New Mexico 87102, Telephone: (505) 766–1486.

Colorado Mined Land Reclamation Division, 423 Centennial Building, 1313 Sherman Street, Denver, CO 80203, Telephone: (303) 866–3567.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (45 FR 82211). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15 and 906.30.

II. Submission of Proposed Amendment

By letter dated July 18, 1989, Colorado submitted to OSMRE a proposed amendment, (Administrative Record No. CO–457), to its program pursuant to SMCRA. Colorado submitted the proposed amendment at its own initiative and in response to OSMRE's letters dated May 7, 1986, June 7, 1987, November 7, 1988, and May 11, 1989 (Administrative Record Nos. CO–282,

CO–342, CO–418, and CO–441 respectively). These letters were issued in accordance with 30 CFR 732.17(c). The regulations that Colorado proposes to amend are listed below.

Permit Information Requirements

Colorado proposes to amend Rules 2.03.4, 2.03.5, 2.07.6, 2.07.7, and 5.03.2.

Ownership and Control

Colorado proposes to amend Rules 1.04 and 2.07.6.

Permit Rescission

Colorado proposes to amend Rule 2.11.1.

Permitting

Colorado proposes to amend Rule 2.07.7.

Coal Exploration

Colorado proposes to amend Rules 2.02.7, and 4.21.4.

Archaeology and Cultural Resources

Colorado proposes to amend Rule 2.02.3.

Civil Penalties

Colorado proposes to amend Rules 1.04, 5.03.5, 5.04.7, and 5.04.8.

Restriction on Financial Interests of State Employees

Colorado proposes to amend Rules 1.10.2 and 1.10.4.

Diversions

Colorado proposes to amend Rules 4.05.3 and 4.05.4.

Siltation Structures

Colorado proposes to amend Rule 4.05.6.

Impoundments

Colorado proposes to amend Rules 1.04, 4.05.6, and 4.05.9.

Hydrologic Balance Protection

Colorado proposes to amend Rule 4.05.8.

Inspection and Enforcement

Colorado proposes to amend Rules 3.03.3 and 5.02.2.

Use of Explosives

Colorado proposes to amend Rules 4.08.1, 4.08.4, and 4.08.5.

Excess Spoil

Colorado proposes to amend Rules 4.09.1 and 4.09.2.

Coal Mine Waste

Colorado proposes to amend Rule 4.11.5.

Backfilling and Grading

Colorado proposes to amend Rules 4.14.1 and 4.23.2.

Previously Mined Area

Colorado proposes to amend Rule 1.04.

Prime Farmland

Colorado proposes to amend Rule 4.25.1.

Reclamation Plan

Colorado proposes to amend Rule 2.05.3.

Fish and Wildlife

Colorado proposes to amend Rule 2.05.6.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., m.d.t. on August 25, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 1, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89–18672 Filed 8–9–89; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS 42107A; FRL 3626–2]

1,6-Hexamethylene Diisocyanate Extension of Comment Period on Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed test rule on 1,6-hexamethylene diisocyanate (HDI) for 30 days after publication of this notice. Extension of the comment period was requested by the Chemical Manufacturers Association (CMA) to allow industry additional time to address unanticipated issues raised in the Proposed Rulemaking (54 FR 21240; May 17, 1989) and to provide interested parties additional opportunity for comment.

DATES: Written comments on the proposed rule should be submitted on or before September 11, 1989.

ADDRESSES: Address written comments identified by the document control number OPTS–42107A, in triplicate to: TSCA Public Docket Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm NE–G004, 401 M St., SW., Washington, DC 20460.

The public records supporting these actions are available for inspection in Room NE–G004 at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule for 1,6-hexamethylene diisocyanate, published in the **Federal Register** of May 17, 1989 (54 FR 21240), in respone to the 22nd Interagency Testing Committee (ITC) Reports (53 FR 18196; May 20, 1988). EPA made a finding of "significant or substantial human exposure" to 1,6-hexamethylene diisocyanate under section 4(a)(1)(B) of TSCA. On June 2, 1989, the CMA requested an extension of the comment period for 30 days to allow industry additional time to address unanticipated issues.

Therefore, EPA is extending the comment period for 30 days. Comments on the proposed test rule for 1,6-hexamethylene diisocyanate are now due September 11, 1989. EPA believes that extension of the comment period will not cause undue delay in the consideration of the test rule proposal.

Authority: 15 U.S.C. 2603.

Dated: July 31, 1989.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 89–18735 Filed 8–9–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket No. 89–349, FCC No. 89–244]

Importation of Radio Frequency Devices Capable of Causing Harmful Interference

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to amend part 2 of its rules concerning the importation of radio frequency (RF) devices capable of causing harmful interference and the filing of FCC Form 740. It is made in response to United States Customs Service (Customs) efforts to eliminate paper filings, informal industry requests for changes in the existing rules and procedures, and the FCC's desire to reduce the burden associated with handling the existing Form 740. This proposal should result in the elimination of a significant and duplicative regulatory burden upon the imports industry, allow Customs to move from a paper system to an automated system, and allow the FCC to spend its limited resources on the most productive and important aspects of its imports program.

DATES: Comments must be submitted on or before September 28, 1989, and reply comments on or before October 13, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard B. Engelman, Chief, Inspections & Investigations Branch, Field Operations Bureau, Washington, DC 20554, (202) 632–6345.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, General Docket No. 89–349, FCC No. 89–244, adopted July 25, 1989 and released August 7, 1989. The full text of this proposal is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text may also be purchased from the Commission's copy contractor, International Transcription Services Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

The proposal would update existing rules, reduce the circumstances in which Form 740 information must be filed, require the filing of Form 740 only with the U.S. Customs Service (Customs) instead of with both the FCC and Customs, and allow the filing of Form 740 information electronically.

List of Subjects in 47 CFR Part 2

Communications equipment, Electronic products, Imports, Telecommunications.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–18705 Filed 8–9–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89–16; Notice 01]

RIN 2127–AC84

Occupant Protection in Interior Impact

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice seeks public comment on a variety of issues relating to Safety Standard No. 201, Occupant Protection in Interior Impact. Some of the issues arise from this agency's granting of a petition for rulemaking from the Chrysler Motors Corporation requesting that NHTSA exclude air bag equipped vehicles from the head impact protection requirements of Standard No. 201. Chrysler alleges that the head impact protection requirements "interfere" with efforts to develop new "top mounted" crash deployed systems having an air bag module located beneath the top surface of the instrument panel. The agency seeks data and other information that would assist the agency in determining whether to propose such an exclusion from the standard.

The other issues explored by this notice arise partly out of the difficulty which the agency has experienced in applying the language of the standard in order to determine whether some portions of the interior in several vehicle models fall within exclusions from the standard's requirements. The agency's review of the exclusions for "console assemblies" and for "areas below any point at which a vertical line is tangent to the rearmost surface of the panel" has led it to seek comment on whether to issue a proposal to clarify, narrow or eliminate those exclusions.

DATE: Comments on this notice must be received by the agency no later than September 25, 1989.

ADDRESS: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5267. Docket hours are 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Jettner, NRM–12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration,

400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366–4917.

SUPPLEMENTARY INFORMATION:

The Standard

Standard No. 201 specifies occupant impact protection requirements for interior vehicle components likely to be struck by a lap-belted occupant in a crash, including instrument panels, seat backs, sun visors and armrests. In addition, the standard requires interior compartment doors (e.g., glove compartment doors) to remain closed during a crash.

In order to comply with Standard No. 201's impact requirements, vehicle manufacturers install energy absorbing materials in the areas of the instrument panel within the "head impact area," as defined in 49 CFR 571.3. The requirements specify that when those areas are impacted by a head form at 15 miles per hour (mph), the deceleration of the head form must not exceed 80g continously for more than 3 milliseconds (S3.1). Installation of appropriate energy absorbing materials in the upper and middle surfaces of the instrument panel in order to meet the requirement can prevent or mitigate chest and head injuries resulting from contacts with the panel.

Paragraph S3.1.1 of Standard No. 201 sets forth five exclusions from the above head impact protection requirements. One of these (S3.1.1(a)) is for "console assemblies." The other four exclusions relate to areas on the instrument panel which, although located in the head impact area, had been thought to be unlikely to be struck by a vehicle occupant in a crash, due to the location of other vehicle components (e.g., the windshield) relative to the instrument panel.

Chrysler's Petition

Chrysler requests that S3.1.1 be amended by adding an exclusion for the "head impact area determined for the front passenger seating positions in vehicles that conform to the requirements of Standard No. 208 by means of air bag systems." The petitioner's request apparently stems from its research efforts at exploring "top mounted" air bag systems for future model vehicles. Chrysler believes Standard No. 201's head impact protection requirements "interfere" with the development of their top-mounted system.

According to the petitioner, the air bag module for the top-mounted system must be located in the head impact area because only there can it rapidly deploy and be supported with sufficient structure "to provide a reaction to the high deployment forces, properly direct the deploying air bag toward the occupant, and * * * provide occupant ride-down" (i.e., cushion and decelerate the occupant). The petitioner states that Standard No. 201's head impact protection requirements "simply cannot be met in the area of the rigid module and its support structure."

Chrysler states that it has attempted to achieve compliance with the head impact protection requirements of Standard No. 201, but has been unsuccessful in its efforts. The petitioner states:

> We have studied the possibility of locating the module beneath the panel surface and employing a rigid tube to direct the deploying bag to the panel surface. Our conclusion is that the structural tube rather than the module would then preclude meeting the head form impact requirements * * *. Recessing the module is therefore not a solution, and we have not been able to determine another. (Petitioner for rulemaking, page 2.)

Chrysler believes that top-mounted air bags "appear to have an advantage in the accommodation of the out-of-position occupant and standing child." NHTSA interprets this statement to mean that top-mounted air bags initially deploy more upward (toward the windshield) than directly rearward, and that petitioner believes the benefits of this upward deployment is that the deploying air bag is less likely than rearward-deploying ones to strike forcefully an occupant leaning toward or a child standing near the instrument panel.

Chrysler further believes Standard No. 201's head protection requirements are unnecessary because they only duplicate the occupant crash protection required by Standard No. 208. The petitioner believes the front barrier test of Standard No. 208 is "far more sensitive to the many sources of occupant head injury than is the head impact test of MVSS 201."

The agency has determined that the alleged "interference" from Standard No. 201's head impact protection requirements with the development of new air bag systems should be further considered. NHTSA notes that in January 1988, the agency denied a petition for rulemaking from Mitsubishi Motors Corporation which, similar to Chrysler's petition, had requested that NHTSA exclude air bag equipped vehicles from Standard No. 201. (53 FR 780; January 13, 1988.) However, unlike Chrysler, Mitsubishi did not even allege that compliance with Standard No. 201 interferes in any way with the development of air bag technology, or that there is sufficient reason for removing the protection offered by that standard. Since Chrysler has based its petition on alleged incompatibility problems between Standard No. 201 and petitioner's efforts at developing new air bag technology, NHTSA decided to grant Chrysler's petition.

However, although vehicle manufacturers should be allowed flexibility in developing complying air bag systems to the extent possible, the agency is concerned about any potential safety problems that may arise from an amendment to Standard No. 201. Therefore, the agency seeks comments on the issues raised by the petition before deciding whether a notice of proposed rulemaking should be issued.

NHTSA does not agree with the petitioner that the protection afforded by Standard No. 201's requirement for padded instrument panels duplicates the occupant crash protection provided by an air bag. Typically, current air bag systems deploy during a collision at an approximate barrier equivalent speed of 12 mph. NHTSA believes Standard No. 201 reduces injuries occurring when occupants strike the instrument panel in crashes for which an air bag was not designed to deploy, such as under-12 mph frontal crashes; in crashes involving a car whose air bags had been previously deployed, but not replaced; in rear crashes in which the occupant rebounds from the seat and strikes the instrument panel; or in side crashes or rollover crashes. Data indicate that occupant contact with the instrument panel occurs frequently. Based on 1982–1985 data from the National Accident Sampling System, there are approximately 2,100 AIS 2 or greater injuries annually resulting from contacts between front seat occupants' heads or faces and the instrument panel in side impacts alone. NHTSA seeks more information on the possible safety effect of amending Standard No. 201 along the lines suggested by the petitioner.

NHTSA requests comments on whether the requested exclusion would have net safety benefits above the level of safety protection afforded by the existing provision. The agency notes that Chrysler has presented only limited evidence that compliance with Standard No. 201 for top mounted systems is impracticable or infeasible, and has not provided alternative suggestions for a proposed amendment, short of a complete exclusion, that might be able to provide relief. However, the agency believes it would not have been appropriate to deny this petition because vehicle manufacturers have begun to acquire testing experience of crash deployed restraint systems under

Standard No. 208 which may have produced data or other information on top-mounted or other air bag systems, and potential incompatibility problems between Standards No. 201 and No. 208. If information indicates that the Standard No. 201 compliance problem alleged by Chrysler could be solved without changing the provisions of that standard for air bag equipped vehicles, the agency will consider terminating rulemaking on this petition.

The agency is particularly interested in obtaining comments relating to the questions numbered below. In responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to test data, statistical data and estimated costs and benefits, and the source of such information.

NHTSA emphasizes that the granting of Chrysler's petition does not necessarily mean that a rule will be issued. The determination of whether to issue a rule is made in the course of the rulemaking proceeding, in accordance with statutory criteria. If the agency were ultimately to issue a final rule, it would do so only after further notice of proposed rulemaking and opportunity to comment.

Issues

1. What benefits are foreseen from implementation of top-mounted air bags? How do these benefits compare to those for a conventionally mounted passenger-side air bag?

2. Are other manufacturers planning to use top-mounted air bags at the right front position in passenger vehicles?

3. If so, are they experiencing difficulty meeting both FMVSS No. 208 and No. 201 requirements? Do they anticipate problems in future designs using top-mounted air bags?

4. Are there feasible design and/or material selections for top-mounted air bag installations which show potential for satisfying head form acceleration limitations now specified for FMVSS No. 201 compliance?

5. What problems in achieving compliance with FMVSS No. 201 are encountered by manufacturers who currently install an air bag for the front outboard passenger position? Are these problems limited to top-mounted designs?

6. Could top-mounted air bag designs meet S3.1 of FMVSS No. 201 if the test speed were lowered from 15 mph to 10–12 mph for air bag equipped vehicles?

7. Are there data from manufacturers, hospital records or insurance claims that would indicate the frequency and severity of head injuries currently occurring in frontal crashes from impacts on the instrument panel in crashes with delta V's (i.e., reductions in velocity) between 0 and 15 mph?

8. If Standard No. 201 were amended as suggested by the petitioner, would a top-mounted air bag only reduce one set of injuries and increase other instrument panel injuries? Would there be a net decrease or a net increase in injuries?

9. If Standard No. 201 were amended as suggested by the petitioner, should Standard No. 208 require lap/shoulder belts at all positions exempted from Standard No. 201 for which automatic crash protection is provided by air bags?

Areas Currently Excluded

The agency is interested in assessing whether existing exclusions in Standard No. 201 should continue. As noted above, paragraph S3.1.1 of Standard No. 201 excludes five areas or objects within the head impact area from the instrument panel performance requirements. One exclusion is for console assemblies. (Paragraph S3.1.1(a).) Another exclusion is for "[a]reas below any point at which a vertical line is tangent to the rearmost surface of the panel." (Paragraph S3.1.1(e).)

The agency is interested in determining whether console assemblies should continue to be excluded from the head impact protection requirements of the standard, and even if so, whether more precise language should be proposed to clarify what constitutes a "console assembly." Console assembly designs have changed significantly since the exclusion for console assemblies was established. NHTSA has become aware that some new vehicle interior designs have a structure which would be commonly recognized as a console assembly, since the structure is a low-lying structure mounted on the vehicle floor, lying between the front seats. However, the structure can also extend upwards to virtually or actually join with the instrument panel in a one-piece, T-shape type of design. Some one-piece designs, such as the Mercedes 260 E, have a small indentation or space between the dashboard and the console assembly. Other designs, such as the Porsche 928 S4, lack an indentation. In some configurations, identifying where the instrument panel ends and the console assembly begins is extremely difficult.

This difficulty has complicated the agency's applying the existing exclusion of console assemblies to the interior designs in several models (see, for example, the agency's September 21, 1988 and October 27, 1986 letters to MMC Services, Inc.), and has resulted in NHTSA's reviewing the merits of the console assembly exclusion. As a result, NHTSA seeks comment on whether the agency should issue a proposal to clarify, narrow or eliminate the exclusion.

NHTSA's review of the exclusions of S3.1.1 has led it to consider also whether the area described in S3.1.1(e) should continue to be excluded from S3.1 of the standard, and even if generally so, whether the agency should propose to narrow the exclusion. NHTSA seeks comment on whether there would be safety benefits in ending or narrowing the exclusion, and on the difficulties manufacturers would have in designing areas presently excluded by S3.1.1(e) to meet the head impact protection requirements of S3.1.

To make these assessments, NHTSA requests information on the following questions:

10. Are manufacturers tending toward one-piece designs which incorporate the form and function of both instrument panel and console assembly?

11. Should console assemblies continue to be excluded from the requirements of S3.1?

(a) If yes, why?

(b) How can a manufacturer or NHTSA determine where the dividing line is between the console assembly and area that is not the console assembly on one-piece designs? How can Standard No. 201 clarify what is meant by "console assembly" and "instrument panel" so as to facilitate distinguishing one from the other?

(c) Even if we could identify where the instrument panel ends and the console assembly begins, should Standard No. 201 exempt all of the console from S3.1, or just a portion thereof? What would be an appropriate portion to exempt?

(d) What is the likelihood of an occupant's head hitting a portion of the console assembly in a crash?

(e) If some or all portions of a console assembly could injure an occupant, would it be difficult for those portions of console assemblies to meet S3.1 of the standard? What design changes would be necessary for compliance? At what estimated cost?

12. Should the area described in S3.1(e) continue to be excluded from the requirements of S3.1? What is the likelihood of an occupant's hitting his or her head in a crash on an area currently excluded by S3.1.1(e)?

13. What difficulties would manufacturers experience in designing areas presently excluded by S3.1.1(e) to meet the head impact protection

requirements of S3.1? What design changes would be necessary for compliance? At what estimated cost?

Comments

NHTSA solicits public comments on this notice. It is requested, but not required, that commenters provide 10 copies of written comments and two copies of films, tapes, and other materials.

All comments must not exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the notice will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this notice will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50)

Issued: August 4, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-18703 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Animal Review; Corrections

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of correction.

SUMMARY: This notice corrects errors in the Service's Animal Notice of Review published January 6, 1989 (54 FR 554–579).

FOR FURTHER INFORMATION CONTACT: Endangered Species Coordinator, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231–231–6150 or FTS 429–6150), or Mr. William Knapp, Chief, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/538–2161 or FTS 921–2161).

SUPPLEMENTARY INFORMATION:

The following are errors that have been identified in the U.S. Fish and Wildlife Service's Animal Notice of Review published January 6, 1989 (54 FR 554–579). The indicated correction do not reflect post-publication changes in the Service's assessments of species' status; any such changes are reserved for later republication of, or supplement to, the animal notice.

1. On page 559, entry 16, CATEGORY for Desert tortoise (Mojave Desert population)—2 should read. 1.

2. On page 560, CATEGORY for Mariana fruit dove (entry 24), Guam white-throated ground dove (entry 26), and Cardinal honey eater (entry 43), 3A should read 3C.

3. On page 560, entry 23, SCIENTIFIC NAME for Truk Micronesian pigeon—*teraoki* should read *teraokai.*

4. On page 560, entry 41, SCIENTIFIC NAME for Palau white-breasted wood-swallow—*Aretamus* should read *Artamus.*

5. On page 561, entry 40, COMMON NAME for Mariana flying fox—Agigun should read Agiguan and Siapan should read Saipan; FAMILY—Pteropidae should area Pteropodidae.

6. On page 561, entry 44, SCIENTIFIC NAME for Mexican long-tongued bat—*Choenycteris* should read *Choeronycteris;* HISTORIC RANGE—NM, Mexico should read NM, TX, Mexico.

7. On page 566, entry 40, FAMILY for Edgewood blind harvestman—should read Phalangodidae.

8. On page 572, entry 52 COMMON NAME for Mardon blue butterfly—Mardon blue should read Mardon skipper; SCIENTIFIC NAME—*Plejebus* should read *Polites;* FAMILY—Lycaenidae should read Hesperiidae.

9. On page 579, entry 6, SCIENTIFIC NAME for shiny-rayed pocketbook (mussel)—*Lampsilsis* should read *Lampsilis.*

Dated: July 25, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-18737 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petition To List the Louisiana Black Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding on petition.

SUMMARY: The Service announces the second 12-month finding for the petition to amend the Lists of Endangered and Threatened Wildlife and Plants by adding the Louisiana black bear. As with the first 12-month petition finding, the action requested has again been determined to be warranted but precluded by other actions to amend the lists.

DATES: The finding announced in this notice was made in April 1989. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding the Louisiana black bear petition may be submitted to the U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39213. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Bowker at the above address (601/965–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act, as amended, requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but precluded from immediate proposal by other pending proposals. Section 4(b)(3)(C) requires that petitions for which the action requested is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e. requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the Federal Register.

A petition dated March 6, 1987, from Mr. Harold Schoeffler, was received by the Service on March 23, 1987. It requested the Service to list *Ursus americanus luteolus*, the Louisiana black bear. The Service had previously initiated review of the status of the Louisiana black bear in a notice published December 30, 1982 (47 FR 58454). The petition gave a summary of evidence that this subspecies is still extant in two restricted areas in the Tensas River Basin and in the lower Atchafalaya Basin of Louisiana. This range was described as a contraction from an area once covering most of Louisiana and extending into eastern Texas and western Mississippi. A number of threats were indicated to exist, including the threat of interbreeding with black bear stocks introduced within the historic range from Minnesota between 1964 and 1967.

In July 1987, the Service determined that the action requested by this petitioner may be warranted. In 1988, a 12-month finding was made that the action requested in respect to the Louisiana black bear was warranted but precluded by work on other species having higher priority for listing. Both findings were reported in the Federal Register for August 19, 1988 (53 FR 31723). The Service wishes to develop further information about the existence and exact status of the subspecies in order to support a rule to propose it for addition to the List of Endangered and Threatened Wildlife. There is sufficient evidence to justify active continuation of surveys to answer the necessary questions about its status. The Tensas River National Wildlife Refuge is surveying in the Tensas River basin; and the Louisiana Cooperative Fish and Wildlife Research Unit at Baton Rouge is assisting the Service by surveying the remainder of the known current range in the Atchafalaya River basin.

Tissue samples from the Atchafalaya River basin and the Tensas River basin are being analyzed using electrophoresis techniques for blood proteins and mitochondrial DNA. Dr. Mike Pelton of the University of Tennessee is coordinating these analyses through the Savannah River ecology laboratory (blood proteins) and the University of North Texas (mitochondrial DNA). These analyses should be complete by June 1989, at which time the Service will undertake an assessment of these genetic data to determine if the Louisiana black bear (*U. a. luteolus*) continues to exist as a distinct subspecies.

The most recent 12-month finding again is that the petitioned action is warranted but precluded by work on other species having higher priority for listing.

Section 4(b)(3)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. Expeditious progress in listing endangered and threatened species is being made, and is reported annually in the Federal Register. The most recent progress report was published on December 29, 1988 (53 FR 52746).

Author

This notice was prepared by Wendell A. Neal, U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39213 (telephone 601/965–4900, FTS 490–4900).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411), unless otherwise noted.

List of Subjects in 50 CFR Part 17

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

Dated: July 20, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–18738 Filed 8–9–89; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

RIN 0648–AC28

American Lobster Fishery

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to the fishery management plan and request for comments.

SUMMARY: NOAA announces that the New England Fishery Management Council (Council) has submitted Amendment 3 to the Fishery Management Plan for American Lobster for Secretarial review and is requesting comments from the public.

DATE: Comments will be accepted on or before October 5, 1989.

ADDRESS: All comments should be sent to Richard Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930. Clearly mark the outside of the envelope "Comments on Amendment 3 to the American Lobster FMP."

Copies of Amendment 3 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntang Office Park, 5 Broadway (Route 1), Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Resource Policy Analyst, (508) 281–9331.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a Council-prepared fishery management plan or amendment be submitted to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary upon receipt, immediately publish a notice that the document is available for public review and comment. The Secretary will consider any public comments received in determining the approvability of the document.

Amendment 3 proposes to: (1) Delay implementation of the escape vent requirement scheduled for January 1, 1990, to January 1, 1992, and (2) require that lobster traps contain an escape panel or equivalent mechanism that would degrade and allow lobsters to escape after a trap has been abandoned or lost for 12 months or more. Proposal 2 would become effective January 1, 1992, only if the Council specifies, and the Regional Director publishes, a list of acceptable escape mechanisms at least twelve months prior to January 1, 1992.

The intent of the first proposal is to relieve an unforseen regulatory burden on the industry. The purpose of Proposal 2 is to reduce mortality caused by lost traps. These measures are expected to increase revenues and landings in the lobster fishery.

Regulations proposed by the Council to implement Amendment 3 are scheduled to be published within 15 days.

Authority: (16 U.S.C. 1801 *et seq.*)

Dated: August 4, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-18660 Filed 8-4-89; 4:03 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 153
Thursday, August 10, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 4, 1989.

The Department of Agriculture has submitted to OMB 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. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form numbers(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington DC 20250, (202) 447–2118.

Extension

• *Agricultural Marketing Service*

Application for Permit to Export Tobacco Seed or Plants
TB–31
On occasion
Small businesses or organizations; 55 responses; 28 hours; not applicable under 3504(h)
Larry L. Crabtree, (202) 447–3489

• *Agricultural Marketing Service*

Meat Market News
None
Daily
Businesses or other for-profit; 172,640 responses; 2,877 hours; not applicable under 3504(h)
James A. Ray (202) 477–6231

• *Agricultural Marketing Service*

Cotton Classification, Market News Service, and Cotton Fiber and Processing Tests
CN–110, CN–59
On occasion; Weekly; Annually
Farms; Business or other for-profit; 7,765 responses; 545 hours; not applicable under 3504(h)
Elvis W. Morris, (FTS) 222–2921

• *Economic Research Service*

U.S. Milled Rice Distribution Survey
None
Biennially
Businesses or other for-profit; Small businesses or organizations; 20 responses; 120 hours; not applicable under 3504(h)
Nathan W. Childs, (202) 786–1840

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 89–18664 Filed 8–9–89; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Price-Undercutting of Domestic Edam and Gouda Cheese by Imported Edam and Gouda Cheese Produced in the Netherlands

AGENCY: Department of Agriculture (USDA).

ACTION: Notice.

On July 6, 1989, the U.S. Department of Agriculture received a complaint alleging price-undercutting of domestic Edam and Gouda cheese by imported subsidized Edam and Gouda quota cheese produced in the Netherlands. Under section 702 of the Trade Agreements Act of 1979 (Pub. L. 96–39), the Secretary of Agriculture must conduct a price-undercutting investigation and make a determination as to the validity of the allegation no later than 30 days after receiving a complaint.

Based on the investigation of the Director, Dairy, Livestock, and Poultry Division, Foreign Agricultural Service, pursuant to the regulations at 7 CFR 6.40–44, I have determined that the duty-paid wholesale price in the New York market area of imported subsidized Edam and Gouda quota cheese and Edam Balls produced in the Netherlands during the period October 1988 through March 1989 was $2.50 per pound and $2.42 per pound, respectively. I have also determined that the domestic wholesale market price for similar U.S. produced Edam and Gouda cheese and Edam Balls in the New York market area during the period October 1988 through March 1989 was $2.04 per pound and $2.27 per pound, respectively.

I, therefore, have determined that there is no price-undercutting of U.S. produced Edam and Gouda cheese or Edam Cheese Balls by imported subsidized Edam and Gouda quota cheese or Edam Cheese Balls produced in the Netherlands.

Done at Washington, DC this 4th day of August 1989.

Clayton Yeutter,

Secretary.

[FR Doc. 89–18739 Filed 8–9–89; 8:45 am]

BILLING CODE 3410–10–M

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of the fee for dairy import licenses for the 1990 quota year.

SUMMARY: This notice announces that the fee to be charged for the 1990 quota year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to quotas proclaimed under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, will be $72.00 per license.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616-South Building, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 447–5270.

SUPPLEMENTARY INFORMATION: Regulations promulgated by the

Department of Agriculture and codified at 7 CFR 6.20–6.34 provide for the issuance of licenses to importers of certain dairy articles which are subject to quotas proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy articles may only be entered into the United States by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of such licenses and the regulations.

The licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country. The use of licenses by the license holder to import dairy articles is monitored by the Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, U.S. Department of Agriculture (the "Licensing Authority") and the U.S. Customs Service.

Regulations at 7 CFR 6.33(a) provide that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation. The fee is to be based upon the total cost to the Department of Agriculture of administering the licensing system during the calendar year preceding the year for which the fee is to be charged, divided by the average number of licenses issued per year for the three years preceding the year for which the fee is to be assessed.

Regulations at 7 CFR 6.33(b) provide that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be filed with the Federal Register. Accordingly, this notice sets out the fee for the licenses to be issued for the 1990 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 1989 has been determined to be $259,603. Of this amount, $134,603 represents the cost of the staff and supervisory hours devoted directly to administering the licensing system during 1989 (total personnel costs for the Import Licensing Group of the Foreign Agricultural Service equaled $106,225; a proportionate share of the supervisory costs devoted directly to administering the licensing system equaled $28,378); $100,000 represents the cost of the computer on-line entry system used to monitor the use of licenses during 1989; and $25,000 represents other miscellaneous costs, including travel, postage, and an in-house computer system. The average number of licenses issued per year for the three years immediately preceding 1990 has been determined to be 3,577.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 1990 calendar year, in accordance with the regulations codified at 7 CFR 6.20–6.34, will be $72.00 per license.

Issued at Washington, DC the 4th day of August, 1989.

Richard P. Warsack,

Licensing Authority.

[FR Doc. 89–18707 Filed 8–9–89; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

White King/Luck Lass Abandoned Uranium Mine Remedial Action Project, Fremont National Forest, Lake County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for assessment and remedial action of the White King and Luck Lass abandoned uranium mines on the Lakeview Ranger District, Fremont National Forest, Lake County, Oregon. This EIS will tier to the Fremont National Forest Land and Resource Management Plan of May 12, 1989 (Goals, Objectives, Standards and Guidelines and Management Area direction), which provides overall guidance in achieving the desired future condition for the area. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected individuals and organizations are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by September 15, 1989.

ADDRESSES: Send written comments and suggestions concerning the scope of the analysis to Joe Tague, District Ranger, Lakeview Ranger District, Fremont National Forest, HC 64, Box 60, Lakeview, Oregon 97630.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Felix R. Miera, Project Manager, phone (503) 947–3334.

SUPPLEMENTARY INFORMATION: The White King/Lucky Lass uranium mines have been listed on the Federal Agency Hazardous Waste Compliance Docket. Under the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99–499) federal agencies are required to list sites on the docket, that have been documented as a hazardous waste site. In SARA, Congress set specific time frames within which the Forest Service must evaluate the hazardous waste sites, and propose and implement acceptable alternatives for remediation of the sites. The mines are located approximately 15 miles northwest of Lakeview, in south-central Oregon. The Lucky Lass mine site is located completely on National Forest System (NFS) lands. The White King mine site is partially on National Forest lands and partially on private lands. The private parcels are surrounded by NFS lands. Both mines operated intermittently from about 1955 through the early 1960's. In 1961, the Lakeview uranium processing mill shutdown. Neither of the mine sites has since produced ore. Production and sale of uranium ore mined and processed, was controlled under contract to the federal government. Cleanup of the abandoned Lakeview uranium processing mill and mill wastes is presently being completed under a contract authorized by the Uranium Mill Tailings Radiation Control Act of 1978, Title I.

There are three types of wastes that were left behind at the mines sites that are cause for potential health, safety, and environmental concern. These include stockpiled ore, acid waste water that has filled the open mine pits, and overburden. The uranium ore and overburden have elevated levels of naturally occurring radioactive materials and also hazardous metals. The stockpiles were left unprotected and exposed to the elements.

Open pit mining at both sites left large depressions for the collection of storm runoff and are also fed by springs. Because of the mineral content of the ore deposits, a very acidic body of water has been created on site. As a result of this acid environment, many of the hazardous metals and radioactive constituents are in solution in the water.

The primary hazards posed by the mine wastes include: gamma radiation exposure from the wastes radioactive constituents; emanation of radon gas, a decay product from radium present in the wastes; and environmental contamination by hazardous chemicals

and the radioactive constituents of surface and ground waters.

The Forest Service is undertaking a site investigation/preliminary assessment of both the White King and Lucky Lass mine sites to determine:

1. The extent and levels of contamination for hazardous constituents and residual radioactivity in soils, ponded water, and the adjacent Augur Creek.

2. The current impacts of this site on the adjacent and surrounding NFS land.

3. The potential for long-term impacts to adjacent and surrounding NFS land.

Based on evaluation of the information obtained from the site investigation and assessment, the Forest Service will then evaluate appropriate corrective action alternatives to mitigate environmental impacts from the mine sites. One of these will be that no corrective action is necessary. Other alternatives will consider stabilizing of contaminated materials at their present location. This could include building a separate clay lined containment cell to hold solid contaminants. Contaminated water would be treated as required prior to release off site and backfill of the open mine pits.

One of the management decisions the Forest Service will evaluate through this EIS process is the appropriateness for the Forest Service to take title to the private lands at the White King mine site. Under this scenario, the Forest Service would take on the full burden for remedial action of the mine site, and also be responsible for the long-term maintenance and surveillance of the site as required under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601–9657. The basis for this approach has already been established by the Congress in addressing remedial actions for Title I sites under the Uranium Mill Tailings Radiation Control Act.

Orville D. Grossarth, Forest Supervisor, Fremont National Forest, Lakeview, Oregon is the responsible official.

The Environmental Protection Agency (EPA) and the Oregon State Department of Energy will be participate as cooperating agencies in this proposed project. Permits may be required from other federal, state and local agencies, such as, Army Corps of Engineers, Oregon State Department of Environmental Quality, Oregon State Department of Geology and Mineral Industries, and Lake County.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.

2. Identifying issues to be analyzed in depth.

3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.

4. Exploring additional alternatives.

5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The Fremont National Forest will hold a public scoping meeting in Lakeview, Oregon, on Thursday, August 31, 1989 at 7:30 pm at the Lakeview Community Center.

The draft EIS is expected to be filed with the EPA and to be available for public review by March 1990. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Sup. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewer may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environment Policy Act at 40 CFR 1503.3 in addressing these points.)

After the 45 day comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by June 1990. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under 36 CFR 217.

Date: August 1, 1989.

Sherman A. Radtke,

Acting Forest Supervisor.

[FR Doc. 89–18683 Filed 8–9–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Commission

[A–122–016]

Choline Chloride From Canada; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke.

SUMMARY: In response to a request by Chinook Chemicals Co., Ltd., the Department of Commerce has conducted an administrative review of the antidumping duty order on choline chloride from Canada. The review covers Chinook Chemicals Co., Ltd., and the period November 17, 1986 through January 8, 1988. We preliminarily determine the margin to be 0.0008 percent *ad valorem*, a rate we consider

de minimis. As a result of the review, the Department intends to revoke the antidumping duty order. Interested parties are invited to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: August 10, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Chip Hayes, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 9786) the final results of its last administrative review of the antidumping duty order on choline chloride from Canada (49 FR 45469, November 16, 1984). On November 30, 1987, Chinook Chemicals Co., Ltd., requested in accordance with § 353.53a(a) of the Commerce Regulations (1988) that we conduct an administrative review. We published a notice of initiation on December 15, 1987 (52 FR 47617). The Department has now conducted that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of choline chloride from Canada. Choline chloride is marketed in several forms including, but not limited to, a solution of 70 percent choline chloride in water (aqueous choline chloride) or in potencies of 50 to 60 percent dried on a cereal carrier. During the review period, such merchandise was classifiable under *Tariff Schedules of the United States Annotated* ("TSUSA") item number 439.5055 and is currently classifiable under HTS item number 2923.10.00. The TSUSA and HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The review covers Chinook Chemicals Co., Ltd., the only known manufacturer and/or exporter of Canadian choline chloride to the United States, and the period November 17, 1986 through January 8, 1988.

United States Price

In calculating United States price we used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed or unpacked, duty-paid, delivered price to unrelated purchasers in the United States. Where applicable, we made adjustments for U.S. and foreign inland freight, import duties, brokerage and handling charges, and discounts. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value we used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on packed or unpacked, ex-factory or delivered price to unrelated purchasers in Canada. We made adjustments, where applicable, for inland freight, credit, and indirect selling expenses when a commission was paid in one market and not the other. In accordance with § 353.55 of the Commerce Regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.55), we did not include sales of small quantities of aqueous choline chloride in drums in calculating home market price. No other adjustments were claimed or allowed.

Preliminary Results of Review and Intent To Revoke

As a result of our review, we preliminarily determine the weighted-average dumping margin to be 0.0008 percent for Chinook Chemicals Co., Ltd., during the period November 17, 1986 through January 8, 1988.

On January 8, 1988, we tentatively revoked the order with respect to Chinook (53 FR 548). However, since Chinook is the only known manufacturer/exporter covered by this order, we intend to revoke the entire order. If this revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the tentative revocation.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested will be held 45 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

This administrative review, intent to revoke, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1) and (c)) and § 353.22 of the new Commerce Department's Regulations. Because the tentative revocation was published (53 FR 548, January 8, 1988) prior to the effective date of the Commerce Regulations published in the **Federal Register** on March 28, 1989, we are proceeding with the intent to revoke pursuant to 19 CFR 353.54 (1988).

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–18643 Filed 8–9–89; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Short-Supply Review on Certain Aluminum-Clad Steel Wire; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to various sizes of aluminum-clad steel wire.

EFFECTIVE DATE: Comments must be submitted no later than August 21, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and

Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTAL INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply and demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods or other relevant factors), an additional tonnage shall be allowed for such category or sub-category * * *."

We have received a short-supply request for 200 metric tons per month for August and September 1989 of high carbon cold-drawn aluminum-clad steel wire conforming to ASTM specification B 415, in diameters ranging from 0.0654 inch to 0.3120 inch.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than August 21, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–18644 Filed 8–9–89; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Orlando, FL Service Area

Dated: August 4, 1989.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is established at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period 01/1/90 to 12/31/90. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Orlando, Florida geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDAs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determined if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Closing Date: The closing date for applications is September 15, 1989. Applications must be postmarked on or before September 15, 1989.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, Suite 505, Atlanta, Georgia 30309, Area Code/Telephone Number 404/347–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Date: August 4, 1989.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree St., NE., Suite 505, Atlanta, Georgia, August 30, 1989, at 9:00 a.m.

[FR Doc. 89–18677 Filed 8–9–89; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Jackson, Mississippi Service Area

Dated: August 4, 1989.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The

cost of performance for the first 12 months is established at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period 01/1/90 to 12/31/90. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Jackson, Mississippi geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (MTA) rendered must be charged by MBDAs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost of firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Closing Date: The closing date for applications is September 15, 1989. Applications must be postmarked on or before September 15, 1989.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, Suite 505, Atlanta, Georgia 30309. Area Code/Telephone Number 404/347–4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

August 4, 1989.

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree St., NE, Suite 505, Atlanta, Georgia, August 30, 1989, at 9:00 a.m.

[FR Doc. 89–18678 Filed 8–9–89; 8:45 am]

BILLING CODE 3510–21–M

National Institute of Standards and Technology

[Docket No. 90647–9147]

RIN 0693–AA74

Proposed Federal Information Processing Standard (FIPS) for Fiber Distributed Data Interface (FDDI)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: A Federal Information Processing Standard adopting voluntary industry standards for the Fiber Distributed Data Interface (FDDI) is proposed for federal agency use. The FDDI is a layered standard for a 100 Mbits fiber optic token ring Local Area Network (LAN). The FDDI network will allow up to 500 stations connected by up to 200 km of fiber, and is particularly suited as a "backbone" network interconnecting other, lower data-rate LANs, for applications inherently requiring high bandwidth, such as image processing with engineering workstations, and connecting storage servers to powerful computers, and other applications whose size and data transfer requirements exceed the capacity of other LANs.

Prior to the submission of this proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the published technical specifications ANSI X3.139–1987, FDDI Medium Access Control (MAC), and ANSI X3.148–1988, FDDI Physical Layer Protocol (PHY), from: American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018 (212) 642–4900. Order the draft technical specifications X3.166, FDDI Physical Layer Medium Department (PMD); X3.XXX, FDDI Station Management (SMT); and X3.XXX, FDDI Single-Mode Physical Layer Dependent (SMF–PMD) from: Global Engineering Documents, Inc., 1–800–854–7179.

All of the technical specifications are derived from standards development projects of X3T9, I/O Interfaces, a technical committee of Accredited Standard Committee X3, Information Processing, which operates under accreditation procedures of ANSI. The final FIPS will adopt specifications as approved by ANSI.

DATE: Comments on this proposed FIPS must be received on or before November 8, 1989.

ADDRESS: Written comments on this proposed standard should be sent to-Director, National Computer Systems Laboratory, ATTN: Proposed GIPS for FDDI, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Burr, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2914.

Dated: August 4, 1989.

Raymond G. Kammer,

Acting Director

Federal Information Processing Standards Publication

Announcing the Standard for Fiber Distributed Data Interface (FDDI)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. *Name of Standard:* LOCAL AREA NETWORKS: Fiber Distributed Data Interface (FDDI).

2. *Category of Standard.* Hardware and Software Standards, Computer Network Protocols.

3. *Explanation.* This Federal Information Processing Standard adopts the fiber Distributed Data Interface (FDDI). FDDI is a layered standard for a 100 Mbits fiber optic token ring Local Area Network (LAN). The default configuration of FDDI allows up to 500 stations connected by as much as 200 km of fiber. This network is particularly suited as a "backbone" network interconnecting other, lower data-rate LANs, for applications inherently requiring high bandwidth, such as image processing with engineering workstations, and connecting storage servers to powerful computers, and other applications whose size and data transfer requirements exceed the capacity of other LANs.

The FDDI standard covers the Physical Layer and lower portion of the Data Link Layer of the Open System Interconnection (OSI) reference Model. It supports the DIS 88012 Logical Link Control (LLC) Standard, and fits within the framework of the Government Open Systems Interconnection Profile (GOSIP), FIPS 146, as one of several lower layer standards supporting LLC.

In addition to supporting the application specified by GOSIP, FDDI is expected to be widely used for applications which are not yet included in GOSIP or which inherently are not "open" applications. An example would be intra-system communications within a loosely coupled multiprocessor system. Both OSI and non-OSI applications may coexist on the same FDDI LAN.

FDDI is a layered standard consisting of four distinct parts:

(a) Medium Access Control (MAC) which provides frame delivery services to the Logical Link Control (LLC) Sublayer above it. LLC is not a part of FDDI. MAC specifies the format of FDDI frames and the token passing medium access protocol.

(b) Physical Layer Protocol (PHY) which provides code word delivery services to the MAC sublayer above it. It is responsible for encoding, decoding and clock recovery functions.

(c) Physical Medium Dependent (PMD) which provides code bit delivery services to the PHY sublayer above it via fiber optic transmission to other PMD entities. Two alternative versions of PMD are defined, one using multimode optical fibers to connect stations separated by less than 2 km, and the other using single mode fiber capable of connecting stations separated by 50 km or more. The multimode version of FDDI is the normal case.

(d) Station Management (SMT) supervises the MAC, PHY and PMD layers and controls the initialization and configuration of the FDDI network, as well as the isolation and resolution of faults. It further provides management services to the OSI Common Management Information Protocol (CMIP) for remote management.

While FDDI is a token ring, it supports a complex topology called a "dual ring of trees," which combines both the dual counter-rotating ring and the ring concentrator strategies for bypassing failures. Four classes of stations are defined:

(a) Dual Attachment Stations (DAS) which are connected to other "peer" DAS to form a dual counter rotating ring.

(b) Single Attachment Stations (SAS) which are connected to the FDDI network as "slaves" through concentrators.

(c) Dual Attachment Concentrations (DAC) which are a DAS with a number of "master" ports to which SAS may be connected. Concentrators will bypass defective or inactive slaves.

(d) Single Attachment Concentrators (SAC) which are SAS and attach as a slave to the master ports of other concentrators, in turn providing a number of master ports to a lower level of slaves. This permits a tree structure of concentrators, with SAS at the terminal leaves.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Institute of Standards and Technology, National Computer Systems Laboratory.

6. *Cross Index.*

(a) IS 9314:–1:1989 Information process systems—Fiber Distributed Data Interface (FDDI)—Part 1: Physical Layer Protocol (PHY) requirements.

(b) IS 9314:–2:1989 Information process systems—Fiber Distributed Data Interface (FDDI)—Part 2: Medium Access Control (MAC) requirements.

(c) DIS 9314–3 Information processing systems—Fiber Distritbuted Data Interface (FDDI)—Part 3: Physical Medium Dependent (PMD) requirements.

7. *Related Documents.*

(a) FIPS PUB 146, Government Open Systems Interconnection Profile (GOSIP).

(b) NBS Special Publication 500–150, Stable Implementation Agreements for Open Systems Interconnection Protocols—Version 1, Edition 1.

(c) NIST Special Publication 500–162, Stable Implementation Agreements for Open Systems Interconnection Protocols—Version 2, Edition 1.

(d) NBSIR 88–3824–2, Ongoing Implementation Agreements for Open Systems Interconnection Protocols: Volume II, Continuing Agreements.

(e) FED–STD–1070, Telecommunications: Detail Specification for 62.5-mm Core Diameter/125-mm Cladding Diameter Class in Multimode, Graded-Index Optical Waveguide Fibers.

8. *Objectives.* The primary objectives of this standard are:

—to achieve interconnection and interoperability of computers, systems and storage systems that are acquired from different manufactures;

—to reduce the costs of computer network systems by increasing alternative sources of supply;

—to facilitate the use of advanced technology by the Federal Government;

—to stimulate the development of commercial products compatable with Open Systems Interconnection (OSI) standards.

9. *Specifications.* This standard adopts the following American National Standards:

X3.139–1987, FDDI Medium Access Control (MAC)

X3.148–1988, FDDI Physical Layer Protocol (PHY)

X3.XXX–19XX, FDDI Station Management (SMT)

In addition, either of the following two standards are adopted for the Physical medium:

(1) X3.166–19XX FDDI Physical Layer Medium Dependent (PMD)

or

(2) X3.XXX–19XX FDDI Single-Mode Physical Layer Dependent (SMF–PMD).

X3.166–19XX specifies a multimode optical fiber medium, and is ordinarily used within buildings and whenever distances between stations are less than 2 km. Unless specifically stated otherwise, multimode PMD is understood to be specified. Although FDDI stations may work with other types of multimode fiber, they have been developed for use with the type of Fiber specified in FED–STD–1070, which should normally be specified when installing fiber cable plants for use with FDDI.

X3.XXX–19XX specifies a single mode fiber medium, and is used, as required, whenever link distances exceed 2 km, and can provide for links exceeding 50 km.

Since ring networks are made by chaining point-to-point connections, it is normal for both physical medium standards to be employed in the same network, depending upon the distance of individual links. Similarly, it is normal for a dual attachment (2 port) FDDI station to have one port of each kind.

In addition, when FDDI is used for Open System Interconnections (OSI) applications, the above American National Standards will be supplemented by the *Stable Agreements for Open System Interconnection Protocols,* which is updated periodically. The current version of this publication is NIST Special Publication 500–162, which does not include additional requirements for FDDI. NBSIR 88–3824–2 contains proposed implementation agreements for FDDI, MAC, PHY and PMD, which are expected to be included in the next revision of the *Stable Agreements for Open System Interconnection Protocols.* Implementation agreements for FDDI SMT are expected to be included in a later revision to the *Stable Agreements for Open System Interconnection Protocols.* These agreements will provide additional specifications for FDDI which select options from the FDDI standards and impose some additional requirements. When implementation agreements for FDDI are included in the current revision to the *Stable Agreements for Open System Interconnection Protocols,* they shall be a requirement of this FIPS whenever FDDI is used for applications within the scope of Open Systems Interconnection. See FIPS PUB 146, Government Open Systems Interconnection Profile (GOSIP) for further information on these agreements.

FDDI may be used for special applications which are not within the scope of Open System Interconnection and do not fall under GOSIP. In these cases, requirements of the *Stable Agreements for Open System Interconnection Protocols* may not be appropriate and agencies may choose not to require the observance of some or all of their provisions.

10. *Applicability.* FDDI shall be used by Federal agencies when acquiring fiber optic token ring computer Local Area Network products having a data transfer rate over 50 Mbits and less than 150 Mbits. The applicability includes, but is not limited to applications covered by the Government Open Systems Interconnection Profile (GOSIP), Federal Information Processing Standards Publication 146.

11. *Implementation.* This standard is effective six (6) months after approval. Agencies are encouraged to use this standard for solicitations and contracts for new fiber optic ring computer Local Area Networks to be acquired after the effective date. This standard is compulsory and binding for use in solicitations and contracts for fiber optic token ring computer Local Area Networks to be acquired two (2) years after the effective date.

The National Institute of Standards and Technology is developing a program to accredit testing organizations for specific tests or types of tests for computer products and services. Information on these tests and test procedures will be made available in the future. Until the tests and test procedures are available, government agencies acquiring networks and services in accordance with this standard may wish to require testing for conformance, interoperation, and performance. The tests to be administered and the testing organization are at the discretion of the agency Acquisition Authority. Guidance on testing for GOSIP specifications is contained in section 2 of the GOSIP document.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Requests for waivers shall be granted only when:

(a) Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

(b) Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Computer Systems Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications documents is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication _____ (FIPSPUB) _____), and title. Specify order or NTIS deposit account.

[FR Doc. 89–18729 Filed 8–9–89; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Coastal Zone Manangement: Federal Consistency Appeal by B.J. Bull From an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On June 20, 1989, B.J. Bull (Appellant), through counsel, filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the South Carolina Coastal Commission (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers (Corps) permit to place dredged or filled material in an isolated wetland in the South Carolina coastal zone. The State's objection precludes the Corps from issuing a permit to the Appellant to perform these activities pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicted by a notice in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Kirsten Erickson, Attorney-Adviser, NOAA Office of General Counsel, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235 (202) 673–5200.

Dated: August 2, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

[FR Doc. 89–18669 Filed 8–9–89; 8:45 am]

BILLING CODE 3510–08–M

Coastal Zone Management: Federal Consistency Appeal by Oak Beach Inn Corporation From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On June 2, 1989, Oak Beach Inn Corporation (Appellant), through counsel, filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the New York Department of State (State) to the Appellant's consistency certification for an intake pipe for a fire sprinkler system, construction of bulkhead with fill, maintenance of an existing deck and enclosure of a second deck. The State's objection precludes the U.S. Army Corps of Engineers from issuing a permit to the Appellant to perform these activities pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR FURTHER INFORMATION CONTACT: Kirsten Erickson, Attorney-Adviser, NOAA Office of General Counsel, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235 (202) 673–5200.

Dated: August 2, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

[FR Doc. 89–18670 Filed 8–9–89; 8:45 am]

BILLING CODE 3510–08–M

Intent To Conduct a Public Meeting on the Sites Being Considered for Nomination as Components to the Proposed Delaware National Estuarine Research Reserve

AGENCY: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Public meeting notice.

SUMMARY: Notice is hereby given that the Department of Natural Resources and Environmental Control (DNREC), of the State of Delaware, intends to conduct a public meeting to discuss the proposed nomination of three sites to form a multi-component Delaware Estuarine Research Reserve System. This public meeting is being held for the purpose of soliciting comments about the following sites: (1) The lower St. Jones River southeast of Dover; (2) a portion of the upper Blackbird Creek between Odessa and Smyrna; and (3) a portion of the Great Marsh northwest of Lewes which are under consideration by the DNREC for nomination. The State of Delaware's completed site nomination package will be submitted to the Marine and Estuarine Management Division, of the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, which administers the National Estuarine Reserve Research System. Environmental impact statements and draft management plans will be prepared for those State nominated sites receiving NOAA approval.

The public meeting will be held at 7:00 PM on Monday, August 28, 1989 in the DNREC auditorium, Department of Natural Resources and Environmental Control building at 89 Kings Highway, in Dover, Delaware, 19903.

Background

The State of Delaware is identifying estuarine areas in an effort to establish a multi-component system for research and education which adequately represents the major estuarine characteristics of the Delaware coastal zone. Sites ultimately designated as components of the Delaware National Estuarine Research Reserve (DNERR) will be used to study the Delaware estuarine eocsystem, as well as by schools and the general public for learning about estuarine ecology and related issues. Sites undergoing preliminary evaluation are: the lower St. Jones River southeast of Dover; a portion of the upper Blackbird Creek between Odessa and Smyrna; and a portion of the Great Marsh northwest of Lewes. Site selection criteria are based on ecological representation, value for research and education and practical management considerations.

All interested individuals are encouraged to attend the public meeting. Invited speakers include representatives of DNREC, DNERR Site Selection Committee, and NOAA. Speakers will describe the importance of the proposed reserve program to local, regional and/or statewide environment issues, and the opportunities for local involvement in reserve operations and management. Public comments on the reserve concept are invited.

An information packet on the proposed Delaware National Estuarine Research Reserve will be available at

the public meeting. Speakers are asked to provide a written copy of their statement at the meeting. It is recommended that members of the public limit their presentations to 3–5 minutes in length.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Dated: August 5, 1989.

Federal Domestic Assistance Catalog Number 11,420 (Coastal Zone Management) Estuarine Sanctuaries

[FR Doc. 89–18736 Filed 8–9–89; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 11, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invities public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 7, 1989.

Carlos U. Rice,

Director, Office of Information Resources Management.

Office of Special Education and Rehabilitatives Services

Type of Review: Reinstatement
Title: Three-year State Plan for Independent Living Rehabilitation Services Under Title VII, Part A of the Rehabilitation Act of 1973, as amended.
Frequency: Triennial
Affected Public: State or local governments
Reporting Burden:
Responses: 80
Burden Hours: 800
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: State Vocational Rehabilitation agences submit a three-year State plan to receive Federal funds. The Department uses the information to make grant awards, and to evaluate State's performance and compliance under Title VII of the Rehabilitations Act, as amended.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Number and Type of Personnel (In Full-Time Equivalency of Assignment) Employed and Additional Personnel Needed to Provide Early Intervention Services to Infants and Toddlers and Their Families
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 3,596
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State or local agencies to report the number of personnel employed and needed to provide early intervention services to handicapped infants and toddlers. The Department uses this information to monitor the State's compliance with Federal program regulations.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Report of Infants and Toddlers Receiving Early Intervention Services in Accord with Part H
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 2,378
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State or local agencies to report to the Department the number of infants and toddlers receiving early intervention services in each State. The Department uses this information to assess the progress, impact, and effectiveness of State efforts to implement such programs and to report this information to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Report of Federal, State and Local Funds Expended for Early Intervention Services
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 5,974
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State or local agencies to report to the Department the amount of Federal, State and local funds expended for early intervention services. The Department uses this information for monitoring and Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Report of Early Intervention Services in Need of Improvement
Frequency: Annually
Affected Public: State or local governments

Reporting Burden:
Responses: 58
Burden Hours: 1,508
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State or local agencies to report to the Department the early intervention services in need of improvement. The Department uses this information to monitor the progress of State efforts to improve these services and to report this information to Congress.

[FR Doc. 89-18724 Filed 8-9-89; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM89-15-20-000]

Algonquin Gas Transmission Co.; Proposed Change In FERC Gas Tariff

August 3, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on July 31, 1989, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheet:

Proposed to be effective May 1, 1989

Substitute Thirty-third Revised Sheet No. 203
Substitute Twenty-first Revised Sheet No. 211
Substitute Sixteenth Revised Sheet No. 214

Proposed to be effective, June 1, 1989

Substitute Thirty-fourth Revised Sheet No. 203

Algonquin States that pursuant to section 7 of Rate Schedule F-2, section 10 of Rate Schedule STB and section 9 of Rate Schedule SS-III, Algonquin is filing the above listed tariff sheets to concurrently track rate changes made by its pipeline suppliers, CNG Transmission Corporation and Texas Eastern Transmission Corporation in the services underlying Algonquin's Rate Schedules F-2, STB and SS-III.

Algonquin further maintains that the effect on Rate Schedule F-2 due to the revision of the take-or-pay unit charge in CNGT's underlying service is to increase the commodity rate by 0.31 cents per MMBtu. Similarly, Texas Eastern has flowed through CNGT's revision of the take-or-pay unit charge through Rate Schedules SS-2 and SS-3. Texas Eastern's Rate Schedules SS-2 and SS-3 are the underlying services for Algonquin's Rate Schedule STB and SS-III, respectively. The effect of the Texas Eastern flow through of CNGT's revised take-or-pay unit charge is to increase the Injection charge by 0.31 cents per MMBtu in Algonquin's Rate Schedules STB and SS-III. All as more fully set forth in Algonquin's instant filing.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 9, 1989. Protest 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 in the Public Reference Room

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-18650 Filed 8-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM89-3-22-000]

CNG Transmission Corp.; Proposed Changes In FERC Gas Tariff

August 3, 1989.

Take notice that CNG Transmission Company ("CNG") on July 28, 1989, pursuant to section 4 of the Natural Gas Act, the Commission's September 30, 1988, August 12, 1988, November 4, 1988, December 28, 1988, March 3, 1989, and June 1, 1989 orders in this docket, and § 12.9 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

First Revised Sheet Nos. 49A, 49C and 160I
Second Revised Sheet Nos. 46, 160F, and 160H
Third Revised Sheet Nos. 41, 44, 47, 48, 49, 160B, 160C, 160E and 160G

The proposed effective date for First Revised Sheet No. 49C is June 1, 1989. The proposed effective date for the remaining sheets is August 1, 1989.

CNG states that the purpose of this filing is to change CNG's take-or-pay pass-through provisions to reflect modifications and additions to Order No. 500 buyout and buydown costs that have been made recently by CNG's pipeline suppliers.

CNG states that copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR § 385.214 and 385.211. All motions or protests should be filed on or before August 10, 1989. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-18651 Filed 8-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-3-46-002]

Kentucky West Virginia Gas Co.; Compliance Filing

August 3, 1989.

Take notice that on July 8, 1989, Kentucky West Virginia Gas Company (Kentucky West) filed Substitute Fourteenth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective August 1, 1989.

Kentucky West states that this filing is in compliance with the Commission's Letter Order issued June 21, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before August 10, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-18652 Filed 8-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-4-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

August 3, 1989.

Take notice that K N Energy, Inc. ("K N") on July 31, 1989 tendered for filing a quarterly PGA proposing changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, Original Volume No. 1–B to reflect changes in the Current Adjustment. The proposed changes would increase the commodity rate under each of K N Energy's jurisdictional rate schedules, exclusive of IOR–1 and IOR–2, by 1.92¢ per Mcf. Rates under Rate Schedules IOR–1 and IOR–2 are proposed to increase by 0.72¢ per Mcf and 0.44¢ per Mcf, respectively. K N has also revised the rates of its various rate schedules to reflect a decrease in D1 and D2 demand costs as set forth in K N's transmittal letter and tariff sheets. K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending November 30, 1989. The proposed effective date for the rate changes in September 1, 1989.

K N states that copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before August 10, 1989 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18653 Filed 8–9–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-26-000]

Natural Gas Pipeline Co. of America; Changes In Rates

August 3, 1989.

Take notice that on August 1, 1989, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC gas Tariff, Third Revised Volume No. 1 (Tariff) the below listed tariff sheets to be effective September 1, 1989.

Eightieth Revised Sheet No. 5
Forty-fifth revised Sheet No. 5A
Twenty-fifth Revised Sheet No. 5B
Twenty-sixth Revised Sheet No. 5C

Natural states the purpose of the instant filing is to implement Natural's quarterly PGA unit rate adjustment calculated pursuant to section 18 of the General Terms and Conditions of Natural's Tariff.

The overall effect of the quarterly adjustment when compared to Natural's quarterly PGA filing in Docket No. TQ89–2–26–000 effective June 1, 1989, is an increase in the DMQ–1 commodity charge of 45.81¢, and decreases in the DMQ–1 demand and entitlement demand and entitlement charges of $.04 and $.0026, respectively. Appropriate adjustments have been made with respect to Natural's other rate schedules.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before August 10, 1989. 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 wishng 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18654 Filed 8–9–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-55-000]

Questar Pipeline Co.; Rate Change

August 3, 1989.

Take notice that on July 31, 1989, Questar Pipeline Company tendered for filing and acceptance Twenty-third Revised Sheet No. 12 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective September 1, 1989.

Questar Pipeline states that the purpose of this filing is to adjust the purchased gas costs under its sale-for-resale Rate Schedule CD–1 effective September 1, 1989.

Questar Pipeline further states that Twenty-third Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.23257/Dth which is $0.15144 lower than the currently effective rate of $2.38401/Dth. The demand base cost of purchased gas as adjusted is decreased by $.00059/Mcf from $0.00767/Mcf to $0.00708/Mcf.

Questar Pipeline states that it has provided a copy of the filing to its sales customer and state public service commissions.

Any person desiring to be heard or to protest this 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 of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before August 10, 1989. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18655 Filed 8–9–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-130-005]

Transwestern Pipeline Co.; Compliance Filing

August 3, 1989.

Take notice that Transwestern Pipeline Company (Transwestern) on July 31, 1989 tendered for as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

Effective April 1, 1989

First Substitute 2nd Revised Sheet No. 87

Reason for Filing

Transwestern states that this tariff sheet is filed to comply with the Commission's order issued July 14, 1989 in Docket Nos. RP89–130–003 and RP89–130–004 (Order). The Order directed Transwestern to eliminate certain tariff

language from Sheet No. 87 of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. Therefore, Transwestern has revised Sheet No. 87 to eliminate the tariff language as outlined in the Order.

Transwestern requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary so as to permit the above listed tariff sheet to become effective April 1, 1989 as approved in the Order.

Transwestern filed for rehearing of the Commission's Order issued on April 28, 1989 (Docket Nos. RP89-130-000,001 and RP88-198-004,005), which required Transwestern, in part, to eliminate the "or administrative proceedings" reference in its Litigation Exception Clause. Therefore, in the event Transwestern prevails in its request for rehearing of the Commission's requirement that Transwestern remove the "or administrative proceedings" reference, or if Transwestern prevails in its request for rehearing, which it contemplates filing, of the Commission's July 14, 1989 Order in Docket Nos. RP89-130-003 and RP89-130-004, then Transwestern reserves its right to refile and implement tariff sheets accordingly.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission Rules of Practice and Procedure. All such protests should be filed on or before August 10, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-18656 Filed 8-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-11-000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

August 3, 1989.

Take Notice that on July 31, 1989, United Gas Pipe Line Company (United) tendered for filing the following tariff sheets:

Original Volume 1

Eighty-Ninth Revised Sheet No. 4
Eighth Revised Sheet No. 4.1
Eighth Revised Sheet No. 4-G

The proposed effective date of the above referenced tariff sheets in this docket is October 1, 1989. The above referenced tariff sheets are being filed pursuant to § 154.310 of the Commission's regulations to reflect changes in United's purchased gas cost adjustment as provided in section 19 of United's FERC Gas Tariff, First Revised Volume No. 1.

United states that it has filed tariff sheets to reflect a 1.85¢ per Mcf overall net decrease in gas commodity costs. This overall net decrease includes an increase of 6.32¢ per Mcf in United's Current Adjustment, and a decrease in the Annual Surcharge of 8.17¢ per Mcf. The surcharge to be effective on October 1, 1989, and remaining in effect through September 30, 1990, is 4.47¢ per Mcf. This reflects the projected recovery of approximately $1.1 million in Additional Deferred Costs in accordance with United's settlement in Docket Nos. TA87-1-11-000, *et al.* and TA87-2-11-000 *et al.*

United also states that it will continue to suspend its right to collect an 18¢ per Mcf Settlement Surcharge for the same reasons given in Docket No. TQ89-3-11-000; that it will forever forego the recovery of approximately $9.4 million of its current deferred gas cost balance pursuant to its PGA Settlement; and that it will reflect a 9¢ per Mcf increase in the demand component of its Current Adjustment attributable to the jurisdictional portion of costs allocoable to United pursuant to the Commission's order issued in *Sea Robin Pipeline Company*, Docket No. TA89-1-6-000, 46 FERC ¶ 61,152 (1989).

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions or protests should be filed on or before August 9, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any 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.

LInwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-18657 Filed 8-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 3, 1989.

Take notice that Williams Natural Gas Company (WNG) on July 31, 1989 tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet Nos. 6B-6D

The proposed effective date of these tariff sheets is August 1, 1989.

WNG made a filing on December 1, 1988, as amended January 30, 1989, to place tariff sheets into effect to establish procedures pursuant to Order No. 500 through which WNG will recover from its customers the take-or-pay and contract reformation fixed charges and commodity surcharges which WNG's pipeline suppliers bill to WNG under § 2.104 of the Commission's General Policy and Interpretations. The instant filing is being made to track additional costs to be billed to WNG by its pipeline suppliers.

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 § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-18658 Filed 8-9-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[General Docket No. 87-25; FCC 88-340]

Compulsory Copyright License for Cable Retransmission

AGENCY: Federal Communications Commission.

ACTION: Notice; report.

SUMMARY: This report analyzes the compulsory license for cable retransmission of television broadcast signals in light of the substantial changes in the cable programming and delivery industries that have occurred since the compulsory license was established in 1976. Drawing on its communications policy expertise, and guided by its longstanding policy goal of encouraging the provision of a rich and diverse menu of video programming to the American public, the Commission concludes that the public interest would be served by the elimination of the compulsory license. The report therefore recommends that Congress abolish the compulsory license for retransmission of distant and local television broadcast signals.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Levy, Office of Plans and Policy; (202) 653-5940.

SUPPLEMENTARY INFORMATION: This is a sumary of the Commission's *Report* in General Docket 87-25, FCC 88-340, Adopted October 27, 1988 and Released August 3, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington DC 20037.

Summary of Report

This report evaluates the compulsory license for cable retransmission of television broadcast signals and concludes that the public interest would be served by its repeal. The cable compulsory license was granted by Congress in the Copyright Act of 1976, effective in 1978. The Commission's report recommends that Congress eliminate the compulsory licenses for both distant and local television signals and replace it with full copyright liability.

The recommendation to repeal the compulsory license is based on two conclusions. First, under full copyright liability, consumers will benefit from a menu of programming, including new programming, that more closely matches their preferences and that is delivered by a more efficiently utilized group of delivery systems. Second, under full liability, mechanisms will be available, with moderate transactions costs, to license programming to cable operators.

The legislative history of the Copyright Act of 1976 suggests that the primary reason for the choice of the compulsory license was Congress' judgment that the transactions costs (costs of negotiating licenses for cable retransmission) would be unacceptably high under full copyright liability. Some observers suggest that Congress was also concerned that broadcasters might withhold their programming from cable, thus depriving cable subscribers of access to broadcast signals that they were uanble to receive over the air.

Under the licensing mechanism set up by the 1976 Act, the Commission defines which signals may be obtained under the compulsory license and the Copyright Royalty Tribunal (a federal agency set up by the Act) administers the statutory royalty rates, adjusting them in response to inflation and in the event of changes in certain FCC rules. While the Tribunal tries to stimulate market results in its distributions, this is an impossible goal for an administrative agency. Moreover, the Tribunal is constrained by the statute in the adjustments that it can make.

Ten years of experience with signal distribution pursuant to this program suggests that the resulting divergence between compulsory license rates and market rates diminishes consumer welfare. Market rates, which are free to vary over time and across programs based on varying consumer preferences, provide an important flow of information regarding those preferences and furnish incentives to program producers to match their output closely to consumer demands. The compulsory license impedes this flow, to the detriment of the public interest in diverse and popular programming. Moreover, by providing a program acquisition advantage to one medium—cable—the compulsory license reduces the efficiency of the program distribution mechanism. This too reduces the welfare of consumers, whom the distribution system is designed to serve.

Under full copyright liability, a variety of mechanisms may develop by which cable operators could obtain the rights to retransmit broadcast signals. In the most likely scenario, individual broadcast stations would act as "retransmission rights packagers," analogous in some respects to cable or broadcast networks. Some stations would acquire national cable retransmission rights; these would most likely be independent television stations. At the local (or regional) level, both independent stations and affiliates could act as retransmission rights packagers, acquiring cable retrainsmission rights for their local or regional service areas. In either case, the broadcast station would then market the retransmission rights that it had acquired to a group of cable systems, wich would be analogous to "affiliates."

The proliferation of full copyright, satellite-delivered cable networks since 1976, and the steps currently being taken by a few superstations to acquire national rights to their programming strongly suggest that this mechanism is workable. Furthermore, the multitude of cable networks and, at the local level, the strongly expressed desire of broadcasters for cable carriage, indicate that today cable systems are unlikely to be foreclosed from access to broadcast programming.

With respect to transactions costs, structural changes in the cable industry over the past 12 years have reduced their burden on a per subscriber basis. Moreover, experience has shown that the transactions costs of the compulsory license system are significant.

In evaluating the compulsory license, the report compares the efficiency of program production and distribution with and without that license in force. This is an inherently difficult task, since it involves analysis of a hypothetical situation, but it is the relevant comparison for public policy purposes. In and of themselves, the health and profitability of the broadcast, cable, or program production industries are not of decisional significance. While the recommendation to eliminate the compulsory license for distant signals in unconditional, the local signal recommendation would have to be reconsidered in the event that new must carry rules are imposed.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18706 Filed 8-9-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89C-0304]

Davis and Geck; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Davis & Geck has filed a petition proposing that the color additive regulations be amended to provide for the safe use of [phthalocyaninato (2-)]copper to color a nonabsorbable monofilament suture composed of polybutylene terephthalate for general and ophthalmic surgery.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402-403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 8C0213) has been filed by Davis & Geck, 1 Casper St., Danbury, CT 06810, proposing that § 74.3045 *[Phthalocyaninato(2-)]copper* (21 CFR 74.3045) of the color additive regulations be amended to provide for the safe use of [phthalocyaninato(2-)]copper to color a nonabsorbable monofilament suture composed of polybutylene terephthalate for general and ophthalmic surgery.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulations in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 2, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-18645 Filed 8-9-89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Division of Research Resources; Meetings of the Subcommittees of the Animal Resources Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the Subcommittees of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health.

These meetings will be open to the public as listed below for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 522b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meetings will be closed to the public as listed below for the review, discussions and evaluation of individual grant applications submitted to the Animal Resource Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Subcommittee: Subcommittee on Primate Research Centers
Date of Meeting: September 15, 1989
Place of Meeting: Hotel El Rancho, 4120 Chiles Road, Davis, California 95616
Open: 10:00 a.m.-Adjournment
Closed: 8:00 a.m.-10:00 a.m.
Name of Subcommittee: Subcommittee on Animal Resources
Dates of Meeting: October 23-24, 1989
Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conference Room 9, Bethesda, MD 20892
Open: October 23—1:00 p.m.-3:00 p.m.
Closed: October 23—8:00 a.m.-12 noon, October 24—8:00 a.m.-Adjournment

Mr. Michael Fluharty, Public Affairs Specialist, Division of Research Resources, Westwood Building, Room 857, 5333 Westbard Avenue, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Arthur D. Schaerdel, Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Westwood Building, Room 10A/18, Bethesda, Maryland 20892, (301) 496-4390, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: August 2, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-18680 Filed 8-9-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of National Advisory Dental Research Council

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held September 25-26, 1989, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to recess on September 25 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on September 26 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Preston A. Littleton, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2039, Betheda, Maryland 20892, (telephone 301-496-9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Institutes; National Institutes of Health.)

Dated: August 2, 1989

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-18681 Filed 8-9-89; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), Division of Research Resources (DRR), on September 21–22, 1989, at the National Institutes of Health, Conference Room 10, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on September 21, from 9 a.m. until recess and from 8:30 a.m. until approximately 11 a.m. on September 22, during which time there will be discussions on administrative matters such as previous meeting minutes; the Report of the Acting Director, DRR; and review of budget and legislative updates. Attendance by the public will be space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 22 from approximately 11 a.m. until adjournment for the review, discussion and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Michael Fluharty, Public Affairs Specialist, DRR, Westwood Building, Room 857, National Institutes of Health, Bethesda, Maryland 20892, 301/496–5545, will provide a summary of the meeting and a roster of the Council members upon request. Dr. James F. O'Donnell, Deputy Director, DRR, Westwood Building, Room 8A16, National Institutes of Health, Bethesda, Maryland 20892, 301/496–6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biomedical Research Technology; 13.375, Minority Biomedical Research Support; 13.389 Research Centers in Minority Institutions, National Institutes of Health.)

Dated: August 2, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–18682 Filed 8–9–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plans for Three Texas Plants for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft recovery plans for *Hymenoxys texana* (Texas bitterweed), *Coryphantha ramillosa* (bunched cory cactus), and *Neolloydia mariposensis* (Lloyd's mariposa cactus). The two cactus species occur in west Texas and probably in suitable habitat in northern Mexico, and *Hymenoxys texana* occurs in southeastern Texas. The Service solicits review and comment from the public on these draft plans.

DATE: Comments on the draft recovery plans must be received on or before September 11, 1989 to receive consideration by the Service.

ADDRESSES: Written comments and materials regarding these plans should be addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, c/o CCSU, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412 (512/888–3346 or FTS 529–3346). The plan is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Philip Clayton, Botanist, or Roy Perez, Field Supervisor, Corpus Christi Ecological Services Field Office (see ADDRESSES).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan.

The species being considered in these recovery plans are *Hymenoxys texana, Coryphantha ramillosa,* and *Neolloydia mariposensis.* The area of emphasis for recovery actions of the cactus species is west Texas (Brewster and Terrell Counties) and for *Hymenoxys texana* is southeast Texas (Fort Bend and Harris Counties). Habitat protection, land acquisition, and development of propagation techniques are major objectives of these recovery plans.

Public Comments Solicited

The Service solicits written comments on the recovery plans described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: August 3, 1989.

Conrad A. Fjetland,

Acting Regional Director.

[FR Doc. 89–18689 Filed 8–9–89; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Collaboration Between Geological Survey and Newmont Exploration, Limited

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a collaborative effort between the U.S. Geological Survey and Newmont Exploration Limited has been granted to provide personnel and chemical analyses of core from two holes drilled

in the Shoshone Range in north-central Nevada.

DATES: This action is effective as of July 14, 1989, for a duration of 6 months.

ADDRESSES: Copies of the Memorandum of Agreement are available for inspection upon request at the following location: U.S. Geological Survey, Branch of Western Mineral Resources, 345 Middlefield Road, Menlo Park, California 94025.

FOR FURTHER INFORMATION CONTACT: Dr. Chester Wrucke of the U.S. Geological Survey, Branch of Western Mineral Resources, at the address given above; telephone 415/329-5413, (FTS) 459-5413.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 89-18621 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[CA-940-09-CACA 12716]

Termination of Recreation and Public Purposes Classification; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Termination of recreation and public purposes classification.

SUMMARY: This action terminates a Recreation and Public Purposes Classification in its entirety which classified public land for disposition pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended. The land was classified as a result of an application filed under the Act cited above. The application was subsequently withdrawn and the classification is moot. The classification segregated the public lands from all forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Mike Selman, BLM Palm Springs-South Coast Resource Area Office, 400 South Farrell Drive, Suite B205, Palm Springs, California 92262.

1. By virtue of the authority vested in the Secretary of the Interior by section 7 of the Act of June 28, 1934, 48 Stat. 1272, as amended, the Recreation and Public Purposes Classification is hereby terminated in its entirety from the following land:

San Bernardino Meridian

T. 9 S., R. 3 W.,
sec. 15, NW¼NW¼.

The area described contains 40 acres in San Diego County.

2. At 10 a.m. on September 12, 1989, the land in paragraph 1 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on September 12, 1989 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on September 12, 1989, the land described in paragraph 1 will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Date: August 20, 1989.

Ed Hastey,

State Director.

[FR Doc. 89-18692 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-40-M

[UT-050-09.4410-08]

Environmental Assessment for the King Top WSA Mine Claim; Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of comment period.

SUMMARY: An Environmental Assessment (EA) for the King Top WSA Mine Claim Reclamation in the King Top WSA will be available for public review August 11, 1989. For further information, contact Dave Henderson at (801) 743-6811. Copies of the EA will be available at the Warm Springs Resource Area, P.O. Box 778, Fillmore, Utah 84631.

Dated: July 31, 1989.

Larry R. Adroyd,

Associate District Manager, Richfield District Office.

[FR Doc. 89-18622 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-DQ-M

[CO-010-09-4320-02]

Craig District Grazing Advisory Board Meeting

Time and Date: September 15, 1989, at 10:00 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Status: Open to public, interested persons may make oral statements between 10:00 a.m. and 11:00 a.m., or may file written statements.

Matters to be Considered: 1. Riparian presentation, 2. Status report on FY'89 range improvement projects, 3. Area reports, 4. Expenditures of Grazing Advisory Board Funds.

Contact Person for More Information: John Denker, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129; Phone: (303) 824-8261.

Dated: August 3, 1989.

Jerry L. Kidd,

Associate District Manager.

[FR Doc. 89-18693 Filed 8-9-89; 8:45 am]

BILLING CODE 4310-JB-M

[OR-130-09-4830-12; GP9-301]

District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR, Part 1780, that a meeting of the Spokane District Advisory Council will be held on September 12, 1989. The meeting will begin at 9:30 a.m. in the conference room of the BLM Spokane District Office, East 4217 Main Avenue, Spokane, Washington.

The agenda of the meeting is as follows:

1. Opening remarks and general business.
2. Spokane District Resource Management Plan (RMP) Amendment.
3. Yakima Canyon Recreation Plan.
4. Iceberg Point/Point Colville Planning Analysis.
5. Land Exchange Update.
6. Accomplishments for FY 89.
7. Outlook for FY 90.

Any responsible person wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202, or telephone (509) 353-2570 by the close of business, 4:30 p.m., Friday, September 8, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A written report of the Council Meeting will be maintained at the BLM Spokane District Office and will be made available for public inspection.

Reproduction of the meeting report will be made available to the public at the cost of duplication.

The meeting is open to the public and news media.

Dated: August 2, 1989.

Pearl E. Lee,

Acting District Manager.

[FR Doc. 89–18694 Filed 8–9–89; 8:45 am]

BILLING CODE 4310-33-M

[ID-010-09-4370-08]

Initiation of Plan Amendment for the Boise District's Cascade Resources Management Plan; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to inititate a plan amendment for the Boise District's Cascade Resource Management Plan (RMP) and prepare an environmental assessment (EA) to consider removal of the 4-mile wild horse herd area designation.

SUMMARY: The amendment would provide for the protection of extensive bitterbrush plantings and maintenance of other projects established to rehabilitate a large wildlife area in a crucial big-game winter range. It would also facilitate the development of a grazing rest-rotation system designed for re-establishing bitterbrush and enhancing perennial grasses.

All remaining Cascade RMP objectives and management decisions would remain the same as shown in the Record of Decision.

The geographical area to be considered encompasses approximately 18,500 acres of public lands in the Cascade Resource Area of the Boise District, and the land involved includes Dry Creek, 4-Mile Area, and Willow Ridge.

The main issue identified for this amendment is the impact the wild horse herd would have on the established bitterbrush plantings and proposed rotation grazing system.

An interdisciplinary team consisting of range, wildlife, watershed, cultural, and planning specialists will prepare the amendment and environmental assessment.

Affected publics are invited to participate in the process. To date, no public meetings are scheduled; however, any public meetings which may be scheduled will be announced in the local media.

FOR FURTHER INFORMATION CONTACT: More detailed information can be obtained by contacting Richard Geier, Cascade Area Manager at Bureau of Land Management, Boise District, 3948 Development Avenue, Boise, Idaho 83705 or at (208) 334–1582.

Date: August 3, 1989.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 89–18695 Filed 8–9–89; 8:45 am]

BILLING CODE 4310-GG-M

[CA-940-09-4214-10; CACA 3620]

California; Partial Termination of Proposed Withdrawal and Reservation of Land; Correction

In notice document 86–23780 beginning on page 37496 in the issue of October 22, 1986, make the following corrections:

On page 37496 in the first column, line 24 from the top which reads "Sec. 11, SE¼NE¼, SE¼SW¼;" is hereby corrected to read "Sec. 11, SE¼NE¼, SW¼SE¼"; and line 26 from the top which reads "NE¼W¼NE¼, N½SW¼SW¼NE¼," is hereby corrected to read "NW¼SW¼NE¼, N½SW¼SW¼NE¼."

Date: August 1, 1989.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89–18696 Filed 8–9–89; 8:45 am]

BILLING CODE 4310-40-M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P–101]

Passenger Train Operation

To: Wisconsin Central Ltd.

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and Seattle, Washington, Train Nos. 7 & 8, the Empire Builder. These train operations require the use of tracks and other facilities of the Soo Line Railroad Company (SL). A portion of the SL tracks near Portage, Wisconsin are temporarily out of service because of a derailment. An alternate route is available via the Wisconsin Central Ltd. (WC) between Duplainville and Junction City, Wisconsin.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, (a) Pursuant to authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Wisconsin Central Ltd. (WC) is directed to operate trains of the National Railroad Passenger Corporation (AMTRAK) between Duplainville, Wisconsin and a connection with Soo Line Railroad Company (SL) at Junction City, Wisconsin.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 4:30 p.m., (CDT), July 6, 1989.

(e) *Expiration date.* The provisions of this order shall expire at 4:30. p.m., (CDT), July 7, 1989, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Wisconsin Central Ltd., and upon the National Railroad Passenger Corporation (AMTRAK), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, July 6, 1989, William J. Love, Agent.

Noreta R. McGee,

Secretary.

[FR Doc. 89–18673 Filed 8–9–89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 70X)]

Norfolk and Western Railway Co.—Abandonment Exemption—In Madison and St. Clair Counties, Illinois

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 10.4-mile line of railroad between milepost A-20.3, at Troy Junction, and milepost A-30.7, at O'Fallon, in Madison and St. Clair Counties, IL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 9, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 21, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by August 30, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 15, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 4, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-18674 Filed 8-9-89; 8:45am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB-290 (Sub-No. 76X)]

Southern Railway Co.—Abandonment Exemption—In Chatham and Lee Counties, NC

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 2.2-mile line of railroad between milepost CF-121.0, at Gulf, and milepost CF-123.2, at Cumnock, in Chatham and Lee Counties, NC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 9, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 21, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by August 30, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 15, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so

3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 2, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–18505 Filed 8–9–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on July 13, 1989, a Consent Decree in *United States* v. *Chase Chemical Company, L.P.*, Civil Action No. 88–2828, was lodged with the United States District Court for the District of New Jersey. The Consent Decree requires the Defendants to pay a civil penalty of $175,000, and obligates them to install pollution control equipment by August 15, 1989, and achieve compliance with the Clean Air Act and the New Jersey State Implementation Plan as to emissions of volatile organic compounds by November 30, 1989.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Chase Chemical Company, L.P.*, D.J. Ref. No. 90–5–2–1–1180.

The Consent Decree may be examined at the office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey, 07102; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree can be obtained in person or by mail from the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–18698 Filed 8–9–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act; Wheeling-Pittsburgh Steel Corp.; U.S. Environmental Protection Agency

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 1, 1989, a proposed Consent Decree in *Wheeling-Pittsburgh Steel Corp.* v. *United States Environmental Protection Agency ("EPA")*, No. 85–0124–W, was lodged with the United States District Court for the Northern District of West Virginia. The proposed Consent Decree arises from a civil action filed by Wheeling Pittsburgh Steel Corp. in 1985 challenging a Final Administrative Order issued by EPA pursuant to Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. 6928(a). The Consent Decree requires that the company conduct a closure of its hazardous waste facility, groundwater monitoring, and, if necessary, corrective action pursuant to Section 3008 of the Resource Conservation and Recovery Act, 42 U.S.C. 6928, and pay a civil penalty of $17,500 assessed under the administrative order.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *Wheeling-Pittsburgh Steel Corp.* v. *United States Environmental Protection Agency ("EPA")*, DJ Ref No. 90–7–1–309A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of West Virginia, Room 247, Federal Building, 1125–1141 Chapline Street, Wheeling, West Virginia, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–18699 Filed 8–9–89; 8:45 am]

BILLING CODE 4410–10–M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984; Semiconductor Research Corporation

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Research Corporation ("SRC") on July 13, 1989, has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of SRC. The changes consist of the addition of Solid State Equipment Corporation and Silvaco Data Systems and the deletion of the Silicon System, Incorporated.

The SRC filed its notification of these membership changes for the purpose of extending the Act's provisions limiting recovery by antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties of the SRC and the SRC's general area of planned activity are given below.

The SRC is a joint venture which, with the additions and deletions of the previously identified companies, comprises the following members:
Advanced Micro Devices, Incorporated
Applied Materials, Inc.
AT&T Technology, Incorporated
Control Data Corporation
Digital Equipment Corporation
E.I. du Pont de Nemours & Company
Eastman Kodak Company
Eaton Corporation
E–Systems, Incorporated
General Electric Company/RCA
General Motors Corporation
Harris Corporation
Hewlett-Packard Company
Honeywell, Incorporated
IBM Corporation

Intel Corporation
LSI Logic Corporation
Microelectronics and Computer Technology Corporation
Micron Technology, Inc.
Motorola, Incorporated
National Semiconductor Corporation
NCR Corporation
Perkin–Elmer Corporation
Rockwell International Corporation
SEMATECH, Inc.
Silvaco Data Systems
Solid State Equipment Corporation
Texas Instruments, Incorporated
Union Carbide Corporation
Varian Associates, Incorporated
Westinghouse Electric Corporation
Xerox Corporation

The SRC's purpose is to plan, promote, coordinate, sponsor, and conduct research supportive of the semiconductor industry and directed toward:

1. Increasing knowledge of semiconductor materials and phenomena, and of related scientific and engineering subjects that are required for the useful application of semiconductors;

2. Developing new and more efficient designs and manufacturing technologies for semiconductor devices;

3. Identifying directions, limits, opportunities, and problems in generic semiconductor technologies;

4. Increasing the number of scientists and engineers proficient in research, development, and manufacture of semiconductor devices;

5. Increasing industry-university ties, establishing university semiconductor research centers with major long-term research thrusts and developing university semiconductor research activities with more precisely defined, short-term objectives;

6. Developing more relevant graduate school education and a larger supply of graduate students in areas related to semiconductor technology;

7. Increasing the ability of universities to attract and retain competent faculty in the semiconductor field;

8. Decreasing fragmentation and redundancy in United States semiconductor research;

9. Establishing advanced research efforts for critical semiconductor technology areas that are beyond the individual resources of many SRC members; and

10. Promoting efficient communication of research results to SRC members and to the United States semiconductor community, as a whole.

On January 8, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985 (50 FR 4281). SRC filed additional notifications on June 6, 1985, November 4, 1985, February 19, 1986, and September 11, 1987, notice of which the Department published on June 28, 1985 (50 FR 26850), December 24, 1985 (50 FR 52568), March 18, 1986 (51 FR 9287), and October 9, 1987 (52 FR 37849), respectively. SRC also filed additional notifications on December 19, 1986 and January 30, 1987; the Department published notice of both on February 13, 1987 (52 FR 4671). SRC also filed an additional notification on December 13, 1988, notice of which the Department published on January 13, 1989, (FR 1454). SRC also filed additional notifications of January 31, 1989 and February 10, 1989; the Department published notice of both on March 13, 1989 (54 FR 10456). SRC also filed an additional notification on March 29, 1989, notice of which the Department published on May 4, 1989 (54 FR 19256).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–18697 Filed 8–9–89; 8:45 am]

BILLING CODE 4410–01–M

Foreign Claims Settlement Commission

Claims Against Egypt; Adjudication Program Transfer From State Department

AGENCY: Foreign Claims Settlement Commission of the United States.

ACTION: Notice.

SUMMARY: This notice announces the transfer from the Department of State to the Foreign Claims Settlement Commission of the Department's program for adjudication of claims of United States nationals against the Government of the Arab Republic of Egypt for losses resulting from that government's nationalization or other taking of property, as settled under the U.S.-Egyptian claims agreement which entered into force on October 27, 1976. Secondly, this notice establishes the final deadline for filing of claims of United States nationals for losses specifically resulting from the blocking of bank accounts by the Government of the Arab Republic of Egypt, and the evidence and information required to be included with such filing. Thirdly, this notice establishes the deadline for completion of the Foreign Claims Settlement Commission's final adjudication of claims of United States nationals against the Government of the Arab Republic of Egypt.

DATES: The deadline for filing with the Foreign Claims Settlement Commission of any new, previously unadjudicated claims against the Government of Arab Republic of Egypt shall be November 30, 1989. The deadline for completion of the claims adjudication program shall be June 30, 1990.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 1111 20th St. NW., Room 400, Washington, DC 20579, (202) 653–5883 or FAX (202) 653–6009.

Notice of Time for Filing and Completion of Program

I. Pursuant to section 4(b) of Title I of the International Claims Settlement Act of 1949, as amended (22 U.S.C. 1623(b)), the Foreign Claims Settlement Commission hereby gives notice that the period for the filing of any new, previously unadjudicated claims for losses resulting from the blocking by the Government of the Arab Republic of Egypt of bank accounts in Egypt owned by United States nationals will begin on the date of publication hereof and will end on October 31, 1989. The setting of this final deadline is necessary because no deadline was previously set by the Department of State for the filing of such claims.

Claims coming within this category are more specifically described as those based on bank accounts in Egypt which were subject to exchange control and regulation under Egyptian Law No. 80 of 1947, as amended. A claimant holding a previously unadjudicated claim under this category may qualify for compensation if such claimant can demonstrate that, as of October 27, 1976, he or she had title to an outstanding balance in a blocked bank account in Egypt and was a United States national. This is the only type of new claims that will be accepted.

Persons or entities wishing to file new claims coming within this category must submit to the Commission, no later than November 30, 1989, the following evidence and information:

(1) *Evidence of United States nationality*

(a) Individuals

(i) Native born—copy of birth certificate or passport

(ii) Naturalized—naturalization certificate (send via registered mail)

(b) Corporations

(i) Certified copy of articles of incorporation;

(ii) Sworn statement of an officer of the corporation that natural persons who are nationals of the United States

own, directly or indirectly, more than 50 percent of the outstanding stock or other beneficial interest in the corporation; and

(iii) Certificate of good standing from the Secretary of State of the state of incorporation.

(c) Partnerships or other legal entities

(i) Certified copy of the partnership agreement or articles of association; and

(ii) Evidence, as described in paragraphs (a) and (b) above, of the nationality of those partners who are United States nationals.

(2) *Evidence of Blocked Bank Account*

(a) Name and location of bank, and bank account number

(b) Any documents substantiating ownership of the account, including bank statements and copies of any letters and communications from the bank or from Egyptian governmental authorities

(c) Statement from the bank showing the balance in the account as of October 27, 1976, if at all possible

Approval has been obtained from the Office of Management and Budget for the collection of this information. Approval No. 1105–0044, expiration date June 30, 1990.

II. Claims against the Government of the Arab Republic of Egypt which were initially filed with the Department of State prior to the filing deadline of January 22, 1975 (set by the Department by publication in the **Federal Register** on October 18, 1974 (39 FR 37218)), and transferred to the Commission, will be considered as timely filed. The Commission's action on these claims will be limited to determination of the amount by which the awards granted by the Department of State shall be augmented to provide an award of interest as part of the compensation properly payable under international law.

Claimants must notify the Commission if their address has changed since their last correspondence with the Department of State. In addition, the legal successors of claimants who have died since receiving their last award payments from the Department will be required to document their right to receive the awards to which their predecessors would have been entitled.

The Commission will conduct this program and render decisions therein in accordance with its regulations, which are published in Chapter V of Title 45, Code of Federal Regulations (45 CFR 500 *et seq.*). In particular, attention is directed to section 531.6(d) of those regulations, which provides that the claimant shall bear the burden of proof on all elements of his or her claim. A copy of the regulations is available from the Commission on request.

Stanley J. Glod,

Chairman.

[FR Doc. 89–18742 Filed 8–9–89; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Corrections

Announcement of Grants, Services, and Training

The National Institute of Corrections, U.S. Department of Justice, has published its Annual Program Plan/Academy Training Schedule for Fiscal Year 1990. The document describes the services and grant monies available beginning October 1, 1989, as well as training that will be provided by the Institute's National Academy of Corrections. Eligibility criteria for participation in the training sessions and an application form are included.

Those interested in obtaining a copy of the Annual Program Plan/Academy Training Schedule may contact the National Institute of Corrections, 320 First Street, NW., Washington, DC 20534 (telephone 202–724–6449) or its Academy or Jail Center, 1790 30th Street, Boulder, CO 80301 (telephone 303–939–8855 or 8866, respectively).

Larry Solomon,

Acting Director.

[FR Doc. 89–18700 Filed 8–9–89; 8:45 am]

BILLING CODE 4410–36–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–456 and 50–457]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating Licenses; Correction

On July 31, 1989 (54 FR 31596), the Federal Register published a Notice of Issuance of Amendment to Facility Operating Licenses. A correction needs to be made to the heading of that notice:

On page 31596, in the third column, delete "and Opportunity for Hearing."

Dated at Rockville, Maryland this 3rd day of August 1989.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Acting Director, Project Directorate III–2, Division of Reactor Projects III, IV, V, and Special Projects.

[FR Doc. 89–18726 Filed 8–9–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328; License Nos. DPR–77 and DPR–79, EA 88–307]

Tennessee Valley Authority (Sequoyah Nuclear Plant Units 1 and 2); Order Imposing Civil Monetary Penalty

I

Tennessee Valley Authority (licensee) is the holder of Operating License No. DPR–77 and No. DPR–79 (licenses) issued by the Nuclear Regulatory Commission (Commission or NRC) on September 17, 1980 and September 15, 1981, respectively. The licenses authorize the licensee to operate the Sequoyah Nuclear Plant, Units 1 and 2, at Soddy-Daisy, Tennessee, in accordance with the conditions specified therein.

II

NRC inspections of the licensee's activities under the licenses were conducted on July 11–15, August 22–23, and November 16–December 1, 1988. The results of these inspections indicated that the licensee had not conducted its activities in fully compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated February 23, 1989. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice by letter dated March 24, 1989. In its response, the licensee admitted the violations but requested reconsideration or mitigation of the civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanations, and argument for reconsideration or mitigation contained therein, the staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby Ordered That:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN:

Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with copies to the Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Associate Director for Special Projects, Office of Nuclear Reactor Regulation, Washington, DC 20555; and a copy to the NRC Resident Inspector, Sequoyah Nuclear Plant.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payments has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Dated at Rockville, Maryland this 1st day of August 1989.

Appendix—Evaluation and Conclusion

On February 23, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during routine NRC inspections at the Sequoyah Nuclear Plant, Units 1 and 2. TVA responded to the Notice in a letter dated March 24, 1989. In its response, the licensee admitted the violations, but requested reconsideration or mitigation of the proposed civil penalty. The NRC staff's evaluation and conclusion regarding TVA's response is as follows:

I. Restatement of Violations

a. 10 CFR 50.59, Changes, Tests, and Experiments, allows a licensee to make changes in a facility, as described in the safety analysis report, without prior Commission approval, provided the change does not involve an unreviewed safety question. In part, a change is deemed to involve an unreviewed safety question if the probability of occurrence or the consequences of an accident or a malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased, or if the margin of safety as defined in the basis for any technical specification is reduced.

Sequoyah Final Safety Analysis Report (FSAR), §§ 7.7 and 15.1, require, in part, that the feedwater control systems prevent the average reactor coolant temperature (Tavg) from dropping below the 547°F programmed no-load temperature following a reactor trip to ensure that adequate shutdown margin (SDM) is maintained.

Contrary to the above, the feedwater control system failed to perform as described in the FSAR in that during the reactor trips of May 19, May 23 and June 6, 1988, Tavg dropped below the 547° programmed no-load temperature needed to assure adequate shutdown margin. This would result in an end-of-life condition for the subject cores which would have violated the Technical Specification limit for shutdown margin after a reactor trip, and increased the probability of occurrence and consequences of an accident previously evaluated and, therefore, an unreviewed safety question. There was no evaluation supporting this deviation from the FSAR pursuant to 10 CFR 50.59(b), and this change was implemented without prior Commission approval as required by 10 CFR 50.59(a).

b. 10 CFR Part 40, Appendix B, Criterion XVI, Corrective Action, requires that measures be established to assure that conditions adverse to quality such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and non-conformances are promptly identified and corrected.

Contrary to the above, licensee corrective actions, which included procedure changes and operator training as outlined in TVA's October 5 and October 14, 1988 letters to the NRC to prevent excessive post-trip reactor cooldowns, were not adequately implemented as demonstrated by the excessive cooldown following the November 18, 1988 Unit 1 reactor trip. This excessive cooldown resulted, in part, due to insufficient training in manual auxiliary feedwater (AFW) control and unclear instructions for manual AFW control in emergency operating procedure ES-01, Reactor Trip Response.

c. 10 CFR Part 50, Appendix B, Criterion B, Instructions, Drawings, and Procedures, requires that activities affecting quality shall be prescribed by documented instructions, drawings, or procedures of a type appropriate to the circumstances and shall be accomplished in accordance with those instructions, drawings, or procedures. Instructions, drawings, or procedures shall include appropriate quantitative or qualitative acceptance criteria for determining the important activities have been satisfactorily accomplished.

Contrary to the above, AI-18, Reactor Post-Trip Review Procedure, established to identify and correct conditions adverse to quality occurring during a reactor trip, failed to provide sufficient guidance and acceptance criteria to evaluate plant performance. The procedure did not compare actual post-trip parameters with FSAR values. Consequently, the post-trip reviews performed following the May 19, 23 and June 6, 1988 reactor trips were inadequate to identify and correct the reactor coolant system overcooling problem.

Collectively, these violations are categorized as a Severity Level III problem (Supplement I).

Civil Penalty—$50,000 (assessed equally among the violations).

II. Summary of Licensee Response

The licensee admits the violations cited in the subject Notice and acknowledges that the SDM issue represented a condition that, if left uncorrected, could have allowed operation prohibited by the technical specifications (TS). The licensee further acknowledges that overcooling of the RCS in a manner inconsistent with design requirements represents clear departure from good operating principles. However, the licensee believes that there are points meriting consideration relative to their performance in addressing the subject issues. The licensee believes their performance prior to the 1985 shutdown is clearly not reflective of their current ability and inclination to identify and correct safety deficiencies. Extensive management and culture changes were needed and were accomplished during the extended shutdown.

Pertaining to the mitigation factors in section V.B of the enforcement policy in 10 CFR Part 2, Appendix C, the licensee makes the following arguments relative to reconsideration or mitigation of the proposed civil penalty.

a. The licensee believes they identified the SDM issue following the first Unit 2 trip after the May 1988 restart.

b. The licensee believes it promptly resolved the SDM safety issue in June 1988 by instituting requirements for boration and comprehensive corrective actions were initiated to institute programmatic improvements.

While part of the actions taken to address RCS overcooling were determined to be ineffective, as evidenced by operator response to the November 18, 1988, Unit 1 trip, no safety issue resulted because SDM continued to be ensured by boration. The licensee believes that management response to this trip was immediate and thorough, resulting in implementation of additional actions and enhancements to address both specific and programmatic concerns.

Pertaining to enforcement discretion in Section V.G of the enforcement policy in 10 CFR Part 2, Appendix C, the licensee stated that imposition of the civil penalty is not warranted recognizing the licensee's identification, reporting, and correction of the violations.

III. NRC Staff's Evaluation of Licensee Response

The NRC acknowledges that the performance of the licensee in the area of identification and correction of safety deficiencies has improved substantially since the 1985 shutdown of the Sequoyah units. However, one part of the violations involved the failure to take timely corrective action when the post-trip cooldown issue was brought to the attention of the licensee as on May 20, 1988. Thereafter, several additional reactor trips occurred before the licensee's incident review process investigated the safety significance of the post-trip cooldown. This failure to identify the safety significance of the post-trip cooldown in a timely manner indicated a deficiency in the post-trip review process.

In the area of identification and reporting, the NRC considered the difference of opinion between TVA and the NRC as to who identified the issue. The NRC questioned the excessive cooldown on May 20, 1988. Although the licensee stated that they were evaluating a shutdown margin anomaly after the May 19, 1988 reactor trip, there is no objective evidence that the post-trip cooldown condition was categorized and reviewed by the licensee as a condition adverse to quality prior to the tie-in with potentially inadequate shutdown margin on June 14, 1988. In addition, the excessive post-trip cooldown was contrary to conditions described in the FSAR and should have been promptly evaluated pursuant to 10 CFR 50.59. While the NRC agrees that in most respects the licensee met the minimum regulatory reporting requirements for the shutdown margin issue, on two occasions, on June 19 and July 14, 1988, the licensee failed to communicate the status of its review findings and planned actions concerning this issue to the NRC. This information was important prior to June 19, 1988 because of the pending NRC decision of whether to allow restart of Sequoyah Unit 2. This issue and the associated proposed corrective actions were not brought to the attention of the onsite NRC restart staff and were not discovered by NRC inspectors until after NRC permission had been given to the licensee to restart the plant on June 19, 1988. On July 14, 1988, an NRC inspection team reviewing this issue was informed by the licensee that the licensee did not intend to report the issue, while the licensee was issuing an LER on the same day. Therefore, mitigation of the base civil penalty was not considered appropriate for the factor of identification and reporting.

The licensee's corrective actions did not warrant mitigation of the base civil penalty because they did not prevent an excessive post-trip cooldown during a subsequent reactor trip on November 18, 1988. In addition, TVA knew that the plant simulator did not adequately model post-trip cooldowns, but took no action to change it to facilitate training of reactor operators until after the November 18, 1988 reactor trip. Although a sufficient amount of boron was injected into the plant to ensure adequate shutdown margin, boron injection flow path discrepancies could have been foreseen had the licensee, in addition to testing the procedure on the simulator, reviewed their procedure against the recent reactor trips which had excessive post-trip cooldowns. On balance, neither mitigation nor escalation were considered appropriate for this factor.

Mitigation of the civil penalty pursuant to section V.G.2 of the NRC Enforcement Policy, extended shutdown facility, is not warranted because the violations do not deal with activities of the licensee that occurred prior to the shutdown and prior to NRC approval for restart of the units. Therefore, enforcement discretion under section V.G.2 of the NRC Enforcement Policy is not considered applicable.

Mitigation of the civil penalty pursant to section V.G.3 of the NRC Enforcement Policy is also not warranted. The violations in this matter do not meet these criteria since, as explained above, they were not identified by the licensee, comprehensive corrective actions were not initiated in a reasonable period of time to prevent the excessive post-trip cooldown that occurred on May 23, June 6, and November 19, 1988, and the violations could have been prevented because the licensee had prior knowledge of the problem after the reactor trip of May 19, 1988. In this regard, although the licensee stated that it was evaluating a shutdown margin anomaly after the May 19, 1988 reactor trip, there is no objective evidence that the post-trip cooldown condition was categorized and reviewed as a condition adverse to quality prior to the tie-in with shutdown margin on June 14, 1988. In fact, the excessive post-trip cooldown was contrary to conditions described in the FSAR and should have been promptly evaluated pursuant to 10 CFR 50.59.

The imposition of the civil penalty is intended to emphasize the need to use established programs such as the post-trip review and 10 CFR 50.59 safety evaluation programs to evaluate and correct problems prior to their impact on actual plant operation.

IV. NRC Staff's Conclusion

The licensee did not provide a sufficient basis for reduction of the proposed civil penalty. Consequently, the NRC staff concludes that the proposed civil penalty in the amount of $50,000 should be imposed.

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OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 1989, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, § 213.103(c) further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register.** That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by contacting the Staffing

Operations Division, Room 6A12, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, or by calling (202) 632–0728. The following exceptions were current on June 30, 1989:

Schedule A

Section 213.3102 Entire Executive Civil Service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) [Reserved].

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admissioin to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment which was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his or her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS–3. This limited compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Subject to prior approval of OPM, positions requiring temporary, part-time, or intermittent employment in wage board type occupations (i.e., position excluded from Classification Act coverage by section 202(7) of the Act) on construction or repair work, where the activity is carried on in localities where examination coverage for the positions has not been provided and where because of employment conditions there is a shortage of available candidates for the positions. Appointments under this paragraph shall not extend beyond 1 year and the employment thereunder shall not exceed 180 working days a year. Seasonal employments of a recurring nature are not authorized under this paragraph.

(j) Positions filled by (1) appointment of persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) in positions at the same or equivalent grade level, or below, who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8457 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment; or (2) reassignment, promotion, or demotion within the same agency of former National Guard Technicians originally appointed under this authority.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, or technical experts for consultation purposes.

(m) Nonsupervisory positions of custodial laborer (levels 1, 2, and 3) and general laborer (levels 2 and 3) in field establishments outside central office and regional office cities of OPM where examination coverage has not been provided for the positions, as follows:

(1) For temporary, intermittent, or seasonal employment (exclusive of positions covered by paragraph (1) of this section) not to exceed 180 working days a year in the Departments of Agriculture, Commerce, Interior, and Energy, in the Federal Aviation Agency, and in the International Boundary and Water Commission; or

(2) When it is specifically held by OPM that this authority is applicable for employment in localities that are isolated with respect to labor supply and where there is a shortage of available candidates for the positions.

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional, or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p) Positions of a scientific, professional, or analytical nature when filled by bona fide graduate students at accredited colleges or universities provided that the work performed for the agency is to be used by the student as a basis for completing certain academic requirements toward a graduate degree. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's completion of requirements for the graduate degree.

(q) Positions at grade GS–7, or equivalent, and below when appointees are to assist scientific, professional, or technical employees. Persons employed under this provision shall be (1) bona fide high school science or mathematics teachers; or (2) bona fide students at high schools or accredited colleges or universities who are pursuing courses related to the field in which employed. The appointment of any individual under this authority shall terminate upon the individual's ceasing to be enrolled in a qualifying educational program or to be employed as a teacher. No one shall be employed under this provision in routine clerical positions, routine trades and labor positions—unless such employment clearly relates to a scientific, professional, or technical curriculum—or in excess of 1040 working hours a year. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(r)–(s) [Reserved].

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(u) Positions when filled by severely physically handicapped persons who: (1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been

certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v) Between May 13 and September 30 only, temporary Summer-Aid positions the duties of which involve work of a routine nature not regularly covered under the General Schedule requiring no specific knowledge or skills, when filled by youths, either (1) appointed under economic needs standards prescribed by OPM; or (2) who are mentally retarded or severely physically handicapped. Youths may not be appointed unless they have reached their 16th birthday. This paragraph shall apply only to positions for which pay is fixed at the highest Federal minimum wage rate established by the Fair Labor Standards Act of 1938, as amended.

(w) Part-time or intermittent positions, the duties of which involve routine work up to and including the GS–4 level of difficulty or equivalent under the Federal Wage system, when filled by bona fide students appointed under the Stay-in-School Program. Students may be appointed if they need the earnings from this employment to continue in school or if they are mentally retarded or severely physically handicapped, provided that the following conditions are met: (1) Appointees are enrolled in or accepted for enrollment as a resident student in a secondary school (or other appropriate school for mentally retarded students) or an institution of higher learning not above the baccalaureate level, accredited by a recognized accrediting body;

(2) Employment does not exceed 20 hours in any calendar week except that students may work full time during any period in which their school is officially closed and during any school vacation period.

(3) While employed, appointees continue to maintain an acceptable school standing, although they need not attend school during the summer;

(4) Appointees meet the economic criteria prescribed by the Office of Personnel Management, except that this requirement does not apply to mentally retarded or severely physically handicapped students appointed under the authority; and

(5) Salaries are fixed by the agency head at a level commensurate with the duties assigned and the expected level of performance.

Appointments under this authority may not extend beyond 1 year. However, such appointments may be made for additional periods of not to exceed 1 year, each, if the conditions for initial appointment are still met. Students may not be appointed under this authority unless they have reached their 16th birthday. No new appointments may be made between May 13 and August 31, inclusive.

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed one additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) Positions at grade GS–2 and below for summer employment as defined in § 213.3101(d), of assistants to scientific, professional, and technical employees, when filled by finalists in national science contests.

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc) Positions at GS–15 and below when filled by persons identified as Interchange Executives by the President's Commission on Personnel Interchange. Apointments made under this authority may not extend beyond 2 years.

(dd)–(ee) [Reserved]

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Pub. L. 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg)–(hh) [Reserved]

(ii) Positions of Presidential Intern, GS–9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to one additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive Order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj) Legal intern positions. Appointments under this paragraph shall be confined to bona fide students at recognized law schools who are candidates for J.D. or LL.B. degrees. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's graduation from law school.

(kk) [Reserved]

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 10 positions at grades GS–9/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS–13 through –15 on the staff of the Council.

(d)–(f) [Reserved]

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

Section 213.3104 Department of State

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Office of the Under Secretary for Management.

(2)–(5) [Reserved]

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c) [Reserved]

(d) *International Boundary Commission, United States and Canada.* (1) Temporary and intermittent field employees such as instrumentmen, foremen, recorders, packers, cooks, and axemen, for not to exceed 180 working days within any one calendar year.

(e) *Bureau of Oceans and International Environmental and Scientific Affairs.* (1) Two Physical Science Administration Officer positions at GS–16.

(f) [Reserved]

(g) *Office of Refugee and Migration Affairs.* (1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the office.

(h) *Bureau of Administration.* (1) One Presidential Trip Specialist. No new appointments may be made under this authority after June 11, 1981.

Section 213.3105 Department of the Treasury

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2) [Reserved]

(3) Positions of part-time, intermittent, or temporary Customs Inspectors, and Port Directors in Alaska paid at a rate not above GS-9 and for not more than 130 working days in a service year.

(4) [Reserved]

(5) Positions at GS-9 and below of Customs Enforcement Officer, Customs Inspector, Customs Marine Clerk/Officer, Customs Aid (sampling), Customs Warehouse Officer, Port Director, Interpreter, and Laborer, with duties of a continuing nature that require the part-time or intermittent service of an employee for not more than 700 hours in his/her service year. An individual appointed under this exception may not be employed in the Bureau of Customs under a combination of this and any other exception for more than 700 hours in his/her service year.

(6) Twenty-five positions of Criminal Investigator for special assignments.

(7)–(8) [Reserved]

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the state of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(c) *Office of the Comptroller of the Currency.* (1) Not to exceed six positions filled under the Professional Accounting Fellow Program. Appointments under this authority may not exceed 2 years.

(d) [Reserved]

(3) *Internal Revenue Service.* Twenty positions of investigator for special assignments.

(2) Two positions of Senior Visiting Pension Actuary, GS–1510–14/15. Appointments to these positions must be for periods not to exceed 24 months.

(f) [Reserved]

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

(h) [Reserved]

(i) *Bureau of Government Financial Operations.* (1) Clerical positions at grades GS–5 and below established in Emergency Disbursing Offices to process emergency payments to victims of catastrophes or natural disasters requiring emergency disbursing services. Employment under this authority may not exceed 1 year.

Section 213.3106 Department of Defense

(a) *Office of the Secretary.* (1) Not to exceed 30 positions at grades GS–6/15 in the Defense Mobilization Systems Planning Activity, Office of the Deputy Assistant Secretary of Defense (Mobilization Planning and Requirements.) No new appointments may be made under this authority after March 31, 1993.

(2)–(5) [Reserved]

(6) One Executive Secretary, US-USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* (1) Professional positions in Military Dependent Schools Systems overseas.

(2) Positions in attache 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the Staffs of the Chaplains in the military services.

(5) Positions under the program for utilization of alien scientists approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or the separation of a dependent's sponsor: *Provided,* That (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to one additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Fifteen secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1040 working hours a year. Children of DOD employees may be appointed to these

positions, notwithstanding the sons and daughters restriction, if the positions are in the field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(c) *Defense Contract Audit Agency.* (1) Not to exceed two positions of Accounting Fellow, Auditor, GM–511–14, filled under the Accounting Fellowship Program. Appointments under this authority may not exceed 2 years.

(d) *General.* (1) Positions concerned with advising, administering, supervising or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, or estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.* (1) Positions of Dean, Associate Dean, Assistant Dean, faculty members, postdoctoral fellows, research associates, senior research associates, and visting scientists.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of senior policy analyst, GS–15, at the strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) *Defense Communications Agency.* (1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) *Defense Systems Management College, Fort Belvoir, VA.*

(1) The Provost and professors in grades GS–13 through 15.

Section 213.3107 Department of the Army

(a) *General.* (1) Not to exceed 30 positions on the faculty and staff which are classified in the GS–1700 occupational group and the GS–1410 Librarian series, located at the U.S. Army Russian Institute, Garmisch, Germany, and the U.S. Army Foreign Language Training Center Europe, Munich, Germany.

(b) *Aviation Systems Command.* (1) One scientific and professional research position in the U.S. Army Research and Technology Laboratories, the duties of which require specific knowledge of aviation technology in non-allied nations.

(c) *Corps of Engineers.* (1) [Reserved]

(2) Nonsupervisory trades, crafts, and manual labor positions at grades WG–6 and below on survey, construction, short-term maintenance, or floating-plant operations, where because of turnover, lack of housing facilities, mobility of work site, or remoteness of personnel servicing facilities, an adequate labor force can be recruited only by immediate gate hiring on a local basis. This authority can be used only when OPM has determined that it is specifically applicable to a given situation; ordinarily, it will not be used for employment in OPM central office, regional, and branch office cities or in cities where there is a local OPM area office to service the employing establishment.

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, chapel organist and choir-master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e) *U.S. Army School of the Americas, Fort Benning, Georgia.* (1) Positions of Translator (Typing), GS–1040–5/9, and Supervisory Translator, GS–1040–11. No new appointments may be made under this authority after December 31, 1985.

(f) *Central Identification Laboratory.* (1) One position of Scientific Director, GM–190–15, and four positions of Forensic Scientists, GM–190–14. Initial appointment to these positions is NTE 3–5 years, with provision for indefinite numbers of renewals in 1-, 2-, or 3-year increments.

(g) *Defense Language Institute.* (1) All positions on the faculty and staff which are classified in the GS–1700 occupational group, the GS–1040 Language Specialist series, and the GS–303 Bilingual Clerk series, that require either a proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) *Army War College, Carlisle Barracks, Pa.* (1) Five positions of Educational Specialist for employment of not to exceed 1 year: *Provided,* That such employment may, with the prior approval of OPM, be extended for not to exceed one additional year.

(2) Nine senior policy analyst positions, GS–14/15, at the Strategic Studies Institute, Army War College, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(3) Five research oriented faculty positions, GS–14/15, with the U.S. Army War College, at Carlisle Barracks, Pennsylvania, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(i) [Reserved]

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head and Instructor.

Section 213.2108 Department of the Navy

(a) *General.* (1) [Reserved]

(2) Positions of Student Pharmacist for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, clinics and departments when filled by students who are enrolled in an approved pharmacy program in a participating non-Federal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed one year.

(3) [Reserved]

(4) Not to exceed 50 positions of resident-in-training at U.S. naval

regional medical centers, hospitals, and dispensaries which have residency training programs, when filled by residents assigned as affiliates for part of their training from non-Federal hospitals. Assignments shall be on a temporary (full-time or part-time) or intermittent basis, shall not amount to more than 6 months for any person, and shall be applied only to persons whose compensation is fixed under 5 U.S.C. 5351–54.

(5) [Reserved]

(6) Positions of Student Operating Room Technician for temporary, part-time or intermittent employment in U.S. naval regional medical centers and hospitals, when filled by students who are enrolled in an approved operating room technician program in a participating non-Federal institution, whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(7) Positions of student social worker for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by bona fide students enrolled in academic institutions: *Provided,* That the work performed in the agency is to be used by the student as a basis for completing certain academic requirements by such educational institution to qualify for a graduate degree in social work. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(8) Positions of student practical nurse for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by trainees enrolled in a non-Federal institution in an approved program of educational and clinical training which meets the requirements for licensing as a practical nurse. This authority shall be applied only to trainees whose compensation is fixed under 5 U.S.C. 5351–54.

(9) [Reserved]

(10) Positions of medical technology intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by students enrolled in approved programs of training in non-Federal institutions. Employment under this authority may be filled on a full-time, part-time, or intermittent basis but may not exceed 1 year. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(11) Positions of medical intern at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are serving medical internships at participating non-Federal hospitals and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(12) Positions of student speech pathologist at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating non-Federal institutions and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(13) Positions of student dental assistant in U.S. naval dental centers, clinics, and departments, when filled by students who are enrolled in an approved dental assistant program in a participating non-Federal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(14) [Reserved]

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the librarian, organist-choirmaster, registrar, the dean of admissions, and social counselors at the Naval Academy.

(c) *Chief of Naval Operations.* (1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) *Pacific Missile Range Facility, Barking Sands, Hawaii.* (1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) [Reserved]

(g) *Office of Naval Research.* (1) Not to exceed five positions of Liaison Scientists, GS–13/15, in the Naval Research Branch Office in Japan, when filled by research scientists who have specialized experience in scientific disciplines of current interest to the Department and who have a demonstrated ability to deal with the Japanese scientific community in their disciplines. An appointment under this authority may be made initially for a period not to exceed 2 years. With the prior approval of OPM, total employment under this authority may be for as long as 3 years.

Section 213.3109 Department of the Air Force

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Sixty-five positions engaged in interdepartmental defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) Positions of Cadet Hostesses, Instructors in Physical Education, Instructors in Music (choirmasters), one Training Instructor (Parachuting), one Training Instructor (Code of Conduct and Evasion), and two Physical Therapists (Athletic Trainers).

(e) Not to exceed five positions, GS–12 through GS–15, in the Specialized Management Office (WR–ALC/QL) at Robins Air Force Base, Georgia, which will provide logistic support management staff guidance for highly sensitive and high priority programs and projects. Employment under this authority is not to exceed May 30, 1988.

(c) *Drug Enforcement Administration.* (1) [Reserved]

(2) One hundred and fifty positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11

Section 213.3112 Department of the Interior

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent in the field service of the Department of the Interior, when filled by the appointment of persons who are

certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided,* That an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term "Indian."

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in non-professional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum rate. Employment under this authority may not exceed 10 weeks.

(b) [Reserved]

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) [Reserved]

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) [Reserved]

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) [Reserved]

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1) Park Ranger positions (appropriate specializations) at salaries equivalent to GS–2 through GS–5 to perform practical and technical work supporting the management of Park Service areas and resources in the functional areas of interpretation, resources management, visitor protection, and visitor services; and positions at salaries equivalent to grades GS–6 and GS–7 in which the duties are supervisory or consist of highly specialized technical work in support of National Park Service operations in the functional areas delineated above. The total number of Park Ranger and Park Technician positions at salaries equivalent to GS–6 and GS–7 excepted under this paragraph shall not exceed 200. Employment under this paragraph is limited to persons who meet the qualification standards for each salary level which have been agreed upon by OPM and the Department. These standards include as a minimum the following number of previous seasons' experience at a salary equivalent to the next lower grade or equivalent experience, in a Federal, State, or local park:

(i) For IGS–7: Two seasons at IGS–6 level in the National Park Service.

(ii) For IGS–6: Two seasons at IGS–5 level in the National Park Service.

(iii) For IGS–5: One season at IGS–4 level or its equivalent in experience.

(iv) For IGS–4: One season at IGS–3 level or its equivalent in experience.

(v) For IGS–3: One season at IGS–2 level or its equivalent in experience.

Employment under this paragraph shall be only for duty that is temporary, intermittent, or seasonal, and no person shall be employed by the same appointing office in the National Park Service under this paragraph or a combination of this and any other excepting authorities in excess of 180 working days a year.

(2) [Reserved]

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values or conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided,* That such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not

applicable to positions in the Agricultural Research Service or the Statistical Reporting Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural Commodity grader (grain) and (meat), (poultry), and (dairy) agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) [Reserved]

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions; Field assistants for subprofessional services; caretakers at temporarily closed camps or improved areas; forest workers engaged primarily for fire prevention or suppression activities and other forest workers employed at headquarters other than forest supervisor and regional offices; State performance assistants in the Agricultural Stabilization and Conservation Service; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service, and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided*, That an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraphs (i) and (m) of § 213.3102.

(6) [Reserved]

(7) Not to exceed 34 Program Assistants, whose experience acquired in positions excepted from the competitive civil service in the administration of agricultural programs at the State level is needed by the Department for the more efficient administration of its programs. No new appointment may be made under this authority after December 31, 1985.

(b) [Reserved]

(c) *Forest Service.* (1) [Reserved]

(2) Positions in Alaska of Laborers, Boat Operations, Mechanics, Equipment Operators, and Carpenters whose duties require the operation of boats in coastal waters and/or the establishment and maintenance of work camps in remote areas.

(d) *Agricultural Stabilization and Conservation Service.*

(1) Not to exceed 34 positions of Agricultural Program Specialist, GS–1145–7/12, engaged in conversion of ASCS' directives and information system to a completely automated format. Appointments to these positions may be made initially at the GS–7/11 levels and may not exceed September 30, 1989.

(2) Members of State Committees: *Provided*, That employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) *Farmers Home Administration.* (1) [Reserved]

(2) County committeemen to consider, recommend, and advise with respect to the Farmers Home Administration program.

(3) Temporary positions whose principal duties involve the making and servicing of natural disaster emergency loans pursuant to current statutes authorizing natural disaster emergency loans. Appointments under this provision shall not exceed 1 year unless extended for one additional period not to exceed 1 year, but may, with prior approval of OPM, be further extended for additional periods not to exceed 1 year each.

(4)–(5) [Reserved]

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of: Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists at grades GS–11 and below; Clerks, Clerk-Typists, and Computer Clerks at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of Milk Market Administrators.

(g)–(i) [Reserved]

(j) *Food and Nutrition Service.* (1) [Reserved]

(2) Three hundred fifty positions of food assistance program specialist, GS–5/7, under the Child Nutrition Summer Feeding Program, for temporary employment not to begin before March 1 and not to exceed September 30 of each year, on a full-time, part-time, or intermittent basis.

(k) [Reserved]

(l) *Food Safety and Inspection Service.* (1)–(2) [Reserved].

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Federal Grain Inspection Service.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

Section 213.3114 Department of Commerce

(a) *General.* (1)–(2) [Reserved]

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b) *Office of the Secretary.* (1) One position of Administrative Assistant, GS–301–8, in the Office of Economic Affairs. New appointments may not be made after March 30, 1979.

(c) [Reserved]

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians,

clerks, interviewers, and enumerators in the field service, for (1) temporary, part-time or intermittent employment in connection with major economic and demographic censuses or with surveys of a nonrecurring or noncyclical nature; and (2) indefinite employment for the duration of each decennial census for key employees located at the Master District Offices (MDO) and Processing Offices (PO): *Provided*, That temporary, part-time employment of the nature described in (1) above will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior Office approval is required for extension of total service beyond 2 years.

(2) Current Program Interviewers employed on an intermittent or part-time basis in the field service.

(3) Not to exceed 20 professional and scientific positions at grades GS–9 through GS–12 filled by participants in the ASA research trainee program. Employment of any individual under this authority may not exceed 2 years.

(e)–(h) [Reserved]

(i) *Office of the Under Secretary for International Trade.* (1) Thirty positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) Not to exceed 40 positions of Managers and Deputy Managers of International Trade Fairs and Exhibit Programs in foreign countries when the duties require a considerable portion of the employee's time to be spent in foreign countries.

(3) Not to exceed 30 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit practices applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1) Subject to prior approval of OPM, which shall be contingent upon a showing of inadequate housing facilities, meteorological aid positions at the following stations in Alaska: Barrow, Bethal, Kotzebue, McGrath, Northway, and St. Paul Island.

(2) [Reserved]

(3) All civilian positions on vessels operated by the National Ocean Survey.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Survey. Appointment to such positions shall not exceed 8 months in any one calendar year.

(5) Field positions, GS–9 and below, in the National Marine Fisheries Service conducting fish and processed fish products inspection, funded by the private sector. New appointments under this authority may not be made after July 1, 1990.

(k) [Reserved]

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

Section 213.3115 Department of Labor

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b) *Bureau of Labor Statistics.* (1) Not to exceed 500 positions involving part-time and intermittent employment for field survey and enumeration work in the Bureau of Labor Statistics. This authority is applicable to positions where the salary is equivalent to GS–6 and below. Employment under this authority may not exceed 1,600 work hours in a service year. No new appointment may be made under this authority after December 31, 1984.

(c) [Reserved]

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of supervisory manpower development specialist and manpower development specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) [Reserved]

(b) *Public Health Service.* (1) Not to exceed five positions a year of Medical Technologist Resident, GS–644–7, in the Blood Bank Department, Clinical Center, of the National Institutes of Health. Appointments under this authority will not exceed 1 year.

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) All positions in the Public Health Service Hospital, Carville, La.

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the cooperating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5) Medical and dental interns, externs, and residents; and student nurses.

(6) Positions of scientific, professional, or technical nature when filled by bona fide students enrolled in academic institutions: *Provided*, That the work performed in the agency is to be used by the student as a basis for completing certain academic requirements required by an educational institution to qualify for a scientific, professional, or technical field. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) Twelve positions of Therapeutic Radiologic Technician Trainee in the Radiation Oncology Branch, National Cancer Institute. Employment under this authority shall not exceed 1 year for any individual. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(10) Health care positions of the National Health Service Corps for employment of any one individual not to

exceed 4 years of service in health manpower shortage areas.

(11) Pharmacy Resident positions at GS–7 in the National Institutes of Health's Clinical Center, Pharmacy Department. Employment in these positions is confined to graduates of approved schools of pharmacy and is limited to a period not to exceed 12 months pending licensure.

(12) Hospital Administration Resident positions at GS–9 in the National Institutes of Health's Clinical Center, Bethesda, Maryland. Employment in these positions is confined to graduates of approved hospital or health care administration programs and is limited to a period not to exceed 1 year.

(13) Not to exceed 30 positions of Cancer Control Science Associate in the Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, for assignments at a level of difficulty and responsibility at or equivalent to GS–11/13. No one may be employed under this authority for more than 3 years, and no more than 10 appointments will be made under the authority in any 1 year.

(14) Not to exceed 30 positions at grades GS–11/13 associated with the postdoctoral training program for interdisciplinary toxicologists in the National Institute of Environmental Health Sciences, National Institutes of Health, Research Triangle Park, North Carolina.

(c) [Reserved]

(d) *Social Security Administration.* (1) Six positions of social insurance representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(2) Seven positions of social insurance representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(3) Two positions of social insurance representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointment of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

(e) [Reserved]

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants, The President's Council on Physical Fitness.

(g)–(i) [Reserved]

(j) *Health Care Financing Administration.* (1) [Reserved]

(2) Not to exceed 10 professional positions, GS–9 through GS–15, to be filled under the Health Care Financing Administration Professional Exchange Program. Appointments under this authority will not exceed 1 year.

(k) *Office of the Secretary.* (1) [Reserved].

(2) Not to exceed 10 positions at grades GS–9/14 in the Office of the Assistant Secretary for Planning and Evaluation filled under the Policy Research Associate Program. New appointments to these positions may be made only at grades GS–9/12. Employment of any individual under this authority may not exceed 2 years.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3127 Department of Veterans Affairs

(a) *Construction Divison.* (1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) [Reserved]

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

Section 213.3128 U.S. Information Agency

(a) *Office of Congressional and Public Liaison.* (1) Two positions of Liaison Officer (Congressional), GS–14.

(b) Five positions of Supervisory International Exchange Officer (Reception Center Director), GS–13 and GS–14, located in USIA's field offices of New Orleans, New York, Miami, San Francisco and Honolulu. Initial appointments will not exceed December 31 of the calendar year in which appointment is made with extensions permitted up to a maximum period of 4 years.

Section 213.3130 Securities and Exchange Commission

(a)–(b) [Reserved]

(c) Positions of accountant and auditor, GS–13 through 15, when filled by persons selected under the SEC Accounting Fellow Program, as follows:

(1) Five positions, for employment of any one individual not to exceed 2 years; and

(2) Two additional identical positions, for employment of any one individual not to exceed 90 days, which may be used to provide a period of transition and orientation between Fellowship appointments. These additional identical positions must be filled by persons who either have completed a 2-year Fellowship or have been selected as replacement Fellows for a 2-year term. Appointments of outgoing Fellows under this authority must be made without a break in service of 1 workday following completion of their 2-year terms; incoming Fellows apointed under this provision must be appointed to 2-year Fellowships without a break in service of 1 workday following their 90-day appointments.

(d) Positions of Economist, GS–13 through 15, when filled by persons selected under the SEC Economic Fellow Program. No more than four positions may be filled under this authority at any one time. An employee may not serve under this authority longer than 2 years unless selected under provisions set forth in the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3372(b)(2)

(e) Not to exceed 10 positions of accountant, GS–12/13, when filled by persons selected as SEC Accounting Fellows for the Full Disclosure Program. Employment under this authority may not exceed 2 years.

Section 213.3131 Department of Energy

(a) [Reserved]

(b) *Bonneville Power Administration.* (1) Five Area Managers.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office

approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, or the Secretary of Agriculture under 7 U.S.C. 1961 or the Small Business Administration under 15 U.S.C. 636(b)(1), declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(c) Positions of Community Economic-Industrial Planner, GS–7 through 12, when filled by local residents who represent the interest of the groups to be served by the Minority Entrepreneurship Teams of which they are members. No new appointments may be made under this authority after May 1, 1977.

Section 213.3133 Federal Deposit Insurance Corporation

(a) All Liquidation Graded, temporary field positions concerned with the work of liquidating the assets of closed banks, of liquidation loans to banks, or of paying the depositors of closed insured banks. New appointments may be made under this authority only during the 5-year period following a bank closing and/or establishment of a consolidated liquidation site.

Section 213.3136 U.S. Soldiers' and Airmen's Home

(a) [Reserved]

(b) Positions when filled by member-residents of the Home.

Section 213.3137 General Services Administraton

(a) [Reserved]

(b) Not to exceed 25 positions at grades GS–14/15, in order to bring into the agency current industry expertise in various program areas. Appointments under this authority may not exceed 2 years.

Section 213.3141 National Labor Relations Board

(a) Election Examiners for temporary, part-time or intermittent employment in connection with elections under the Labor-Management Relations Act.

Section 213.3142 Export-Import Bank of the United States

(a) One Special Assistant to the Board of Directors, grade GS–14 and above.

Section 213.3146 Selective Service System

(a) State Directors.

(b)–(c) [Reserve]

(d) Executive Secretary, National Selective Service Appeal Board.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

(b) Not to exceed 40 positions of fully qualified pilot and mission specialists astronauts.

(c)–(e) [Reserved]

(f) Positions of Program Coordinator/Counselor at grades GS–7/9/11 for part-time and summer employment in connection with the High School Students Summer Research Apprenticeship Program.

Section 213.3152 U.S. Government Printing Office

(a) Not to exceed three positions of Research Associate at grades GS–15 and below, involved in the study and analysis of complex problems relating to the reduction of the Government's printing costs and to provision of more efficient service to customer agencies and the public. Appointments under this authority may not exceed 1 year, but may be extended for not to exceed one additional year.

(b) Positions in the printing trades when filled by students majoring in printing technology employed under a cooperative education agreement with the University of the District of Columbia.

Section 213.3154 Federal Home Loan Bank Board

(a) One Secretary, Federal Home Loan Bank Board.

(b) [Reserved]

(c) Positions in the Federal Savings and Loan Insurance Corporation concerned with the work of liquidating the assets of closed insured institutions or the liquidation of loans or the handling of contributions to insured institutions and the purchase of assets therefrom; and positions of the Federal Savings and Loan Insurance Corporation the work of which is concerned with paying the depositors of closed insured institutions. Appointments under this authority may not exceed 3 years.

Section 213.3156 Commission on Civil Rights

(a) Twenty-five positions at grade GS–11 and above of employees who collect, study, and appraise civil rights information to carry out the national clearinghouse responsibilities of the Commission under Pub. L. 88–352, as amended. No new appointments may be made under this authority after March 31, 1976.

Section 213.3174 Smithsonian Institution

(a) Not to exceed 25 positions at grades GS–11 and below which support planning and production of the Annual American Folklife Festival. Employment under this authority may not exceed 6 months in connnection with any one Festival.

(b) All positions located in Panama which are part of or support the Smithsonian Tropical Research Institute.

Section 213.3175 Woodrow Wilson International Center for Scholars

(a) One East Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, and one Social Science Program Administrator.

Section 213.3182 National Foundation on the Arts and the Humanities

(a) *National Endowment for the Arts.*

(1) Until September 30, 1990, one position of Assistant Director, Artists-in-Education Programs, Office for Partnership, GS–301–14.

(2) Until September 30, 1990, one position of Assistant Director for State Programs.

(3) Until September 30, 1990, one position of Director of Literature Programs.

(4) Until September 30, 1990, one position of Assistant Director of Theatre Programs.

(5) Until September 30, 1990, one position of Director of Folk Arts Programs.

(6) Until September 30, 1990, one position of Director, Opera/Musical Theatre Programs.

(7) Until September 30, 1990, one position of Assistant Director of Opera/Musical Threatre Programs.

(8) Until September 30, 1990, one position of Assistant Director of Literature Programs.

(9) Until September 30, 1990, one position of Director of Locals Test Programs, Office of the Deputy to the Chairman for Public Partnership.

(10) Until September 30, 1990, one position of Deputy Chairman for Public Partnership.

(11) Until September 30, 1990, four Project Evaluators.

(12) Until September 30, 1990, one position of Director of Museum Programs.

(13) Until September 30, 1990, one position of Assistant Director of Folk Arts, Office of the Deputy Chairman for Programs.

(14) Until September 30, 1990, one position of Assistant Director of Music Programs.

(15) Until September 30, 1990, one position of Director of Expansion Arts Programs.

(16) Until September 30, 1990, one position of Director of Media Arts Programs.

(17) Until September 30, 1990, one position of Director, Challenge and Advancement Grant Program.

(18) Until September 30, 1990, one position of Assistant Director, Challenge and Advancement Grant Programs.

(19) [Reserved]

(20) Until September 30, 1990, one position of Director of Inter Arts Program.

(21) Until September 30, 1990, one position of Assistant Director of Expansion of Arts Programs.

(22) Until September 30, 1990, one position of Assistant Director of Media Arts Programs.

(23) Until September 30, 1990, one position of Assistant Director of Design Arts Program.

(24) Until September 30, 1990, one position of Assistant Director of Dance Programs.

(25) Until September 30, 1990, one position of Assistant Director of Visual Arts Programs.

(26) Until September 30, 1990, one position of Assistant Director of Museum Programs.

(27)–(29) [Reserved]

(30) Until September 30, 1990, one position of Director of Education Programs.

(31) Until September 30, 1990, one position of Director of Music Programs.

(32) Until September 30, 1990, one position of Director of Theater Programs.

(33) Until September 30, 1990, one position of Director of Dance Programs.

(34) Until September 30, 1990, one position of Director of Visual Arts Programs.

(35) Until September 30, 1990, one position of Director of Design Arts Program.

(36) [Reserved]

(37) Until September 30, 1990, one Director for State Programs.

(38) Until September 30, 1990, one Director for Artists-in-Education Programs.

Section 213.3184 Department of Housing and Urban Development

(a) One position of Special Advisor to the Regional Administrator, GS–301–14, in San Francisco. Employment under this authority may not exceed 2 years.

Section 213.3191 Office of Personnel Management

(a) Not to exceed 500 positions in Federal Job Information Centers, to be filled under the Community Outreach Information Network program. Appointments under this authority may not exceed 90 days, and no one may receive more than one appointment under the authority.

(b)–(c) [Reserved]

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

Section 213.3194 Department of Transportation

(a) *U.S. Coast Guard.* (1) Not to exceed 25 positions of Marine Traffic Controller (Pilot), at grade GS–11 and below for temporary, intermittent or seasonal employment in the State of Louisiana. Temporary appointments may not exceed 1 year, and temporary appointees may be reappointed under this authority only after a break in service of at least 6 months. Intermittent or seasonal employment may not exceed 180 working days in a service year, except that this limitation for an individual employee may be extended to 220 days when necessitated by emergencies caused by unusual flooding conditions or high river stages.

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Conn.

(b) [Reserved]

(c) *Federal Highway Administation.* (1) Temporary, intermittent, or seasonal employment in the field service of the Federal Highway Administration at grades not higher than GS–5 for subprofessional engineering aide work on the highway surveys and construction projects, for not to exceed 180 working days a year, when in the opinion of OPM, appointment through competitive examination is impracticable.

(d) [Reserved]

(e) *Maritime Administation.* (1)–(2) [Reserved]

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) [Reserved]

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers: including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Pub. L. 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies

not covered by the Disaster Relief Act of 1974, Pub. L. 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary organizations

(a) Positions at GS–15 and below on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s) does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions at GS–15 and below on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order: (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

Schedule B

Section 213.3202 Entire executive civil service

The provisions established under paragraphs (a) through (i) are authorized under provisions of E.O. 12015 and support career-related work-study programs. OPM's requirements relating to appointment under paragraphs (a) through (i) will be published in the Federal Personnel Manual. Further, appointments under paragraphs (a) through (i) are subject to all the requirements and conditions governing career or career-conditional appointments, including investigation by OPM to establish an appointee's qualifications and suitability. Appointments of participants may be converted to career or career-conditional at any time within a 120-day period after satisfactory completion of a career-related work-study program.

(a) Student positions established in connection with a bachelor's degree cooperative education program which provide for a formally arranged schedule of attendance at an institution of higher learning combined with at least 26 weeks, or 1040 hours, of study-related work in a Federal agency. The periods of work and study together must satisfy requirements for a bachelor's degree and must provide the experience necessary for a career or career-conditional appointment to administrative, professional or technical positions in the Federal career service upon the student's graduation.

(b) Student positions established in support of cooperative education programs for graduate students which provide for scheduled periods of attendance at a graduate school combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements for the graduate degree and provide experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(c) Student positions established in connection with associate degree cooperative education programs which provide for a formally arranged schedule of attendance at a recognized 2-year educational institution combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study together must satisfy requirements for graduation and must provide the experience necessary for career of career-conditional appointment in selected occupations in the Federal career service upon the student's graduation.

(d) Student positions established in connection with the Harry S. Truman Foundation Scholarship Program under the provisions of Public Law 93–624 to permit scheduled periods of attendance at institutions of higher education combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements of programs established by agreement between the Harry S. Truman Scholarship Foundation and the employing agency and provide the experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(e) Student positions established in support of the Cooperative Education (Vocational Education) Programs for high school students which provide for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for a high school diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper, and preapprentice occupations in the Federal career service upon the student's graduation.

(f) Positions under the Federal Junior Fellowship Program, a career-related work-study program covered under the provisions of Executive Order 12015.

(g) Student positions established in support of the Cooperative Education Program in which the student is enrolled in an undergraduate certificate or diploma program in an accredited college, technical, trade, vocational, or business school which provides for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for an undergraduate certificate or diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper, and preapprentice occupations in the Federal career service upon the student's graduation.

(h)–(i) [Reserved]

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding three years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of

substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) Professional and administrative career (PAC) positions at the GS–5 or GS–7 grade level which are subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271, which were not removed from coverage of the Professional and Administrative Career Examination (PACE) prior to the effective date of the consent decree, and which are to be filled, under the conditions described below, by appointment of individuals other than those who at the time of such appointment already have competitive status in the Federal civil service. When a Federal agency needs to fill a PAC position that was not removed from PACE coverage before the consent decree became effective, and the agency has made maximum use of priority placement sources and has given appropriate consideration to available and qualified status applicants, then OPM may authorize the agency to make a new appointment under this paragraph. Such appointments shall be authorized and made pursuant to such Schedule B requirements for PAC positions as shall be prescribed in the Federal Personnel Manual. Terms of use of this appointment authority shall be established by an appointment authority agreement to be executed for each position excepted from the competitive service pursuant to this authority. The appointment authority agreement will remain in effect with respect to particular GS–5 and GS–7 PAC positions only so long as there is no competitive examination available to fill those positions. Establishment of a register under an alternative competitive examination for any PAC position(s) at grades GS–5 and GS–7 will immediately terminate all agreements permitting new Schedule B appointments to such position(s) under this authority. Individuals appointed before termination of the agreements, however, may continue to serve under those appointments at grades GS–5 and GS–7 until they are appointed to a competitive position in accordance with applicable civil service laws, rules, and regulations. An incumbent of a Schedule B PAC position may be converted to a career or career-conditional appointment under the provisions of Executive Order 12596, subject to the conditions set out in § 315.710 of this chapter.

(m) Positions when filled under any of the following conditions:

(1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successfully executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

Section 213.3203 Executive Office of the President

(a) [Reserved]

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)–(c) (Reserved)

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) Four Physical Science Administration Officer positions at GS–11 and GS–12 under the Bureau of Oceans and International Environmental and Scientific Affairs' Science, Engineering and Diplomacy Fellowship Program. Employment under this authority is not to exceed 1 year.

(f) Scientific, professional, and technical positions at grades GS–12 to GS15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b) Not to exceed 10 positions engaged in functions mandated by Public Law 99–190, the duties of which require expertise and knowledge gained as a present or former employee of the Synthetic Fuels Corporation, as an employee of an organization carrying out projects or contracts for the Corporation, or as an employee of a Government agency involved in the Synthetic Fuels Program. Appointments under this authority may not exceed 4 years.

(c) Not to exceed two positions of Accountant (Tax Specialist) at grades GS–13 and above to serve as specialists on the accounting analysis and treatment of corporation taxes. Employments under this paragraph shall not exceed a period of 18 months in any individual case.

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective service are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years; or (2) 120 days following completion of the service required for conservation under Executive Order 11203, whichever occurs first.

Section 213.3206 Department of Defense

(a) *Office of the Secretary.* (1) [Reserved]

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) [Reserved]

(5) For Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(c) *National Defense University.* (1) Sixty-one positions of professor, GS–13/15, for employment of any one

individual on an initial appointment not to exceed 3 years, which may be renewed in 1-, 2-, or 3-year increments indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–1811–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, CM–15.

Section 213.3207 Department of the Army

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

(b) *Brooke Army Medical Center, Fort Sam Houston, Texas.* (1) Two Medical Officer (Surgery) positions, GS–12, in the Clinical Division, U.S. Army Institute of Surgical Research, whose incumbents are enrolled in medical school surgical residency progams. Employment under this authority shall not exceed 12 months.

Section 213.3208 Department of the Navy

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

Section 213.3209 Department of the Air Force

(a) Not to exceed eight interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b) [Reserved]

(c) One Director of Instruction and 14 civilian Instructors at the Defense Institute of Security Assistance Management, Wright-Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

(c) Eighteen positions of professor, associate professor, or professional academic staff at the Air University, Maxwell Air Force Base, Alabama, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in 1-, 2-, or 3-year increments indefinitely thereafter.

Section 213.3210 Department of Justice

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) Positions of Port Receptionist and Supervisory Port Receptionist, Immigration and Naturalization Service.

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) Until September 30, 1987, positions, other than those providing routine clerical and admininstrative support, on the staff of the offices of United States Trustees. Terms of service under this authority shall be established in accordance with provisions of the Bankruptcy Reform Act of 1978 and subsequent applicable legislation.

Section 213.3213 Department of Agriculture

(a) *Office of International Cooperation and Development.* (1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 2 years on a single project for any individual. No more than 20 new appointments may be made under this authority in any 12-month period.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to two additional years.

Section 213.3214 Department of Commerce

(a) *Bureau of the Census.* (1) [Reserved]

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) Not to exceed 300 Community Awareness Specialist positions at the equivalent of GS–7 through GS–12. Employment under this authority may not exceed December 31, 1992.

(b) [Reserved]

(c) *Minority Business Development Agency.* (1) One position of minority business opportunity specialist at grades GS–9 through GS–15. This authority may not be used for new appointments after December 31, 1977.

(d) *National Telecommunications and Information Administration.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor

(a) Positions of Chairman and Member, Wage Appeals Board.

(b) *Office of the Inspector General.* (1) Not to exceed 110 positions of Criminal Investigator (Special Agent), GS–1811–5/15, in the Office of Labor Racketeering.

Section 213.3216 Department of Health and Human Services

(a) *Public Health Service.* (1) Not to exceed 68 positions at GS–11 and below on the Health and Nutrition Examination Survey teams of the National Center for Health Statistics.

(2) One Public Health Education Specialist, GS–1725–15, in the Center for Disease Control, Atlanta, Georgia.

(b)–(c) (Reserved)

(d) *National Library of Medicine.* (1) Ten positions of Librarian, GS–7, the incumbents of which will be trainees in the Library Associate Training Program in Medical Librarianship and Biomedical Communications. Employment under this authority is not to exceed 1 year.

Section 213.3217 Department of Education

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty

members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3227 Department of Veterans Affairs

(a) Not to exceed 800 principal investigatory, scientific, professional and technical positions at grades GS–11 and above in the medical research program. Employment under this authority may not exceed 7 years for any individual.

Section 213.3228 U.S. Information Agency

(a) *Voice of America:* (1) Not to exceed 150 positions at grades GS–15 and below in the Cuba Service. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

(b) Positions of English Language Radio Broadcast Intern, GS–1001–5/7/9. Employment is not to exceed 2 years for any intern.

Section 213.3231 Department of Energy

(a) Twenty Exceptions and Appeals Analyst positions at grades GS–7 through 11, when filled by persons selected under DOE's fellowship program in its Office of Hearings and Appeals, Washington, DC. Appointments under this authority shall not exceed 3 years.

Section 213.3234 Federal Trade Commission

(a) Positions filled under the Economic Fellows Program. No more than five new appointments may be made under this authority in any fiscal year. Service of an individual Fellow may not exceed 4 years.

Section 213.3236 U.S. Soldiers' and Airmen's Home

(a) Three GS–11 Medical Officer positions under a fellowship program on geriatrics.

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

Section 213.3237 General Services Administration.

(a) One position of Deputy Director of Network Services.

Section 213.3242 Export-Import Bank of the U.S.

(a) One position of Food Service Worker WG–7804–3/4/5, in the Office of the President and Chairman.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3254 Federal Home Loan Bank Board

(a) Positions of Accounting Policy Analyst, GS–13/14/15, in the Office of Examinations and Supervision filed in connection with a fellowship program. Appointments under this authority may not exceed 2 years. No more than three new appointments may be made under this authority during any consecutive 12-month perid.

(b) Up to 569 positions at GS–15 and below in the Federal Home Loan Bank Board engaged in exploring methods to promote stability in the thrift industry, restore the industry to profitability, and protect individual savers. No additional appointments may be made under this authority after September 30, 1990.

Section 213.3257 National Credit Union Administration

(a) *Central Liquidity Facility.* (1) All managerial and supervisory position at pay levels greater than the equivalent of GS–13.

Section 213.3259 ACTION

(a) *Office of Domestic and Anti-Poverty Operations.* (1) Not to exceed 25 positions of Program Specialist at grades GS–9 thrugh GS–15.

(b) *Office of Policy and Research.* (1) Three positions of Program Specialist at grades GS–7 through GS–15.

Section 213.3264 U.S. Arms Control and Disarmament Agency

(a) Twenty-five scientific, professional, and technical positions at grades GS–12 through GS–15 when filled by persons having special qualifications in the fields of foreign policy, foreign affairs, arms control, and related fields. Total employment under this authority may not exceed 4 years.

Section 213.3272 Administrative Office of the U.S. Courts

(a) Not to exceed 18 positions of Federal Probation System Administrator in the Division of Probation, when filled by Federal Probation Officers and/or Pretrial Services Officers on active service in the U.S. Courts.

(b) [Reserved]

(c) Six positions of Clerks Liaison Officer in the Division of Clerks of Court.

Section 213.3274 Smithsonian Institution

(a) *National Zoological Park.* (1) Four positions of Veterinary Intern, GS–8/9/11. Employment under this authority is not to exceed 36 months.

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) [Reserved]

(b) *National Endowment for the Humanities.* (1) Until September 30, 1990, Humanities Administrator, Reference Materials Programs, Division of Research Programs.

(2) Until September 30, 1990, Humanities Administrator (Assistant Director), Humanities Projects in Higher Education Program, Division of Education Programs.

(3) Until September 30, 1990, Deputy Director, Division of Education Programs.

(4) Until September 30, 1990, Director, Division of Research Grants.

(5) Until September 30, 1990, one position of Director, GS–1701–15, one position of Deputy Director, GS–1701–14, and seven positions of Humanities Administrator, GS–1701–13, Division of State Programs.

(6) Until September 30, 1990, one Director and one Deputy Director, Division of Fellowships and Seminars.

(7) Until September 30, 1990, one Humanities Administrator, Fellowships

for College Teachers, Division of Fellowships.

(8) Until September 30, 1990, seven positions of Humanities Administrator, Media Program, Division of General Programs.

(9) Until September 30, 1990, one position of Humanities Administrator, Humanities Projects in Higher Education Program, Division of Education Programs.

(10) Until September 30, 1990, one position of Assistant Director for the Elementary and Secondary Education Program, Division of Education Programs.

(11) Until September 30, 1990, one position of Assistant Director for the Museums and Historical Organizations Program, Division of General Programs.

(12) Until September 30, 1990, four positions of Humanities Administrator, Museums and Historical Organizations Program, Division of General Programs.

(13) Until September 30, 1990, four positions of Humanities Administrator, Elementary and Secondary Education Program, Division of Education Programs.

(14) Until September 30, 1990, Director of General Programs.

(15) Until September 30, 1990, one Assistant to the Director, General Programs.

(16) Until September 30, 1990, one Humanities Administrator, Younger Scholars Programs, Division of General Programs.

(17) Until September 30, 1990, one Humanities Administrator, Public Humanities Projects, Division of General Programs.

(18) Until September 30, 1990, one position of Director, Division of Education Programs.

(19) Until September 30, 1990, one Humanities Administrator (Assistant Director), Texts Programs, Division of Research Programs.

(20) Until September 30, 1990, one Humanities Administrator,Centers for Advanced Study, Division of Research Programs.

(21) Until September 30, 1990, one Challenge Grants Officer.

(22) Until September 30, 1990, one Assistant Director, Media Program, Division of General Programs.

(23) Until September 30, 1990, one position of Humanities Administrator, Publications Program, Division of Research Grants.

(24) Until September 30, 1990, one Deputy Director, Division of Research Grants.

(25) Until September 30, 1990, one Humanities Administrator, Summer Seminars for College Teachers, Division of Fellowships and Seminars.

(26) Until September 30, 1990, two positions of Humanities Administrator, Humanities Libraries Projects, Division of General Programs.

(27) Until September 30, 1990, one position of Humanities Projects Assessment Officer and one position of Humanities Administrator, Office of the Assistant Chairman for Programs.

(28) Until September 30, 1990, one position of Humanities Administrator, Public Humanities Projects, Division of General Programs, GS–14.

(29) Until September 30, 1990, one position of Humanities Administrator, GS–1701–14, in the Interpretive Research Programs, Division of Research Programs.

(30) Until September 30, 1990, one Humanities Administrator, Office of Challenge Grants.

(31)–(33) [Reserved]

(34) Until September 30, 1990, one Humanities Administrator, GS–1701–12, Humanities Projects in Higher Education Program, Division of Education Programs.

(35) Until September 30, 1990, one Humanities Administrator, Humanities Projects in Higher Education Program, Division of Education Programs.

(36) Until September 30, 1990, three Humanities Administrators, Humanities Projects in Higher Education Program, Division of Education Programs.

(37) Until September 30, 1990, two Humanities Administrators, Summer Seminars for Secondary School Teachers, Division of Fellowships and Seminars.

(38) Until September 30, 1990, one Humanities Administrator, Summer Stipends, Division of Fellowships and Seminars.

(39) Until September 30, 1990, one Humanities Administrator, Travel to Collections, Division of Fellowships and Seminars.

(40) Until September 30, 1990, one Humanities Administrator, Translation Program, Reference Works Program, Division of Research Programs.

(41) Until September 30, 1990, one Humanities Administrator, Editions Program, Reference Works Program, Division of Research Programs.

(42) [Reserved]

(43) Until September 30, 1990, one Humanities Administrator, Foundations of American Society Program, Division of Fellowships and Seminars.

(44) Until September 30, 1990, one Humanities Administrator, Humanities Projects in Museums and Historical Organizations, Division of General Programs.

(45) Until September 30, 1990, four Humanities Administrators, Office of Preservation.

(46) Until September 30, 1990, one Director, Office of Preservation.

(47) Until September 30, 1990, one Humanities Administrator (Program Officer), Regrant Programs, Division of Research Programs.

(48) Until September 30, 1990, one Director, Office of Planning and Budget.

(49) Until September 30, 1990, one Humanities Administrator, Access Program, Reference Materials Program, Division of Research Programs.

(50) Until September 30, 1990, one Humanities Administrator, Access Program, Reference Materials Program, Division of Research Programs.

(51) Until September 30, 1990, one Humanities Administrator, Project Research, interpretive Research Program, Division of Research Programs.

(52) Until September 30, 1990, one Humanities Administrator, Humanities, Science, and Technology Program, Interpretive Research Program, Division of Research Programs.

Section 213.3285 Pennsylvania Avenue Development Corporation

(a) One position of Civil Engineer (Construction Manager).

Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Section 213.3294 Department of Transportation

(a) *Federal Railroad Administration.* (1) Regional Director of Railroad Safety, Fort Worth Texas.

Schedule C

Section 213.3303 Executive Office of the President

Council of Economic Advisers

CEA 4 Secretary to the Chairman.
CEA 5 Secretary to the Council Member.

Council on Environmental Quality

CEQ 2 Executive Assistant to a Council Member.
CEQ 3 Confidential Assistant to the Chairman.
CEQ 4 Confidential Assistant to the Chairman.

Office of Management and Budget

OMB 8 Special Assistant to the Deputy Director.
OMB 10 Secretary to the Associate Director for Natural Resources, Energy, and Science.
OMB 11 Secretary to the Associate Director, National Security and International Affairs.
OMB 50 Legislative Assistant to the Assistant Director for Legislative Affairs.
OMB 59 Public Affairs Assistant to the Assistant Director for External Affairs.
OMB 66 Secretary to the Associate Director for Economic Policy.
OMB 68 Secretary to the Director.
OMB 71 Confidential Assistant to the General Counsel.
OMB 74 Special Assistant to the Associate Director for Congressional Affairs.
OMB 75 Deputy Director of External Affairs.

Office of Science and Technology Policy

OSTP 1 Public Information Assistant to the Director.
OSTP 8 Confidential Secretary to the Director.

President's Commission on Executive Exchange

PCEE 1 Confidential Assistant to the Executive Director.
PCEE 2 Special Assistant to the Executive Director.
PCEE 5 Public Affairs Specialist to the Executive Director.
PCEE 6 Staff Assistant (Typing) to the Executive Director.
PCEE 7 Staff Assistant (Typing) to the Executive Director.
PCEE 8 Secretary (Typing) to the Executive Director.

Office of the United States Trade Representative

USTR 7 Public Affairs Specialist to the Ambassador/United States Trade Representative.
USTR 14 Confidential Secretary to the Ambassador/United States Trade Representative.
USTR 20 Deputy Assistant United States Trade Representative.
USTR 25 Confidential Assistant to the General Counsel.
USTR 28 Congressional Affairs Officer to the Assistant United States Trade Representative for Congressional Affairs.
USTR 29 Director, Office of Private Sector Liaison, to the Assistant United States Trade Representative for Public and Intergovernmental Affairs.
USTR 30 Confidential Assistant to the Deputy United States Trade Representative—Geneva.

Section 213.3304 Department of State

ST 59 Secretary (Steno) to the Under Secretary for Economic Affairs.
ST 67 Secretary (Steno) to the Director, Bureau of Politico-Military Affairs.
ST 79 Special Assistant to the United States Representative to the United Nations.
ST 83 Foreign Affairs Officer to the Chief of Protocol.
ST 86 Foreign Affairs Officer to the Assistant Secretary, Bureau of International Organization Affairs.
ST 100 Secretary (Steno) to the United States Representative to the United Nations.
ST 106 Protocol Officer to the Chief of Protocol.
ST 107 Secretary (Typing) to the Assistant Secretary, Bureau of Economic and Business Affairs.
ST 112 Member, Policy Planning Staff, to the Director, Policy Planning Staff.
ST 116 Special Assistant to the Counselor.
ST 117 Confidential Clerk to the Secretary.
ST 122 Staff Assistant to the Under Secretary for Management.
ST 132 Secretary (Typing) to the Assistant Secretary, Bureau of International Organization Affairs.
ST 134 Secretary (Steno) to the Deputy Secretary.
ST 149 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 155 Protocol Officer (Visits) to the Chief of Protocol.
ST 161 Secretary (Steno) to the Under Secretary for Management.
ST 162 Secretary (Steno) to the Assistant Secretary, Bureau of Consular Affairs.
ST 167 Protocol Officer to the Chief of Protocol.
ST 168 Staff Assistant to the Legal Adviser.
ST 170 Special Assistant to the Deputy Secretary.
ST 172 Staff Assistant to the Under Secretary for Management.
ST 173 Special Assistant to the Under Secretary for Management.
ST 174 Public Affairs Specialist to the Deputy Assistant Secretary for Public Affairs.
ST 175 Legislative Management Officer to the Principal Deputy Assistant Secretary for Congressional Relations.
ST 176 Staff Assistant to the Under Secretary for Management.
ST 177 Special Assistant to the Chairman, International Joint Commission.
ST 178 Secretary (Steno) to the Assistant Secretary for International Narcotics Matters.
ST 179 Congressional Relations Officer to the Assistant Secretary, Office of Congressional Relations.
ST 180 Director of Programs to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 181 Director/Coordinator of Intergovernmental Affairs to the Assistant Secretary, Bureau of Public Affairs.
ST 182 Special Assistant to the Assistant Secretary, Bureau of Consular Affairs.
ST 183 Public Affairs Advisor to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 188 Staff Assistant to the Assistant Secretary for International Narcotics Matters.
ST 190 Special Assistant to the Ambassador-at-Large and Special Advisor to the Secretary.
ST 191 Secretary (Steno) to the Executive Secretary/Special Assistant to the Secretary.
ST 192 Staff Assistant to the Deputy Secretary.
ST 195 Staff Assistant to the Assistant Secretary for Congressional Relations.
ST 202 Special Assistant to the Ambassdor-at-Large.
ST 203 Staff Assistant to the Counselor.
ST 208 Foreign Affairs Officer to the Assistant Secretary, Bureau of International Organization Affairs.
ST 209 Protocol Officer to the Assistant Chief of Protocol.
ST 213 Staff Assistant to the Assistant Secretary for Human Rights and Humanitarian Affairs.
ST 217 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 224 Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs.
ST 226 Special Assistant to the Assistant Secretary, Bureau of Near Eastern and South Asian Affairs.
ST 229 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 243 Program Specialist to the Chief of Protocol.
ST 244 Staff Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.

ST 246 Secretary (Steno) to the Ambassador-at-Large for Cultural Affairs.
ST 248 Special Assistant to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs.
ST 250 Public Information Officer to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs.
ST 251 Special Assistant to the Deputy Assistant Secretary for Policy and Counter Terrorism, Bureau of Diplomatic Security.
ST 253 Secretary (Steno) to the Ambassador-at-Large for Counter Terrorism.
ST 256 Policy and Press Advisor to the U.S. Permanent Representative to the U.S. Mission to the Organization of American States.
ST 258 Secretary (Steno) to the Inspector General.
ST 260 Special Assistant to the Under Secretary for Security Assistance, Science, and Technology.
ST 261 Special Assistant to the Under Secretary for Security Assistance, Science, and Technology.
ST 262 Associate Director to the Deputy Assistant Secretary, Office of Equal Employment Opportunity and Civil Rights.
ST 267 Secretary to the Assistant Secretary, Bureau of Public Affairs.
ST 268 Staff Assistant to the Secretary.
ST 269 Supervisory Protocol Officer to the Chief of Protocol.
ST 270 Staff Assistant to the Director, Policy Planning Staff.
ST 274 Special Assistant to the Head of the U.S. Delegation to Geneva for Arms Reduction Negotiations.

Section 213.3305 Department of the Treasury

TREA 27 Executive Assistant to the Secretary.
TREA 28 Special Assistant to the Director of the Mint.
TREA 44 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 56 Confidential Assistant to the Assistant Secretary for Legislative Affairs.
TREA 79 Legislative Assistant to the Assistant Secretary for Legislative Affairs.
TREA 92 Director, Consumer Affairs, to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 93 Special Assistant to the Deputy Assistant Secretary for Public Affairs.
TREA 94 Executive Assistant to the Commissioner of Customs.
TREA 113 Executive Assistant to the Special Assistant to the Commissioner of Customs.
TREA 115 Staff Assistant to the Deputy Assistant Secretary for Financial Systems.
TREA 120 Special Assistant to the Assistant Secretary for Policy, Planning and Communications.
TREA 122 Public Affairs Specialist to the Assistant Secretary for Policy, Planning and Communications.
TREA 126 Staff Assistant to the Director of the Mint.
TREA 128 Confidential Assistant to the Secretary.
TREA 139 Director of Scheduling to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 144 Staff Assistant to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 145 Travel Assistant to the Assistant Director for Travel and Special Event Services.
TREA 146 Legislative Aid to the Assistant Secretary for Legislative Affairs.
TREA 148 Director, Special Operations Division, to the Deputy Assistant Secretary for Administration.
TREA 150 Special Assistant to the Deputy Assistant Secretary for Developing Nations, Office of the Assistant Secretary for International Affairs.
TREA 153 Legislative Specialist to the Assistant Secretary for Legislative Affairs.
TREA 156 Special Assistant to the Assistant Secretary for Policy Development.
TREA 157 Congressional Liaison Officer to the Associate Commissioner of Customs for Congressional Affairs.
TREA 158 Confidential Assistant to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 166 Travel Assistant to the Deputy Assistant Secretary for Administration.
TREA 170 Assistant Director for Travel and Special Event Services, to the Director, Special Operations Division.
TREA 171 Executive Assistant to the Deputy Secretary.
TREA 174 Senior Assistant to the Deputy Assistant Secretary for Law Enforcement.
TREA 177 Special Assistant to the Executive Director, U.S. Savings Bonds Division.
TREA 179 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 183 Staff Assistant to the Director of the Mint.
TREA 185 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 186 Public Affairs Specialist to the Treasurer of the United States.
TREA 188 Special Assistant (Policy Analysis) to the Secretary.
TREA 189 Special Assistant (Personnel) to the Secretary.
TREA 190 Special Assistant to the Assistant Secretary for Policy Development.
TREA 191 Special Assistant to the Deputy Assistant Secretary for Departmental Finance and Management.
TREA 192 Confidential Assistant to the Secretary.
TREA 193 Director, Office of Intergovernmental Affairs, to the Deputy Assistant Secretary (Public Liaison).
TREA 194 Confidential Assistant to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 195 Review Officer to the Assistant Secretary for Policy Development.
TREA 196 Confidential Assistant to the Executive Secretary.
TREA 197 Staff Assistant to the Deputy Assistant Secretary for Departmental Finance and Management.
TREA 198 Executive Assistant to the Assistant Secretary for Management.
TREA 199 Executive Assistant to the Deputy Secretary.
TREA 200 Legislative Manager to the Assistant Secretary for Legislative Affairs.
TREA 201 Deputy Assistant Secretary for Legislative Affairs.
TREA 203 Staff Assistant to the Executive Secretary.
TREA 205 Director, Office of Corporate Finance, to the Deputy Assistant Secretary (Corporate Finance).
TREA 206 Staff Assistant to the Assistant Secretary (Enforcement).

Section 213.3306 Department of Defense

DOD 5 Private Secretary to the Deputy Secretary.
DOD 19 Personal and Confidential Assistant to the Director, Program Analysis and Evaluation.
DOD 22 Private and Confidential Secretary to the Assistant to the Secretary (Atomic Energy).
DOD 23 Confidential Assistant to the Military Assistant to the Secretary.
DOD 24 Chauffeur to the Secretary.
DOD 30 Secretary (Steno) to the Defense Advisor to U.S. NATO.

DOD 32 Special Assistant to the Assistant Secretary for Legislative Affairs.
DOD 33 Personal Secretary to the Deputy Secretary.
DOD 34 Private Secretary to the Principal Deputy Assistant Secretary for International Security Affairs.
DOD 35 Confidential Assistant to the Executive Secretary.
DOD 51 Private Secretary to the Assistant Secretary for Reserve Affairs.
DOD 54 Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 55 Private Secretary to the Chief Judge, U.S. Court of Military Appeals.
DOD 56 Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 62 Management Officer to the Chairman, President's Intelligence Oversight Board.
DOD 66 Private Secretary to the Physician to the President, White House Support Group.
DOD 89 Secretary (Typing) to the Principal Deputy Assistant Secretary (Public Affairs).
DOD 119 Private Secretary to the Principal Deputy Director, Program Analysis and Evaluation.
DOD 133 Public Affairs Specialist to the Assistant Secretary (Public Affairs).
DOD 171 Special Assistant to the Deputy Assistant Secretary (Reserve Affairs).
DOD 175 Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals.
DOD 178 Special Assistant to the Assistant Secretary for Legislative Affairs.
DOD 194 Private Secretary to the Assistant Secretary (International Security Policy).
DOD 205 Personal and Confidential Assistant to the Judge, U.S. Court of Military Appeals.
DOD 212 Private Secretary to the Deputy Under Secretary, Research and Engineering (International Programs and Technology).
DOD 217 Private Secretary to the Assistant Secretary (Command, Control, Communications, and Intelligence).
DOD 229 Special Assistant to the Assistant Secretary for International Security Policy.
DOD 236 Special Assistant to the Assistant Secretary for Public Affairs.
DOD 238 Special Assistant to the Assistant Secretary for Legislative Affairs.
DOD 250 Speechwriter to the Assistant Secretary for Public Affairs.
DOD 252 Confidential Assistant to the Secretary.
DOD 254 Special Assistant for Emergency Planning to the Assistant Secretary (Acquisition and Logistics).
DOD 256 Staff Assistant to the Assistant Secretary (Force Management and Personnel).
DOD 261 Special Assistant for European Security and Political Affairs to the Deputy Assistant Secretary (European and NATO Policy).
DOD 270 Private Secretary to the Director, Strategic Defense Initiative Organization.
DOD 274 Security Advisor to the Deputy Assistant to the President, White House Support Group.
DOD 275 Assistant for European Security Negotiations to the Deputy Assistant Secretary (Negotiations Policy).
DOD 279 Personal and Confidential Assistant to the Director, Operational Testing and Evaluation.
DOD 283 Special Assistant to the Assistant Secretary for Public Affairs.
DOD 284 Special Assistant to the Director, Office of Civilian Health and Medical Programs of the Uniformed Services.
DOD 287 Special Assistant for Strategic Defense and Space Arms Control Policy to the Deputy Assistant Secretary (Nuclear Forces and Arms Control Policy).
DOD 290 Public Affairs Specialist to the Principal Deputy Assistant Secretary for Public Affairs.
DOD 294 Staff Specialist to the Deputy Director, Strategic Defense Initiative Organization.
DOD 295 Special Assistant to the Assistant Secretary (Force Management and Personnel).
DOD 298 Confidential Assistant to the Under Secretary for Acquisition.
DOD 301 Personal and Confidential Assistant to the Assistant Secretary for Production and Logistics.
DOD 305 Special Assistant to the Director, Strategic Defense Initiative Organization.
DOD 308 Director, Low-Intensity Conflict, to the Deputy Assistant Secretary for Low-Intensity Conflict.
DOD 310 Staff Assistant to the Chairman, Joint Chiefs of Staff.
DOD 311 Staff Assistant to the Assistant to the Chairman, Joint Chiefs of Staff.
DOD 313 Staff Assistant to the Deputy Assistant Secretary (Family Support, Education, and Safety).
DOD 314 Personal and Confidential Assistant to the Under Secretary for Acquisition.
DOD 316 Law Clerk to the Judge, U.S. Court of Military Appeals.
DOD 319 Executive Assistant to the Special Assistant to the Assistant Secretary (Production and Logistics) for Stockpile Policy and Programs.
DOD 320 Executive Assistant to the Secretary.

Section 213.3307 Department of the Army

ARMY 1 Staff Assistant to the Secretary.
ARMY 2 Secretary (Steno) to the Under Secretary.
ARMY 3 Secretary (Steno) to the Assistant Secretary for Manpower and Reserve Affairs.
ARMY 6 Secretary (Typing) to the Assistant Secretary, Research, Development, and Acquisition.
ARMY 21 Secretary (Steno) to the General Counsel.
ARMY 38 Plans Coordinator to the Chief of Public Affairs.
ARMY 41 Assistant Director to the Chairman and Executive Director of the President's Foreign Intelligence Advisory Board.
ARMY 55 Secretary (Typing) to the Assistant Secretary, Financial Management.

Section 213.3308 Department of the Navy

NAV 2 Staff Assistant to the Secretary.
NAV 5 Private Secretary to the Assistant Secretary for Financial Management.
NAV 7 Private Secretary to the Assistant Secretary for Research and Engineering.
NAV 20 Special Assistant to the Military Assistant to the President.
NAV 23 Special Assistant to the Military Assistant to the President.
NAV 24 Private Secretary to the Assistant Secretary for Manpower and Reserve Affairs.
NAV 27 Special Assistant for Emergency Planning to the Military Assistant to the President.
NAV 30 Staff Assistant to the Deputy Under Secretary.
NAV 31 Staff Assistant to the Under Secretary.
NAV 38 Private Secretary to the Under Secretary.
NAV 40 Special Assistant to the Deputy Under Secretary (Policy).

Section 213.3309 Department of the Air Force

AF 1 Secretary (Steno) to the Secretary.
AF 3 Secretary (Steno) to the Assistant Secretary for Manpower, Reserve Affairs, and Installations.
AF 5 Secretary (Steno) to the Assistant Secretary for Research and Development Logistics.

AF 8 Secretary (Steno) to the General Counsel.
AF 20 Secretary (Steno) to the Military Assistant to the President.
AF 21 Special Assistant to the Military Assistant to the President.
AF 28 Special Assistant to the General Counsel.

Section 213.3310 Department of Justice

JUS 70 Special Assistant to the Assistant Attorney General, Civil Rights Division.
JUS 83 Confidential Assistant to the Attorney General.
JUS 85 Special Assistant to the Director, Community Relations Service.
JUS 100 Confidential Assistant to the Director of Congressional and Public Affairs, Immigration and Naturalization Service.
JUS 104 Special Assistant to the Director, Community Relations Service.
JUS 152 Secretary and Confidential Assistant to the U.S. Attorney.
JUS 158 Secretary (Stenographer) to the U.S. Attorney.
JUS 166 Special Assistant to the Attorney General.
JUS 200 Secretary and Confidential Assistant to the U.S. Attorney.
JUS 224 Special Assistant to the Deputy Attorney General.
JUS 227 Staff Assistant to the Director, Community Relations Service.
JUS 240 Special Assistant to the Deputy Assistant Attorney General, Civil Rights Division.
JUS 241 Confidential Assistant and Private Secretary to the Chairman, Foreign Claims Settlement Commission.
JUS 248 Missing Children Program Coordinator to the Administrator, Office of Juvenile Justice and Delinquency Prevention.
JUS 262 Staff Assistant to the Director, Bureau of Justice Statistics.
JUS 266 Public Affairs Specialist to the Deputy Director, Office of Public Affairs.
JUS 270 Special Assistant to the Assistant Attorney General, Civil Rights Division.
JUS 271 Confidential Assistant to the Assistant Attorney General, Office of Legal Policy.
JUS 277 Staff Assistant to the Assistant Attorney General/Chief of Staff.
JUS 294 Special Assistant to the Assistant Attorney General, Tax Division.
JUS 301 Attorney-Advisor (Special Assistant) to the Principal Deputy Assistant Attorney General.
JUS 314 Senior Liaison Officer to the Director, Office of Liaison Services.
JUS 315 Confidential Assistant to the Director, National Obscenity Enforcement Unit, Criminal Division.
JUS 316 General Attorney to the Director, Office of Victims of Crime.
JUS 319 Supervisory Attorney-Advisor (Associate Director), National Obscenity Enforcement Unit, Criminal Division.
JUS 320 Special Assistant to the Assistant Attorney General, Antitrust Division.
JUS 331 Special Assistant to the Director, National Institute of Justice.
JUS 335 Special Assistant to the Assistant Attorney General, Civil Division.
JUS 339 Executive U.S. Marshal.
JUS 340 Chief of Staff to the Director, Community Relations Service.
JUS 341 Confidential Assistant to the Director, Executive Office for U.S. Attorneys.
JUS 342 Executive Assistant to the Deputy Commissioner, Immigration and Naturalization Service.
JUS 343 Special Assistant to the Attorney General.
JUS 344 Confidential Assistant to the Attorney General.
JUS 345 Special Assistant to the Director, Community Relations Service.

Section 213.3311 Federal Judicial Center

FJC2 Staff Assistant to the Director.

Section 213.3312 Department of the Interior

INT 116 Special Assistant to the Deputy Assistant Secretary for Policy and Analysis.
INT 152 Special Assistant to the Deputy Director, National Park Service.
INT 155 Confidential Assistant to the Director, Office of Surface Mining.
INT 165 Special Assistant to the Director, Bureau of Land Management.
INT 190 Special Assistant to the Director, Bureau of Mines.
INT 191 Special Assistant to the Director, Bureau of Mines.
INT 208 Congressional Liaison Officer to the Director, Minerals Management Service.
INT 212 Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 215 Confidential Assistant to the Executive Assistant to the Secretary.
INT 232 Staff Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 235 Confidential Assistant to the Director, Fish and Wildlife Service.
INT 238 Director, Office of External Affairs, to the Commissioner of Reclamation.
INT 246 Public Affairs Specialist to the Director, Minerals Management Service.
INT 256 Staff Assistant to the Associate Director, Bureau of Land Management.
INT 264 Confidential Assistant to the Special Assistant (Field Representative) to the Secretary.
INT 265 Special Assistant to the Director, Bureau of Land Management.
INT 268 Special Assistant to the Director, Office of Surface Mining and Reclamation.
INT 272 Special Assistant to the Assistant to the Secretary and Director, Office of External Affairs.
INT 274 Congressional Liaison Specialist to the Director, Office of Surface Mining and Reclamation.
INT 282 Confidential Assistant to the Solicitor.
INT 287 Assistant to the Director, Bureau of Land Management.
INT 292 Special Assistant to the Director, Bureau of Land Management.
INT 294 Special Assistant to the Director, Fish and Wildlife Service.
INT 298 Special Assistant to the Assistant to the Secretary and Director, Office of External Affairs.
INT 300 Special Assistant to the Solicitor.
INT 309 Special Assistant to the Director, Fish and Wildlife Service.
INT 311 Special Assistant to the Assistant Secretary for Policy, Budget, and Administration.
INT 312 Confidential Assistant to the Secretary.
INT 313 Special Assistant to the Assistant Secretary for Policy, Budget, and Administration.
INT 315 Staff Assistant to the Commissioner of Reclamation.
INT 317 Special Assistant to the Assistant Director of External Affairs, Fish and Wildlife Service.
INT 323 Confidential Assistant to the Director of Security and Drug Enforcement.
INT 324 Confidential Assistant to the Assistant to the Secretary and Director, Office of Congressional and Legislative Affairs.
INT 327 Special Assistant to the Director, National Park Service.
INT 328 Staff Assistant to the Director, Geological Survey.
INT 329 Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 330 Deputy Director, Office of Public Affairs, to the Assistant to the Secretary and Director, Office of Public Affairs.

INT 331 Confidential Assistant to the Director, Minerals Management Service.

Section 213.3313 Department of Agriculture

AGR 1 Staff Assistant to the Executive Assistant for Operations and Correspondence to the Seretary.
AGR 8 Chauffeur to the Secretary.
AGR 12 Private Secretary to the Under Secretary for International Affairs and Commodity Programs.
AGR 28 Members, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 29 Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 31 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 33 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 34 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 44 Private Secretary to the Assistant Secretary for Economics.
AGR 48 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 56 Private Secretary to the Assistant Secretary for Governmental and Public Affairs.
AGR 61 Private Secretary to the Assistant Secretary for Special Services.
AGR 62 Confidential Assistant to the Under Secretary for Small Community and Rural Development.
AGR 64 Confidential Assistant to the Under Secretary of Small Community and Rural Development.
AGR 81 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 96 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 102 Confidential Assistant to the Assistant Secretary for Food and Consumer Services.
AGR 103 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 106 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 108 Private Secretary to the Deputy Under Secretary for International Affairs and Commodity Programs.
AGR 110 Confidential Assistant to the General Counsel.
AGR 111 Confidential Assistant to the Deputy Secretary.
AGR 128 Private Secretary to the Administrator, Federal Grain Inspection Service.
AGR 129 Private Secretary to the Assistant Secretary, Marketing and Inspection Service.
AGR 130 Private Secretary to the Deputy Assistant Secretary, Marketing and Inspection Service.
AGR 137 Confidential Assistant to the Assistant Secretary for Economics.
AGR 139 Staff Assistant to the Secretary.
AGR 154 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 164 Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 182 Confidential Assistant to the Administrator, Rural Electrification Administration.
AGR 188 Northeast Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 189 Southeast Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 190 Midwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 191 Northwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 192 Southwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 194 Private Secretary to the Under Secretary for Small Community and Rural Development.
AGR 201 Confidential Assistant to the Special Assistant to the Secretary.
AGR 206 Director, Office of the Consumer Advisor to the Assistant Secretary for Food and Consumer Services.
AGR 207 Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 208 Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 210 Staff Assistant to the Administrator, Office of International Development and Cooperation.
AGR 212 Speical Assistant to the Assistant Secretary for Administration.
AGR 218 Staff Assistant to the Assistant Secretary for Administration.
AGR 220 Private Secretary to the Deputy Assistant Secretary for Administration.
AGR 222 Confidential Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 224 Director, Congressional and Public Affairs Division, to the Manager, Federal Crop Insurance Corporation.
AGR 226 Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 229 Staff Assistant/ Correspondence Review Officer to the Director, Executive Secretariat.
AGR 231 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 232 Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 235 Confidential Assistant to the Administrator, Agricultural Marketing Service.
AGR 236 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service.
AGR 238 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 242 Staff Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 243 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 244 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 247 Private Secretary to the Inspector General.
AGR 257 Executive Assistant to the Assistant Secretary for Food and Consumer Services.
AGR 260 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 261 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 262 Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 263 Confidential Assistant to the Assistant Secretary for Special Services.
AGR 267 Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 273 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 275 Special Assistant to the Secretary.
AGR 276 Confidential Assistant to the Administrator, Agricultural Research Service.
AGR 277 Confidential Assistant to the Chief, Soil Conservation Service.
AGR 279 Confidential Assistant to the Administrator, Foreign Agricultural Service.

AGR 282 Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 283 Staff Assistant to the Administrator, Agricultural Stabilization and Conservation Service.

Section 213.3314 Department of Commerce

COM 2 Confidential Assistant to the Secretary.
COM 3 Deputy to the Chief of Staff.
COM 5 Special Assistant to the Director, Office of Executive Programs.
COM 12 Confidential Assistant to the Deputy Secretary.
COM 20 Confidential Assistant to the Deputy Assistant Secretary for Administration.
COM 21 Congressional Liaison Officer to the Assistant Secretary for Congressional Affairs.
COM 22 Deputy Director, Congressional Affairs, to the Deputy Assistant Secretary for Congressional Affairs.
COM 73 Congressional Liaison Specialist to the Director, Office of Congressional Relations.
COM 147 Confidential Assistant to the Director, Office of Executive Programs.
COM 156 Confidential Assistant to the Assistant Secretary, Economic Development Administration.
COM 158 Director of Public Affairs to the Under Secretary.
COM 162 Confidential Assistant to the Assistant Secretary, for International Economic Poliy, International Trade Administration.
COM 165 Director of Business Liaison to the Under Secretary.
COM 184 Confidential Assistant to the Director, National Bureau of Standards.
COM 191 Confidential Assistant to the General Counsel.
COM 200 Congressional Liaison Officer to the Assistant Secretary for Congressional Affairs.
COM 203 Congressional Liaison Specialist to the Deputy Assistant Secretary for Congressional Affairs.
COM 220 Confidential Assistant to the Deputy Assistant Secretary for East Asia and the Pacific, International Trade Administration.
COM 224 Confidential Assistant to the Under Secretary, International Trade Administration.
COM 225 Director, Congressional Affairs Staff, to the Under Secretary for Export Administration.
COM 232 Special Assistant to the Assistant Secretary, Economic Development Administration.
COM 248 Special Assistant to the Deputy Secretary.
COM 263 Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration.
COM 268 Executive Assistant to the Associate Deputy Secretary.
COM 272 Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration.
COM 274 Confidential Assistant to the Director, Office of Business Liaison.
COM 284 Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 285 Deputy Director, Office of Intergovernmental Affairs, to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 287 Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 288 Confidential Assistant to the Director, Office of Business Liaison.
COM 289 Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 293 Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 294 Confidential Assistant to the Secretary.
COM 295 Confidential Assistant to the Director, Office of Executive Programs.
COM 303 Confidential Assistant to the Assistant Secretary for Administration.
COM 311 Confidential Assistant to the Director, Office of Executive Programs.
COM 312 Confidential Assistant to the Director General, U.S. and Foreign Commercial Service.
COM 313 Confidential Assistant to the Director, Office of Executive programs.
COM 321 Director, Office of Public Affairs to the Under Secretary for International Trade.
COM 325 Confidential Assistant to the Deputy Assistant Secretary for Africa, Near East, and South Asia, International Trade Administration.
COM 329 Congressional Liaison Assistant to the Director of Congressional Affairs, International Trade Administration.
COM 332 Confidential Assistant to the Deputy Assistant Secretary for Capital Goods and International Construction, International trade Administration.
COM 334 Special Assistant to the Assistant Secretary for Trade Administration.
COM 337 Congressional Liaison Assistant to the Deputy Director, Congressional Affairs.
COM 350 Deputy Director to the Director, Office of Business Liaison.
COM 359 Confidential Assistant to the Deputy Assistant Secretary for Africa, Near East, and South Asia, International Trade Administration.
COM 365 Confidential Assistant to the Director, Minority Business Development Agency.
COM 370 Chief of Congressional Affairs to the Director, Minority Business Development Agency.
COM 374 Congressional Affairs Specialist to the Congresional Affairs Advisor, Bureau of the Census.
COM 376 Confidential Assistant to the Director, Office of Executive Programs.
COM 378 Congressional Liaison Officer to the Under Secretary for Economic Affairs.
COM 382 Confidential Assistant to the Director, Office of Executive Programs.
COM 390 Confidential Assistant to the Under Secretary for Economic Affairs.
COM 397 Congressional Affairs Advisor to the Director, Bureau of the Census.
COM 410 Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration.
COM 415 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration.
COM 416 Director, Office of Consumer Affairs, to the Director, Office of Public Affairs.
COM 422 Confidential Assistant to the Director, Commercial Space Programs.
COM 429 Confidential Assistant to the Director, Office of Executive Programs.
COM 430 Special Assistant to the Assistant Secretary for Export Administration.
COM 432 Confidential Assistant to the Director, Commercial Space Programs.
COM 433 Senior Advisor to the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.
COM 434 Executive Assistant to the Under Secretary for Export Administration.
COM 436 Director, Office of Private Sector Initiatives, to the Director, Office of Business Liaison.
COM 438 Confidential Assistant to the Director, Office of Executive Programs.

Section 213.3315 Department of Labor

LAB 3 Special Assistant to the Secretary.
LAB 17 Senior Liaison Officer to the Assistant Secretary for Congressional Affairs.
LAB 25 Legislative Officer to the Assistant Secretary for Congressional Affairs.
LAB 44 Senior Liaison Officer to the Assistant Secretary for Congressional Affairs.
LAB 49 Special Assistant to the assistant Secretary, Occupational Safety and Health Administration.
LAB 55 Staff Assistant to the Deputy Under Secretary for Congressional Affairs.
LAB 64 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 91 Confidential Staff Assistant to the Deputy Under Secretary for Congressional Affairs.
LAB 99 Special Assistant to the Assistant Secretary for Education and Training.
LAB 100 Special Assistant to the Deputy Under Secretary for International Labor Affairs.
LAB 103 Secretary's Representatives to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 104 Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 106 Secretary's Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 107 Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 108 Secretary's Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 109 Secretary's Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 110 Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 111 Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 115 Secretary (Typing) to the Secretary's Representative.
LAB 116 Secretary (Typing) to the Secretary's Representative.
LAB 118 Secretary (Typing) to the Secretary's Representative.
LAB 122 Secretary (Typing) to the Secretary's Representative.
LAB 127 Staff Assistant to the Director, Office of Workers' Compensation Programs.
LAB 130 Special Assistant to the Secretary.
LAB 132 Senior Legislative Officer to the Assistant Secretary for Congressional Affairs.
LAB 137 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 146 Confidential Assistant to the Solicitor.
LAB 152 Special Assistant to the Deputy Director, Women's Bureau.
LAB 160 Confidential Assistant to the Secretary.
LAB 169 Special Assistant to the Assistant Secretary for Policy.
LAB 171 Special Assistant to the Secretary.
LAB 179 Executive Assistant to the Assistant Secretary, Employment Standards Administration.
LAB 184 Special Assistant for Public Affairs to the Deputy Under Secretary for Employment Standards.
LAB 189 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 190 Special Assistant to the Assistant Secretary for Policy.
LAB 191 Staff Assistant to the Secretary.
LAB 192 Staff Assistant to the Assistant Secretary for Pension and Welfare Benefits Programs.
LAB 195 Special Assistant to the Assistant Secretary for Employment and Training.
LAB 196 Executive Assistant to the Assistant Secretary for Veterans' Employment and Training.
LAB 199 Deputy Liasison Officer to the Assistant Secretary for Congressional Affairs.
LAB 200 Special Assistant (Speech Writer) to the Assistant Secretary for Employment and Training.
LAB 208 Deputy Liaison Officer to the Assistant Secretary for Congressional Affairs.
LAB 209 Confidential Assistant to the Assistant Secretary for Veterans' Employment and Training.
LAB 210 Special Assistant to the Assistant Secretary for Policy.
LAB 212 Staff Assistant to the Secretary.
LAB 215 Staff Assistant to the Director, Women's Bureau.
LAB 219 Special Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 221 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 230 Special Assistant to the Assistant Secretary for Public and Intergovernment Affairs.
LAB 231 Special Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 234 Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 237 Special Assistant to the Assistant Secretary for Congressional Affairs.
LAB 238 Assistant to the Secretary's Representative.
LAB 240 Assistant to the Secretary's Representative.
LAB 243 Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 244 Staff Assistant to the Secretary.
LAB 245 Assistant to the Secretary's Representative.
LAB 246 Assistant to the Secretary's Representative.
LAB 248 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.
LAB 251 Staff Assistant to the Deputy Assistant Secretary for Mine Safety and Health.
LAB 254 Associate Assistant Secretary for Congressional Affairs.

Section 213.3316 Department of Health and Human Services

HHS 213 Steward to the Secretary.
HHS 230 Attorney-Advisor (Special Assistant) to the General Counsel.
HHS 273 Special Assistant to the Deputy Assistant Secretary for Legislation.
HHS 293 Special Assistant to the Commissioner, Administration for Children, Youth and Families, Office of Human Development Services.
HHS 331 Special Assistant to the Administrator, Health Care Financing Administration.
HHS 332 Executive Assistant to the Assistant Secretary for Human Development Services.
HHS 336 Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services).
HHS 354 Associate Commissioner, Administration for Children, Youth and Families, Office of Human Development Services.
HHS 358 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison).
HHS 394 Confidential Assistant to the Executive Secretary.
HHS 419 Confidential Assistant to the Secretary.
HHS 446 Special Assistant to the Chief of Staff.
HHS 448 Staff Assistant to the Associate Commissioner for Governmental Affairs, Social Security Administration.
HHS 452 Special Assistant for Advisory Committees to the Special Assistant/Advisory Committee Officer.

HHS 455 Confidential Assistant to the Director, Office of Legislation and Policy, Health Care Financing Adminsitration.
HHS 462 Special Assistant for Liaison Activities to the Administrator, Alcohol, Drug Abuse and Mental Health Administration, Public Health Service.
HHS 467 Confidential Assistant to the Director, Office of Community Services, Family Support Administration.
HHS 477 Special Assistant for Policy Development to the Director, Policy Development Staff, Social Security Administration.
HHS 484 Confidential Assistant to the Director, Office of Legislation and Policy, Health Care Financing Administration.
HHS 487 Confidential Assistant to the Administrator, Health Care Financing Administration.
HHS 491 Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families.
HHS 509 Director, Youth 2000 Program, to the Assistant Secretary for Human Development Services.
HHS 510 Deputy Director, Office of Public Liaison, Health Care Financing Administration.
HHS 512 Special Assistant to the Deputy Assistant Secretary for Human Development Services.
HHS 517 Special Assistant to the Director, Office of Family Assistance.

Section 213.3317 Department of Education

EDU 1 Special Assistant to the Deputy Under Secretary for Planning, Budget, and Evaluation.
EDU 4 Special Assistant to the Director, Intergovernmental Affairs, Office of Intergovernmental and Interagency Affairs.
EDU Confidential Assistant to the Under Secretary.
EDU 8 Confidential Assistant to the Assistant Secretary, Office of Civil Rights.
EDU 14 Special Assistant to the Deputy Under Secretary for Management.
EDU 15 Special Assistant to the Deputy Under Secretary for Management.
EDU 20 Steward to the Executive Assistant to the Secretary.
EDU 21 Confidential Assistant to the Deputy Assistant Secretary for Legislation.
EDU 37 Special Assistant to the Secretary.
EDU 38 Special Assistant to the Assistant Secretary for Postsecondary Education.
EDU 46 Special Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 67 Special Assistant Chief of Staff/Counselor to the Secretary.
EDU 71 Special Assistant to the Assistant Secretary for Legislation.
EDU 72 Special Assistant to the Assistant Secretary for Legislation.
EDU 74 Executive Assistant to the Assistant Secretary for Legislation.
EDU 77 Executive Assistant to the Assistant Secretary for Civil Rights.
EDU 78 Special Assistant to the Assistant Secretary for Civil Rights.
EDU 87 Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 91 Special Assistant to the Assistant Secretary for Civil Rights.
EDU 94 Confidential Assistant to the Assistant Secretary for Postsecondary Education.
EDU 96 Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs.
EDU 101 Special Assistant to the Deputy Under Secretary for Management.
EDU 105 Secretary's Regional Representative.
EDU 108 Secretary's Regional Representative.
EDU 109 Secretary's Regional Representative.
EDU 110 Secretary's Regional Representative.
EDU 111 Secretary's Regional Representative.
EDU 112 Special Assistant to the Assistant Secretary for Educational Research and Improvement.
EDU 115 Special Assistant to the Deputy Assistant Secretary for Higher Education Programs.
EDU 131 Secretary's Regional Representative.
EDU 146 Special Assistant to the Deputy Assistant Secretary for Special Education and Rehabilitative Services.
EDU 147 Secretary's Regional Representative.
EDU 149 Special Assistant to the Under Secretary.
EDU 152 Special Assistant to the Deputy Under Secretary for Management.
EDU 153 Special Assistant to the Director, Intergovernmental Affairs Staff, Office of Intergovernmental and Interagency Affairs.
EDU 154 Executive Director, Intergovernmental Advisory Council on Education, to the Deputy Under Secretary for Intergovernmental and Intergency Affairs.
EDU 155 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 158 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 167 Diretor, Operations Support Services, to the Deputy Assistant Secretary for Operations, Office of Civil Rights.
EDU 168 Special Assistant to the Under Secretary.
EDU 171 Director, Legislative Liaison, to the Deputy Assistant Secretary for Legislation.
EDU 185 Staff Assistant to the Secretary's Regional Representative.
EDU 186 Special Assistant to the Secretary's Regional Representative.
EDU 188 Staff Assistant to the Secretary's Regional Representative.
EDU 193 Executive Secretary to the Chief of Staff.
EDU 195 Executive Assistant to the Comptroller, Office of the Deputy Under Secretary for Management.
EDU 196 Special Assistant to the Director, Special Education Programs, Office of Special Education and Rehabilitative Services.
EDU 204 Deputy Secretary's Regional Representative.
EDU 205 Special Assistant to the Secretary.
EDU 209 Special Assistant to the Secretary for Educational Research and Improvement.
EDU 214 Special Assistant to the Secretary's Regional Representative.
EDU 218 Special Assistant to the Deputy Assistant Secretary for Higher Education, Office of Postsecondary Education.
EDU 248 Executive Assistant to the Assistant Secretary for Postsecondary Education.
EDU 249 Staff Assistant to the Director, Programs for the Improvement of Practice, Office of Educational Research and Improvement.
EDU 251 Special Assistant to the Director, Intergovernmental Affairs Staff, Office of Intergovernmental and Interagency Affairs.
EDU 254 Director, Postsecondary Relations Staff, to the Deputy Assistant Secretary for Higher Education, Office of Postsecondary Education.
EDU 256 Special Assistant to the Director, Legislative Liaison Staff, Office of Legislation.
EDU 266 Special Assistant to the Assistant Secretary for Postsecondary Education.

EDU 267 Special Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 275 Staff Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 295 Special Assistant to the Deputy Assistant Secretary for Student Financial Assistance Programs, Office of Postsecondary Education.
EDU 297 Confidential Assistant to the Secretary's Senior Special Assistant.
EDU 301 Confidential Assistant to the Director, Intergovernmental Affairs, Office of Intergovernmental and Interagency Affairs.
EDU 302 Confidential Assistant to the Chief of Staff.
EDU 303 Special Assistant to the Executive Secretary.
EDU 305 Confidential Assistant to the Director, Private Sector Initiative Staff.
EDU 306 Confidential Assistant to the Chief of Staff/Counselor to the Secretary.
EDU 307 Confidential Assistant to the Director, Private Sector Initiative Staff.
EDU 308 Confidential Assistant to the Director, Private Sector Initiative Staff.
EDU 310 Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 312 Confidential Assistant to the Assistant Secretary for Educational Research and Improvement.
EDU 313 Special Assistant to the Deputy Under Secretary for Management.

Section 213.3318 Environmental Protection Agency

EPA 5 Confidential Assistant to the Deputy Administrator.
EPA 58 Congressional Liaison Specialist to the Director, Office of Congressional Liaison.
EPA 61 Special Assistant to the Assistant Administrator for Administration and Resource Management.
EPA 69 Deputy Director, Office of Congressional Liaison.
EPA 70 Congressional Relations Officer to the Director, Office of Congressional Liaison.
EPA 94 Special Assistant to the Regional Administrator.
EPA 100 Staff Assistant to the Associate Administrator.
EPA 106 Staff Assistant to the Director, Office of Public Affairs.
EPA 109 Special Assistant to the Assistant Administrator for Solid Waste and Emergency Response.
EPA 111 Special Assistant to the Director of Public Affairs.
EPA 112 Staff Assistant to the General Counsel.
EPA 116 Special Assistant to the Assistant Administrator for Administration and Resources Management.
EPA 118 Staff Assistant to the Assistant Administrator for Enforcement and Compliance Monitoring.

Section 213.3322 Interstate Commerce Commission

ICC 1 Confidential Assistant to a Commissioner.
ICC 3 Confidential Assistant to a Commissioner.
ICC 5 Confidential Assistant to a Commissioner.
ICC 6 Confidential Assistant to a Commissioner.
ICC 8 Confidential Assistant to a Chairman.
ICC 45 Congressional Liaison Representative to the Director, Office of Legislative and Public Affairs.
ICC 47 Government Affairs Assistant to the Director, Office of Government and Public Affairs.
ICC 48 Congressional Liaison Representative to the Director, Office of Government and Public Affairs.

Section 213.3325 Tax Court of the United States

TCOUS 40 Secretary and Confidential Assistant to the Judge.
TCOUS 41 Secretary and Confidential Assistant to the Judge.
TCOUS 42 Secretary and Confidential Assistant to the Judge.
TCOUS 43 Secretary and Confidential Assistant to the Judge.
TCOUS 44 Secretary and Confidential Assistant to the Judge.
TCOUS 45 Secretary and Confidential Assistant to the Judge.
TCOUS 46 Secretary and Confidential Assistant to the Judge.
TCOUS 47 Secretary and Confidential Assistant to the Judge.
TCOUS 48 Secretary and Confidential Assistant to the Judge.
TCOUS 49 Secretary and Confidential Assistant to the Judge.
TCOUS 50 Secretary and Confidential Assistant to the Judge.
TCOUS 51 Secretary and Confidential Assistant to the Judge.
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TCOUS 56 Secretary and Confidential Assistant to the Judge.
TCOUS 57 Secretary and Confidential Assistant to the Judge.
TCOUS 58 Secretary and Confidential Assistant to the Judge.
TCOUS 59 Secretary and Confidential Assistant to the Judge.
TCOUS 60 Secretary and Confidential Assistant to the Judge.
TCOUS 61 Secretary and Confidential Assistant to the Judge.
TCOUS 62 Secretary and Confidential Assistant to the Judge.
TCOUS 63 Secretary and Confidential Assistant to the Judge.
TCOUS 65 Secretary and Confidential Assistant to the Judge.
TCOUS 66 Trial Clerk to the Judge.
TCOUS 67 Trial Clerk to the Judge.
TCOUS 68 Trial Clerk to the Judge.
TCOUS 69 Trial Clerk to the Judge.
TCOUS 70 Trial Clerk to the Judge.
TCOUS 71 Trial Clerk to the Judge.
TCOUS 72 Trial Clerk to the Judge.
TCOUS 73 Trial Clerk to the Judge.
TCOUS 74 Trial Clerk to the Judge.
TCOUS 75 Trial Clerk to the Judge.
TCOUS 76 Trial Clerk to the Judge.
TCOUS 77 Trial Clerk to the Judge.
TCOUS 78 Trial Clerk to the Judge.

Section 213.3327 Department of Veterans Affairs

VA 34 Director, Congressional Affairs, to the Associate Deputy Administrator for Congressional and Intergovernmental Affairs.
VA 42 Confidential Assistant to the Director, Congressional Affairs.
VA 48 Confidential Assistant to the Chief of Staff.

Section 213.3328 United States Information Agency

USIA 2 Executive Assistant to the Director.
USIA 22 Director, New York Foreign Press Center, to the Associate Director for Programs.
USIA 29 Public Affairs Specialist to the Deputy Counselor for Press and Public Affairs.
USIA 56 Staff Specialist to the Director, Office of Private Sector Liaison.
USIA 57 Special Assistant to the Associate Director for Educational and Cultural Affairs.
USIA 58 Special Assistant to the Deputy Director.
USIA 67 Chief, Voluntary Visitor Division, to the Associate Director for Educational and Cultural Affairs.
USIA 73 Special Assistant to the Associate Director for Educational and Cultural Affairs.

USIA 75 Special Assistant to the General Counsel.
USIA 77 Special Assistant to the Associate Director for Management.
USIA 91 Program Officer to the Coordinator, U.S.-Soviet Exchange Initiative.
USIA 98 Special Assistant to the Director.
USIA 101 Program Officer to the Director, New York Foreign Press Center.
USIA 103 Equal Employment Manager to the Associate Director for Management.
USIA 104 Special Assistant to the Director, Private Sector Committees.

Section 213.3330 Securities and Exchange Commission

SEC 2 Executive Aide (Typing) to the Executive Assistant to the Chairman.
SEC 5 Confidential Assistant to a Commissioner.
SEC 6 Confidential Assistant to a Commissioner.
SEC 9 Secretary to the General Counsel.
SEC 12 Public Information Officer to the Chairman.
SEC 14 Secretary (Typing) to the Director of Economic and Policy Research.
SEC 15 Secretary (Steno) to the Director, Division of Market Regulation.
SEC 18 Secretary (Steno) to the Director, Division of Investment Management.
SEC 19 Secretary (Typing) to the Director, Division of Corporate Finance.
SEC 24 Secretary (Typing) to the Chief Economist.

Section 213.3331 Department of Energy

DOE 2 Secretary (Confidential Assistant) to the Secretary.
DOE 40 Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 41 Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 42 Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 47 Technical Advisor to a Member, Federal Energy Regulatory Commission.
DOE 55 Staff Assistant to the Special Assistant to the Secretary.
DOE 60 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 68 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 74 Secretary (Confidential Assistant) to the General Counsel.
DOE 75 Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 77 Staff Assistant to the Administrative Assistant to the Secretary and Chief of Staff.
DOE 87 Staff Assistant to the Associate Director, Office of Resource Management.
DOE 95 Staff Assistant to the General Counsel.
DOE 103 Attorney Advisor (Public Utilities), to the Chairman, Federal Energy Regulatory Commission.
DOE 105 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 106 Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 172 Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 174 Special Assistant to the Assistant Secretary for Fossil Energy.
DOE 185 Confidential Assistant to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 197 Director, Division of Congressional Affairs, to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 198 Director, Senate Liaison Branch, to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 199 Confidential Assistant to the Director, Office of Consumer and Public Affairs, Federal Energy and Regulatory Commission.
DOE 200 Special Assistant to the Deputy Secretary.
DOE 214 Staff Assistant to the Chief of Staff.
DOE 218 Director, Intergovernmental Affairs Division, to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 243 Staff Assistant to the Assistant Secretary for International Affairs.
DOE 250 Director, Division of Public Affairs, to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 264 Staff Assistant to the Administrator, Energy Information Administration.
DOE 269 Deputy Assistant Secretary to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs.
DOE 274 Staff Assistant to the Special Assistant to the Secretary.
DOE 276 Secretary (Confidential Assistant) to the Special Assistant to the Secretary.
DOE 292 Chauffeur to the Secretary.
DOE 294 Special Programs Liaison Specialist to the Director, Division of Public Liaison, Office of Congressional, Intergovernmental and Public Affairs.
DOE 306 Special Assistant to the Chief of Staff.
DOE 307 Special Assistant to the Assistant Secretary for Environment, Safety and Health.
DOE 314 Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies.
DOE 328 Senior Policy Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs.
DOE 339 Special Assistant to the Deputy Assistant Secretary for Energy Emergencies.
DOE 344 Senior Policy Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs.
DOE 350 Associate Director to the Director, Office of Policy, Planning, and Analysis.
DOE 357 Special Assistant to the Assistant Secretary for International Affairs and Energy Emergencies.
DOE 358 Staff Assistant to the Chief of Staff.
DOE 359 Staff Assistant to the Executive Assistant to the Secretary.
DOE 360 Staff Assistant to the Assistant Secretary for Defense Programs.
DOE 361 Staff Assistant to the Principal Deputy Assistant Secretary for Conservation and Renewable Energy.
DOE 362 Confidential Assistant to the Executive Assistant Secretary.
DOE 363 Staff Assistant to the Deputy General Counsel for Environment, Conservation, and Legislation.
DOE 365 Staff Assistant to the Deputy Assistant Secretary for External Affairs.
DOE 366 Speechwriter to the Deputy Assistant Secretary for External Affairs.
DOE 367 Staff Assistant to the Assistant Secretary for Nuclear Energy.
DOE 368 Staff Assistant to the Assistant Secretary, Management and Administration.
DOE 369 Staff Assistant to the Deputy Assistant Secretary for Energy Emergencies.

Section 213.3332 Small Business Administration

SBA 4 Special Assistant to the Administrator.

SBA 11 Deputy Assistant Administrator for Congressional and Legislative Affairs.
SBA 43 Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs.
SBA 45 Special Assistant to the Associate Administrator for Procurement Affairs.
SBA 66 Special Assistant to the Regional Administrator.
SBA 69 Special Assistant to the Regional Administrator.
SBA 71 Special Assistant to the Regional Administrator.
SBA 73 Special Assistant to the Regional Administrator.
SBA 76 Executive Assistant to the Director of Women's Business Ownership.
SBA 97 Confidential Assistant to the General Counsel.
SBA 100 Special Assistant to the Regional Administrator.
SBA 106 Director, Office of Private Sector Initiatives, to the Associate Deputy Administrator for Special Programs.
SBA 122 Special Assistant to the Regional Administrator.
SBA 128 Director of Women's Business Ownership to the Associate Administrator for Business Development.
SBA 132 Special Assistant to the Regional Administrator.
SBA 134 Special Assistant to the Associate Administrator for Business Development.
SBA 135 Special Assistant to the Regional Administrator.
SBA 139 Special Assistant to the Associate Administrator for Business Development.
SBA 140 Special Assistant to the Regional Administrator.
SBA 141 Staff Assistant to the Associate Deputy Administrator for Special Programs.

Section 213.3333 Federal Deposit Insurance Corporation

FDIC 2 Secretary to a Member.
FDIC 7 Special Assistant to the Director, Congressional Liaison Staff.
FDIC 9 Legislative Attorney and Advisor to the Director, Office of Congressional Relations and Public Information.
FDIC 10 Legislative Advisor to the Director of Legislative Affairs.

Section 213.3334 Federal Trade Commission

FTC 2 Director, Office of Public Affairs, to the Chairman.
FTC 6 Director Congressional Relations to the Chairman.
FTC 7 Deputy Director, Office of Congressional Relations.
FTC 9 Staff Assistant to the Chairman.

Section 213.3337 General Services Administration

GSA 16 Confidential Assistant to the General Counsel.
GSA 24 Special Assistant to the Commissioner, Public Building Service.
GSA 26 Confidential Assistant to the Commissioner, Public Building Service.
GSA 51 Special Assistant to the Administrator.
GSA 63 Director, Office of Business and Industry Affairs, to the Associate Administrator for Congressional Affairs and Industry Relations.
GSA 72 Confidential Assistant to the Commissioner, Federal Supply Service.
GSA 73 Confidential Assistant to the Deputy Administrator.
GSA 83 Confidential Assistant to the Regional Administrator.
GSA 86 Confidential Assistant to the Regional Administrator.
GSA 89 Confidential Assistant to the Director of Congressional Affairs.
GSA 90 Special Assistant to the Associate Administrator for Congressional Affairs.
GSA 93 Executive Assistant to the Administrator for Operations.
GSA 99 Confidential Assistant to the Regional Administrator.
GSA 100 Director, Office of the Executive Secretariat, to the Administrator.
GSA 103 Confidential Assistant to the Director, Office of the Executive Secretariat.
GSA 106 Special Assistant to the Associate Administrator for Public Affairs.
GSA 107 Special Assistant to the Executive Director, Office of Information Resources Management.
GSA 109 Confidential Assistant to the Regional Administrator.
GSA 114 Confidential Assistant to the Regional Administrator.

Section 213.3338 Federal Communications Commission

FCC 9 Confidential Assistant to the Chief of Staff.
FCC 13 Congressional Liaison Specialist to the Director, Office of Legislative Affairs.
FCC 15 Chief, News Media Division to the Director, Office of Public Affairs.
FCC 17 Confidential Staff Assistant to the Chief, Office of Plans and Policy.
FCC 18 Confidential Staff Assistant to the Director, Office of Legislative Affairs.

Section 213.3339 U.S. International Trade Commission

ITC 1 Confidential Assistant to a Commissioner.
ITC 3 Staff Assistant (Economics) to a Commissioner.
ITC 5 Confidential Assistant to a Commissioner.
ITC 6 Staff Assistant (Economics) to a Commissioner.
ITC 7 Special Assistant (Economics) to a Commissioner.
ITC 9 Confidential Assistant to a Commissioner.
ITC 12 Staff Assistant (Economics) to a Commissioner.
ITC 13 Staff Assistant (Legal) to a Commissioner.
ITC 14 Staff Assistant (Legal) to a Commissioner.
ITC 15 Confidential Assistant to a Commissioner.
ITC 17 Staff Assistant (Legal) to a Commissioner.
ITC 18 Confidential Assistant to a Commissioner.
ITC 19 Staff Assistant (Economics) to a Commissioner.
ITC 22 Staff Assistant (Legal) to a Commissioner.
ITC 24 Staff Assistant (Legal) to a Commissioner.
ITC 25 Staff Assistant (Legal) to a Commissioner.
ITC 26 Staff Assistant (Legal) to a Commissioner.
ITC 29 Staff Assistant (Legal) to the Chairman.
ITC 30 Confidential Assistant to a Commissioner.
ITC 31 Staff Assistant (Legal) to a Commissioner.
ITC 32 Staff Assistant (Legal) to a Commissioner.
ITC 33 Staff Assistant to a Commissioner.
ITC 34 Staff Assistant (Legal) to a Commissioner.

Section 213.3340 National Archives and Records Administration

NARA 4 Assistant to the Archivist of the United States.

Section 213.3341 National Labor Relations Board

NLRB 5 Confidential Assistant to a Board Member.
NLRB 17 Attorney Advisor (Labor) to the Chairman.

Section 213.3342 Export-Import Bank of the United States

EXIM 2 Private Secretary to the First Vice President and Vice Chairman.
EXIM 3 Administrative Assistant to a Director.

EXIM 4 Administrative Assistant to a Director.
EXIM 5 Administrative Assistant to a Director.
EXIM 12 Secretary (Steno) to the Senior Vice President for Exporter Credits, Guarantees, and Insurance.
EXIM 15 Administrative Assistant (Typing) to the President and Chairman.
EXIM 16 Administrative Assistant to the General Counsel.
EXIM 24 Secretary (Steno) to the Executive Vice President.

Section 213.3343 Farm Credit Administration

FCA 2 Private Secretary to a Board Member.
FCA 4 Deputy Director for Public Affairs to the Director, Office of Congressional and Public Affairs.
FCA 5 Confidential Assistant to the Director, Office of Congressional and Public Affairs.
FCA 6 Executive Assistant to a Board Member.
FCA 8 Secretary to the Chairman.

Section 213.3346 Selective Service System

SSS 9 Assistant Director of Congressional and Intergovernmental Affairs

Section 213.3348 National Aeronautics and Space Administration

NASA 1 Secretary (Steno) to the Administrator.
NASA 2 Secretary (Steno) to the Deputy Administrator.

Section 213.3351 Federal Mine Safety and Health Review Commission

FM 1 Secretary (Steno) to a Commissioner.
FM 3 Confidential Secretary to a Commissioner.
FM 4 Confidential Secretary to a Commissioner.
FM 7 Attorney-Advisor (General) to a Commissioner.
FM 8 Attorney-Advisor (General) to a Commissioner.

Section 213.3352 Government Printing Office

GPO 15 Special Assistant to the Public Printer.

Section 213.3354 Federal Home Loan Bank Board

FHLB Secretary (Typing) to a Board Member.
FHLB 5 Staff Assistant to the Chairman.
FHLB 6 Assistant to a Board Member.
FHLB 7 Assistant to a Board Member.
FHLB 19 Congressional Liaison to the Executive Staff Director.
FHLB 33 Special Assistant to the Chairman.
FHLB 35 Deputy Director, Office of Congressional Liaison.
FHLB 36 Deputy Chief of Staff to the Executive Director and Chief of Staff.
FHLB 40 Assistant to a Board Member.
FHLB 43 Deputy to the Executive Director, Federal Savings and Loan Insurance Corporation, for the Southwest Plan.
FHLB 45 Congressional Lobbying Specialist to the Executive Director for Public Affairs.
FHLB 46 Assistant to the Deputy Executive Director for Asset Management.

Section 213.3356 Commission on Civil Rights

CCR 1 Special Assistant to the Staff Director.
CCR 12 Special Assistant to a Commissioner.
CCR 13 Special Assistant to a Commissioner.
CCR 14 Deputy General Counsel to the General Counsel.
CCR 15 Special Assistant to a Commissioner.
CCR 23 Special Assistant to a Commissioner.
CCR 27 Public Affairs Officer to the Staff Director.
CCR 28 Special Assistant to a Commissioner.
CCR 29 Special Assistant to a Commissioner.
CCR 30 Special Assistant to a Commissioner.
CCR 32 Special Assistant to a Commissioner.

Section 213.3357 National Credit Union Administration

NCUA 9 Staff Assistant to the Chairman.
NCUA 15 Secretary (Typing) to the President, Central Liquidity Facility.
NCUA 16 Confidential Assistant to a Board Member.
NCUA 18 Special Assistant to the Chairman.
NCUA 19 Writer-Editor to the Executive Director.
NCUA 21 Staff Assistant to a Board Member.

Section 213.3359 ACTION

ACT 32 Confidential Assistant to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 48 Special Assistant to the Deputy Director.
ACT 56 Special Assistant to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 58 Special Assistant to the Director.
ACT 79 Assistant Director for VISTA/Student Community Service Programs to the Associate Director.

Section 213.3360 Consumer Product Safety Commission.

CPSC 7 Special Assistant (Legal) to a Commissioner.
CPSC 16 Director, Office of Congressional Relations, to the Chairman.
CPSC 20 Special Assistant (Legal) to a Commissioner.
CPSC 23 Special Assistant to a Commissioner.
CPSC 25 Staff Assistant to a Commissioner.
CPSC 37 Supervisory Public Affairs Specialist to the Executive Director, Office of Public Affairs.

Section 213.3364 U.S. Arms Control and Disarmament Agency

ACDA 2 Secretary (Steno) to the Director.
ACDA 4 Private Secretary to the Assistant Director for Verification and Intelligence.
ACDA 5 Secretary (Steno) to the Assistant Director for Nuclear and Weapons Control.
ACDA 15 Secretary to the Chairman, General Advisory Committee.
ACDA 17 Secretary (Steno) to the Director.
ACDA 20 Special Assistant to the Deputy Director for Public Affairs.
ACDA 23 Staff Assistant to the Assistant Director for Multilateral Affairs.
ACDA 27 Special Assistant to the Director.
ACDA 29 Congressional Affairs Specialist to the Director of Congressional Affairs.
ACDA 30 Secretary (Steno) to the Special Representative for Arms Control and Disarmament.
ACDA 32 Secretary (Typing) to the Assistant Director for Strategic Programs.

Section 213.3367 Federal Maritime Commission

FMC 2 Confidential Assistant to a Commissioner.
FMC 5 Confidential Assistant to a Commissioner.
FMC 7 Secretary (Steno) to a Commissioner.
FMC 8 Secretary (Steno) to a Commissioner.
FMC 9 Secretary (Typing) to a Commissioner.
FMC 10 Secretary (Steno) to a Commissioner.

Section 213.3368 Agency for International Development

AID 38 Director, Office of Interbureau Affairs and Special Projects, to the Deputy Assistant Administrator for External Affairs.
AID 45 Deputy Assistant to the Administrator for Public Affairs to the Assistant Administrator, External Affairs.
AID 48 Special Assistant to the Director of Policy Development and Program Review.
AID 58 Special Assistant to the Coordinator, Office of Public Diplomacy for Latin America and the Caribbean.
AID 64 Special Assistant to the Deputy Assistant Administrator for Management.
AID 65 Supervisory Public Affairs Specialist to the Deputy Assistant Administrator for Public Affairs.
AID 68 Special Assistant to the Assistant Administrator for Private Enterprise.
AID 76 Public Affairs Specialist to the Director, Public Liaison.
AID 80 Confidential Assistant to the Deputy Administrator.
AID 82 Congressional Liaison Officer to the Deputy Director, Office of Legislative Affairs.

Section 213.3372 Administrative Office of the United States Courts

AOUSC 5 Secretary (Steno) to the Deputy Legislative Affairs Officer.
AOUSC 8 Attorney-Advisor (Legislative) to the Legislative and Pubic Affairs Officer.
AOUSC 9 Public Information Officer to the Legislative and Public Affairs Officer.
AOUSC 10 Secretary (Typing) to the Legislative and Public Affairs Officer.

Section 213.3376 Applachian Regional Commission

ARC 8 Legislative and Policy Advisor to the Federal Co-Chairman.

Section 213.3377 Equal Employment Opportunity Commission

EEOC 2 Special Assistant to the Chairman.
EEOC 5 Confidential Assistant to a Member.
EEOC 9 Special Assistant to the Chairman.
EEOC 12 Media Contact Specialist to the Director, Communications Staff, Office of Communications and Legislative Affairs.
EEOC 15 Research Specialist to the Chairman.
EEOC 17 Special Assistant to a Member.
EEOC 22 Director, Legislative Affairs, to the Director, Office of Communications and Legislative Affairs.
EEOC 23 Special Assistant to a Member.
EEOC 25 Media Contact Specialist to the Director, Communications Staff, Office of Communications and Legislative Affairs.
EEOC 37 Social Science Research Specialist to the Director, Office of Program Research.
EEOC 38 Legislative Affairs Specialist to the Director, Office of Congressional Affairs.
EEOC 40 Legislative Affairs Specialist to the Director, Office of Communications and Legislative Affairs.
EEOC 41 Confidential Assistant to the Director, Office of Communications and Legislative Affairs.

Section 213.3379 Commodity Futures Trading Commission

CFTC 1 Administrative Assistant to the Chairman.
CFTC 3 Administrative Assistant to a Commissioner.
CFTC 4 Administrative Assistant to a Commissioner.
CFTC 5 Administrative Assistant to a Commissioner.
CFTC 6 Administrative Assistant to a Commissioner.
CFTC 7 Supervisory Public Affairs Specialist to the Chairman.
CFTC 12 Special Assistant to a Commissioner.
CFTC 15 Special Assistant to a Commissioner.
CFTC 21 Governmental Affairs Officer to the Chairman.

Section 213.3382 National Foundation on the Arts and the Humanities

National Endowment for the Arts

NEA 9 Congressional Liaison Officer to the Chairman.
NEA 45 Special Assistant to the Chairman.
NEA 49 Associate Deputy Chairman for Programs.
NEA 50 Special Projects Coordinator (Development) to the Chairman.

National Endowment for the Humanities

NEH 46 Special Assistant to the Chairman.
NEH 48 Congressional Liaison Officer to the Chairman.
NEH 54 Confidential Assistant to the Assistant Director, Institute of Museum Services.

Section 213.3384 Department of Housing and Urban Development

HUD 35 Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 60 Supervisory Public Affairs Specialist to the Assistant Secretary for Public Affairs.
HUD 114 Special Assistant/Director, Executive Secretariat to the Secretary.
HUD 135 Special Assistant to the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.
HUD 151 Staff Assistant to the President, Government National Mortgage Association.
HUD 163 Special Assistant to the Deputy Assistant Secretary for Multifamily Housing.
HUD 176 Special Assistant to the Secretary.
HUD 182 Special Assistant to the Assistant Secretary for Housing.
HUD 184 Senior Assistant for Congressional Relations to the Deputy Assistant Secretary for Legislation and Congressional Relations.
HUD 200 Staff Assistant to the Assistant Secretary for Administration.
HUD 203 Legislative Officer to the Deputy Assistant Secretary for Legislation.
HUD 206 Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 212 Staff Assistant to the Deputy Assistant Secretary for Research.
HUD 213 Staff Assistant to the Assistant Secretary for Program Development and Research.
HUD 216 Special Assistant to the Assistant Secretary for Administration.
HUD 227 Executive Assistant to the Regional Administrator.
HUD 238 Special Assistant to the Secretary.
HUD 247 Executive Assistant to the Assistant Secretary for Housing.
HUD 255 Executive Assistant to the Assistant Secretary for Program Development and Research.
HUD 266 Special Assistant to the President, Government National Mortgage Association.
HUD 281 Special Assistant to the Regional Administrator.
HUD 289 Associate Deputy Assistant Secretary for Program Policy Development and Evaluation.
HUD 292 Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 359 Special Assistant to the Regional Administrator.
HUD 373 Special Assistant (Speech Issues to the Assistant Secretary for Public Affairs.
HUD 374 Executive Assistant to the Deputy Under Secretary for Field Coordination.

HUD 376 Special Assistant to the Regional Administrator.
HUD 386 Executive Assistant to the Under Secretary.
HUD 396 Special Assistant to the Director, Office of Small and Disadvantaged Business Utilization.
HUD 400 Special Advisor to the Assistant Secretary for Legislation and Congressional Relations.
HUD 404 Special Assistant to the Regional Administrator.
HUD 407 Executive Assistant to the Regional Administrator.
HUD 408 Special Projects Coordinator to the Deputy Assistant Secretary for Policy, Financial Management, and Administration.

Section 213.3388 President's Commission on White House Fellows

PCWHF 2 Associate Director.
PCWHF 3 Confidential Assistant to the Director.
PCWHF 4 Special Assistant to the Director.

Section 213.3389 National Mediation Board

NMB 53 Confidential Assistant to the Chairman.
NMB 54 Confidential Assistant to a Member.

Section 213.3391 Office of Personnel Management

OPM 8 Confidential Assistant to the Director.
OPM 10 Confidential Assistant to the Assistant Director for Public Affairs.
OPM 11 Confidential Assistant to the Director, Office of Executive Administration.
OPM 17 Special Assistant to the Associate Director for Administration.
OPM 18 Staff Assistant (Typing) to the Director, Office of Executive Administration.
OPM 19 Special Assistant to the Associate Director for Administration.
OPM 21 Special Assistant to the Director, Office of Public Affairs.
OPM 25 Special Assistant to the Director, Office of Congressional Relations.
OPM 26 Confidential Assistant (Typing) to the Director, Office of Government Ethics.
OPM 31 Staff Assistant to the Counselor to the Director.
OPM 33 Confidential Assistant to the Assistant Director for Congressional Relations.
OPM 36 Staff Assistant to the Director, Office of Executive Administration.
OPM 37 Executive Assistant to the Director, Office of Government Ethics.
OPM 39 Special Assistant to the Deputy Director.
OPM 40 Special Assistant to the Associate Director for Administration.
OPM 41 Special Assistant to the Director, Office of Public Affairs.
OPM 42 Confidential Assistant (Typing) to the Chief of Staff.

Section 213.3392 Federal Labor Relations Authority

FLRA 13 Special Assistant to the General Counsel.

Section 213.3394 Department of Transportation

DOT 1 Staff Assistant to the Secretary.
DOT 14 Chauffeur to the Secretary.
DOT 56 Special Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 57 Confidential Assistant to the Assistant Secretary for Governmental Affairs.
DOT 60 Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 77 Special Assistant to the Assistant Secretary for Public Affairs.
DOT 131 Staff Assistant to the Administrator, Federal Highway Administration.
DOT 147 Staff Assistant to the Assistant Secretary for Public Affairs.
DOT 157 Secretary (Steno) to the Associate Administrator for Policy and International Aviation, Federal Aviation Administration.
DOT 197 Staff Assistant to the Secretary.
DOT 204 Executive Assistant to the Administrator, Federal Railroad Administration.
DOT 209 Special Assistant to the Administrator, Urban Mass Transportation Administration.
DOT 218 Staff Assistant to the Director, Office of Congressional Affairs.
DOT 233 Staff Assistant to the General Counsel.
DOT 239 Executive Assistant to the Administrator, Maritime Administration.
DOT 243 Special Assistant to the Secretary for Public Affairs.
DOT 244 Deputy Executive Secretary for Management to the Director, Executive Secretariat.
DOT 249 Deputy Executive Secretary for Policy to the Director, Executive Secretariat.
DOT 251 Staff Assistant to the Administrator, Maritime Administration.
DOT 257 Staff Assistant to the Secretary for Public Affairs.
DOT 263 Special Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 270 Special Assistant to the Administrator, Federal Aviation Administration.
DOT 274 Special Assistant to the Assistant Secretary for Public Affairs.
DOT 276 Special Assistant to the Administrator, Research and Special Programs Administration.
DOT 278 Staff Assistant to the Deputy Secretary.
DOT 281 Special Assistant for Intergovernmental Relations to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 287 Staff Assistant to the Deputy Secretary.
DOT 301 Legislative Research Officer to the Assistant Secretary for Governmental Affairs.
DOT 303 Special Assistant to the Administrator, Federal Aviation Administration.
DOT 307 Director, Office of Intergovernmental and Consumer Affairs, to the Deputy Assistant Secretary for Intergovernmental and Consumer Affairs.
DOT 308 Deputy Director (Intergovernmental) to the Director, Office of Intergovernmental and Consumer Affairs.
DOT 309 Special Assistant to the Administrator, Federal Aviation Administration.
DOT 311 Staff Assistant to the Chief of Staff.

Section 213.3395 Federal Emergency Management Agency

FEMA 3 Director of Congressional Affairs.
FEMA 33 Director, Office of Regional Operations, to the Director.
FEMA 34 Executive Assistant to the Deputy Director.
FEMA 36 Confidential Assistant to the Associate Director, Emergency Operations Directorate.
FEMA 38 Confidential Assistant to the Associate Director, Emergency Operations Directorate.

Section 213.3396 National Transportation Safety Board

NTSB 1 Special Assistant to a Board Member.
NTSB 30 Confidential Assistant to the Chairman.
NTSB 31 Confidential Assistant to a Board Member.
NTSB 32 Confidential Assistant to a Board Member.
NTSB 33 Confidential Assistant to a Board Member.
NTSB 34 Confidential Assistant to a Board Member.

NTSB 92 Government and Public Affairs Officer to the Managing Director.

NTSB 104 Special Assistant to a Board Member.

NTSB 105 Special Assistant to the Chairman.

Office of Personnel Management.

Constance Berry Newman,

Director.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

[FR Doc. 89–18743 Filed 8–9–89; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[34–27090; NSCC–89–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Securities Clearing Corporation ("NSCC") Regarding the Fees That the Midwest Clearing Corp. ("MCC") and the Depository Trust Co. ("DTC") Will Pay to NSCC for Their Use of the Fund/SERV Service

August 2, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 20, 1989 NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the following fee agreements. The fee which MCC and DTC shall pay to NSCC on a monthly basis for their use of the Fund/SERV service are as follows: 1. $50.00 per Fund/SERV Participant per month, 2. $.50 per side per settled transaction, 3. Pass through of NSCC's costs for Communications access.

The above referenced fees, except for the communication fees shall be subject to a 10% discount. These fees are based on the prevailing fees currently charged to NSCC Members and set forth in NSCC's Fee Schedule. Should NSCC increase these Fees, MCC's and DTC's charges will be similarly increased.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule filing consists of the fees to be charged Depository Trust Company ("DTC") and Midwest Clearing Corporation ("MCC") for their use of NSCC's Fund/SERV service.

(b) The proposed rule filing provides for the equitable allocation of reasonable fees for NSCC's Fund/SERV service to DTC and MCC and, therefore, is consistent with the requirements of the 1934 Act, as amended ("the ACT") and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR–NSCC–89–09 and should be submitted by August 31, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18730 Filed 8–9–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27085; File No. SR–OCC–89–07]

Self Regulatory Organizations; Options Clearing Corp.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning Delayed Settlement of Equity Options Where Underlying Securities are Subject to When Distributed Trading in the Primary Market

The Options Clearing Corporation ("OCC") on July 5, 1989, filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposal allows OCC to delay settlement of any option during the period "when distributed" trading is declared by the primary market for the underlying stock of such option. The Commission is publishing this notice to solicit public comment on this proposal.

The proposal adds Interpretation and Policy .01 ("Interpretation .01") to Rule

902 of Chapter 9 of OCC's Rules.[1] interpretation .01 provides that OCC may delay settlement of any option during the period "when distributed" trading is declared by the primary market for the underlying stock of such option.

OCC states in its filing that it has been OCC's practice to delay settlement of an option as of the date the primary market declares "when distributed" trading for the underlying stock because it has no reasonable alternative. OCC further states that failure to do so could result in a "short squeeze" [2] in the options.

OCC's Margin Committee ("Committee") monitors the effect of market conditions upon options contracts and has the delegated authority to impose special exercise settlement procedures and extensions of exercise settlement dates. The Committee recently executed an authorization to delay settlement of any OCC issued option in the event the related underlying security trades on a "when distributed" basis. OCC states that the authorization procedure is cumbersome and time-consuming, and thus seeks to codify the procedures it has often used in the above-described situation.

OCC states that the proposal is consistent with the purposes and requirements of section 17A of the Act in that it would further the public interest by helping to avoid a short squeeze in OCC-issued options.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of the Act.

Interested persons are invited to submit written comments. Persons desiring to submit written comments should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of the OCC. All submissions should refer to File No. SR–OCC–89–07 and should be submitted by August 31, 1989.

For the commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 1, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18731 Filed 8–9–89; 8:45 am]

BILLING CODE 8010–01–M

[1] Chapter 9 contains the rules governing settlement of options contracts.

[2] A "short squeeze" refers to a situation where a lack of available stock causes short sellers to have difficulty borrowing the stock that they have sold short. The rush to cover produces additional upward pressure on the price of the stock.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Notice of Review of Product Petitions, Public Hearings, and List of Articles To Be Sent to the U.S. International Trade Commission (USITC) for Review

SUMMARY: The purpose of this notice on the GSP annual review is (1) to announce the acceptance for review of petitions to modify the list of articles eligible for duty-free treatment under the GSP and to modify the status of countries as GSP beneficiary countries in regard to their practices as specified in 15 CFR 2007.0 (a) and (b); (2) to announce the timetable for public hearings to consider petitions accepted for review; and (3) to announce that the list of articles herein will be sent by the United States Trade Representative to the USITC to seek advice with respect to modification of the list of eligible articles for GSP.

I. Acceptance of Petitions for Review

Notice is hereby given of acceptance for review of petitions requesting modification of the list of articles eligible to receive duty-free treatment under the GSP, and modification in the status of countries presently designated as GSP beneficiary countries, as provided for in Title V of the Trade Act of 1974 (the Act) (19 U.S.C. 2461–2465). These petitions were submitted, and will be reviewed, pursuant to regulations codified at 15 CFR part 2007.

1. Requests to Modify Product and Country Eligibility

Petitions have been submitted by interested parties or foreign governments (1) to designate additional articles as eligible for the GSP; or (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; or (3) to otherwise modify GSP coverage. In addition, requests have been received requesting that the GSP status of certain beneficiary developing countries be reviewed with respect to the relevant criteria listed in subsection 502(b) of 502(c) of the Act.

As in previous reviews, requests to add products to or remove them from the list of articles eligible for GSP duty-free treatment will be evaluated in accordance with the "graduation" policy. In considering GSP eligibility for products, limitations on GSP benefits will be considered for the more economically advanced beneficiary developing countries in specific products where it is determined that they have demonstrated sufficient competitiveness. Four criteria will be taken into account when any such graduation action is considered: the development level of individual beneficiary countries; their competitive position in the product concerned; the countries' practices relating to trade, investment and worker rights; and the overall economic interests of the United States. The GSP Subcommittee will review information for the relevant U.S. industry as enumerated in 15 CFR 2007.1(a)(5) when considering the removal of any beneficiary developing country from GSP eligibility.

Product designations announced at the conclusion of the review process, therefore, may be made on a differential basis. This means that certain beneficiary developing countries may not be designated for GSP benefits on certain products even though those countries are not excluded under the competitive need provisions set forth in section 504(c)(1) of the Trade Act of 1974, as amended. It also is possible to withdraw GSP treatment on a product from certain beneficiary developing countries, or reduce the competitive need limit applicable to the countries and product in question, rather than remove the product entirely from GSP coverage.

As is required under section 504(a), the eligibility factors set forth in sections 501 and 502(c) will be considered with respect to decisions to withdraw, suspend or limit duty-free treatment with respect to any article or with respect to any country.

2. Information Subject to Public Inspection

Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted

"business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Briefs or statements must be submitted in twenty copies in English. If the document contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

3. Communications

All communications with regard to these hearings should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 517, Washington, DC 20506. The telephone number of the Secretary of the GSP Subcommittee is (202) 395–6971. Questions may be directed to any member of the staff of the GSP Information Center.

Acceptance for review of the petitions listed herein does not indicate any opinion with respect to a disposition on the merits of the petitions. Acceptance indicates only that the listed petitions have been found to be eligible for review by the GSP Subcommittee and the Trade Policy Committee (TPSC), and that such review will take place.

II. Deadline for Receipt of Requests to Participate in the Public Hearings

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to any petition contained in this notice. All such submissions should conform to 15 CFR 2007, particularly sections 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3). All submissions should identify the product of interest in terms of the current Harmonized System tariff nomenclature.

Hearings will be held on September 25–28 beginning at 10:00 a.m. in the U.S. International Trade Commission's Hearing Room, 7th and E Streets, SW., Washington, DC. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

Requests to present oral testimony in connection with public hearings should be accompanied by twenty copies, in English, of all written briefs or statements and should be received by the Chairman of the GSP Subcommittee no later than 5:00 p.m. Tuesday, September 5. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. All interested parties wishing to make an oral presentation at the hearings must submit the name, address, and telephone number of the witness(es) representing their organization by 5:00 p.m. Monday, September 11. Post-hearing briefs or statements will be accepted if they conform with the regulations cited above and are submitted in twenty copies, in English, no later than 5:00 p.m. Wednesday, October 18. Parties not wishing to appear may submit such written briefs or statements also by October 18. Rebuttal briefs should be submitted in twenty copies, in English, by 5:00 p.m. Monday, November 13.

During 1989 and/or January 1990, an opportunity will be provided for the public to comment on nonconfidential USITC analysis. Notice of the availability of this analysis and the timetable for comment will be published in the **Federal Register.**

III. List of Articles Which May Be Considered for Designation as Eligible Articles for Purposes of the GSP or for Waiver of the Competitive Need Limit and On Which the USITC Will Be Asked To Provide Advice

1. In conformity with sections 502(a) and 131(a) of the Trade Act of 1974 as amended (19 U.S.C. 2543(A) and 2151(A)), notice is hereby given that the articles listed herein may be considered for designation as eligible articles for purposes of the GSP, or for modification of their current GSP status.

An article which is determined to be import sensitive in the context of the GSP cannot be designated as an eligible article. Recommendations with respect to the eligibility of any listed article will be made after public hearings have been held and advice has been received from the USITC on the probable effects of the requested modification in the GSP on industries producing like or directly competitive articles and on consumers.

2. As explained in 52 FR 10960, the Harmonized Systems (HS) tariff nomenclature is a new international product nomenclature developed under the auspices of the Customs Cooperation Council (CCC) for the purposes of classifying goods in international trade. The HS was implemented by the United States and internationally on January 1, 1989, and replaced the previous TSUS nomenclature. Product eligibility under the coverage of the GSP program is currently defined in terms of the eight-digit HS classifications. Therefore, all product-related petitions must identify the product(s) of interest in terms of the HS tariff nomenclature. The lists that follow describe the articles that have been accepted for review in this year's review in terms of the HS tariff nomenclature only.

3. Advice of the United States International Trade Commission. On behalf of the President and in accordance with sections 503(A) and 131(A) of the Trade Act of 1974 as amended, the USITC is being furnished with the list of articles published herein for the purpose of securing from the USITC its advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the modification of the list of articles eligible for GSP. Also, on behalf of the President and in accordance with section 504(c)(3)(A)(i) of the Act, the USITC is being asked to furnish economic advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the granting of a waiver of competitive need limits for the products identified in section D of the lists which follow.

IV. Cases Accepted for Review Regarding Country Practices, Pursuant to 15 CFR 2007.0(b)

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review petitions to review the status of Benin, Indonesia, Nepal, Thailand, and the Dominican Republic as GSP beneficiary countries in relation to their practices relating to worker rights.

Because review of the 1988 worker rights cases of Haiti, Liberia, and Syria

has been extended, comments on the worker rights practices of these three countries will also be welcomed during the public hearing and comment process described in section II.

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review requests filed by the following groups or individuals to review the GSP status of various countries with regard to each country's practices concerning expropriation without compensation: American International Group (Peru), Charles Sayous (Uruguay), and Administradora Commercial (Costa Rica). Comments regarding the Venezuelan expropriation case filed by Occidental Petroleum Co. in 1988 will also be welcome since the review of this case was extended into 1989.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

Annex

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences.	
		Vegetables (uncooked or cooked by steaming or boiling in water), frozen:	
		Leguminous vegetables, shelled or unshelled:	
		Beans (Vigna spp., Phaseolus spp.):	
		Not reduced in size:	
89-1	0710.22.30(pt.)	String beans (snap beans)	Government of Peru
		Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter:	
		[Articles provided for in subheadings 0811.10.00 thru 0811.20.40]	
		Other:	
89-2	0811.90.40	Papayas	do.
89-3	0811.90.60(pt.)	Mangoes	do.
		Cereal flours other than of wheat or meslin:	
		[Rye flour; corn (maize) flour; rice flour]	
		Other:	
		[Buckwheat flour]	
		Other:	
89-4	1102.90.40(pt.)	Mixtures	do.
		Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced or kibbled), except rice of heading 1006; germ of cereals, whole, rolled, flaked or ground:	
		[Rolled or flaked grains]	
		Other worked grains (for example, hulled, pearled, sliced or kibbled):	
		[Of barley; of oats; of corn (maize)]	
89-5	1104.29.00	Of other cereals	do.
		Sunflower-seed, safflower or cottonseed oil, and fractions thereof, whether or not refined, but not chemically modified:	
		Sunflower-seed or safflower oil and fractions thereof:	
		Crude oil:	
89-6	1512.11.0040	Safflower oil	Oilseeds International, Ltd., San Francisco, CA; Producers Cotton Oil, Co., Fresno, CA; Safflower Seed & Oil California Oils Corp., Richmond, CA

1/ Harmonized Tariff Schedule of the United States.

Annex
-2-

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen:	
		Potatoes:	
89-7	2004.10.00(pt.)	Yellow (Solano) potatoes	Government of Colombia
		Jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, being cooked preparations, whether or not containing added sugar or other sweetening matter:	
		[Homogenized preparations]	
		Other:	
		[Citrus fruit]	
		Other:	
		Pastes and purees:	
		[Apple, quince and pear; guava and mango]	
89-8	2007.99.55	Papaya	Government of the Philippines
		[Strawberry]	
89-9	2007.99.65	Other	do.
		Vegetable materials and vegetable waste, vegetable residues and byproducts, whether or not in the form of pellets, of a kind used in animal feeding, not elsewhere specified or included:	
		[Acorns and horse-chestnuts]	
		Other:	
89-10	2308.90.60(pt.)	Dehydrated marigolds	Government of Peru
		Carboxyamide-function compounds; amide-function compounds of carbonic acid:	
		Cyclic amides (including cyclic carbamates) and their derivatives; salts thereof:	
		[Ureines and their derivatives; salts thereof]	
		Other:	
		Aromatic:	
		[Articles provided for in subheading 2924.29.05 thru 2924.29.14]	
		Other:	
		[Pesticides; fast color bases; drugs]	
		Other:	
89-11	2924.29.40(pt.)	5-Bromoacetyl-2-salicylamide	Sour Pliva, Yugoslavia

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Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Sulfonamides: [Articles provided for in subheadings 2935.00.05 thru 2935.00.15]	
		Other: Drugs: [Anti-infective agents] Other:	
89-12	2935.00.45(pt.)	N-[5-(Aminosulfonyl)-1,3,4-thiadiazol-2-yl]acetamide	Sour Pliva, Yugoslavia
		Modeling pastes, including those put up for children's amusement; preparations known as "dental wax" or as "dental impression compounds", put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulfate):	
89-13	3407.00.00(pt.)	Modeling pastes, including those put up for children's amusement	American Art Clay Co., Inc., Indianapolis, IN; Industrias Isemarf S.A., Mexico
		Prepared rubber accelerators; compound plasticizers for rubber or plastics, not elsewhere specified or included; antioxidizing preparations and other compound stabilizers for rubber or plastics: Antioxidizing preparations and other compound stabilizers for rubber or plastics: Containing any aromatic or modified aromatic antioxidant or other stabilizer:	
89-14	3812.30.10(pt.)	Mixtures of N,N'-diaryl-p-phenylenediamines	Novaquim, S.A. de C.V., Mexico
		Synthetic staple fibers, not carded, combed or otherwise processed for spinning:	
89-15	5503.40.00	Of polypropylene	Fitesa, S.A., Brazil
		Gloves, mittens and mitts, knitted or crocheted: Gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber: [Ski or snowmobile gloves, mittens and mitts] Other: [Without fourchettes] With fourchettes:	
89-16	6116.10.4505	Specially designed for use in sports	Government of the Philippines

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Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Gloves, mittens and mitts:	
		Impregnated, coated or covered with plastics or rubber:	
		[Ski or snowmobile gloves, mittens and mitts]	
		Other:	
		Without fourchettes:	
		[Cut and sewn from pre-existing machine-woven fabric that is impregnated, coated or covered with plastics or rubber]	
		Other:	
89-17	6216.00.2505	Specially designed for use in sports	Government of the Philippines
		With fourchettes:	
89-18	6216.00.3005	Specially designed for use in sports	do.
		Other:	
		Of man-made fibers:	
		[Ski or snowmobile gloves, mittens and mitts]	
		Other:	
89-19	6216.00.4805	Specially designed for use in sports	do.
		Other furnishing articles, excluding those of heading 9404:	
		[Bedspreads]	
		Other:	
		[Articles provided for in subheadings 6304.91.00 thru 6304.93.00]	
		Not knitted or crocheted, of other textile materials:	
		[Wall hangings of wool or fine animal hair]	
		Other:	
		Of vegetable fibers (except cotton):	
89-20	6304.99.20(pt.)	Wall hangings of jute	Intercontinental Art, Inc., Gardena, CA

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Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
89-21	6911.10.50(pt.)	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: [Hotel or restaurant ware and other ware not household ware] Other: [Of bone chinaware] Other: [Articles provided for in subheadings 6911.10.35 and 6911.10.39] Other: [Articles provided for in subheadings 6911.10.41 thru 6911.10.49] Serviette rings	Government of the Philippines
89-22	6912.00.49(pt.)	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: [Articles provided for in subheading 6912.00.10] Other: [Hotel or restaurant ware and other ware not household ware] Other: [Articles provided for in subheadings 6912.00.35 and 6912.00.39] Other: [Articles provided for in subheadings 6912.00.41 thru 6912.00.47] Serviette rings	do.

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Case No.	MTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent or reflecting layer, but not otherwise worked:	
		[Nonwired glass, having an absorbent or reflecting layer]	
		Other nonwired glass:	
		Colored throughout the mass (body tinted), opacified, flashed or merely surface ground:	
89-23	7005.21.10	Measuring less than 10 mm in thickness	Government of Mexico; Vidrio Plano de Mexico, S.A., Mexico; Vitro Flotado, S.A., Mexico
89-24	7005.21.20	Measuring 10 mm or more in thickness	do.
		Other:	
		Measuring less than 10 mm in thickness:	
		Measuring not over 0.65 m^2 in area:	
89-25	7005.29.0510	Measuring not over 0.26 m^2 in area	do.
89-26	7005.29.15	Measuring over 0.65 m^2 in area	do.
89-27	7005.29.25	Measuring 10 mm or more in thickness	do.
		Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):	
		[Articles provided for in subheadings 7013.10.10 thru 7013.39.60]	
		Other glassware:	
		[Of lead crystal]	
		Other:	
		[Articles provided for in subheadings 7013.99.10 and 7013.99.20]	
		Other:	
		[Articles provided for in subheadings 7013.99.30 and 7013.99.35]	
		Other:	
		Valued over $0.30 but not over $3 each:	
89-28	7013.99.50(pt.)	Globe-shaped bowls	Crisa Corporation, Laredo, TX; Vitrocrisa Cristaleria, S.A. de C.V., Mexico

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Case No.	MTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
89-29	7614.90.10(pt.)	Stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum, not electrically insulated: [With steel core] Other: Not fitted with fittings and not made up into articles: Electrical conductors	Government of Venezuela; General Cable Company, Greenwich, CT;
89-30	8528.10.8055	Television receivers (including video monitors and video projection television receivers), whether or not combined, in the same housing, with radiobroadcast receivers or sound or video recording or reproducing apparatus: Color: [Video recording or reproducing apparatus incorporating a television tuner] Other television receivers: Not having a picture tube: Apparatus for the reception of television signals relayed by television satellite	Uniden Corporation of America, Fort Worth, TX
89-31	8532.10.00	Electrical capacitors, fixed, variable or adjustable (pre-set); parts thereof: Fixed capacitors designed for use in 50/60 Hz circuits and having a reactive power handling capacity of not less than 0.5 kvar (power capacitors)	ABB Capacitores, S.A. de C.V., Mexico
89-32	8532.25.00	Other fixed capacitors: [Articles provided subheadings 8532.21.00 thru 8532.24.00] Dielectric of paper or plastics	do.
89-33	8532.29.00	Other	do.

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Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
		Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:	
		Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes:	
		[Light-emitting diodes (LED's); other diodes; transistors]	
		Other:	
89-34	8541.40.9060	Optical coupled isolators 2/	Siemens Components, Inc., Cupertino, CA
		Slide fasteners and parts thereof:	
		Slide fasteners:	
89-35	9607.11.00	Fitted with chain scoops of base metal	Government of Mexico; Asociacion Mexicana de Fabricantes de Cremalleras Automaticas, A.C., Mexico
89-36	9607.19.00	Other	do.

B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.

		Chlorides, chloride oxides and chloride hydroxides; bromides and bromide oxides; iodides and iodide oxides:	
		Bromides and bromide oxides:	
		Bromides of sodium or of potassium:	
89-37	2827.51.10	Of sodium	Ethyl Corporation, Richmond, VA; Great Lakes Chemical Corporation, West Lafayette, IN
		Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		[Saturated monohydric alcohols; unsaturated monohydric alcohols; diols]	
		Other polyhydric alcohols:	
89-38	2905.44.00	D-glucitol (Sorbitol)	ICI Americas Inc., Wilmington, DE

1/ Harmonized Tariff Schedule of the United States.
2/ Waiver of competitive need limit for Malaysia also requested for optical coupled isolators in HTS 8541.40.9060.

Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
B.		Petitions to remove products from the list of eligible articles for the Generalized System of Preferences. (con.)	
		Gelatin (including gelatin in rectangular (including square) sheets, whether or not surface-worked or colored) and gelatin derivatives; isinglass; other glues of animal origin, excluding casein glues of heading 3501:	
		[Fish glue; inedible gelatin and animal glue valued under 88 cents per kg]	
89-39	3503.00.50	Other	Hudson Industries Corporation, West Orange, NJ
		Prepared glues and other prepared adhesives, not elsewhere specified or included; products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg:	
		[Products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg]	
		Other:	
		[Adhesives based on rubber or plastics (including artificial resins)]	
89-40	3506.99.00	Other	do.
		Cellulose and its chemical derivatives, not elsewhere specified or included, in primary forms:	
89-41	3912.20.00	Cellulose nitrates (including collodions)	Hercules Incorporated, Wilmington, DE
		Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated:	
		Stranded wire, ropes and cables:	
		[Stranded wire]	
		Ropes, cables, and cordage other than stranded wire:	
		Of stainless steel:	
89-42	7312.10.5[illegible]	Fitted with fittings or made up into articles	Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, Washington, DC
89-43	7312.10.60	Other	do.

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Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
		B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences. (con.)	
		Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated (con.):	
		Stranded wire, ropes and cables (con.):	
		Ropes, cables, and cordage other than stranded wire (con.):	
		Other:	
89-44	7312.10.70	Fitted with fittings or made up into articles	Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, Washington, DC
		Other:	
89-45	7312.10.90	[Of brass plated wire] Other	do.
		Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof:	
		Lead-acid storage batteries, of a kind used for starting piston engines:	
		[Used batteries, for recovery of metal] Other:	
		12 V batteries:	
89-46	8507.10.0060	Exceeding 6 kg in weight	U.S. Battery Trade Council, Washington, DC
		C. Petition to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences. 2/	
		Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		[Saturated monohydric alcohols; unsaturated monohydric alcohols; diols]	
		Other polyhydric alcohols:	
89-47	2905.43.00 (Brazil)	Mannitol	ICI Americas Inc., Wilmington, DE

1/ Harmonized Tariff Schedule of the United States.
2/ The country named is the beneficiary developing country specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on that country, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner.

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Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
		D. Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences.	
		Vegetables provisionally preserved (for example, by sulfur dioxide gas, in brine, in sulfur water or in other preservative solutions), but unsuitable in that state for immediate consumption: [Onions; olives; capers; cucumbers including gherkins]	
89-48	0711.90.60(pt.) (Mexico)	Other vegetables; mixtures of vegetables: Jalapeno or serrano chili peppers	Camara Nacional de la Industria de Conservas Alimenticias, Mexico
		Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid: [Cucumbers including gherkins; onions] Other: [Capers] Other: Vegetables:	
89-49	2001.90.40(pt.) (Mexico)	Nopalitos 2/	Government of Mexico; Empacadora San Marcos, S.A. de C.V., Mexico
89-50	2001.90.40(pt.) (Mexico)	Jalapeno or serrano chili peppers	Camara Nacional de la Industria de Conservas Alimenticias, Mexico
		Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen: [Articles provided for in subheadings 2005.10.00 thru 2005.80.00]	
		Other vegetables and mixtures of vegetables:	
89-51	2005.90.90(pt.) (Mexico)	Nopalitos 2/	McCormick & Company, Incorporated Hunt Valley, MD; Festin Foods Corporation, Carlsbad, CA
89-52	2203.00.00 (Mexico)	Beer made from malt	Government of Mexico; Cerveceria Cuauhtemoc, S.A. de C.V., Mexico; Cerveceria Moctezuma, S.A. de C.V., Mexico

1/ Harmonized Tariff Schedule of the United States.
2/ 504(d) waiver also requested for nopalitos in HTS 2001.90.40 or HTS 2005.90.90.

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Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
D.		Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)	
		Polymers of styrene, in primary forms:	
		Polystyrene:	
		[Expandable]	
89-53	3903.19.00 (Mexico)	Other	Government of Mexico; Industrias Resistol, S.A. Mexico; Poliestireno Y Derivados, S.A. de C.V., Mexico; Polioles, S.A. de C.V., Mexico
		Polymers of vinyl chloride or of other halogenated olefins, in primary forms:	
89-54	3904.10.00 (Mexico)	Polyvinyl chloride, not mixed with any other substances	Government of Mexico; Grupo Primex, S.A. de C.V., Mexico
		Toilet paper, handkerchiefs, cleansing tissues, towels, tablecloths, table napkins, diapers, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers:	
89-55	4818.10.00 (Mexico)	Toilet paper	Government of Mexico; Cia. Industrial San Cristobal, S.A., Mexico; Kimberly-Clark Corporation, Irving, TX; Kimberly-Clark de Mexico, S.A. de C.V., Mexico; Productos San Cristobal, S.A. de C.V., Mexico; Scott Paper Company, Philadelphia, PA
89-56	4818.20.00 (Mexico)	Handkerchiefs, cleansing or facial tissues and towels	do.
89-57	4818.30.00 (Mexico)	Tablecloths and table napkins	do.

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Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
D.		Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)	
		Cloth (including endless bands), grill, netting and fencing, of iron or steel wire; expanded metal of iron or steel:	
		Woven products:	
89-58	7314.19.00 (Mexico)	[Of stainless steel] Other	Government of Mexico; DEACERO, S.A. de C.V., Mexico
		Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof:	
		Filtering or purifying machinery and apparatus for liquids:	
89-59	8421.23.00 (Mexico)	Oil or fuel filters for internal combustion engines	Government of Mexico; Gonher, Mexico
		Filtering or purifying machinery and apparatus for gases:	
89-60	8421.31.00 (Mexico)	Intake air filters for internal combustion engines	do.
		Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included:	
		[Analog or hybrid automatic data processing machines]	
89-61	8471.20.00 (Mexico)	Digital automatic data processing machines, containing in the same housing at least a central processing unit and an input and output unit, whether or not combined	Government of Mexico; IBM de Mexico, S.A., Mexico
		Other:	
89-62	8471.91.00 (Mexico)	Digital processing units, whether or not entered with the rest of a system, which contain in the same housing one or two of the following types of units: storage units, input units, output units	do.
		[Articles provided for in subheadings 8471.92.10 thru 8471.93.60]	
		Other:	
89-63	8471.99.30 (Malaysia)	Power supplies	Astec U.S.A. (HK) Ltd., Santa Clara, CA

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Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
D.		Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)	
89-64	8504.40.00 (Malaysia)	Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof: Static converters	Astec U.S.A. (HK) Ltd., Santa Clara, CA
89-65	8505.19.00 (Mexico)	Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof: Permanent magnets and articles intended to become permanent magnets after magnetization: [Of metal] Other	General Motors Corporation, Rochester, NY
89-66	8511.30.00 (Mexico)	Electrical ignition or starting equipment of a kind used for spark-ignition or compression-ignition internal combustion engines (for example, ignition magnetos, magneto-dynamos, ignition coils, spark plugs and glow plugs, starter motors); generators (for example, dynamos, alternators) and cut-outs of a kind used in conjunction with such engines; parts thereof: Distributors; ignition coils	Government of Mexico; Bobinadores Unidos, S.A. de C.V., Mexico
89-67	8523.20.00 (Mexico)	Prepared unrecorded media for sound recording or similar recording of other phenomena, other than products of chapter 37: Magnetic discs	Government of Mexico; Aurex, S.A. de C.V., Mexico
89-68	8525.20.30 (Malaysia)	Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras: Transmission apparatus incorporating reception apparatus: Transceivers: [Articles provided for in subheadings 8525.20.05 thru 8525.20.20] Other	Motorola Inc., Schaumburg, IL

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Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
		D. Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)	
89-69	8605.00.00 (Mexico)	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604)	Government of Mexico; Constructora Nacional de Carros de Ferrocarril, Mexico
		Railway or tramway freight cars, not self-propelled:	
89-70	8606.10.00 (Mexico)	Tank cars and the like	do.
89-71	8606.20.00 (Mexico)	Insulated or refrigerated cars, other than those of subheading 8606.10	do.
89-72	8606.30.00 (Mexico)	Self-discharging cars, other than those of subheading 8606.10 or 8606.20	do.
		Other:	
89-73	8606.91.00 (Mexico)	Covered and closed	do.
89-74	8606.92.00 (Mexico)	Open, with non-removable sides of a height exceeding 60 cm	do.
89-75	8606.99.00 (Mexico)	Other	do.
		Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:	
		[Articles provided for in subheadings 9503.10.00 thru 9503.60.00]	
		Other toys, put up in sets or outfits, and parts and accessories thereof:	
		[Toy tea sets of ceramic ware made to the approximate scale of 1 to 10 or larger]	
		Other:	
		[Toy alphabet blocks]	
89-76	9503.70.80 (Mexico)	Other	Mattel Inc., Hawthorne, CA; Tonka Corporation, Minnetonka, MN
		[Other toys and models, incorporating a motor, and parts and accessories thereof]	

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Case No.	HTS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	

D. Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)

		Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof (con.): Other: [Kites] Other:	
89-77	9503.90.50 (Mexico)	Inflatable toy balls, balloons and punchballs	Government of Mexico; Latex Occidental, S.A. de C.V., Mexico
89-78	9503.90.60 (Mexico)	Other toys (except models), not having a spring mechanism	Mattel Inc., Hawthorne, CA; Tonka Corporation, Minnetonka, MN

E. Petition pursuant to section 504(d) of the Trade Act of 1974 to determine an eligible article as not like or directly competitive with any article produced in the United States on January 3, 1985, in order to avoid loss of GSP duty-free treatment under the provisions of section 504(c)(1)(B) of the Trade Act of 1974.

		Other fixed vegetable fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified: Castor oil and its fractions:	
89-79	1515.30.00(pt.)	Crude oil	Alnor Oil Company, Inc., Valley Stream, NY; Caschem, Inc., Bayonne, NJ; Union Camp Corporation, Wayne, NJ
		Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: [Articles provided for in subheadings 9405.10.40 thru 9405.60.60] Parts: Of glass: Globes and shades:	
89-80	9405.91.20(pt.)	Of lead crystal	Crisa Corporation, Laredo, TX; Philip Goldin Associates, Inc., Baldwin, NY; Vitrocrisa Kristal, S.A., Mexico

1/ Harmonized Tariff Schedule of the United States.

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DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 4, 1989

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 applications, 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.: 46435
Date filed: August 4, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 1, 1989
Description: Application of Delta Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applied for a new or amended certificate of public convenience and necessity to permit Delta to provide nonstop air transportation between the United States and New Zealand.

Docket No.: 29833
Date filed: July 31, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 28, 1989
Description: Application of Transporturile Aeriene Romane (TAROM) pursuant to section 402 of the Act and Subpart Q of the Regulations applies for an emergency renewal of its foreign air carrier permit, pursuant to Order 85–2–72.

Docket No.: 45348
Date filed: August 3, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 31, 1989
Description: Supplement to the Application of Haiti Trans Air, S.A., pursuant to section 402 of the Act and Subpart Q of the Regulations request the issuance of the additional Miami-Santo Domingo authority requested.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 89–18711 Filed 8–9–89; 8:45 am]
BILLING CODE 4910–62–M

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on August 4, 1989

AGENCY: Department of Transportation (DOT), Office of the Secretary.
ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on August 4, 1989, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366–4735, or Gary Waxman or Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register,** listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on August 4, 1989.

DOT No: 3246
OMB No: 2127–0052
Administration: National Highway Traffic Safety Administration
Title: Brake Hose Manufacturing Identification Standard 106
Need for Information: To be able to trace the manufacturer in case a defect is found in the hose.
Proposed Use of Information: The purpose of this requirement is to ensure traceability should a noncompliance or safety related defect be discovered.
Frequency: On occasion
Burden Estimate: 30 hours
Respondents: Manufacturers
Form(s): None
Average Burden Hours Per Respondent: 30 minutes

DOT No: 3247
OMB No: 2130–0511
Administration: Federal Railroad Administration
Title: Designation of Qualified Persons
Need for Information: To verify that all freight car inspections are conducted by qualified persons thus preventing unsafe movement of defective equipment.
Proposed Use of Information: To prevent the unsafe movement of defective equipment authorized by personnel unqualified to make such determinations.
Frequency: On occasion
Burden Estimate: 50 hours
Respondents: 400 Railroads
Form(s): None
Average Burden Hours Per Respondent: 2 minutes

DOT No: 3248
OMB No: 2120–0040
Administration: Federal Aviation Administration
Title: Aviation Maintenance Technician School—FAR 147
Need for Information: The collection of information is necessary to ensure that Aviation Maintenance Technician schools meet the minimum requirements for procedures and curriculum set forth by the FAA in FAR 147.
Proposed Use of Information: The information is used to certify aviation maintenance technician schools and maintain a standardized level of proficiency in those schools.

Frequency: On occasion
Burden Estimate: 61515 hours annually
Respondents: Aviation Maintenance Technician school operators and owners.
Form(s): FAA Form–8310–6
Average Burden Hours Per Respondent: 40 hours

DOT No: 3249
OMB No: 2127–0042
Administration: National Highway Traffic Safety Administration
Title: 49 CFR Part 576, Record Retention
Need for Information: To insure records are kept by manufacturers for proper investigation of possible defects related to motor vehicle safety.
Proposed Use of Information: This regulation requires manufacturers to retain one copy of complaints, reports, and other records of malfunctions that may be related to motor vehicle safety. These records may be used to investigate possible defects and noncompliance.
Frequency: Recordkeeping
Total Estimated Burden: 40,000 hours
Respondents: 1,000 manufacturers
Form(s): None
Average Burden Hours Per Respondent: 39½ minutes

DOT No: 3250
OMB No: 2130–0527
Administration: Federal Railroad Administration
Title: New Locomotive Certification (Noise Compliance Regulations)
Need for Information: To obviate the need for additional noise testing by the railroads when purchasing new locomotives.
Proposed Use of Information: To ensure compliance with the Environmental Protection Agency noise standards for new locomotives and cars.
Frequency: Recordkeeping
Burden Estimate: 190 hours
Respondents: 2 Manufacturers
Form(s): None
Average Burden Hours Per Respondent: 30 minutes

DOT No: 3251
OMB No: 2120–0517
Administration: Federal Aviation Administration
Title: FAR Part 150—Airport Noise Compatibility Planning
Need for Information: The FAA needs the information to determine which airport operators are eligible for an 8% set aside of discretionary grant funds under the FAA Airport Improvement Program.
Proposed Use of Information: The FAA will use the voluntarily submitted information in conducting its Aviation Safety and Noise Abatement Act of 1979 required reviews of the submissions.
Frequency: On occasion
Burden Estimate: 78,300 hours annually
Respondents: Airport operators
Form(s): None
Average Burden Hours Per Respondent: 9,000 hours annually for a medium to large hub airport, 4,500 hours for a large heliport, and 1,800 hours annually for a small hub airport.
DOT No: 3252
OMB No: 2120–0508
Administration: Federal Aviation Administration
Title: Fuel Venting and Exhaust Emission Requirements for Turbine Powered Airplanes
Need for Information: This is a labeling requirement to permit rapid determination by FAA inspectors, owners, and operators as to whether an engine can legally be installed and operated on an aircraft in the USA.
Proposed Use of Information: This is a labeling requirement to put the date of manufacture and compliance with U.S. EPA pollution requirements on the identification plate. The information on the label is intended to minimize the effort required to determine whether a turbojet engine may legally be installed and operated on an aircraft in the United States.
Frequency: On occasion
Burden Estimate: 100 hours
Respondents: Aircraft engine manufacturers
Form(s): None
Average Burden Hours Per Respondent: 5 minutes

DOT No: 3253
OMB No: 2115–0043
Administration: U.S. Coast Guard
Title: Plan Approval and Records for Load Lines
Proposed Use of Information: The Coast Guard uses the information so that there are procedures for vessel owners, to determine vessel compliance with design requirements and vessel compliance with load line regulations.
Need for Information: Owners of merchant vessels over 150 gross tons or 79 feet long engaged in commerce on international or coastwise voyages by sea and required by law to obtain a load line certificate. This procedure ensures that no such vessel is loaded deeper than the line of safety.
Frequency: On occasion
Burden Estimate: 11560
Respondents: Waterway users
Form(s): LL 9–A, LL 10–A, LL 14–A, LL 18–E, LL 40–A, LL 101–A
Average Burden Hours Per Response: 10 hours and 15 minutes reporting; 8 minutes recordkeeping

DOT No: 3254
OMB No: 2115–0076
Administration: U.S. Coast Guard
Title: Security Zones, Regulated Navigation Areas and Safety Zones
Need for Information: This information collection requirement is needed to establish a limited access zone for the purpose of safeguarding ports, harbors, territories or waters of the U.S. from a threat or potential threat to national security.
Proposed Use of Information: The Coast Guard uses the information to control vessel traffic is such areas by prohibiting marine traffic, requiring reduced speed, controlling spectators, or other restrictions.
Frequency: On occasion
Burden Estimate: 645
Respondents: Waterway users
Form(s): None
Average Burden Hours Per Response: 1 hour and 15 minutes

DOT No: 3255
OMB No.: 2133–0025
Administration: Maritime Administration
Title: Position Reporting System For Vessels
Need for Information: To document changes in ship location
Proposed Use of Information: Search and rescue, defense contingency planning
Frequency: Other (every 48 hours)
Burden Estimate: 78,767 hours
Respondents: Ship Operators
Form(s): CG–4796A
Average Burden Hours Per Respondent: 10 minutes
DOT No: 3256
OMB No: 2132–0544
Administration: Urban Mass Transportation Administration
Title: Buy American Requirements
Need For Information: UMTA regulations require all bidders to certify compliance with the general requirements or the special requirements for rolling stock.
Proposed Use of Information: To ensure that products that are being purchased by UMTA grantees or contractors comply with requirement that, with exceptions, all steel and manufactured products must be of U.S. origin.
Frequency: On occasion
Burden Estimate: 7,500 hours
Respondents: 10,000
Form(s): Certificate
Average Burden Hours Per Response: 15 minutes

DOT No: 3257
OMB No: 2115–0042
Administration: U.S. Coast Guard
Title: Certificate of Discharge to Merchant Seamen
Need For Information: This information collection requirement is needed to provide merchant seaman with a document of evidence of sea service to determine eligibility for various benefits.
Proposed Use of Information: The Seamen and Coast Guard use the information to establish sea service time and qualifications for issuing original documents or upgrading existing documents. It is also used to develop maritime sea service statistics.
Frequency: On occasion
Burden Estimate: 7,500
Respondents: Merchant Seamen
Form(s): CG–718A
Average Burden Hours Per Response: 3 minutes

DOT No: 3258
OMB No: 2115–0520
Administration: U.S. Coast Guard
Title: Plan Approval and Records for Existing Tank Vessels of 20,000 to 40,000 Deadweight Tons (DWT) Carrying Oil in Bulk
Need For Information: This information collection requirement is needed to ensure that vessels have on board, approved plans and records for safe operation.
Proposed Use of Information: The Coast Guard uses the information to certify that vessels comply with the standards. Also, operating personnel use the information for safe and proper operation of the vessel and equipment.
Frequency: On occasion
Burden Estimate: 56.75
Respondents: U.S. and Foreign tank vessel owners, builders and operators
Form(s):
Average Burden Hours Per Respondent: 18 minutes for reporting and 32½ minutes

DOT No: 3259
OMB No: 2137–0542
Administration: Research and Special Programs Administration
Title: Cryogenic Liquids Requirements
Need For Information: To assure the compliance of special requirements needed for cryogenics due to their extreme flammability and high compression ratio, one to six hundred, and low temperatures, about minus 400 degrees F., needed to maintain cryogenics in the liquid state.
Proposed Use of Information: To ascertain that drivers of cargo tanks transporting flammable cryogenics have received training pertaining to the proper handling of cargo tanks, properties and hazards of material in the cargo tank and emergency procedures; and that tanks are properly loaded and have not been malfunctioning.
Frequency: Each trip
Burden Estimate: 1520 hours annually
Respondents: Carriers of cryogenic materials
Form(s): None
Average Burden Hours Per Response: 9 hours and 49 minutes

DOT No: 3260
OMB No: 2137–0051
Administration: Research and Special Programs Administration
Title: Rule Making and Exemption Requirements
Need For Information: To allow the regulated public a means to propose new or amended safety standards or to deviate from the hazardous materials regulations to try out new methods of transportation, packaging, etc., on a trial basis.
Proposed Use of Information: To ensure that all conditions of an exemption are adhered to, ensuring the safe transportation of the hazardous materials authorized under its terms.
Frequency: On occasion
Burden Estimate: 4319 hours annually
Respondents: Shippers, carriers and manufacturers of containers for hazardous materials
Form(s): None
Average Burden Hours Per Response: 45 minutes

Issued in Washington, DC, on August 4, 1989.

Robert J. Woods,
Director of Information Resource Management.

[FR Doc. 89–18709 Filed 8–9–89; 8:45 am]
BILLING CODE 4910–62–M

[Docket No. 43343; Notice 89–7]

Electronic Tariff System; Advisory Committee Meeting

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Department announces the third meeting of the Electronic Tariff Filing System Advisory Committee to be held on September 7, 1989, in Washington, DC. The agenda includes a summary of the developments for the interim Electronic Tariff Filing System and a detailed demonstration of the system interface with the first tariff filer granted permission, on an experimental basis, to file electronically.

DATE: The Advisory Committee meeting will commence on September 7, 1989, at 9:00 a.m. and, if necessary, continue through September 8, 1989.

ADDRESS: The Advisory Committee meeting will be held in Room 6202 at 400 7th Street, SW., Washington, DC. Comments should be sent to the Docket Clerk, C–55, Docket 43343, Department of Transportation, Room 4107, 400 7th Street, SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:00 p.m., Monday through Friday. Persons wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comments. The docket clerk will stamp the card with the time and date, and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Committee Executive Director, Douglas V. Leister, Office of International Aviation, P–40, 400 7th Street, SW., Washington, DC 20590, telephone: (202) 366–2422.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established in November of 1986 (51 FR 42327) to advise the Department on the study, development, and operation of an automated tariff filing system. The Committee includes representatives of airlines, airline associations, tariff agents, consumer groups, and the information industry. The Committee held its first meeting on March 24–25, and the second on June 30, 1987.

The meeting will be open to public observation. A period will be set aside for oral comments or questions, not to exceed 10 minutes for each individual, by the public. Public comments regarding Committee affairs may be submitted at any time before or after the meeting. Limited seating will be available for the public (including media representatives) on a first-come, first-served basis.

Dated: August 4, 1989.

Jeffrey N. Shane,
Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–18710 Filed 8–9–89; 8:45 am]
BILLING CODE 4910–62–M

Formulation of a National Transportation Policy

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of additional public hearing.

SUMMARY: This notice announces the intent of the Department of Transportation to elicit public comment

with respect to international transportation systems in the formulation of a comprehensive, integrated National Transportation Policy. The international policy cluster group plans to conduct an additional public hearing to solicit information and advice. The DOT believes public comment is essential to development of a viable public policy. As a consequence, this notice describes some key issues and requests a dialogue and input on issues, positions, problems, and recommended solutions for addressing the challenges facing international transportation in the 1990's and beyond.

In order to stimulate a discussion of such concerns, in addition to the public hearings the cluster group will be holding a series of focus groups and site visits. Through the discussion and comments gathered from these outreach efforts, the Department seeks to broaden its knowledge for a national multi-modal transportation policy addressing international transportation. The information will be used in formulation of a National Transportation Policy which will set forth the framework through which decisions in transportation infrastructure, services, and related needs can be systematically assessed and implemented during the next decade and into the 21st Century.

DATES: Comments must be received on or before September 1, 1989 in order to be fully considered in the development of the national transportation policy. Comments can be sent to the Cluster Chairperson listed in **ADDRESSES.**

The additional public hearing will be held on August 29, 1989, at New York City, New York. While not excluding any international transportation issues, this hearing will focus on international maritime issues.

ADDRESSES: Comments relating to international transportation issues should be addressed to the International Cluster Group Chairman; Mr. Arnold Levine, Director, Office of International Transportation and Trade, U.S. Department of Transportation, Room 10300, 400 Seventh Street, SW., Washington, DC 20590 Ph: (202) 366–4368.

The public hearing will be held at the following location: Room 4 and 5, World Trade Institute, 55th floor West, 1 World Trade Center, New York City, New York.

Those seeking further information or wishing to participate in the hearing should contact: Ms. Florizelle Liser, Special Trade Policy Advisor, P–22, Office of International Transportation and Trade, U.S. Department of Transportation, Room 10300, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–9510.

SUPPLEMENTARY INFORMATION: The development of an integrated National Transportation Policy should involve the widest possible dialogue with affected parties. To that end, public hearings have been scheduled at which views may be expressed orally.

With regard to the overall purpose of developing an integrated National Transportation Policy, refer to OST's notice issued on June 28, 1989 (54 FR 27970); published July 3, 1989. For information on other hearings scheduled by the international cluster group, see OST's notices published on July 19, 1989 (54 FR 30308) and July 20, 1989 (54 FR 30496).

Hearing Procedures

(a) Attendance is open to the interested public but limited to the space and time available. With the approval of the chairperson, members of the public may present oral statements at the hearings.

(b) Any persons wishing to make a presentation will be asked to sign in and estimate an amount of time needed for their statement. Statements should be limited to fifteen minutes.

(c) The chairperson may allocate the time available for each presentation in order to accommodate all speakers. The hearing may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Written material concerning the topics will also be accepted by the chairperson of the hearing. Every effort will be made to hear every request for presentation consistent with a reasonable closing time for the hearing.

(e) The hearing will not be formally recorded. However, informal recordings will be made of presentations to ensure that each respondent's comments are accurately noted.

The international cluster group has identified a number of broad issues to be addressed; they include:

1. *Maximizing transportation efficiency* for passengers and shippers for the purpose of fostering a more competitive economy; facilitating international transportation of passengers and freight;

—How can the U.S. Government encourage U.S. flag and other carriers and port authorities to operate efficiently? To invest in modern equipment and facilities?

—How can the U.S. Government encourage its trading partners to adopt market oriented policies that emphasize the development and facilitation of efficient transportation infrastructure necessary to support an intergrated international system?

—How vigorously should the U.S. Government protect access of third-flag carriers to U.S. trade?

—How can the U.S. Government balance the sometimes competing demands of carriers, passengers, and shippers in international markets?

2. *Achieving an equitable international competitive environment* for U.S. transportation companies; eliminating unfair and discriminatory practices that affect U.S. carriers;

—How best can the U.S. Government eliminate those foreign policies and practices that discriminate against or otherwise inhibit the provision of competitive services by U.S. carriers? Merits of multilateral vs. Bilateral vs unilateral approaches?

—Under what circumstances should the U.S. Government apply sanctions against foreign carriers (*i.e.* reduce efficiency in the short term for potential gains in efficiency in the long term)?

—Again, how best can the U.S. Goverment balance the needs of carriers, passengers, and shippers?

3. *Promoting U.S. transportation interests* to achieve national security, transportation safety and security and economic objectives through such unilateral measures as direct or indirect financial assistance, buy/fly/ship American policies, and sabotage restrictions;

—What are the broad national policy goals that warrent government promotion and support of transportation services and equipment manufacturing?

—How effective are current methods of promoting and supporting the transportation industry in helping to achieve those broad policy goals?

—What alternative methods of promotion and support might be more effective.

—What role, if any, should the Department of Transportation play in promoting the sale of U.S. transportation equipment and services (*e.g.*, consulting and engineering services)?

4. *Cooperating internationally* to achieve national security, transportation safety and security, environmental, and economic objectives through adoption of treaties and conventions, participation in international organizations, and the development of joint policy approaches bilaterally and internationally:

—What key international treaties and conventions should the United States adopt?

—In what, if any, areas should the United States consider proposing new international agreements?

—On what international bodies should the United States focus its resources?

—What additional benefits can be derived from fuller participation in international bodies and cooperative efforts.

—Under what circumstances/in what areas would it be inadvisable for the United States to pursue multilateral solutions to international transportation issues?

—How can the Department of Transportation encourage U.S. engineering and equipment manufacturers to strengthen their efforts to acquire and use advanced transportation technology from abroad?

5. Views are also solicated on the issue of Great Lakes pilotage. In December 1988, the Depatment issued the final report of the Great Lakes Pilotage Study; the report contained recommendations for changes to the system. A number of parties have requested a public hearing in order to make their views known on these recommendations and on the future of the pilotage system itself.

Issued in Washington, DC, on August 4, 1989.

Florizelle Liser,

Special Trade Policy Advisor, International Cluster Group.

[FR Doc. 89-18798 Filed 8-8-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 89-059]

Meeting of the Subcommittee on Coal Transportation, Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Coal Transportation of the Chemical Transportation Advisory Committee (CTAC) will hold a meeting on Thursday, September 14, 1989 in Room 4436, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC. The Subcommittee is considering requirements for the safe transportation of coal in ships and barges. The meeting is scheduled to run from 9:30 a.m. until 4:00 p.m.

The meeting will be devoted to discussing Draft reports on Safe Procedures for Carrying Coal in Vessels and Recommended Guidelines for Coal Loading and Transportation.

Attendance is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Mrs. D. Anderson or LCDR R. Fitch, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street, SW., Washington, DC 20593, (202) 267-1217.

Dated: August 3, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-18667 Filed 8-9-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 4, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0022.

Form Number: ATF Form 5320.20.

Type of Review: Extension.

Title: Application to Transport Interstate or to Temporarily Export Certain National Firearms Act (NFA) Firearms.

Description: When approved this form satisfies requirements that the Secretary give prior approval to the movement of certain NFA firearms in interstate or foreign commerce.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 700.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 350 hours.

OMB Number: 1512-0046.

Form Number: ATF Form 27-G (5520.3).

Type of Review: Extension.

Title: Applications—Volatile Fruit-Flavor Concentrate Plants.

Description: Persons who wish to establish premises to manufacture Volatile fruit-flavor concentrates are required to file an application so requesting. ATF uses the application information to identify persons responsible for such manufacture, since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Response: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 30 hours.

OMB Nubmer: 1512-0385.

Form Number: ATF REC 5900/1.

Type of Review: Extension.

Title: Proprietors of Claimants Exporting Liquors.

Description: Distilled spirits, wine and beer may be exported from bonded premises without payment of tax or these products may be exported in a taxpaid status with the tax claimed back (drawback). Record is needed to allow the amounts exported to be verified and to maintain accountability over products. Protects the revenue.

Respondents: Business or other for-profit, Small businesses or organizations.

Estimated Number of Recordkeepers: 120.

Estimated Burden Hours Per Recordkeeper: 60 hours.

Frequency of Response: Recordkeeping.

Estimated Total Recordkeeping Burden: 7,200 hours.

Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-18684 Filed 8-9-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 4, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

Internal Revenue Service

OMB Number 1545–0087.
Form Number: IRS Form 1040–ES, 1040–ES(NR), 1040–ES (Espanol).
Type of Review: Revisions.
Title: Estimated Tax for Individuals (3 forms) (1) U.S. Citizens and Residents, (2) For Nonresident Aliens, (3) For use in Puerto Rico (In Spanish).
Description: Form 1040–ES is used by individuals (including self-employed) to make estimated tax payments if their estimated tax is $500 or more. IRS uses the data to credit taxpayers accounts and to determine if the estimated tax has been properly computed and timely paid.
Respondents: Individuals or households.
Estimated Number of Respondents: 14,563,250.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 1 hour, 25 minutes.
Learning about the law or the form: 20 minutes.
Preparing the form: 16 minutes.
Copying, assembling, and sending the form to IRS: 10 minutes.
Frequency of Response: Quarterly
Estimated Total Recordkeeping/ Reporting Burden: 130,596,320 hours
OMB Number: 1545–0975.
Form Number: IRS Form 1120–W.
Type of Review: Revision.
Title: Corporation Estimated Tax.
Description: Form 1120–W is used by corporations to figure estimated income tax liability and the amount of each installment payment. Form 1120–W is a worksheet only. It is not to be filed with the Internal Revenue Service.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 900,000
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 27 hours, 52 minutes.
Learning about the law or the form: 1 hour, 40 minutes.
Preparing the form: 5 hours, 50 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 8,573,218 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Department Reports Management Officer.

[FR Doc. 89–18685 Filed 8–9–89; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 4, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0051.
Form Number: 990–C.
Type of Review: Revision.
Title: Farmers' Cooperative Association Income Tax Return.
Description: Form 990–C is used by farmers' cooperatives to report the tax imposed by section 1381. IRS uses the information to determine whether the tax is being properly reported.
Respondents: Farms, Businesses or other for-profit.
Estimated Number of Respondents: 5,600.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 69 hours 7 minutes.
Learning about the law or the form: 17 hours 49 minutes.
Preparing the form: 34 hours 37 minutes.
Copying, assembling, and sending the form to IRS: 4 hours 17 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 804,384 hours.
OMB Number: 1545–0110.
Form Number: 1099–DIV.
Type of Review: Extension.
Title: Statement for Recipients of Dividends and Distributions.
Description: The form is used by the Service to insure that dividends are properly reported as required by Code section 6042 and that liquidation distributions are correctly reported as required by Code section 6043, and to determine whether payees are correctly reporting their income.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 163,364.
Estimated Burden Hours Per Response: 13 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 19,678,949 hours.
OMB Number: 1545–0128.
Form Number: 1120–L.
Type of Review: Revision.
Title: U.S. Life Insurance Company Income Tax Return.
Description: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 2,440.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 69 hours 50 minutes.
Learning about the law or the form: 29 hours 59 minutes.
Preparing the form: 54 hours 47 minutes.
Copying, assembling, and sending the form to IRS: 6 hours 26 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 392,962 hours.
OMB Number: 1545–0715.
Form Number: 1099–B.
Type of Review: Extension.
Title: Statement for Recipients of Proceeds From Broker and Barter Exchange Transactions.
Description: Form 1099–B is used by brokers and barter exchanges to report proceeds from Transactions to the Internal Revenue Service.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 146,859.

Estimated Burden Hours Per Response: 14 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 16,169,536 hours.
OMB Number: 1545–1027.
Form Number: 1120–PC.
Type of Review: Revision.
Title: U.S. Property and Casualty Insurance Company Income Tax Return.
Description: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 7,500.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 104 hours 45 minutes.
Learning about the law or the form: 42 hours.
Preparing the form: 78 hours 7 minutes.
Copying, assembling, and sending the form to IRS: 9 hours 23 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 1,779,375 hours.
OMB Number: 1545–1078.
Form Number: None.
Type of Review: Extension.
Title: Customer Survey on IRS Tax Publications.
Description: The information we get will help us identify who our customers are and how we can better meet their needs. It will point us to possible problem areas in certain publications. We can then produce a more understandable publication that will reduce the burden on taxpayers and help them comply with the tax laws. The random sample will come from taxpayers requesting the targeted publication(s).
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 3,294.
Estimated Burden Hours Per Response: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 329 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89–18687 Filed 8–9–89; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review.

Date: August 4, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980. Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0005.
Form Number: PD 3253.
Type of Review: Revision.
Title: Exchange Application for U.S. Savings Bonds of Series HH.
Description: This form is used by owners of bonds of Series EE/E or notes to request exchange for series HH Savings Bonds.
Respondents: Individuals or households.
Estimated Number of Respondents: 60,000.
Estimated Burden Hours Per Response: 40 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 39,960 hours.
Clearance Officer: Rita DeNagy (202) 447–1640, Bureau of the Public Debt, Room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239–0001.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89–18686 Filed 8–9–89; 8:45 am]
BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 153
Thursday, August 10, 1989

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).

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:00 am September 8, 1989.

PLACE: The Forbes Building, 60 Fifth Avenue, New York, NY 10011.

STATUS: Closed, pursuant to 5 U.S.C. (b)(c)(1) 22 CFR 1302.4 (c) and (h) of the Board's rules [42 FR 9388, March 12, 1977].

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mark G Pomar, Deputy Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue NW., Washington, DC 20036.

Mark G. Pomark,

Deputy Executive Director.

[FR Doc. 89–18855 Filed 8–8–89; 8:45 am]

BILLING CODE 6155-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 32561, August 8, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Thursday, August 10, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Part open and part closed.

CHANGE IN THE MEETING: The discussion of all items listed has been cancelled.

1. *Secretary of Labor, MSHA* v. *Garden Creek Pocahontas Co.*, Docket No. VA 88–9, etc.
2. *Westwood Energy Properties*, Docket No. PENN 88–42–R.
3. *FMC Wyoming Corporation*, Docket No. WEST 86–43–RM, etc.

It was determined by a unanimous vote of Commissioners that this meeting be cancelled and no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89–18811 Filed 8–8–89; 10:40 am]

BILLING CODE 6735-01-M

FEDERAL ELECTION COMMISSION

DATE & TIME: Tuesday, August 15, 1989, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, August 17, 1989, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989–14: Mr. Anthony Athanas on behalf of Pier 4 Restaurant, Inc.
Draft Final Rules: 11 CFR 100.7(b)(8), 100.8(b)(9), 110.4(a).
Status of Presidential Audits.
FY 1991 Initial Budget Request.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Hilda Arnold,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 89–18895 Filed 8–8–89; 3:51 pm]

BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 32023, August 3, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Tuesday, August 8, 1989.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Renovation proposals regarding the Federal Reserve Bank of St. Louis. (This item was originally announced for a closed Board meeting on July 31, 1989.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: August 8, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–18893 Filed 8–8–89; 3:51 pm]

BILLING CODE 6210-01-M

federal register

Thursday
August 10, 1989

Part II

Department of Labor

Wage and Hour Division, Employment Standards Administration

29 CFR Parts 524, 525, and 529

Employment of Workers With Disabilities Under Special Certificates; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Parts 524, 525, and 529

RIN: 1215-AA34

Employment of Workers With Disabilities Under Special Certificates

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of the regulations governing the employment of individuals with disabilities at special minimum wages under section 14(c) of the Fair Labor Standards Act (FLSA). A notice of proposed rulemaking implementing the 1986 Amendments to section 14(c) of FLSA was published on May 20, 1988 (53 FR 18234) and provided for a 60-day public comment period. A notice reopening and extending the public comment period for 15 days was published on October 31, 1988 (53 FR 43899). In amending the regulations, the Department also elected to incorporate changes in policies and procedures adopted since these regulations were last amended in 1966 and to clarify certain areas, such as the requirement to determine prevailing wages, which have proven difficult to administer. In addition, the Department proposed to consolidate the three separate regulations relating to competitive employment, sheltered workshops, and hospitals and institutions, into a single regulation.

Forty comments were received during the initial public comment period. Fourteen additional comments were received as a result of reopening and extending the comment period. These comments, while offering numerous specific recommendations for improving parts of the proposed regulations, were generally support of the overall intent of the proposed regulations and the idea of consolidating the existing three separate regulations into one. The specific recommendations contained in the responses have been reviewed and, where appropriate, have been adopted in this final rule.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210 (202) 523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1986, Pub. L. 99-486 was signed and became effective. This law amended section 14(c) of FLSA which has been a part of the Act since 1938 and provides for the employment under certificate of workers with disabilities at special minimum wage rates. Such wage rates are below the minimum otherwise required by FLSA but commensurate with (i.e., based on comparative productivity) those paid to experienced nondisabled workers performing essentially the same type of work in the same vicinity. Special minimum wage rates are permitted in order to prevent the curtailment of opportunities for employment.

Prior to the 1986 Amendments, section 14(c) provided for three distinct types of certification with different requirements and guarantees. The provisions establishing the distinct types of certification were introduced as a part of the FLSA Amendments of 1966. It was the intent at that time to establish a minimum guarantee of 50 percent of the statutory minimum for the majority of workers with disabilities employed under a certificate. Workers not receiving such a guarantee would be those participating in evaluation or training programs, those with multiple disabilities, or those employed in work activities centers "planned and designed exclusively to provide therapeutic activities" for workers with inconsequential productive capacity.

However, as more individuals with severe disabilities were deinstitutionalized and placed in rehabilitation facilities offering employment as a part of the rehabilitation program, the work activities center became the predominant type of certified facility. By fiscal year 1986, work activities centers comprised over 55 percent of the certified programs and employed nearly 60 percent of the workers employed under certificates.

It became apparent, subsequent to the 1966 Amendments, that having three distinct types of certification and requiring that work activities centers, as a consequence of being planned and designed exclusively for workers with inconsequential productive capacity, be physically separate from other programs was creating serious administrative problems for both the Department and the rehabilitation facilities without providing benefit to the workers with disabilities themselves. Several unsuccessful efforts were initiated prior to 1986 to amend and simplify section 14(c). In 1986, these efforts were finally successful.

The 1986 Amendments eliminated the various types of certification while retaining the basic requirement that workers with disabilities employed under certificates be paid wages commensurate with those paid to nondisabled workers for essentially the same type, quality, and quantity of work. The legislation also included the following new provisons:

(1) During a two-year period beginning June 1, 1986, wage rates of certain workers could not be reduced without prior authorization of the Secretary of Labor; (2) employers must provide written assurances of semi-annual wage reviews for workers paid an hourly wage rate and annual wage reviews of prevailing wage rates; and, (3) employees may petition for a review by an Administrative Law Judge of the special minimum wage rates paid pursuant to section 14(c).

After reviewing the 1986 Amendments, the Department undertook the revision of the regulations. One of the first questions the Department addressed was whether it was necessary to continue to have three separate regulations governing the employment of workers with disabilities under section 14(c): (1) Regulations, 29 CFR Part 524 governing competitive employment; (2) Regulations, 29 CFR Part 525 governing employment in sheltered workshops; and, (3) Regulations, 29 CFR Part 529 governing employment in hospitals and institutions. Because of the similarities between these three regulations and the fact that section 14(c) does not require separate regulations, the Department prepared a proposal combining the three existing regulations. The Department was encouraged in this approach by its Advisory Committee on Special Minimum Wages, which provides the Department with advice and recommendations with respect to the administration of section 14(c), and by the various groups which were instrumental in passing the legislation. In addition to incorporating the 1986 Amendments and consolidating the three regulations, the proposed rule also included several policies developed by the Department since the 1966 Amendments and guidelines intended to clarify areas such as the determination of prevailing wages which have proven particularly difficult to administer.

Paperwork Reduction Act

The recordkeeping provisions that are included in these rules were previously

developed under OMB 1215–0017 in conjunction with 29 CFR Part 516.

Discussion of Comments

A total of 54 comments on the proposed rule were received. Thirty-five were from local rehabilitation facilities and nine were from local or national organizations of such facilities or their representatives. Five comments were received from individuals, three from State or local government officials, and two from advocacy groups representing workers with disabilities. All but one of these comments were substantive, many containing numerous statements on the proposed rule. None of the comments indicated that the separate regulations should be maintained. The comments did include many statments relating to improvements or clarifications in specific sections of the proposed regulations.

The Department has completed its analysis of all of the comments and has made changes as appropriate. A section-by-section analysis of these changes follows:

Section 525.1 Introduction

This section sets forth the applicability of the regulations and summarizes the statutory language contained in FLSA section 14(c). One comment was received, stating objections to several statements or requirements. Since the commenter did not demonstrate errors in the regulation's summary of the statutory language, no change is made in this section.

Section 525.3 Definitions

This section contains the definitions of the terms used in this part. Ten comments were received on this section.

Two of the comments expressed opposition to the use of the terms "mental deficiency" or "mentally defective" in defining the term "worker with a disability" in § 525.3(d). The term mental deficiency is used in FLSA. However, based on concerns voiced earlier by the Advisory Committee on Special Minimum Wages, the Department is aware that this term is considered pejorative and is no longer acceptable in the rehabilitation community. The final rule has been amended to delete this phrase. In order to provide greater clarity, this definition has also been amended to include examples of those disabilities which meet the statutory requirements.

The definition of the term "employ" in section 525.3(g) generated five comments. One indicated, without elaborating, that this definition is current with respect to private employers but conflicts with the 1985 FLSA Amendments relating to public employees who may, under certain provisions, volunteer their services. This definition is a restatement of the basic definition contained in FLSA with special emphasis given to its applicability to workers with disabilities. The Department has reviewed the 1985 Amendments and Subpart B, relating to volunteers, of the Regulations at 29 CFR Part 553 and was unable to discern a conflict. One comment expressed concern that other agencies used the FLSA definition of "employ" to determine who was an employee for purposes of their laws or regulations and asked that explicit language be included to make it clear that the definition in these regulations applies only for purposes of FLSA. The language of the definition makes clear that it is limited to FLSA, and no change is required. One comment suggested that the six criteria the Department uses to distinguish a trainee from an employee be included in this section of the regulations. In determining whether persons receiving training are or are not employees, the Department applies six judicially developed criteria. These are set forth at section 10b11(b) of the Wage-Hour Field Operations Handbook.

This section provides that if all six of the following criteria apply, the trainees or students will not be considered to be employees within the meaning of the FLSA:

(1) The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;

(2) The training is for the benefit of the trainees or students;

(3) The trainees or students do not displace regular employees, but work under their close observation;

(4) The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion his or her operations may actually be impeded;

(5) The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and,

(6) The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

Inasmuch as the Department has not been delegated general regulatory authority under the FLSA, and these regulations are authorized to govern certain special provisions applicable to workers with disabilities, the Department has concluded that the inclusion of this material in these regulations would be inappropriate. One comment indicated that work which was incidental to diagnostic assessment, situational evaluation, or work adjustment, should not render an individual an employee. The Department has always considered work performed as a part of an evaluation or training program to be compensable. This is made clear in the definition of "employ" which states that an employment relationship "does not depend upon the level of performance or whether the work is of some therapeutic benefit." This position conforms to various court decisions regarding the employment relationship under FLSA. (A sentence has been added to this definition from 525.4 regarding workers engaged in producing craft products. See that section for discussion.)

One comment notes that §525.3(h) could be read to mean that a certificate is issued "to a worker with a disability" and asks if this is correct. This section has been amended to make clear that certificates are issued to employers, not workers.

One comment suggests eliminating the example given in § 525.3(i) for calculating a commensurate wage since the example implies that the Department may require commensurate wages in excess of the statutory minimum. The illustrative language has been retained but a statement has been added making it clear that commensurate wages, for purposes of FLSA, need never be higher than the statutory minimum wage.

Two comments asked that guidance be included regarding the acceptable manner of weighing the factors of quantity and quality for purposes of arriving at a commensurate wage for workers paid at hourly rates, and suggest allowing employers to use differing ratios of quality to quantity based on local industry surveys. Historically, there have been difficulties in agreeing upon an objective method of determining the commensurate wage rate of individuals paid on an hourly-rate basis as opposed to a piece-rate basis. Based on a demonstration study conducted several years ago with the help of the Advisory Committee, the Department adopted a policy of accepting a ratio of 90 percent quantity to 10 percent quality as most nearly resulting in payment of commensurate wage rates. While the Department recognizes the limitations of this policy, there is no indication that its application has curtailed employment opportunities or resulted in payment of less than commensurate wage rates. This policy is a rule-of-thumb and, where it is not appropriate for the work to be performed, variations are allowed. Since

this policy is used only as a guideline, it is not considered appropriate for inclusion in these regulations.

Two comments expressed concern over the lack of a definition of the term experienced worker. A definition has been added.

Section 524.4 Patient Workers

This section contains guidelines that are unique to determining if an employment relationship exists for patient workers in hospitals or institutions. There were four comments on this section.

Two comments asked for more guidance with respect to determining under what circumstances a patient worker may volunteer to work in the institution or the community. In addition, one of these comments asked why certain guidelines contained in the Field Operations Handbook (FOH) regarding the employment relationship were not included in the regulations and whether the position regarding the production of craft items was limited to patient workers. The Department has determined that the regulations contain sufficient guidelines concerning the employment relationship and that inclusion of additional guidelines from the FOH is not appropriate in this instance. Upon review, the Department has also determined that the position with respect to craft items applies to all workers with disabilities, not just those who are patient workers. This position has therefore been moved to § 525.3(g).

One comment asked for a clarification of the statement in this section that no employment relationship exists where an individual "performs personal housekeeping chores." The comment pointed out a possible conflict with recently promulgated 42 CFR Part 483 governing Intermediate Care Facilities for the mentally retarded which states that "* * * it is acceptable for individuals to engage in household tasks which are in common with other individuals, all sharing the total household tasks commonly shared in nuclear family units." This part also states that "[t]he expectation is that tasks are the general responsibility of the individual, and that the duties rotate to the maximum extent possible." The apparent conflict with § 525.4 arises from this section's silence on performing commonly shared household tasks as opposed to performing only one's own personnal chores. In the past, the Department has reviewed individual situations involving small units operating in a family-like or nuclear family manner and has found that individuals may share and rotate duties without creating an employment relationship. The Department agrees that the regulations need to make some reference to such situations, and language has been added to indicate that performance of commonly shared household tasks may be acceptable. However, the Department does not intend that any facility may avoid compensating its patient workers by deeming the situation a "family-like setting" and rotating the tasks.

The Department feels it is necessary to closely review such situations and will provide guidance on a case-by-case basis.

A lengthy comment was received from representatives of therapeutic communities for substance abuse. The representatives asked that changes be made in §§ 525.3 (e) and (g) and § 525.4 to specifically exclude from the definition of "employee" persons who are residents of therapeutic communities for substance abuse who voluntarily perform tasks in those communities as a part of structured treatment programs. The comment stated that such residents should be excluded because application of FLSA and these regulations would interfere with the rehabilitation program of the residents and substantially increase the cost of these programs, which would have to be charged back to the residents. The representatives stated that this special exception should be made because the programs in the therapeutic communities are not comparable to long-term programs in mental institutions where protection against exploitation and abuse is necessary. The Department currently has a policy with respect to residential programs for drug treatment as follows: The Department will not assert the existence of an employment relationship where, but only where, the activities of the residents are those ordinarily carried on on a daily basis in a private home and not for the economic benefit of the facility; the activities would ordinarily not be performed by full-time employees; residence at the facility is short-term (usually no more than one year) and the facility is relatively small with no paid staff other than counselors. The representatives of therapeutic communities state that this policy should be modified since, due to the scope of the drug problem today, facilities have grown larger (up to 300 beds) and programs have grown longer. The Department is aware of the size and scope of the drug problem and understands that some therapeutic drug treatment programs may have certain features which make them different from programs for individuals with other disabilities. However, the Department does not conclude that these differences sufficiently distinguish these programs from other programs for individuals with disabilities to justify the action requested.

The Department's position that FLSA must be enforced with respect to patient workers is mandated by the court's ruling in *Souder* v. *Brennan*, 72 CCH Lab. Cas. 32, 980 (D.D.C. 1973), which held that an employment relationship exists "[s]o long as the institution derives any consequential economic benefit" from the work performed by patients.

Section 525.6 Compensable Time

This section clarifies the issue of compensable time with respect to workers with disabilities. Twelve comments were received on this section.

Eight of the comment indicated that including vocational training as an example of an alternative program that was not a compensable activity was confusing since vocational training could easily be directly related to the workers' jobs and therefore should be compensable. Upon review, the Department agrees that the example, as stated, could lead to confusion as to whether training is compensable and has deleted it. One of the comments suggested including job seeking skills training, independent living skills training, or adult basic eduation as additional examples. The examples have been added. One comment favored the vocational training example but objected to restricting it to work not related to the worker's job. The comment stated that ruling out programs directly related to the worker's job was not in the best interest of the individual with disabilities and that some training without compensation is fair to the employee and employer. The Department recognizes that many individuals with disabilities participate in rehabilitation programs that include some form of vocational training which is closely job-related. It also recognizes that the existence of an employment relationship must be determined on a case-by-case basis (see discussion concerning § 525.3, *supra*), that such programs are designed primarily to be of ultimate benefit to the individual, and that the existence of an employment relationship and payment of wages may not be of primary importance to the individual or the facility. However, once it has been established that an employment relationship exists, the Department has no authority to waive the requirements of FLSA, even where such a relationship may be an incidental or insignificant part of an overall program. Two comments ask if the

guidelines apply to individuals employed in the community as opposed to those employed in rehabilitation facilities. These guidelines would apply in any situation. However, it is generally recognized that individuals with disabilities employed in rehabilitation facilities may not be able to leave the facilities when work is not available. In such situations, the facilities may provide alternative noncompensable activities, so long as a clear distinction is made between such activities and those that are compensable. It is unlikely that individuals employed in the community would be unable to leave the premises of the employer when work was unavailable or that the employer would be expected to provide alternative activities. This section does include a reference to the general guidelines regarding compensable time contained in Part 785.

Section 525.7 Application for Certification

This section contains the procedural requirements for submitting an application for a certificate authorizing special minimum wages. Two comments were received regarding this section.

Four comments state that this section should be considerably expanded by including more guidance on the application process. The comments noted concern about an alleged variance in the interpretation of application requirements among different regional offices of the Department and a backlog of unprocessed applications in certain regional offices which could result in possible violations. Specifically, it was suggested that the application forms themselves, as well as the type and amount of information required on them, be made a part of the regulations and that definitions of the terms "branch establishment" and "enclave" be included. After careful consideration, the Department has decided not to include the application forms in these regulations. It does not seem that this approach would address the concerns expressed in the comments. The applications are official Department of Labor forms which must be approved periodically by the Office of Management and Budget. Placing the official form in the regulations would not preclude misinterpretations or backlogs of unprocessed applications. In addition, puting the application forms in the regulations would increase the length and complexity of the regulations and make it difficult to modify these forms in the future. The Department views the definitions of "branch establishment" and "enclave," as policy matters which are best addressed in the FOH. However, the Department recognizes the validity of the concerns expressed and intends to initiate efforts after the adoption of this final rule to insure that there is consistency from region to region. One comment objects that certificates become effective upon application, not Departmental approval. This is not current Departmental policy or procedure. Certificates issued in response to initial applications are effective only after review by the Department. Special minimum wages are not permitted prior to such approval. The Department recognizes its responsibility to promptly review initial applications and gives them priority.

Section 525.8 Special Provisions for Temporary Authority

This section contains provisions relating to obtaining temporary authority to employ workers with disabilities pursuant to a vocational program administered by the Veterans Administration or a State agency. There were two comments on this section.

One commenter expresses concern that temporary authority, which may only be extended for 90 days, could expire before the Department takes action on the application, resulting in violations due to the lack of a certificate. This response suggested that the regulations require the Department to respond within 90 days. The Department appreciates the need to review such applications in a timely manner and has established standards to that effect.

The other comment contended that there is no statutory authority for granting temporary authority. Section 14(c) of FLSA authorizes the Secretary of Labor, by regulation or order, to provide for the employment under special certificates of individuals with disabilities at special minimum wages. The Secretary has determined that this authority should be exercised by permitting limited and very temporary self-certification by certain governmental entities. The purpose of these procedures, which were a part of the regulations prior to the 1986 Amendments (29 CFR Part 524.4), is to allow for timely placements and avoid undue delay. The Department retains oversight over such temporary certificates, which are only good for 90 days and may not be renewed except by the Department. Since these provisions have been a long standing part of the regulations without presenting serious problems they have been retained in the final rule.

Section 525.9 Criteria for Employment of Workers With Disabilities Under Certificates at Special Minimum Wage Rates

This section contains the criteria for consideration in deciding whether to issue a certificate authorizing the employment of workers with disabilities at special minimum wages. There were thirteen comments on this section.

Two of the comments pointed out that the terms "handicapped" and "disabled" had been used interchangeably in this section as well as elsewhere in the regulations, causing possible confusion. The comments also suggested that a definition of the term "disabled" be included. The regulations have been revised to consistently use the terms "disabled" or "disabilities" in referring to individuals subject to these regulations. While a definition has not been added of the term "disability" per se, the definition of the term "worker with a disability" has been expanded to include examples of disabilities that do or do not fall within the scope of these regulations (§ 525.3(d)).

Eight of the comments suggested amendments to sections 525.9(a) (2) and (3). Several of the comments suggested changing subsection (a)(2) to read "The prevailing wages of 100% productive experienced employees * * *" Others suggested changing subsection (a)(3) to read "The productivity of workers with disabilities * * *" rather than "The comparative productivity of workers with disabilities * * *" It was apparent from these comments that this subsection was not clearly worded with respect to the Department's intent. These comments indicated that, if literally interpreted, the proposed sections would have required potential employers of workers with disabilities at special minimum wages to determine the productivity of nondisabled experienced workers of other employers in the vicinity by visiting the job sites of such other employers. This section has been revised to make it clear that the Department does not expect the potential employer to directly determine the productivity of individuals employed by other employers in order to make a showing that special minimum wages are required in order to prevent the curtailment of opportunities for employment. The potential employer must determine the productivity of nondisabled workers but may use the methods outlined elsewhere in these regulations.

One comment suggests that employers be required to make written assurances that employees receive advance written

notices of any wage evaluation and written notices explaining in detail the results of any such evaluation. The regulations already require, in § 525.12(g), that the workers with disabilities be informed orally and in writing of the terms of the certificate under which they are employed. While the Department would encourage employers to make such information available, the Department is reluctant to add to an employer's paperwork burdens by making this a formal regulatory requirement.

One comment indicates that annual reviews for both workers paid at hourly rates and those paid at piece rates should be adequate and that semi-annual reviews for hourly-rated workers should not be required. A semi-annual review for an hourly-rated worker is a statutory requirement.

Section 525.10 Prevailing Wage Rates

This section, which was not contained in previous regulations, provides basic guidelines with respect to determining a prevailing wage rate for purposes of paying commensurate wages to workers with disabilities. The guidelines contained in this section are based on policies developed and used by the Department in administering this requirement and have been discussed with the Advisory Committee on Special Minimum Wages.

As expected, this section of the proposed regulations drew the most comments, a total of forty-four. While no comment suggested that prevailing wages are unnecessary, there is considerable disagreement on how an acceptable prevailing wage rate should be determined. In general, the comments sought clarification of certain points or asked for more specific guidelines.

One of the key elements in arriving at the commensurate wage rate of a worker with disabilities is determining the prevailing wage rate. The prevailing wage rate is simply the wage rate paid to workers not disabled for the work to be performed, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work. However, the Department has found, both in administering this program and reviewing the comments to the proposed regulations, that this single area generates the most disagreement.

In general, the comments pointed out numerous areas that needed additional clarification. After reviewing all of the comments, this section has been revised to clarify what the Department will accept as a prevailing wage for purposes of determining a commensurate wage. The following points have been clarified in the final rule: (1) That, while there may not be a single prevailing wage rate, the employer has the responsibility to demonstrate that the rate used was objectively determined; (2) when employers may use the wage rates paid to their employees and when surveys must be conducted; (3) what constitutes a representative sample and a similar employer; and (4) that there is no one prescribed method for calculating the prevailing wage.

Section 525.12 Terms and Conditions of Special Minimum Wage Certificates

This section states the terms and conditions of special certificates. There were twenty-seven comments on this section.

One of the comments recommended that paragraph (c) should indicate that certificates would not be issued for periods to exceed one year to insure an annual review by the Department. The Department appreciates the desirability of an annual review and it is current policy to require annual renewal of authority to pay special minimum wages. However, the Department has elected not to include this particular policy in the regulations in order to preserve flexibility in the administration of certificate requirements.

One comment pointed out that the term "experienced worker," as used in paragraphs (d) and (f) should be defined. This has been addressed in § 525.3(k).

Seven comments were received regarding subsection (g) which requires that a worker with a disability, or the worker's parent or guardian, be informed of the terms of a certificate. One comment suggests this subsection should specifically state what terms must be disclosed, because of the possibility of an appeal under § 525.22, and another suggests that a copy of the certificate be given to the workers. Both recommendations have been addressed by adding language to this subsection indicating that the disclosure requirement may be satisfied by making available copies of the certificate. Information with respect to appeals under § 525.22 is covered by the poster requirement in § 525.14. Two comments ask for clarification of what is meant by the phrase "where appropriate." It was not the intent of this subsection to require that parents or guardians be informed of certificate terms if the worker has an understanding of these terms and chooses not to have other parties informed. Language has been added to clarify this. Two of the comments expressed specific support for requiring written and oral notification.

There were eighteen comments on paragraph (h) regarding the establishment of piece rates. Two of the comments point out the need to have this section as clearly written as possible, particularly in light of the possibility of an appeal before an administrative law judge. The Department recognizes the need for clarity and that there are a number of methods available for establishing piece rates that are generally recognized and accepted. Difficulties have arisen not in choosing among such recognized methods, provided such methods are properly applied, but in utilizing a recognized method rather than paying an arbitrary wage rate. Where an employer determines that special minimum wages are necessary in order to prevent the curtailment of opportunities for employment, the employer must take those steps necessary to arrive at a commensurate wage. These regulations attempt to establish minimum acceptable procedures under which commensurate wage rates can be determined without creating unnecessary administrative burdens for employers or limiting the way in which such wages can be determined.

One comment asks what is meant by "other measurement methods" and if there will be a training prerequisite while three other responses ask if the Department will provide training. The term "other measurement methods" is meant to be inclusive rather than exclusive and covers any generally recognized method. It is the responsibility of the employer, in order to justify the payment of special minimum wages, to be able to demonstrate that the method is one generally recognized and accepted among industrial engineers and has been properly applied. The Department will not establish standards for training but may make some voluntary training available at various conferences and workshops. We have added language to paragraph (h)(1) to make the Department's position clear.

One comment suggests that the "50 minute hour" be cited as an acceptable work measurement method. The Department has accepted a simplified work measurement method, usually referred to as the "50 minute hour," and will continue to do so. However, it is not deemed appropriate or necessary to cite this method in the regulations since it might imply that it is the one preferred by the Department.

In paragraph (h)(1), one of the comments suggests that a host company's piece rates could be used where the employer of workers with disabilities is subcontracting work from

the host or contracting employer and is using the same method of production. Language has been included in paragraph (h)(1) to make clear that an employer may use established piece rates where the methods of production are the same.

One comment asks for further clarification of work measurement specifics, especially in regard to hourly rated workers. After adoption of these regulations, the Department intends to develop nontechnical publications outlining acceptable procedures and therefore considers it inappropriate and unnecessary to include such procedures in the regulations.

Several comments pointed out that § 525.12(h)(2)(i) contained a typographical error: "competition" should have been "completion." This has been corrected.

Several comments asked what was meant by successful completion of training in performance rating or leveling, whether the Department would provide such training, and if Departmental personnel will have completed such training. The Department considers performance rating or leveling to be an accepted work measurement technique that is used to adjust the observed time of an individual worker to reflect that worker's pace as compared to the pace that an average worker could be expected to maintain for an extended period. Departmental personnel will be sufficiently familiar with this technique to make a judgment as to whether it has been used appropriately. Several other specific questions were raised regarding the definition of "normal or near normal performance," the availability of resources to complete work measurements, and the training of individuals in specific work measurement methods. The Department intends to develop nontechnical pamphlets to address these issues.

Several comments indicated that paragraph (h)(2)(iii) needed clarification with respect to when the Department would expect a second work measurement to be conducted. The Department recognizes that employers may develop jigs or fixtures which enable workers with disabilities to perform the work or to increase productivity. For example, where workers with disabilities have difficulty in counting, the employer may develop a counting board. Rather than counting the items, the employee would place them on the counting board and then drop them into a container. However, in determining the standard for workers without disabilities, the counting board may not have been used since it would not have been required to perform the work. In this instance, the employer would not have to perform a second work measurement. On the other hand, where an employer does not have a sufficient number of machines for all workers and some workers must perform tasks manually, a second work measurement would be required for those individuals who do not have access to the machinery, except that the employer may choose to use the higher piece rate for all employees. Paragraph (h)(2)(iii) has been amended to make these requirements clear.

Two comments were received regarding paragraph (i) which allows the pooling of earnings in limited circumstances, one opposed to pooling and one supporting pooling. The Department discourages the pooling of earnings since an employer who pools earnings may not be fulfilling the commensurate wage responsibilities. However, there may be some limited situations, such as that cited in the regulations, where the pooling of earnings would be acceptable. This provision was contained in the previous regulations, and since it is applicable only in limited situations will be retained.

There were ten comments on paragraph (j). These comments pointed out that, if an initial evaluation was not required until after one month, a worker with disabilities might not receive a commensurate wage during that period. The comments also pointed out that individual workers could change jobs frequently during a six month period and therefore should have more frequent evaluations. The language of this subsection has been amended in an effort to address those problems.

Section 525.13 Renewal of Special Minimum Wage Certificates

This section contains procedures for certificate renewal. There was one comment on this section.

The comment expressed opposition to paragraph (b), which extends authority to pay special minimum wages if renewal applications are properly and timely filed, and to paragraph (c), which provides for continued payment of special minimum wages pending review of a denial action. The commenter opposes (b) because employers should be responsible for anticipating their renewal needs and the statute requires prior authorization, not after-the-fact approval. The purpose of paragraph (b) is to insure that authority to employ workers with disabilities at special minimum wages does not lapse where the employer has submitted a properly completed renewal application and the employer has no reason to believe that the application will be disapproved, but the Department has not had the opportunity to process that application. However, upon further consideration, the Department agrees that employers should not be permitted to continue paying special minimum wages where sufficient grounds for denial of an application exist. Paragraph (c) has been amended accordingly.

Section 525.14 Posting of Notices

This section sets forth the requirement that an employer with a certificate post a notice alerting workers being paid special minimum wages of the terms and conditions of their employment. There were three comments on this section.

One comment opposes the posting of notices since posting a notice regarding workers with disabilities could stigmatize those workers or discourage employers from hiring them. The purpose of posting a notice is to insure that workers employed at special minimum wages are informed of the terms and conditions of their employment. However, the Department recognizes that in certain situations, such as where an employer may have only one or two workers with disabilities, posting of the notice may not be in a worker's best interest. We have modified this section to allow the employer to provide the notice directly to the worker.

One comment asks for clarification of what is meant by "as prescribed by the Administrator." This has been clarified by adding that the Administrator will also supply such posters.

One comment indicates that copies should be distributed and made available in other formats, including Braille and recorded tapes. We have added language to the effect that posters will be made available in other formats on request.

Section 525.16 Records to be Kept by Employers

This section outlines those recordkeeping requirements unique to the employment of workers with disabilities at special minimum wages. There were seven comments on this section.

Five comments express concern that these regulations now require every employer to maintain records verifying a worker's disability. In combining regulations which dealt separately with competitive employment, nonprofit rehabilitation facilities, and hospitals and institutions, the Department overlooked the difficulty and burden of requiring every employer to maintain

medical records related to a worker's disability. Language has been changed to allow such information to be maintained by other appropriate referring agencies or facilities.

One comment expresses concern that the verification of nonobvious disabilities is discriminatory and verification should be required for all workers employed at special minimum wages. This language has been deleted.

One comment indicates that employees, parents, guardians, or their authorized representatives should have access to all records identified in this section and that records to be kept by employers should also include the results of any Wage and Hour investigations and decisions made under § 525.22. There is no statutory authority for requiring employers to disclose all records to employees. However, insofar as such records become a part of closed Departmental investigation files, they may be disclosable under the Freedom of Information Act.

Section 525.17 Revocation of Certificates

This section contains procedures for revoking certificates where serious violations occur or where the certificate is no longer necessary to prevent the curtailment of opportunities for employment. There was one comment on this section.

The comment opposed the provision in paragraph (b) extending a certificate in effect during a request for a review of revocation action. The commenter felt that the basis for revocation should be sufficient to warrant immediate termination of authority to pay special minimum wages. Upon consideration, the Department concurs with this comment, and has deleted this paragraph.

The commenter also opposes paragraph (c) which affords an employer the opportunity to demonstrate or achieve compliance before a certificate is revoked. The comment would have this section specify that payment of the full minimum wage should be required. In the Department's view, fairness requires that such an opportunity be provided except in cases of willfulness or where the public interest requires otherwise.

Section 525.19 Investigations and Hearings

This section addresses investigations and hearings initiated by the Administrator to review a certification action. There were two comments on this section.

Both comments noted the lack of specific rules or procedures for such investigations or hearings. One asked about authority for such procedures and the relationship to the provisions for review by an aministrative law judge under FLSA section 14(c)(5). Provisions for investigations and hearings have been a part of these regulations since their adoption. There are no formal rules pertaining to such procedures, which are separate and apart from proceedings under section 14(c)(5), and relate only to the issuance or revocation of certificates. Language has been added to make it clear that these procedures are unrelated to those taken pursuant to FLSA section 14(c)(5).

Section 525.20 Relation to Other Laws

This section points out the relationship of the requirements of these regulations to other laws which may establish higher standards. There was one comment on this part.

The comment asked that the regulations adopted the position that the receipt of a certificate does not carry an implied or explicit determination that the employer would be exempt from any applicable provision of the National Labor Relations Act. While the Department appreciates the concerns expressed in this comment, especially in light of the Court of Appeals decision in *Arkansas Lighthouse for the Blind* v. *NLRB*, 851 F.*2nd* 180 (8th Cir 1988), such a position relates to an interpretation of the National Labor Relations Act, and is inappropriate in FLSA regulations.

Section 525.21 Lowering of Wage Rates

This section interprets the provision in section 14(c)(3) prohibiting the reduction of the wage rates of certain workers with disabilities without prior approval from the Secretary of Labor until May 31, 1988. There were five comments on this section.

Three of the comments pointed out that the end of the period had already passed, making this section obsolete, and suggested deletion. However, since the statute of limitations covering FLSA violations is two years (three years in the case of willful violations), this section will have some relevance for several more years. One response asks for additional guidelines with respect to the criteria listed in (d). Requests for exceptions during the period were handled on a case-by-case basis. Since the period during which prior approval was required has passed, additional guidelines are not needed.

Section 525.22 Employee's Right to Petition

This section discusses the employee's right to petition for a review by an Administrative Law Judge (ALJ) of the employee's special minimum wage rate. There were seven comments on this section.

Three of the comments asserted that insufficient guidance was given to employers with respect to the exact criteria that ALJs would use or whether the hearing will be a part of the enforcement program of the Wage and Hour Division. The proposed rule reflects the statutory language which was new with the 1986 amendments. Additional guidance will be made available as experience is gained.

Two comments indicated that workers with disabilities should have the opportunity to work out disputes through a normal grievance procedure at the local level. One comment noted that the proposed rule did not preclude such a procedure but proposed that the rule encourage such. While the Department appreciates the importance of such procedures, it considers it inappropriate to include any provision which would in any way tend to discourage an employee's exercise of rights conferred by the statute.

One comment points out that if the employee has no guardian, the involvement of a parent or guardian need not be required if the employee so decides. This is made sufficiently clear in the language which state that a petition may be filed by the employee or a parent or guardian.

One comment raises a question about the time requirements in paragraphs 525.22(b) and (c). Paragraph (b) indicates that all parties to a hearing shall be given at least eight days notice. Paragraph (c) indicates that any employer intending to participate shall provide documentary evidence no later than 15 days prior to the commencement of the hearing. Language has been added to (c) to provide the employer with additional time where notice of the hearing was not timely received. The same comment also contained concenrs about the time requirements applicable once the ALJ has rendered a decision. Since the time requirements in the regulations essentially reflect the statutory language, the Department lacks authority to provide for longer time frames.

One comment proposes several technical changes in this section. In paragraph (a), it is suggested that an employee's right to counsel be made clear. We have added language to do so. The comment objects that paragraph (c) permits the Administrator to participate in the proceedings but not other parties. This provision has been included because the Administrator has a special

role to play and interest in assuring that the law is correctly and consistently interpreted and applied. The comment also objects to the provision in paragraph (e) which gives the ALJ authority to determine a wage below the statutory minimum where the wages paid are found not justified. The comment indicates that such authority is not found in the statute and that, where a specific special minimum wage is found not justified, the employer should be required to pay the full statutory minimum until a new determination can be made. The Department believes that the issue of the correct wage should not be left unsettled pending further proceedings, and that in the interest of administrative responsibility, the ALJ should have the authority to decide the correct wage based on the evidence presented. Such authority is appropriate to avoid the necessity for continued proceedings. The comment also asserts that paragraph (f) is too open-ended, allowing anyone to seek a review of the decision of an ALJ. This subsection has been amended to clarify that only those who participated in the initial decision, including the Administrator, may request a review. The comment asks that paragraph (g) be clarified with respect to the amount of time the Secretary may take to review a decision of an ALJ. The Department reads the statute as allowing the Secretary 30 days to review the record after receiving a request for a review. This respondent also recommends additional language providing for the award of attorney's fees. The Department finds no statutory authority for such fees.

Section 525.23 Work Activities Centers

This section restates the provisions of section 14(c)(4) which allow employers to continue to maintain or establish work activities centers. Two comments were received regarding this section.

One comment expressed the view that the use of the term "inconsequential productive capacity" used in this section disregarded the experience of the last several years in successfully placing workers with severe disabilities in the community and was both pejorative and unnecessary and suggested that the reference be deleted. This term has been deleted from the final rule.

The other comment opposed the use of the term "deficiency" as used to define a worker with a disability. This term is no longer used.

Section 525.24 Advisory Committee on Special Minimum Wages

This section provides a regulatory reference to the Committee. One comment addressed this section.

The comment discussed the implied authority of the Administrator to determine the agenda for a meeting and the composition of the Committee. These matters are more properly addressed in the regulations on Federal Advisory Committee Management (41 CFR Part 101–6) and the Charter of the Committee, which must be filed with and approved by the General Services Administration.

In addition to the comments regarding specific sections, there were five general comments. One asks how to determine whether an employment relationship exists for incarcerated youthful offenders, many of whom may have been diagnosed as having mental or physical disabilities, who have been enrolled in sheltered workshop-type programs. Because circumstances may differ from program to program or situation to situation, these questions must be addressed on a case by case basis. One comment suggested it would be helpful if addresses and telephone numbers of various Departmental offices were more readily available because calls to local offices draw blank responses or incorrect referrals. Lists of all regional offices are available for distribution. In addition, the addresses of individual offices are included on certificates and posters. One comment suggested basing vacation, holiday, and sick pay on the criteria established in § 525.12(j) (2) and (3) to satisfy state law requirements even though such requirements are not a part of FLSA. Since such requirements are not a part of FLSA, the Department may not set standards in these regulations. One comment addressed the lack of prohibitions against unfair competition. While such a prohibition was contained in the previous regulations governing the employment of workers with disabilities in nonprofit rehabilitation facilities, the Department appeared to lack statutory authority to enforce such a provision. Therefore, such a prohibition was not included in these regulations. The same comment opposed the payment of fringe benefits under a contract subject to the Service Contract Act since many of the individuals are already receiving other benefits such as Medicare or Medicaid. The commenter proposed providing benefits only to those not already receiving benefits or at the same proportionate rate as productivity. The requirement for full fringe benefits to worker with disabilities employed under certificates issued pursuant to this part is contained in Regulations 29 CFR Part 4. One comment complained about the difficulty of completing the I–9 form required under the Immigration and Reform Control Act. This is outside the scope of these regulations. The final question asked was whether there are provisions for training in specific recordkeeping requirements or if there are any written guidelines. As soon as the final rule is adopted, the Department intends to develop appropriate nontechnical pamphlets and to conduct public training sessions with respect to these regulations.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

This rule will not have a significant effect on a substantial number of small entities. This conclusion is based on all information presently available to the Department concerning the employment of workers with disabilities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 524

Handicapped, Minimum wages, Reporting and recordkeeping requirements.

29 CFR Part 525

Disabled, Handicapped, Hospitals, Minimum wages, Reporting and recordkeeping requirements.

29 CFR Part 529

Hospitals, Minimum wages, Reporting and recordkeeping requirements.

For the reasons set forth above, 29 CFR Parts 524 and 529 are removed and 29 CFR Part 525 is revised as set forth below.

Signed at Washington, DC, on the 4th day of August, 1989.

Elizabeth Dole,

Secretary of Labor.

John Fraser,

Acting Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

PART 524—[REMOVED]

1. Part 524, Special Minimum Wages for Handicapped Workers in Competitive Employment, is removed.

PART 529—[REMOVED]

2. Part 529, Employment of Patient Workers in Hospitals and Institutions at Subminimum Wages, is removed.

3. Part 525 is revised to read as follows:

PART 525—EMPLOYMENT OF WORKERS WITH DISABILITIES UNDER SPECIAL CERTIFICATES

Sec.

Authority: 52 Stat. 1060, as amended (29 U.S.C. 201–219); Pub. L. 99–486, 100 Stat. 1229 (29 U.S.C. 214).

§ 525.1 Introduction.

The Fair Labor Standards Amendments of 1986 (Pub. L. 99–486, 100 Stat. 1229) substantially revised those provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201) (FLSA) permitting the employment of individuals disabled for the work to be performed (workers with disabilities) at special minimum wage rates below the rate that would otherwise be required by statute. These provisions are codified at section 14(c) of the FLSA and:

(a) Provide for the employment under certificates of individuals with disabilities at special minimum wage rates which are commensurate with those paid to workers not disabled for the work to be performed employed in the vicinity for essentially the same type, quality, and quantity of work;

(b) Require employers to provide written assurances that wage rates of individuals paid on an hourly rate basis be reviewed at least once every six months and that the wages of all employees be reviewed at least annually to reflect changes in the prevailing wages paid to experienced individuals not disabled for the work to be performed employed in the locality for essentially the same type of work;

(c) Prohibit employers from reducing the wage rates prescribed by certificate in effect on June 1, 1986, for two years;

(d) Permit the continuance or establishment of work activities centers; and

(e) Provide that any employee receiving a special minimum wage rate pursuant to section 14(c), or the parent or guardian of such an employee, may petition for a review of that wage rate by an administrative law judge.

§ 525.2 Purpose and scope.

The regulations in this part govern the issuance of all certificates authorizing the employment of workers with disabilities at special minimum wages pursuant to section 14(c) of FLSA.

§ 525.3 Definitions.

(a) "FLSA" means the Fair Labor Standards Act of 1938, as amended.

(b) "Secretary" means the Secretary of Labor or the Secretary of Labor's authorized representative.

(c) "Administrator" means the Administrator of the Wage and Hour Division, U.S. Department of Labor, or the Administrator's authorized representative.

(d) "Worker with a disability" for the purpose of this Part means an individual whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed. Disabilities which may affect earning or productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism, and drug addiction. The following, taken by themselves, are not considered disabilities for the purposes of this part: Vocational, social, cultural, or educational disabilities; chronic unemployment; receipt of welfare benefits; nonattendance at school; juvenile delinquency; and, correctional parole or probation. Further, a disability which may affect earning or productive capacity for one type of work may not affect such capacity for another.

(e) "Patient worker" means a worker with a disability, as defined above, employed by a hospital or institution providing residential care where such worker receives treatment or care without regard to whether such worker is a resident of the establishment.

(f) "Hospital or institution," hereafter referred to as "institution," is a public or private, nonprofit or for-profit facility primarily engaged in (i.e., more than 50 percent of the income is attributable to) providing residential care for the sick, the aged, or the mentally ill or retarded, including but not limited to nursing homes, intermediate care facilities, rest homes, convalescent homes, homes for the elderly and infirm, halfway houses, residential centers for drug addicts or alcoholics, and the like, whether licensed or not licensed.

(g) "Employ" is defined in FLSA as "to suffer or permit to work." An employment relationship arises whenever an individual, including an individual with a disability, is suffered or permitted to work. The determination of an employment relationship does not depend upon the level of performance or whether the work is of some therapeutic benefit. However, an individual does not become an employee if engaged in such activities as making craft products where the individual voluntarily participates in such activities and the products become the property of the individual making them, or all of the funds resulting from the sale of the products are divided among the participants in the activity or are used in purchasing additional materials to make craft products.

(h) "Special minimum wage" is a wage authorized under a certificate issued to an employer under this part that is less than the statutory minimum wage.

(i) "Commensurate" wage is a special minimum wage paid to a worker with a disability which is based on the worker's individual productivity in proportion to the wage and productivity of experienced nondisabled workers performing essentially the same type, quality, and quantity of work in the vicinity in which the individual under certificate is employed. For example, the commensurate wage of a worker with a disability who is 75% as productive as the average experienced nondisabled worker, taking into consideration the type, quality, and quantity of work of

the disabled worker, would be set at 75% of the wage paid to the nondisabled worker. For purposes of these regulations, a commensurate wage is always a special minimum wage, i.e., a wage below the statutory minimum.

(j) "Vicinity" or "locality" means the geographic area from which the labor force of the community is drawn.

(k) "Experienced worker" means a worker who has learned the basic elements or requirements of the work to be performed, ordinarily by completion of a probationary or training period. Typically, such a worker will have received at least one pay raise after successful completion of the probationary or training period.

§ 525.4 Patient workers.

With respect to patient workers, as defined in § 525.3(e), a major factor in determining if an employment relationship exists is whether the work performed is of any consequential economic benefit to the institution. Generally, work shall be considered to be of consequential economic benefit if it is of the type that workers without disabilities normally perform, in whole or in part in the institution or elsewhere. However, a patient does not become an employee if he or she merely performs personal housekeeping chores, such as maintaining his or her own quarters, or receives a token remuneration in connection with such services. It may also be possible for patients in family-like settings such as group homes to rotate or share household tasks or chores without becoming employees.

§ 525.5 Wage payments.

(a) An individual whose earning or productive capacity is not impaired for the work being performed cannot be employed under a certificate issued pursuant to this part and must be paid at least the applicable minimum wage. An individual whose earning or productive capacity is impaired to the extent that the individual is unable to earn at least the applicable minimum wage may be paid a commensurate wage, but only after the employer has obtained a certificate authorizing payment of special minimum wages from the appropriate office of the Wage and Hour Division of the Department of Labor.

(b) With respect to patient workers employed in institutions, no deductions can be made from such individuals' commensurate wages to cover the cost of room, board, or other services provided by the facility. Such an individual must receive his or her wages free and clear, except for amounts deducted for taxes assessed against the employee and any voluntary wage assignments directed by the employee. (See Part 531 of this title.) However, it is not the intention of these regulations to preclude the institution thereafter from assessing or collecting charges for room, board, and other services actually provided to an individual to the extent permitted by applicable Federal or State law and on the same basis as it assesses and collects from nonworking patients.

§ 525.6 Compensable time.

Individuals employed subject to this part must be compensated for all hours worked. Compensable time includes not only those hours during which the individual is actually performing productive work but also includes those hours when no work is performed but the individual is required by the employer to remain available for the next assignment. However, where the individual is completely relieved from duty and is not required to remain available for the next assignment, such time will not be considered compensable time. For example, an individual employed by a rehabilitation facility would not be engaged in a compensable activity where such individual is completely relieved from duty but is provided therapy or the opportunity to participate in an alternative program or activity in the facility not involving work and not directly related to the worker's job (e.g., self-help skills training, recreation, job seeking skills training, independent living skills, or adult basic education). The burden of establishing that such hours are not compensable rests with the facility and such hours must be clearly distinguishable from compensable hours. (For further information on compensable time in general under FLSA, see Part 785 of this title.)

§ 525.7 Application for certificates.

(a) Application for a certificate may be filed by any employer with the Regional Office of the Wage and Hour Division having administrative jurisdiction over the geographic area in which the employment is to take place.

(b) The employer shall provide answers to all of the applicable questions contained on the application form provided by the Regional Office.

(c) The application shall be signed by the employer or the employer's authorized representative.

§ 525.8 Special provisions for temporary authority.

(a) Temporary authority may be granted to an employer permitting the employment of workers with disabilities pursuant to a vocational rehabilitation program of the Veterans Administration for veterans with a service-incurred disability or a vocational rehabilitation program administered by a State agency.

(b) Temporary authority is effective for 90 days from the date the appropriate section of the application form is signed and completed by the duly designated representative of the State agency or the Veterans Administration. Such authority may not be renewed or extended by the issuing agency.

(c) The signed application constitutes the temporary authority to employ workers with disabilities at special minimum wage rates. A copy of the application must be forwarded within 10 days to the appropriate Regional Office of the Wage and Hour Division. Upon receipt, the application will be reviewed and, where appropriate, a certificate will be issued by the Regional Office. Where additional information is required or certification is denied, the applicant will receive notification from the Regional Office.

§ 525.9 Criteria for employment of workers with disabilities under certificates at special minimum wage rates.

(a) In order to determine that special minimum wage rates are necessary in order to prevent the curtailment of opportunities for employment, the following criteria will be considered:

(1) The nature and extent of the disabilities of the individuals employed as these disabilities relate to the individuals' productivity;

(2) The prevailing wages of experienced employees not disabled for the job who are employed in the vicinity in industry engaged in work comparable to that performed at the special minimum wage rate;

(3) The productivity of the workers with disabilities compared to the norm established for nondisabled workers through the use of a verifiable work measurement method (see § 525.12(h)) or the productivity of experienced nondisabled workers employed in the vicinity on comparable work; and,

(4) The wage rates to be paid to the workers with disabilities for work comparable to that performed by experienced nondisabled workers.

(b) In order to be granted a certificate authorizing the employment of workers with disabilities at special minimum wage rates, the employer must provide the following written assurances concerning such employment:

(1) In the case of individuals paid hourly rates, the special minimum wage rates will be reviewed by the employer

at periodic intervals at a minimum of once every six months; and,

(2) Wages for all employees will be adjusted by the employer at periodic intervals at a minimum of once each year to reflect changes in the prevailing wages paid to experienced nondisabled individuals employed in the locality for essentially the same type of work.

§ 525.10 Prevailing wage rates.

(a) A prevailing wage rate is a wage rate that is paid to an experienced worker not disabled for the work to be performed. The Department recognizes that there may be more than one wage rate for a specific type of work in a given area. An employer must be able to demonstrate that the rate being used as prevailing for determining a commensurate wage was objectively determined according to the guidelines contained in this section.

(b) An employer whose work force primarily consists of nondisabled workers or who employs more than a token number of nondisabled workers doing similar work may use as the prevailing wage the wage rate paid to that employer's experienced nondisabled employees performing similar work. Where an agency places a worker or workers with disabilities on the premises of an employer described above, the wage paid to the employer's experienced workers may be used as prevailing.

(c) An employer whose work force primarily consists of workers disabled for the work to be performed may determine the prevailing wage by ascertaining the wage rates paid to the experienced nondisabled workers of other employers in the vicinity. Such data may be obtained by surveying comparable firms in the area that employ primarily nondisabled workers doing similar work. The firms surveyed must be representative of comparable firms in terms of wages paid to experienced workers doing similar work. The appropriate size of such a sample will depend on the number of firms doing similar work but should include no less than three firms unless there are fewer firms doing such work in the area. A comparable firm is one which is of similar size in terms of employees or which competes for or bids on contracts of a similar size or nature. Employers may contact other sources such as the Bureau of Labor Statistics or private or State employment services where surveys are not practical. If similar work cannot be found in the area defined by the geographic labor market, the closest comparable community may be used.

(d) The prevailing wage rate must be based upon the wage rate paid to experienced nondisabled workers as defined elsewhere in these regulations. Employment services which only provide entry level wage data are not acceptable as sources for prevailing wage information as required in these regulations.

(e) There is no prescribed method for tabulating the results of a prevailing wage survey. For example, either a weighted or unweighted average would be acceptable provided the employer is consistent in the methodology used.

(f) The prevailing wage must be based upon work utilizing similar methods and equipment. Where the employer is unable to obtain the prevailing wage for a specific job to be performed on the premises, such as collating documents, it would be acceptable to use as the prevailing wage the wage paid to experienced individuals employed in similar jobs such as file clerk or general office clerk, requiring the same general skill levels.

(g) The following information should be recorded in documenting the determination of prevailing wage rates:

(1) Date of contact with firm or other source;

(2) Name, address, and phone number of firm or other source contacted;

(3) Individual contacted within firm or source;

(4) Title of individual contacted;

(5) Wage rate information provided;

(6) Brief description of work for which wage information is provided;

(7) Basis for the conclusion that wage rate is not based upon an entry level position. (See also § 525.10(c).)

(h) A prevailing wage may not be less than the minimum wage specified in section 6(a) of FLSA.

§ 525.11 Issuance of certificates.

(a) Upon consideration of the criteria cited in these regulations, a special certificate may be issued.

(b) If a special minimum wage certificate is issued, a copy shall be sent to the employer. If denied, the employer will be notified in writing and told the reasons for the denial, as well as the right to petition under § 525.18.

§ 525.12 Terms and conditions of special minimum wage certificates.

(a) A special minimum wage certificate shall specify the terms and conditions under which it is granted.

(b) A special minimum wage certificate shall apply to all workers employed by the employer to which the special certificate is granted provided such workers are in fact disabled for the work they are to perform.

(c) A special minimum wage certificate shall be effective for a period to be designated by the Administrator. Workers with disabilities may be paid wages lower than the statutory minimum wage rate set forth in section 6 of FLSA only during the effective period of the certificate.

(d) Workers paid under special minimum wage certificates shall be paid wages commensurate with those paid experienced nondisabled workers employed in the vicinity in which they are employed for essentially the same type, quality, and quantity of work.

(e) Workers with disabilities shall be paid not less than one and one-half times their regular rates of pay for all hours worked in excess of the maximum workweek applicable under section 7 of FLSA.

(f) The wages of all workers paid a special minimum wage under this part shall be adjusted by the employer at periodic intervals at a minimum of once a year to reflect changes in the prevailing wages paid to experienced individuals not disabled for the work to be performed employed in the vicinity for essentially the same type of work.

(g) Each worker with a disability and, where appropriate, a parent or guardian of the worker, shall be informed, orally and in writing, of the terms of the certificate under which such worker is employed. This requirement may be satisfied by making copies of the certificate available. Where a worker with disabilities displays an understanding of the terms of a certificate and requests that other parties not be informed, it is not necessary to inform a parent or guardian.

(h) In establishing piece rates for workers with disabilities, the following criteria shall be used:

(1) Industrial work measurement methods such as stop watch time studies, predetermined time systems, standard data, or other measurement methods (hereinafter referred to as "work measurement methods") shall be used by the employer to establish standard production rates of workers not disabled for the work to be performed. The Department will accept the use of whatever method an employer chooses to use. However, the employer has the responsibility of demonstrating that a particular method is generally accepted by industrial engineers and has been properly executed. No specific training or certification will be required. Where work measurement methods have already been applied by another employer or source, and documentation exists to show that the methods used

are the same, it is not necessary to repeat these methods to establish production standards.

(i) The piece rates shall be based on the standard production rates (number of units an experienced worker not disabled for the work is expected to produce per hour) and the prevailing industry wage rate paid experienced nondisabled workers in the vicinity for essentially the same type and quality of work or for work requiring similar skill. (Prevailing industry wage rate divided by the standard number of units per hour equals the piece rate.).

(ii) Piece rates shall not be less than the prevailing piece rates paid experienced workers not disabled for the work doing the same or similar work in the vicinity when such piece rates exist and can be compared with the actual employment situations of the workers with disabilities.

(2) Any work measurement method used to establish piece rates shall be verifiable through the use of established industrial work measurement techniques.

(i) If stop watch time studies are made, they shall be made with a person or persons whose productivity represents normal or near normal performance. If their productivity does not represent normal or near normal performance, adjustments of performance shall be made. Such adjustments, sometimes called "performance rating" or "leveling" shall be made only by a person knowledgeable in this technique, as evidenced by successful completion of training in this area. The persons observed should be given time to practice the work to be performed in order to provide them with an opportunity to overcome the initial learning curve. The persons observed shall be trained to use the specific work method and tools which are available to workers with disabilities employed under special minimum wage certificates.

(ii) Appropriate time shall be allowed for personal time, fatigue, and unavoidable delays. Generally, not less than 15% allowances (9–10 minutes per hour) shall be used in conducting time studies.

(iii) Work measurements shall be conducted using the same work method that will be utilized by the workers with disabilities. When modifications such as jigs or fixtures are made to production methods to accommodate special needs of individual workers with disabilities, additional work measurements need not be conducted where the modifications enable the workers with disabilities to perform the work or increase productivity but would impede a worker without disabilities. Where workers with disabilities do not have a method available to them, as for example where an adequate number of machines are not available, a second work measurement should be conducted.

(i) Each worker with a disability employed on a piece rate basis should be paid full earnings. Employers may "pool" earnings only where piece rates cannot be established for each individual worker. An example of this situation is a team production operation where each worker's individual contribution to the finished product cannot be determined separately. However, in such situations, the employer should make every effort to objectively divide the earnings according to the productivity level of each individual worker.

(j) The following terms shall be met for workers with disabilities employed at hourly rates:

(1) Hourly rates shall be based upon the prevailing hourly wage rates paid to experienced workers not disabled for the job doing essentially the same type of work and using similar methods or equipment in the vicinity. (See also § 525.10.)

(2) An initial evaluation of a worker's productivity shall be made within the first month after employment begins in order to determine the worker's commensurate wage rate. The results of the evaluation shall be recorded and the worker's wages shall be adjusted accordingly no later than the first complete pay period following the initial evaluation. Each worker is entitled to commensurate wages for all hours worked. Where the wages paid to the worker during pay periods prior to the initial evaluation were less than the commensurate wage indicated by the evaluation, the employer must compensate the worker for any such difference unless it can be demonstrated that the initial payments reflected the commensurate wage due at that time.

(3) Upon completion of not more than six months of employment, a review shall be made with respect to the quantity and quality of work of each hourly-rated worker with a disability as compared to that of nondisabled workers engaged in similar work or work requiring similar skills and the findings shall be recorded. The worker's productivity shall then be reviewed and the findings recorded at least every 6 months thereafter. A review and recording of productivity shall also be made after a worker changes jobs and at least every 6 months thereafter. The worker's wages shall be adjusted accordingly no later than the first complete pay period following each review. Conducting reviews at six-month intervals should be viewed as a minimum requirement since workers with disabilities are entitled to commensurate wages for all hours worked. Reviews must be conducted in a manner and frequency to insure payment of commensurate wages. For example, evaluations should not be conducted before a worker has had an opportunity to become familiar with the job or at a time when the worker is fatigued or subject to conditions that result in less than normal productivity.

(4) Each review should contain, as a minimum and in addition to the data cited above, the following: name of the individual being reviewed; date and time of the review; and, name and position of the individual doing the review.

§ 525.13 Renewal of special minimum wage certificates.

(a) Applications may be filed for renewal of special minimum wage certificates.

(b) If an application for renewal has been properly and timely filed, an existing special minimum wage certificate shall remain in effect until the application for renewal has been granted or denied.

(c) Workers with disabilities may not continue to be paid special minimum wages after notice that an application for renewal has been denied.

(d) Except in cases of willfulness or those in which the public interest requires otherwise, before an application for renewal is denied facts or conduct which may warrant such action shall be called to the attention of the employer in writing and such employer shall be afforded an opportunity to demonstrate or achieve compliance with all legal requirements.

§ 525.14 Posting of notices.

Every employer having workers who are employed under special minimum wage certificates shall at all times display and make available to employees a poster as prescribed and supplied by the Administrator. The Administrator will make available, upon request, posters in other formats such as Braille or recorded tapes. Such a poster will explain, in general terms, the conditions under which special minimum wages may be paid and shall be posted in a conspicuous place on the employer's premises where it may be readily observed by the workers with disabilities, the parents and guardians of such workers, and other workers. Where an employer finds it inappropriate to

post such a notice, this requirement may be satisified by providing the poster directly to all employees subject to its terms.

§ 525.15 Industrial homework.

(a) Where the employer is an organization or institution carrying out a recognized program of rehabilitation for workers with disabilities and holds a special certificate issued pursuant to this part, certification under regulations governing the employment of industrial homeworkers (29 CFR Part 530) is not required.

(b) For all other types of employers, special rules apply to the employment of homeworkers in the following industries: Jewelry manufacturing, knitted outerwear, gloves and mittens, buttons and buckles, handkerchief manufacturing, embroideries, and women's apparel. (See 29 CFR Part 530.)

§ 525.16 Records to be kept by employers.

Every employer, or where appropriate (in the case of records verifying the workers' disabilities) the referring agency or facility, of workers employed under special minimum wage certificates shall maintain and have available for inspection records indicating:

(a) Verification of the workers' disabilities;

(b) Evidence of the productivity of each worker with a disability gathered on a continuing basis or at periodic intervals (not to exceed six months in the case of employees paid hourly wage rates);

(c) The prevailing wages paid workers not disabled for the job performed who are employed in industry in the vicinity for essentially the same type of work using similar methods and equipment as that used by each worker with disabilities employed under a special minimum wage certificate (see also § 525.10(b) and (d));

(d) The production standards and supporting documentation for nondisabled workers for each job being performed by workers with disabilities employed under special certificates; and

(e) The records required under all of the applicable provisions of Part 516 of this title, except that any provision pertaining to homeworker handbooks shall not be applicable to workers with disabilities who are employed by a recognized nonprofit rehabilitation facility and working in or about a home, apartment, tenement, or room in a residential establishment. (See § 525.15) Records required by this section shall be maintained and preserved for the periods specified in Part 516 of this title.

(Approved by the Office of Management and Budget under control number 1215–0017)

§ 525.17 Revocation of certificates.

(a) A special minimum wage certificate may be revoked for cause at any time. A certificate may be revoked:

(1) As of the date of issuance, if it is found that misrepresentations or false statements have been made in obtaining the certificate or in permitting a worker with a disability to be employed thereunder;

(2) As of the date of violation, if it is found that any of the provisions of FLSA or of the terms of the certificate have been violated; or

(3) As of the date of notice of revocation, if it is found that the certificate is no longer necessary in order to prevent curtailment of opportunities for employment, or that the requirements of these regulations other than those referred to in (a)(2) above have not been complied with.

(b) Except in cases of willfulness or those in which the public interest requires otherwise, before any certificate shall be revoked, facts or conduct which may warrant such action shall be called to the attention of the employer in writing and such employer shall be afforded an opportunity to demonstrate or achieve compliance with all legal requirements.

§ 525.18 Review.

Any person aggrieved by any action of the Administrator taken pursuant to this part may, within 60 days or such additional time as the Administrator may allow, file with the Administrator a petition for review. Such review, if granted, shall be made by the Administrator. Other interested persons, to the extent it is deemed appropriate, may be afforded an opportunity to present data and views.

§ 525.19 Investigations and hearings.

The Administrator may conduct an investigation, which may include a hearing, prior to taking any action pursuant to these regulations. To the extent it is deemed appropriate, the Administrator may provide an opportunity to other interested persons to present data and views. Proceedings initiated pursuant to this section are separate from those taken pursuant to FLSA section 14(c)(5) and § 525.22.

§ 525.20 Relation to other laws.

No provision of these regulations, or of any special minimum wage certificate issued thereunder, shall excuse noncompliance with any other Federal or State law or municipal ordinance establishing higher standards.

§ 525.21 Lowering of wage rates.

(a) No employer may reduce the minimum hourly wage rate, guaranteed by a special minimum wage certificate in effect on June 1, 1986, of any worker with disabilities from June 1, 1986 until May 31, 1988, without prior authorization of the Secretary.

(b) This provision applies to those workers with disabilities who were:

(1) Employed during the pay period which included June 1, 1986, even if no work was performed during that pay period; and

(2) Employed under a group or individual special minimum wage certificate which specified a minimum guaranteed rate, i.e., a special certificate issued under former section 14(c) (1) or (2)(b) of FLSA.

(c) In order to obtain authority to lower the wage rate of a worker with a disability to whom this provision applies to a rate below the certificate rate, the employer must submit information as prescribed under this section to the appropriate Regional Office. The burden of establishing the necessity of lowering the wage of a worker with a disability rests with the employer.

(d) In reviewing a request to lower a wage rate of a worker with a disability, documented evidence of the following will be considered:

(1) Any change in the worker's disabling condition which has a substantially negative impact on productive capacity;

(2) Any change in the type of work being performed in the facility which would affect the productivity of the worker with a disability or which would result in the application of a lower prevailing wage rate;

(3) Any change in general economic conditions in the locality in which the work is performed which results in lower prevailing wage rates.

(e) A wage rate may not be lowered until authorization is obtained.

§ 525.22 Employee's right to petition.

(a) Any employee receiving a special minimum wage at a rate specified pursuant to subsection 14(c) of FLSA or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. No particular form of petition is required, except that a petition must be signed by the individual, or the parent or guaradian of the individual, and should contain the name and address of the employee and the name and address of the employee's employer. A petition may be filed in person or by mail with the Administrator of the Wage and Hour

Division, Employment Standards Administration, U.S. Department of Labor, Room S3502, 200 Constitution Avenue NW., Washington, DC 20210. The petitioner may be represented by counsel in any stage of such proceedings. Upon receipt, the petition shall be forwarded immediately to the Chief Administrative Law Judge.

(b) Upon receipt of a petition, the Chief Administrative Law Judge shall, within 10 days of the receipt of the petition by the Secretary, appoint an Administrative Law Judge (ALJ) to hear the case. Upon receipt, the ALJ shall notify the employer named in the petition. The ALJ shall also notify the employee, the employer, the Administrator, and the Associate Solicitor for Fair Labor Standards of the time and place of the hearing. The date of the hearing shall be not more than 30 days after the assignment of the case to the ALJ. All the parties shall be given at least eight days' notice of such hearing. Because of the time constraints imposed by the statute, requests for postponement shall be granted only sparingly and for compelling reasons.

(c) Hearings held under this subpart shall be conducted, consistent with statutory time limitations, under the Department's rules of practice and procedure for administrative hearings found in 29 CFR Part 18. There shall be a minimum of formality in the proceeding consistent with orderly procedure. Any employer who intends to participate in the proceeding shall provide to the ALJ, and shall serve on the petitioner and the Associate Solicitor for Fair Labor Standards no later than 15 days prior to the commencement of the hearing, or as soon as practical depending on when the notice of a hearing as required under paragraph (b) was received, that documentary evidence pertaining to the employee or employees identified in the petition which is contained in the records required by § 525.16 (a), (b), (c) and (d). The Administrator shall be permitted to participate by counsel in the proceeding upon application.

(d) In determining whether any special minimum wage rate is justified, the ALJ shall consider, to the extent evidence is available, the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured, and the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity and the conditions under which much productivity was mesured. In these proceedings, the burden of proof on all matters relating to the propriety of a wage at issue shall rest with the employer.

(e) The ALJ shall issue a decision within 30 days after the termination of the hearing and shall serve the decision on the Administrator and all interested parties by Express Mail or other similar system guaranteeing one-day delivery. The decision shall contain appropriate findings and conclusions and an order. If the ALJ finds that the special minimum wage being paid or which has been paid is not justified, the order shall specify the lawful rate and the period of employment to which the rate is applicable. In the absence of evidence sufficient to support the conclusion that the proper wage should be less than the minimum wage, the ALJ shall order that the minimum wage be paid.

(f) Within 15 days after the date of the decision of the ALJ, the petitioner, the Administrator, or the employer who seeks review thereof may request review by the Secretary. No particular form of request is required, except that a request must be in writing and must attach a copy of the ALJ's decision. Requests for review shall be filed with the Secretary of Labor, 200 Constitution Ave. NW., Washington, DC 20210. Any other interested party may file a reply thereto with the Secretary and the Administrator within 5 working days of receipt of such request for review. The request for review and reply thereto shall be transmitted by the Administrator to all interested parties by Express Mail or other similar system guaranteeing one-day delivery.

(g) The decision of the ALJ shall be deemed to be final agency action 30 days after issuance thereof, unless within 30 days of the date of the decision the Secretary grants a request to review the decision. Where such request for review is granted, within 30 days after receipt of such request the Secretary shall review the record and shall either adopt the decision of the ALJ or issue exceptions. The decision of the ALJ, together with any exceptions issued by the Secretary, shall be deemed to be a final agency action.

(h) Within 30 days of issuance of the final action of the Secretary reviewing the decision of the ALJ or declining to grant such review, any person adversely affected or aggrieved by such action may seek judicial review pursuant to Chapter 7 of Title 5, United States Code. The record of the case, including the record of proceedings before the ALJ, shall be transmitted by the Secretary to the appropriate court pursuant to the rules of such court.

§ 525.23 Work activities centers.

Nothing in these regulations shall be interpreted to prevent an employer from maintaining or establishing work activities centers to provide therapeutic activities for workers with disabilities as long as the employer complies with the requirement of these regulations. Work activities centers shall include centers planned and designed to provide therapeutic activities for workers with severe disabilities affecting their productive capacity. Any establishment whose workers with disabilities are employed at special minimum wages must comply with the requirements of this part, regardless of the designation of such establishment.

§ 525.24 Advisory Committee on Special Minimum Wages.

The Advisory Committee on Special Minimum Wages, the members of which are appointed by the Secretary, shall advise and make recommendations to the Administrator concerning the administration and enforcement of these regulations and the need for amendments thereof and shall serve such other functions as may be desired by the Administrator.

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August 10, 1989

Part III

Department of Education

34 CFR Part 208

Mathematics-Science Education Program; State Grants; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 208

RIN 1810-AA40

Mathematics-Science Education Program; State Grants

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues these regulations for the program of State grants for strengthening the economic competitiveness and national security of the United States by improving the skills of teachers and the quality of instruction in mathematics and science in the Nation's public and private elementary and secondary schools. These regulations implement the changes in the Mathematics and Science Education Program as a result of its reauthorization as the Dwight D. Eisenhower Mathematics and Science Education Act of 1988.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 208.11 and 208.22. Sections 208.11 and 208.22 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Genevieve W. Cornelius, Director, Division of Formula Grants, School Improvement Programs, 400 Maryland Avenue SW., (Room 2040, FOB-6), Washington, DC, 20202-6246, (202) 732-4062.

SUPPLEMENTARY INFORMATION: Title II, Part A of the Elementary and Secondary Education Act of 1965, enacted in the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), reauthorizes the mathematics and science education program. The new Act (the Dwight D. Eisenhower Mathematics and Science Education Act) revises several of the provisions of the predecessor statute (Title II of the Education for Economic Security Act). However, the purpose of the program is still to improve the skills of teachers and the quality of instruction in mathematics and science.

The following regulations implement the changes required by Pub. L. 100-297.

On December 6, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (53 FR 49280).

The NPRM included a discussion of major changes and issues. In addition to clarifying changes mandated by the statute, this discussion included a statement of the Secretary's policy, in situations where the State educational agency (SEA) determines that a local educational agency (LEA) has not made adequate progress in implementing its program, to permit the SEA either to approve appropriate revisions in the LEA's application or, after providing the LEA an opportunity for a hearing, to disapprove the LEA's application. In addition, the discussion proposed an explanation of the expanded definition of retraining in the higher education program as well as some specifics of the required agreement between institutions of higher education (IHEs) and LEAs. Finally, it explained briefly that the regulations that would govern a bypass for a grantee's failure to provide for the participation of children or teachers from private nonprofit schools were those proposed in the **Federal Register** on August 18, 1988.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, the Department received a number of written comments on the proposed regulations. An analysis of the substantive comments is published as an appendix to these final regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 208

Colleges and universities, Consortium, Economically disadvantaged, Education, Elementary and secondary education, Gifted and talented, Grants administration, Grant programs—education, Inservice education, Low-income families, Mathematics, Museums, Nonprofit educational organization, Other appropriate educational personnel, Preservice education, Private schools, Recruitment and retention, Reporting and recordkeeping requirements, Retraining, Science and technology, State administered programs, Students, Teachers, Training program, Underserved and underrepresented, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.164, The Dwight D. Eisenhower Mathematics and Science Education Act.)

Dated: August 4, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 208 to read as follows:

PART 208—MATHEMATICS AND SCIENCE EDUCATION PROGRAM

Subpart A—General

Sec.

Subpart B—Application Procedures

Subpart C—Elementary and Secondary Education Programs and Activities

Authority: 20 U.S.C. 2981–2993.

Subpart A—General

§ 208.1 Purpose.

The Secretary provides financial assistance under this part to states to strengthen the economic competitiveness and national security of the United States by improving the skills of teachers and the quality of instruction in mathematics and science in the Nation's public and private elementary and secondary schools.

(Authority: 20 U.S.C. 2982)

§ 208.2 Applicable regulations.

The following regulations apply to programs for which the Secretary provides financial assistance under this part:

(a) The regulations in this part.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), and part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-free Workplace (Grants)).

(Authority: 20 U.S.C. 2981–2991, 2993)

§ 208.3 Definitions that apply to programs under this part.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
Department
EDGAR
Elementary school
Fiscal year
Local educational agency (LEA)
Nonprofit
Private
Public
Secretary
State educational agency (SEA)

(b) *Additional definitions.* The following additional terms used in this part are defined as follows:

Act means Title II, part A of the Elementary and Secondary Education Act of 1965 (The Dwight D. Eisenhower Mathematics and Science Education Act).

Institution of higher education (IHE) has the meaning given that term in section 1201(a) of the Higher Education Act of 1965, 20 U.S.C. 1141(a).

Magnet school programs for gifted and talented students means programs for gifted and talented students in magnet schools or magnet programs in regular schools that attract gifted and talented students from other schools. Magnet schools are schools or education centers that offer a special curriculum, and include but are not limited to, schools or education centers capable of attracting substantial numbers of students of different racial backgrounds.

Nonprofit organizations include, but are not limited to, museums, libraries, educational television stations, professional science, mathematics, and engineering societies and associations, associations for the development and dissemination of projects designed to improve student understanding and performance in science and mathematics, and other organizations that meet the definition of "nonprofit" in 34 CFR 77.1.

Secondary school means a day or residential school that provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

State means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico. "State" also includes the "insular areas" of Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and, as appropriate, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau (or the Trust Territory of the Pacific Islands (Palau), if the Compact of Free Association for Palau has not been ratified when funds are allocated).

State agency for higher education (SAHE) means the State board of higher education or other agency or officer primarily responsible for the State supervision of higher education, or, if there is no such officer or agency, an officer or agency designated for the purposes of this part by the Governor or by State law.

(Authority: 20 U.S.C. 2981–2991, 2993)

§§ 208.4–208.10 [Reserved]

Subpart B—Application Procedures

§ 208.11 State application.

(a) Of the amount allotted to each State under section 2004 of the Act, the Secretary awards, on the basis of approved State applications, 75 percent to the State's SEA for elementary and secondary education programs (in accordance with §§ 208.23, 208.24, and 208.25) and 25 percent to the State's SAHE for higher education programs (in accordance with § 208.33). The SEA shall apportion these funds in accordance with § 208.21; the SAHE shall apportion these funds in accordance with § 208.31.

(b) A State that desires to receive funds under this part shall have on file with the Secretary an application that covers a period of three fiscal years. Each State application must—

(1) Designate the SEA as the agency responsible for the administration and supervision of the elementary and secondary education programs described in subpart C of this part and the SAHE as the agency responsible for the administration and supervision of the higher education programs described in subpart D of this part;

(2) Provide assurances that—

(i) Payments will be distributed by the State in accordance with the provisions of § 208.21 and 208.31;

(ii) Provision will be made for the equitable participation of nonprofit private school children and teachers, in accordance with § 208.51, in elementary and secondary education programs described in subpart F of this part;

(iii) Provision will be made for fiscal control and accounting procedures to ensure proper accounting and expenditure of funds made available under this part;

(iv) Funds made available under this part will be used to supplement and not supplant non-Federal funds in accordance with § 208.41;

(v) During the three-year period of the plan, the State will evaluate its standards for teacher preparation, licensing, certification, and endorsement for elementary and secondary mathematics and science;

(vi) The State will take into account the needs for greater access to, and participation in, mathematics and science by students and teachers from

historically underrepresented and underserved groups, including females, minorities, individuals with limited English proficiency, the economically disadvantaged and the handicapped;

(vii) The needs of teachers and students in areas of high concentrations of low-income students and sparsely populated areas will be considered in the distribution of funds reserved for State use; and

(viii) The programs conducted with State funds will be assessed annually (including collecting statistics on the number of students and teachers involved in these programs) and the data from these assessments, as well as a summary of the local assessments required under § 208.22(b)(1), will be submitted to the Secretary;

(3) Provide descriptions of—

(i) How, if appropriate, funds paid under this part will be coordinated with State and local funds and other Federal resources, particularly resources available from the National Science Foundation or the Department of Energy, or both;

(ii) Procedures for—

(A) Submitting applications for the programs described in subparts C and D of this part; and

(B) Approval of applications by the appropriate State agency, including procedures to ensure in accordance with 34 CFR 76.401 that the State agency will not disapprove an application without notice and opportunity for a hearing. Disapproval of an application does not include a determination by a SAHE as to the relative merit of a competing application submitted under § 208.32;

(iii) How programs under this part will meet the teacher training and curriculum needs projected under paragraph (b)(4) of this section;

(iv) Specific activities that will be undertaken that involve IHEs;

(v) Specific activities that will be supported with funds reserved for State use, and how those activities relate to the State's needs in mathematics and science; and

(vi) Specific activities the State will support to improve access of historically underrepresented groups in mathematics and science education; and

(4) Contain the following information:

(i) A projection of the supply and demand for teachers within the State in all the mathematics and science subject areas at the elementary and secondary levels, including a consideration of the impact of changing State graduation requirements and other State reforms on the supply of those teachers.

(ii) An assessment of the current elementary and secondary curriculum needs within the State in mathematics and science.

(c) The Secretary approves any State application that meets the requirements of this section.

(Authority: 20 U.S.C. 2988)

§§ 208.12–208.20 [Reserved]

Subpart C—Elementary and Secondary Education Programs and Activities

§ 208.21 In-State apportionment.

(a) Each SEA shall distribute to LEAs within the State, for use under § 208.23, not less than 90 percent of the funds allotted to it under § 208.11(a), as follows:

(1)(i) Fifty (50) percent of the funds must be distributed to LEAs according to the relative enrollments in public and private nonprofit schools within the school districts of the LEAs. Relative enrollments may be calculated, at the option of the SEA, on the basis of the total number of children enrolled in public schools and—

(A) Private nonprofit schools; or

(B) Private nonprofit schools desiring that their children and teachers participate in programs or projects assisted under the Act.

(ii) Nothing in paragraph (a)(1)(i) of this section diminishes the responsibility of an LEA to contact, on an annual basis, appropriate officials of private nonprofit schools within its school district to determine whether those officials desire that their children and teachers participate in programs or projects funded under the Act.

(2) Fifty (50) percent of the funds must be distributed to LEAs in the same proportion as funds under part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, are distributed.

(b) Each SEA shall use not less than five percent of the total funds allotted to it under § 208.11(a) for demonstration and exemplary program activities described in § 208.24.

(c) Each SEA shall use not more than five percent of the funds allotted to it under § 208.11(a) for technical assistance and administrative costs, as described in § 208.25.

(Authority: 20 U.S.C. 2986)

§ 208.22 LEA application.

(a) An LEA that desires to receive an allocation of funds under subpart C of this part shall submit to the SEA an application that covers a period of three fiscal years and meets the requirements of this section.

(b) An LEA may apply for funds under paragraph (a) of this section, singly or in conjunction with other LEAs, IHEs, or an intermediate educational unit to conduct programs under § 208.23. Each LEA application must include—

(1) A summary assessment of—

(i) The needs of its current teachers in mathematics and science and whether a shortage of qualified teachers in these subjects exists or will exist within five years of the date of the application;

(ii) The current levels of mathematics and science student achievement in the LEA; and

(iii) The curricular needs of the LEA In mathematics and science;

(2) Information the SEA may require describing the LEA's proposed activities and expenditures of funds for those activities under § 208.23. This information must include, at minimum, a description of—

(i) How the LEA plans to use funds received under this part to meet the needs described in paragraph (b)(1)(i) of this section;

(ii) If applicable, how funds it receives under this part will be coordinated with State, local, and other Federal resources, especially with respect to any programs available from the National Science Foundation, the Department of Energy, or both; and

(iii) If applicable, how the assisted programs will use other resources of the community and involve public agencies, private industry, IHEs, public and private nonprofit organizations, and other appropriate institutions; and

(3) Assurances that—

(i) Programs will take into account the need for greater access to and participation in mathematics and science programs by students from historically underrepresented groups, including females, minorities, individuals with limited English proficiency, the economically disadvantaged, and the handicapped; and

(ii) Programs assisted will be assessed and progress made will be reported, in terms of numbers of teachers and students affected, and the results will be submitted to the SEA in the time and manner that the SEA requires.

(c) Notwithstanding paragraph (a) of this section, an LEA that has applied for funds singly or in conjunction with other LEAs, IHEs, or an intermediate educational unit, and that desires to change the basis on which its programs are funded, shall submit to the SFA an amended application for the remainder of the application period. The amended application must update the information required by paragraph (b) of this section.

(d) (1) The SEA shall renew payments to the LEA under this program if it determines on the basis of its review of the LEA's application and any other information it may have, that the LEA is making adequate progress toward the goals of this part.

(2) If the SEA determines that the LEA has not made adequate progress toward meeting the goals of this part, the SEA may—

(i) Approve revisions to the programs funded under this part that are proposed by the LEA, if those revisions will enable the LEA to meet the goals of this part; or

(ii) After affording the LEA notice and opportunity for a hearing, disapprove the LEA's application.

(Authority: 20 U.S.C. 2989)

§ 208.23 Use of funds by LEAs.

(a) An LEA shall use the funds it receives under § 208.21(a) to support one or more of the following:

(1) The expansion and improvement of preservice and inservice training and retraining for teachers and other appropriate school personnel in the fields of mathematics and science, including vocational education teachers who use mathematics and science in teaching vocational education courses.

(2) Recruitment or retraining of minority teachers to become mathematics and science teachers.

(3) Training in and instructional use of computers, video, and other telecommunications technologies as part of a mathematics and science program (which may include the purchase of computers or other telecommunications equipment in schools with an enrollment of 50 percent or more of students from low-income families after all other training needs have been met).

(4) Integrating higher-order analytical and problem-solving skills into the mathematics and science curriculum.

(5) Providing funds for grants projects for individual teachers within the LEA to undertake projects to improve either their teaching ability or the instructional materials they use in their mathematics and science classrooms.

(b) An LEA may carry out the training and instruction under this section—

(1) Through agreements with public agencies, private industry, IHEs, and nonprofit organizations; and

(2) In conjunction with one or more LEAs within the State, with the SEA, or with both LEAs and the SEA.

(c) An LEA may use not more than five percent of the funds it receives under § 208.21 for local administration of these programs.

(Authority: 20 U.S.C. 2986)

§ 208.24 Use of funds by SEAs for demonstration and exemplary programs.

(a) An SEA shall use the funds described under § 208.21(b) to support one or more of the following:

(1) Demonstration and exemplary programs in the fields of mathematics and science for—

(i) Teacher training and retraining and inservice upgrading of teacher skills;

(ii) Instructional equipment and materials and necessary technical assistance; or

(iii) Special projects for historically underrepresented and underserved populations and for gifted and talented students.

(2) The dissemination of information relating to demonstration and exemplary programs to all LEAs within the State.

(b) In funding demonstration and exemplary programs under paragraph (a)(1) of this section, the SEA shall give special consideration to special projects in mathematics and science for—

(1) Students from historically underrepresented and underserved populations, including females, minorities, handicapped individuals, individuals with limited English proficiency, and migrant students; and

(2) Gifted and talented students. A program for gifted and talented students may include assistance to a magnet school program for those students.

(Authority: 20 U.S.C. 2986)

§ 208.25 Use of funds by SEAs for technical assistance and administrative costs.

An SEA may use the funds described under § 208.21(c)—

(a) To provide technical assistance to LEAs and, if appropriate, IHEs and nonprofit organizations that are conducting programs under § 208.23; and

(b) For the costs incurred by the SEA in administering and assessing programs assisted under this part.

(Authority: 20 U.S.C. 2986)

§§ 208.26–208.30 [Reserved]

Subpart D—Higher Education Programs and Activities

§ 208.31 Apportionment of funds.

(a) *Funds for IHEs.* (1) A SAHE shall distribute not less than ninety-five (95) percent of the funds it receives under § 208.11(a) to IHEs in accordance with the application procedures governing IHEs in § 208.32.

(2) The SAHE shall make every effort to ensure equitable participation of public and private IHEs.

(3) The SAHE may use funds described in this section for cooperative programs among IHEs, LEAs, SEAs, private industry, and nonprofit organizations, for the development and dissemination of projects designed to improve student understanding and performance in science and mathematics.

(b) *Funds retained by SAHEs.* A SAHE may reserve not more than five percent of the funds it receives under § 208.11 for the costs incurred by the SAHE for the State assessment of curriculum needs required by § 208.11(b)(4)(ii) and for administration and evaluation of programs assisted under this part.

(Authority: 20 U.S.C. 2987)

§ 208.32 IHE application.

An IHE wishing to receive a grant for programs funded under the Act may apply to the SAHE on a competitive basis either as an individual subgrantee or on behalf of a proposed cooperative program (see § 208.31(a)(2)). The application must contain information that the SAHE may require, and must demonstrate the IHE's involvement with one or more LEAs, as required by § 208.33(d).

(Authority: 20 U.S.C. 2987)

§ 208.33 Use of funds by IHEs.

(a) Subject to the requirement in paragraph (c) of this section, an IHE shall use funds awarded under § 208.31(a) for one or more of the following activities:

(1) Establishing traineeship programs for new teachers who will specialize in teaching mathematics and science at the secondary school level.

(2) Retraining. (i) Teachers who specialize in disciplines other than the teaching of mathematics and science, to specialize in the teaching of mathematics and science; or

(ii) Mathematics and science secondary school teachers to expand their areas of specialization within those disciplines (e.g., retraining biology teachers in physics or geometry teachers in calculus) or to expand their specializations across disciplines (e.g., retraining biology teachers in algebra).

(3) Inservice training for elementary, secondary, and vocational school teachers and training for other appropriate school personnel to improve their teaching skills in the fields of mathematics and science.

(b) Support for inservice training and retraining includes the provision of stipends for participation in institutes authorized under Title I of the EESA or any other program of the National Science Foundation.

(c) Each IHE receiving funds under this part shall ensure that programs of training, retraining, and inservice training will take into account the need for greater access to and participation in mathematics and science, and careers for—

(1) Students from historically underrepresented and underserved groups, including females, minorities, individuals with limited English proficiency, the handicapped, and migrants; and

(2) Gifted and talented students.

(d)(1) To receive funds for programs under paragraphs (1) (2) and (3) of this section, and IHE shall enter into an agreement with an LEA, or a consortium of LEAs, to provide inservice training and retraining for elementary and secondary school teachers in public and private schools in the LEA or LEAs.

(2) In the agreement, the IHE shall provide evidence that proposed projects and activities are the result of cooperative planning with LEAs affected, and that those projects and activities reflect the training, retraining, and inservice training needs of teachers as determined jointly by the LEA or LEAs and the IHE.

(Authority: 20 U.S.C. 2987)

§§ 208.34–208.40 [Reserved]

Subpart E—Fiscal Requirements

§ 208.41 Supplement not supplant.

A grantee or subgrantee that receives funds under this part—

(a) May use those funds only to supplement and, to the extent practicable, to increase the level of funds from non-Federal sources that, in the absence of funds made available under this part, would be made available for the purposes described in subparts C and D of this part; and

(b) May not use funds made available under this part to supplant funds from non-Federal sources.

(Authority: 20 U.S.C. 2988)

§§ 208.42–208.50 [Reserved]

Subpart F—Participation of Private Schools

§ 208.51 Participation of children and teachers in private schools.

(a) *Participation of private nonprofit school students.* To the extent consistent with the number of children in a State or an LEA who are enrolled in private nonprofit elementary and secondary schools, the SEA or LEA shall, after consultation with appropriate private nonprofit school representatives, make provisions for including services and arrangements for the benefit of these children to ensure their equitable participation in the purposes and benefits of this part.

(b) *Participation of private nonprofit school teachers.* (1) To the extent consistent with the number of children in the State or an LEA who are enrolled in private nonprofit elementary and secondary schools, an SEA, LEA, SAHE, or IHE shall, after consultation with appropriate private nonprofit school representatives, make provision for teacher training, retraining, and inservice training for the benefit of private nonprofit school teachers as will ensure their equitable participation in the purposes and benefits of this part.

(2) To receive funds for programs under § 208.33(a)(2) and (3), an IHE shall meet the requirements in § 208.33(d) for serving teachers in public and private nonprofit elementary and secondary schools.

(c) *Applicable requirements.* In fulfilling the equitable participation requirements in paragraphs (a) and (b) of this section an SEA, LEA, or IHE shall comply with the provisions in 34 CFR 76.650–76.662 regarding equipment and supplies and construction.

(Authority: 20 U.S.C. 2990)

§ 208.52 Bypass.

The Secretary implements a bypass if—

(a) An SEA, LEA, or IHE is prohibited by law from providing for the participation of children or teachers from private nonprofit schools as required by § 208.51; or

(b) The Secretary determines that an SEA or LEA has substantially failed or is unwilling to provide for the participation of children or teachers from private nonprofit schools on an equitable basis.

(Authority: 20 U.S.C. 2990)

§ 208.53–208.60 [Reserved]

Note: This appendix will not be codified in the Code of Federal Regulations

Appendix—Analysis of Comments and Changes

General Comments

Comment: One commenter recommended that the groups considered to be historically underserved and underrepresented be consistent in §§ 208.11(b)(2)(vi), 208.22(b)(3)(i), and 208.33(c)(1), and that those listings include the gifted and talented.

Discussion: The NPRM lists groups of "underserved and underrepresented" as provided in the statute. The gifted and talented are expressly included in program requirements in §§ 208.11(b)(2)(vi), 208.22(b)(3)(i), and 208.33(c)(1) governing the use of the funds by SEAs and IHEs. Section 208.33(b)(3)(i) governs assurances required in State and LEA applications. While States and LEAs are free to determine that the gifted and talented should be included in those assurances, the Secretary does not believe it is necessary to require broader assurances than are required by the Statute.

Changes: None.

Section 208.2 Applicable Regulations

Comment: One commenter noted that the regulations governing audit appeals in 34 CFR part 78 (Education Appeal Board) are no longer applicable and should be replaced by regulations governing the new Office of Administrative Law Judge in 34 CFR part 81.

Discussion: The Secretary agrees that part 78 is not applicable. Final regulations were issued for part 81 (General Education Provisions Act—Enforcement) on May 5, 1989 at 54 FR 19512, and apply to all appeals from final audit determinations pertaining to this program.

Changes: The reference to part 78 has been replaced by a reference to part 81.

Section 208.11 State Application

Comment: One commenter recommended that the requirement in § 208.11(b)(2)(v) for a State to evaluate, once every three years, its standards for teacher preparation, licensing, certification, and endorsement not apply if a State has reviewed or revised its standards within the past three to five years. The commenter expressed concern about the burden that this review will place on State staff, and the consequence of a fragmented State review of its certification code.

Discussion: Section 2008(b)(2)(E) of the statute expressly requires a State to include in its application an assurance that during the three-year period of the plan, the State will evaluate its standards for teacher preparation, licensing, certification, and endorsement for elementary and secondary mathematics and science. The regulation reflects the statutory requirement. If a State has recently evaluated these standards, meeting this requirement should present few problems.

Changes: None.

Comment: One commenter recommended that, for greater emphasis, the State application include not only assurances that funds will be used to address the needs of students historically underrepresented and underserved in mathematics and science, but also a timeline for using funds to address those needs. Another commenter strongly supported the provision as provided in the NPRM.

Discussion: Section 2008(b)(2)(F) of the statute requires each State to provide an assurance that it "will take into account the needs for greater access to and participation in mathematics and science by students and teachers from historically underrepresented groups." In § 2008(d)(4), the statute also requires the State's application to describe "the specific activities the State will support to improve the access of (these groups) in mathematics and science education." This requirement is reflected in § 208.11(b)(3)(vi). The Secretary interprets these State supported activities to include activities at the LEA, IHE, and State levels.

While the Secretary declines to impose by regulations a specific requirement for a

timeline, the Secretary believes that a detailed description of the activities described in § 208.11(b)(3)(vi) should meet the commenter's concern.

Changes: None.

Section 208.22 LEA Application

Comment: One commenter expressed concern over the apparent lack of provision for periodic amendments to LEA plans.

Discussion: Section 208.2(b) of these regulations incorporates the requirements in part 80 of the Education Department General Administrative Regulations (EDGAR). Section 80.30(d)(1) requires an LEA to seek the prior approval of its respective SEA whenever it anticipates a desire to make "any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision (§ 80.30(b)) requiring prior approval)." The Secretary is satisfied that given this provision, and the inherent authority of SEAs to specify conditions when subgrantees should amend their applications, the regulations in part 208 do not need to address periodic amendments to LEA plans.

Changes: None.

Comment: Several commenters believed that the phrase "information the SEA may require" in § 208.22(b)(2) should be revised to read "information the SEA must require." The commenters stressed that this would clarify that the LEA's application must contain information on its proposed activities and use of funds and expenditures for those activities under § 208.23.

Discussion: Section 208.22(b) contains a list of items an LEA must include in its application. One of those items, in § 208.22(b)(2), is "information the SEA may require describing the LEA's proposed activities * * *." The word "may" was used in the NPRM to indicate that the SEA may decide to require more than the elements prescribed in § 208.22(b)(2)(i)–(iii). Although the Secretary believes that the NPRM language was appropriate, in view of the apparent confusion he has added further clarifying language.

Change: Section 208.22(b)(2) has been revised to clarify that while SEAs may require more information, all LEA applications must include, "at minimum" the information described in paragraphs (b)(2)(i) through (b)(2)(iii).

Comment: One commenter asked for clarification of an apparent conflict between the requirement in both section 2009(a) of the statute and § 208.22(a) of the NPRM that an LEA application cover three years, and the provision in section 2006(b)(3) of the statute providing that an LEA "for any fiscal year may apply for funds as part of a consortium * * *."

Discussion: LEAs, whether participating individually or as part of a consortium, need apply only once every three years. However, after submitting an individual application, and LEA desiring to participate through a consortium must amend its application accordingly in any subsequent fiscal year.

Change: To avoid confusion, a new § 208.22(c) has been added, which provides that notwithstanding the LEA's three-year application cycle, an LEA wishing to change the basis under which it previously applied for funds may submit an amended application to the SEA for the remainder of the application period. Proposed § 208.22(c) has been redesignated as § 208.22(d).

Section 208.23 Use of Funds by LEAs

Comment: One commenter recommended that training be given priority over "instruction," i.e., over non-staff development kinds of activities. The commenter observed that under the predecessor statute, Public Law 98–377, an approved waiver was required in order to use funds for non-training instructional improvement purposes.

Discussion: Section 2006(b)(1)(D) and (E) of the statute specifically authorizes an LEA to use funds for training or instructional purposes related to mathematics and science and does not establish the kind of priority the commenter has recommended. Therefore, there is no authority for the Secretary to do so.

Moreover, the Secretary believes that LEAs are in the best position to establish priorities in the use of program funds that will most effectively meet their needs.

Changes: None.

Comment: None.

Discussion: The Secretary believes that § 208.23(a) should clarify that LEAs may use funds for one or more of the specified activities.

Changes: Section 208.23(a) has been revised accordingly.

Comment: Two commenters requested a clarification of an LEA's role in preservice training activities, in light of the fact that preservice training is normally the responsibility of higher education agencies.

Discussion: Section 2006(b)(1) of the statute lists preservice teacher training as one of a number of activities on which an LEA may spend its funds. If an LEA choose to undertake preservice training as an activity, section 2006(b)(2) of the statute permits the LEA to involve other agencies or organizations, including higher education agencies, through agreements with them. Any expenditure made for preservice training activities must relate to program improvement for the LEA in mathematics or science.

Changes: None.

Comment: One commenter requested an interpretation of the meaning of the word "school" in § 208.23(a)(3), regarding limitations on purchases of computers or other telecommunications equipment. The commenter recommended that it be defined as a "school building."

Discussion: The Secretary interprets the word "school," as used in § 208.23(a)(3) of the regulations and section 2006(b)(C) of the statute, to mean an individual school building or school campus within a school district.

Changes: None.

Comment: One commenter suggested that in § 208.23(a)(3) clarification is needed about whether a school that does not meet the 50 percent or more low income guideline will be precluded from buying any computer, video, or instructional equipment even if the LEA indicates that it is an essential and necessary part of conducting the training outlined in its application. The commenter recommended that the purchase of equipment be allowed if the district provides an assurance that the equipment is essential to the conduct of the proposed training.

Discussion: Section 2006(b)(C) of the statute limits the purchase of this equipment to the circumstances described in § 208.23(a)(3) of the regulations. The statute does not provide the latitude the commenter desires.

Changes: None.

Comment: The Department received several comments requesting clarification of the particular costs that are subject to § 208.23(c)'s five percent limitation on the amount an LEA can charge to program funds for "local administration" of its program. One commenter inquired whether those administrative costs include indirect costs and salaries of the project director, coordinator or consultant, or teacher released to provide program-related technical assistance. Another commenter was unsure whether LEA activities allowed under section 2006(b) of the statute (and § 208.23(a) of the regulations) were themselves technical assistance training activities that should be treated as LEA administrative costs. Still another commenter recommended that the five percent limitation on an LEA's allowable administrative costs not include indirect costs it could claim through application of an established indirect cost rate.

Discussion: The five percent limitation on an LEA's administrative costs includes only charges attributable to program administration. Administrative costs include, as they do under section 1521 of the statute for the Chapter 2 program, planning and processing of funds and monitoring and evaluation of program activities. Therefore, to the extent that persons paid with program funds perform work directly related to program implementation or supervision of project activities, their salaries can be considered program costs rather than administrative costs. This is so regardless of the activity, under § 208.23(a), the LEA is implementing. Moreover, while that section and section 2006(d) of the statute limit to five percent the combined SEA level expenditures for technical assistance and administrative costs, so-called "technical assistance" activities at the LEA level are not subject to the LEA's five percent limit on administrative costs unless they reasonably must be considered, on their own, as administrative costs. The fact that one might characterize project activities as "technical assistance" or "on-site training" does not make the charge an administrative cost.

Indirect costs, which LEAs may charge to program funds through application of an indirect cost rate, are a form of administrative cost that cannot readily be identified as relating to a single cost objective or function. Therefore, the Secretary has concluded that an LEA's indirect costs must be subsumed within the five percent limitation on its charges for local administration of the program.

Changes: None.

Comment: One commenter requested clarification of the phrase "instructional

materials" as used in § 208.23(a)(5), and asked whether it includes equipment as well as supplies.

Discussion: Instructional materials may include any teaching equipment and supplies, if, within the design of an approved project for an individual teacher, the equipment and supplies are essential and their purchase is allowable under EDGAR. The LEA would be responsible for ensuring that the purchases are essential to the program proposed and are used for the purpose intended. The purchase of any computers or telecommunications equipment must also meet the restrictions in § 208.23(a)(3) on the schools for which they may be purchased.

Changes: None.

Comment: One commenter recommended that proposed § 208.23(b)(2), which specified entities with which LEAs may carry out instruction or training activities, be amended to reflect what the commenter believes is the statutory intent to permit LEAs to carry out training and instruction with IHEs and intermediate educational units.

Discussion: Section 2006(b)(2) of the statute authorizes LEAs to carry out their teacher training and instructional activities "through agreements with public agencies, private industry (IHEs), and nonprofit organizations." The Secretary has determined that § 208.23(b)(2) permits, but does not require, those agreements to be made in conjunction with the SEA or other LEAs in the State. Therefore, the regulation permits the LEA to carry out training and instruction as the commenter would desire.

Changes: None.

Section 208.24 Use of Funds by SEAs for Demonstration and Exemplary Programs

Comment: One commenter urged that proposed § 208.24(a)(1), which described allowable demonstration and exemplary programs, be rewritten to clarify that an SEA may conduct one or more of the activities described.

Discussion: The Secretary agrees that the section as written could be confusing.

Changes: Section 208.24(a)(1)(ii) has been changed accordingly.

Comment: Section 208.24(a)(1)(i) specifies that SEAs may use funds of teacher training and retraining, and inservice upgrading of teacher skills. One commenter asked if SEAs may also use funds to train administrators and support personnel such as principals, science supervisors, and curriculum directors, in the issues affecting the mathematics and science program. The commenter observed that these persons may supervise teachers or help them in developing curriculum but have no classroom responsibilities.

Discussion: Unless the training is directly related to the "inservice upgrading of teacher skills," program funds may not be spent for these purposes. However, section 2006(c) of the statute, which authorizes the SEA Demonstration and Exemplary Programs, authorizes the SEA to provide training for administrators and support personnel, but only if that training is directly related to the improvement of classroom teaching in mathematics and science.

Changes: None.

Section 208.32 IHE Appliction

Comment: Several commenters disagreed with the Secretary's proposal to require that SAHEs wishing to fund cooperative programs under section 2007(c) of the statute, do so through competitive grants to IHEs. Commenters claimed that the statute is ambiguous as to whether cooperative programs must be funded competitively since the requirements in section 2007(b)(1)(B) of the statute that grants to IHEs be awarded competitively need not relate to funds used to support cooperative programs funded under section 2007(c). The commenters viewed the statute as eliminating the previous statutory requirements that at least 20 percent of higher education program funds support cooperative programs, while retaining the option that SAHEs award cooperative grants without formal competition.

Therefore, the commenters recommended that the Secretary continue to provide SAHEs the discretion to develop, plan, and fund cooperative programs on a non-competitive basis, a process that several commenters agreed had resulted in very successful projects. This, they claimed, will ensure that cooperative programs meet identified State needs, such as those in rural areas, and that SAHEs retain their leadership role in promoting the most effective programs in mathematics and science education. One commenter also stated that if cooperative programs must be awarded competitively, the limitation in section 2007(d) of the statute on the amount of funds available to SAHEs for administrative costs will provide insufficient financial support for planning and developing appropriate cooperative programs.

Discussion: While the Secretary understands these concerns, he continues to believe that the statute requires cooperative programs to be funded on a competitive basis.

Section 2007(c), which describes cooperative programs, references the funds to be awarded as grants to IHEs under section 2007(b)(1)(A). Section 2007(b)(1)(A) states that not less than 95 percent of funds available shall be used by the SAHE "for grants to (IHEs) in accordance with the provisions of this subsection" (meaning section 2007(b)). Section 2007(b)(1)(B), which is a part of "this subsection," states, among other things, that the SAHE shall make funds available on a competitive basis to IHEs that apply for funds and that demonstrate the involvement of LEAs. Consequently, the Secretary interprets section 2007(c) of the statute to require that SAHEs fund cooperative programs on a competitive basis as grants to IHEs.

This interpretation is supported by the Conference Committee Report accompanying the statute, which states that of the funds reserved for higher education activities: "Up to five percent may be used for State assessment and administration and not less than 95 percent must be used for grants to (IHEs) for training programs conducted in conjunction with LEAs." See H. Rep. 100–567, 100th Cong., 2d Sess., p. 354, para. 17. As the requirement that grants be awarded for training purposes conducted in conjunction with LEAs is itself part of section 2007(b)(1)(B), the requirements governing all funds provided under section 2007(b)(1)(A) appear to be those in section 2007(b)(1)(B). As noted above, this includes the requirement that grants be issued to IHEs on a competitive basis.

While the Secretary cannot alter the amount of funds that section 2007(d) permits SAHEs to retain for their administrative costs, the requirement of competitive award-making should not significantly impair a SAHE's ability to fund cooperative programs, even non-traditional programs, that it believes are important. The statute, for example, does not limit a SAHE's authority to develop the specific content of projects it wants funded on a cooperative basis and to solicit corresponding applications from IHEs. Nor does it either preclude SAHEs from reserving a portion of funds available under section 2007(b) for cooperative programs, or impose selection criteria for awards to successful applicants. The statute requires only that SEAs use a process of awarding grants that does not pre-select the recipients of grants to operate cooperative programs.

Changes: None.

Section 208.33 Use of Funds by IHEs

Comment: One commenter asked whether IHEs may use funds under this section to train administrators and other non-teaching support personnel so that they understand the scope of the issues and improvements in mathematics and science programs in the State.

Discussion: The regulations, like the underlying provision in section 2007(b) of the statute, authorizes training only for teachers unless, under § 208.33(a)(3) (section 2007(b)(2)(C) of the statute), inservice training is needed to permit other school personnel to improve their mathematics and science teaching skills.

Changes: None.

Comment: One commenter felt the proposed regulations should be amended to recognize the special needs of rural schools for teachers with multicertifications (i.e., in a number of subjects).

Discussion: The provisions of § 208.33 permit IHEs to use funds to provide training for teachers to obtain multicertifications in mathematics and science. Moreover, like the statute, the regulations emphasize the State's responsibility to meet the needs of its rural population. For example, under § 208.11(b)(vii), the State's application must include an assurance that the needs of the rural population will be considered in the SEA's and SAHE's use of funds reserved for State use. In addition, to the extent that the State determines that its rural population is "historically underserved," the SEA may use Demonstration and Exemplary Program funds to concentrate on rural demonstration and exemplary programs under § 208.24(a)(1)(iii). Similarly, to the extent that the rural population is considered historically underserved, under § 208.33(c)(1) an IHE might be required to take the special needs of a rural population into account in the activities it supports with program funds.

Changes: None.

Comment: Three commenters strongly supported the proposed expanded definition

of allowable "retraining" services in § 208.33(a)(2)(ii), which would expressly permit funds to be used to expand teachers' areas of specialization within their existing disciplines. However, two commenters believed that the proposed provision would weaken and confuse the purpose of section 2007(b)(2)(B) of the statute, which the commenters felt is to increase the numbers of mathematics and science teachers. These latter commenters also believed the expanded definition is duplicative of the "inservice training" services authorized by section 2007(b)(2)(C) of the statute.

Discussion: The Secretary agrees that the principal purpose of section 2007(b)(2)(B) is to increase the number of qualified mathematics and science teachers. However, not all States appear to view intradisciplinary retraining as an allowable form of "inservice" training. In those that do not, the question of whether program funds could be used to retrain those already teaching mathematics or science appears to create significant uncertainty. Because the Secretary views intradisciplinary and interdisciplinary training to be equally within the purpose of the statute, the Secretary proposed § 208.33(a)(2)(ii).

Moreover, national research studies, including the Department of Education's "Summary Report of Title II State Needs Assessments", "A Study of Certified Teacher Availability in the States" by Joanne Capper for the Council of Chief State School Officers, and National Science Teachers Association studies of training within the science fields, indicate that one of the major retraining needs is the retraining of science teachers who are teaching courses within science other than those for which they were specifically prepared. Indeed, Capper has reported that "15,127 teachers of mathematics, science and foreign languages are teaching out-of-field, and that 500,000 students in the 29 states surveyed are being taught by teachers who are not fully certified to teach their subjects." According to the American Association for the Advancement of Science report Project 2061, "Few elementary school teachers have even a rudimentary education in science and math and many junior and senior high school teachers of science and mathematics do not meet reasonable standards of preparation in those fields." Thus the regulation enhances the flexibility States have in meeting their most urgent needs.

Changes: None.

Comment: One commenter requested the data source for the statement in the NPRM (53 FR 49280), "because the greatest need for retraining is intradisciplinary".

Discussion: Upon further review, the phrase "greatest need" may have been an overstatement. However, several reports from professional associations, including those mentioned in response to the preceding comment, the staff experience of Title II, and the needs expressed by a number of States, have confirmed that intradisciplinary retraining is a major need in science and mathematics education. Therefore, the Secretary has determined that these regulations should permit the expenditure of program funds on intradisciplinary retraining.

Changes: None.

Comment: One commenter stressed that for rural areas, meaningful agreements between IHEs and consortia of LEAs will not be feasible unless the SAHE makes funds available to administer and operate the consortia. The commenter observed that small schools have difficulty attracting and retaining teachers of quality, and the IHEs lack funds to operate the consortia. The commenter recommended either that some administrative funds be made available to IHEs that form and coordinate consortia of rural schools, or that the consortia receive additional funding for their administrative costs.

Discussion: The statute provides ways of defraying administrative costs of IHEs that coordinate consortia of rural schools. If an IHE's activities are funded by a subgrant or subcontract from a number of LEAs, the IHE could incur administrative costs provided that the total amount of administrative costs the LEAs and the IHE incur does not exceed the five percent limitation in section 2006(b)(4) of the statutes. If the IHE's activities are funded by a competitive grant from the SAHE, its administrative costs would be subject to the SAHE approved budget and applicable provisions of EDGAR.

Changes: None.

Comment: Two commenters strongly supported proposed § 208.33(d)(2), which would require that applications to SAHEs from IHEs provide evidence of both (1) cooperative planning with the affected LEAs, and (2) that the funded activities reflect the training, retraining, and inservice training needs of teachers as jointly determined by the affected LEAs and IHEs. Two other commenters objected to the provision on the ground that it would impose requirements that lack a statutory basis. The commenters believed that the proposed regulation will not rectify the perceived problem of IHEs offering programs ill-suited to LEA needs. Moreover, given the variety of subjects that IHE applications must address, the commenters stated that the proposed regulation places too much emphasis on IHE–LEA collaboration in program planning.

Discussion: Section 2007(b)(3) of the statute states that to receive a grant, an IHE must enter into an agreement with an LEA, or consortium of LEAs, to provide inservice training and retraining for teachers in the public and private schools. Furthermore, section 2007(b)(1)(B) of the statute requires an IHE's application for funds to demonstrate the involvement of LEAs. The Secretary has concluded that an IHE cannot reasonably meet these responsibilities unless it has worked with the respective LEAs in identifying the needs for training or retraining among the teachers working within the affected school districts. Therefore, the Secretary concludes that the provisions of § 208.33(d)(2) are reasonable and consistent with those statutory requirements. Moreover, because maximum impact at the school level from such training generally occurs when school personnel are continually and fully involved in the improvement process, the Secretary also believes that the elements of an agreement listed in § 208.33(b)(2) are necessary for adequate program management.

Changes: None.

Section 208.51 Participation of Children and Teachers in Private Schools

Comment: One commenter objected to the use of the words "sufficient" in proposed § 208.51(b), which would have required that LEAs make "sufficient provision for teacher training, retraining, and inservice training for the benefit of private nonprofit school teachers * * *." The commenter stressed that the word is vague and that it is not used in the statute.

Discussion: The Secretary agrees with the commenter.

Changes: The word "sufficient" has been deleted from § 208.51(b).

[FR Doc. 89–18725 Filed 8–9–89; 8:45 am]

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federal register

Thursday
August 10, 1989

Part IV

Department of Education

34 CFR Part 755

National Program for Mathematics and Science Education; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 755

RIN 1850-AA34

National Program for Mathematics and Science Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the National Program for Mathematics and Science Education. These regulations are needed to implement section 2012 of the Dwight D. Eisenhower Mathematics and Science Education Act, Title II, part A of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments, with the exception of § 755.32. Section 755.32 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Richard T. La Pointe, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208-5524, Telephone: (202) 357-6496.

SUPPLEMENTARY INFORMATION: The National Program for Mathematics and Science Education supports projects of national significance in elementary and secondary schools in mathematics and science instruction designed to improve the skills of teachers and instruction in these areas and to increase the access of all students to that instruction.

On May 24, 1989, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (54 FR 22552). There are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, one party submitted a comment on the proposed regulations. An analysis of the comment follows:

Section 755.32 What Are the Selection Criteria?

Comment: One letter was received suggesting that the Secretary in evaluating applications for mathematics education projects use the Curriculum and Evaluation Standards for School Mathematics developed by the National Council of Teachers of Mathematics.

Discussion: The Secretary does not believe that it would be appropriate to evaluate all applications on the basis of a particular set of curriculum guidelines. The selection criteria for this program address general concerns such as the quality of teaching and instruction in mathematics and science (§ 755.32(e)) and national significance (§ 755.32(f)). While the goal of the Standards may also be to improve the quality of instruction in mathematics, the Standards describe a particular approach to be followed in reaching that goal. The Secretary believes that the criteria should be general in order to permit applicants to propose a variety of approaches. Adoption of particular curriculum standards as part of the selection criteria would have the effect of limiting this flexibility.

Change: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective in the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based upon the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 755

Historically underserved and underrepresented populations, Gifted and talented students, Grant programs—Education, Instruction, Mathematics, Reporting and recordkeeping requirements, Science.

(Catalog of Federal Domestic Assistance number 84.168, Mathematics and Science Education National Programs)

Dated: August 1, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 755 to read as follows:

PART 755—NATIONAL PROGRAM FOR MATHEMATICS AND SCIENCE EDUCATION

Subpart A—General

Sec.

Sec.

Authority: 20 U.S.C. 2992, unless otherwise noted.

Subpart A—General

§ 755.1 What is the National Program for Mathematics and Science Education?

The National Program for Mathematics and Science Education assists projects of national significance in elementary and secondary school mathematics and science instruction designed to improve the skills of teachers and instruction in these areas and to increase the access of all students to that instruction.

(Authority: 20 U.S.C. 2992)

§ 755.2 What parties are eligible for a grant under this program?

The Secretary may award grants to State educational agencies, local educational agencies, institutions of higher education, and public and private nonprofit organizations, including museums, libraries, educational television producers, distributors, and stations, and professional science, mathematics, and engineering societies and associations.

(Authority: 20 U.S.C. 2992)

§ 755.3 What regulations apply to this program?

The following regulations apply to grants made under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions That Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs, and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), and part 85 (Governmentwide Debarment and Suspension (Nonprocurement), Governmentwide Requirements for Drug-Free Workplace (Grants); and

(b) The regulations in this part 755.

(Authority: 20 U.S.C. 2992)

§ 755.4 What definitions apply to this program?

(a) *Definitions in the act.* The following terms used in this part are defined in section 2013 of the Act:

Institution of higher education
State agency for higher education

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Department
Elementary School
EDGAR
Facilities
Fiscal Year
Grant
Local educational agency
Nonprofit
Private
Project
Public
Secondary school
Secretary
State
State educational agency

(c) *Additional definitions.* The following terms are used in this part:

Act means the Dwight D. Eisenhower Mathematics and Science Education Act, Title II, part A of the Elementary and Secondary Education Act of 1965, as amended.

Gifted and talented student means a student, identified by various measures, who demonstrates actual or potential high performance capability, particularly in the fields of mathematics and science.

Historically underserved and underrepresented populations includes females, minorities, handicapped persons, persons of limited-English proficiency, economically disadvantaged persons, and migrants.

Magnet school means a school or education center that offers a special curriculum and to which students are not automatically assigned but may seek to attend on a voluntary basis because of the special curriculum, including but not limited to a school or education center capable of attracting substantial numbers of students of different racial backgrounds.

Unsolicited application means an application, not specifically invited by the Secretary, that supports one or more of the activities listed in §755.11.

(Authority: 20 U.S.C. 2992, 2993)

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

§755.11 What types of projects does the Secretary assist?

(a) The Secretary funds applications proposing projects of national significance in mathematics and science instruction.

(b) Projects of national significance in mathematics and science instruction include those designed to—

(1) Improve teacher recruitment and retention in the fields of mathematics and science;

(2) Improve teacher qualifications and skills in the fields of mathematics and science; and

(3) Improve curricula in mathematics and science, including the use of new technologies.

(c) The Secretary does not provide operating revenue to meet local needs to any applicant under this program.

(Authority: 20 U.S.C. 2992)

§ 755.12 How does the Secretary establish priorities for this program?

(a) The Secretary may establish the following priorities:

(1) Establishing or improving magnet schools.

(2) Providing special services to historically underserved and underrepresented populations, especially gifted and talented children from these populations.

(3) Building upon and adding to a project that is already developed and disseminated.

(4) Training and retraining teachers in methods of scientific inquiry.

(5) Providing materials that aid the education of students.

(b) In addition to the priorities established in paragraph (a) of this section, each year the Secretary may select as a priority one or more of the types of projects listed in §755.11.

(c) The Secretary may limit any priority to mathematics or science, particular educational levels, or any combination of these subject areas and educational levels.

(Authority: 20 U.S.C. 2992)

Subpart C—How Does One Apply for a Grant?

§755.20 What assurances must an applicant make?

(a) An applicant that is a State (including a State educational agency or a State agency for higher education) or a local educational agency shall comply with the provisions of section 2010 of the Act governing the equitable participation of private school children and teachers in the purposes and benefits of the Act.

(b) An applicant described in paragraph (a) of this section shall include an assurance in its application that, in accordance with section 2010 of the Act, it will provide for consultation with appropriate private school representatives and for the equitable participation of children and teachers in private elementary or secondary schools if the applicant proposes to use grant funds to provide benefits to children and teachers in public elementary or secondary schools, including the provision of services, materials, equipment, and inservice or teacher training and retraining.

Note: EDGAR establishes requirements for participation of private school children. See 34 CFR 75.650.

(Authority: 20 U.S.C. 2992)

Subpart D—How Does the Secretary Make a Grant?

§ 755.30 How does the Secretary evaluate applications?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the applicable selection criteria in §755.32.

(b) The Secretary awards up to 100 points, including a reserved 10 points to be distributed in accordance with paragraph (d) of this section, based on the applicable criteria in § 755.32.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion in § 755.32 is indicated in parentheses.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary distributes the reserved 10 points among the applicable criteria listed in § 755.32

(Authority: 20 U.S.C. 2992)

§ 755.31 How does the Secretary evaluate unsolicited applications?

(a)(1) At any time during a fiscal year, the Secretary may accept and consider for funding an unsolicited application for a project that does not meet a priority established in accordance with § 755.12 if the project—

(i) Furthers the purposes and objectives of the program as described in § 755.1; and

(ii) Satisfies all other requirements for funding under this program.

(2) In a fiscal year in which the Secretary does not establish absolute priorities, the Secretary does not consider unsolicited applications for funding.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the **Federal Register.**

(c) The Secretary may select unsolicited applications for funding in accordance with the procedures contained in § 755.30(a)–(c).

(d) The Secretary reviews and evaluates an unsolicited application on the basis of the selection criteria in § 755.32.

(e) The Secretary assigns the reserved 10 points under § 755.30(b) to the selection criterion at § 755.32(f) (National significance) so that the maximum number of possible points for this criterion is 30.

(Authority: 20 U.S.C. 2992)

§ 755.32 What are the selection criteria?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (15 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(4) For an applicant who makes an assurance under § 755.20 as to the equitable participation of children and teachers in private elementary or secondary schools, how the applicant will ensure that equitable participation.

(b) *Quality of key personnel.* (5 Points) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(2) To determine personnel qualifications under paragraphs (b)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(c) *Budget and cost-effectiveness.* (5 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Are objective; and

(3) Document and quantify the project's effectiveness in achieving its stated goals.

Cross-reference. See 34 CFR 75.590 Evalutation by the grantee.

(e) *Improvement of the quality of teaching and instruction in mathematics and science.* (25 Points) The Secretary reviews each application to determine the extent to which the project will contribute to the improvement of teaching and instruction in mathematics and science, including—

(1) The objectives of the project; and

(2) The manner in which the objectives of the project further the purposes of improving the quality of teaching and instruction in mathematics and science.

(f) *National significance.* (20 Points) The Secretary reviews each application to determine the national significance of the project, including—

(1) The magnitude of the need for the proposed project;

(2) The likely impact of the proposed project, and

(3) The potential transferability of the proposed project to other settings with the likelihood of accomplishing similar results.

(g) *Applicant's commitment and capacity.* (10 Points) The Secretary considers the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Authority: 20 U.S.C. 2992)

§ 755.33 What special considerations may the Secretary use in selecting an application for funding?

(a) After evaluating applications according to the criteria contained in § 755.32, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition or under this program.

(b) The Secretary may select other applications for funding if doing so would improve—

(1) The geographical distribution of projects funded under a particular competition or under this program, or

(2) The diversity of activities or projects funded under a particular competition or under this program.

(c) The Secretary may decline to fund a project that is eligible for funding by the Secretary under a different, specific Department of Education competition or program.

(d) The Secretary does not fund a project that receives Federal funds from other programs authorized under the Act.

(Authority: 20 U.S.C. 2992)

§ 755.34 Are there restrictions on the use of funds for equipment under this program?

Of the funds made available through a grant under this program, the Secretary may restrict the amount of funds used under this part to purchase equipment.

(Authority: 20 U.S.C. 2992)

[FR Doc. 89-18723 Filed 8-9-89; 8:45 am]
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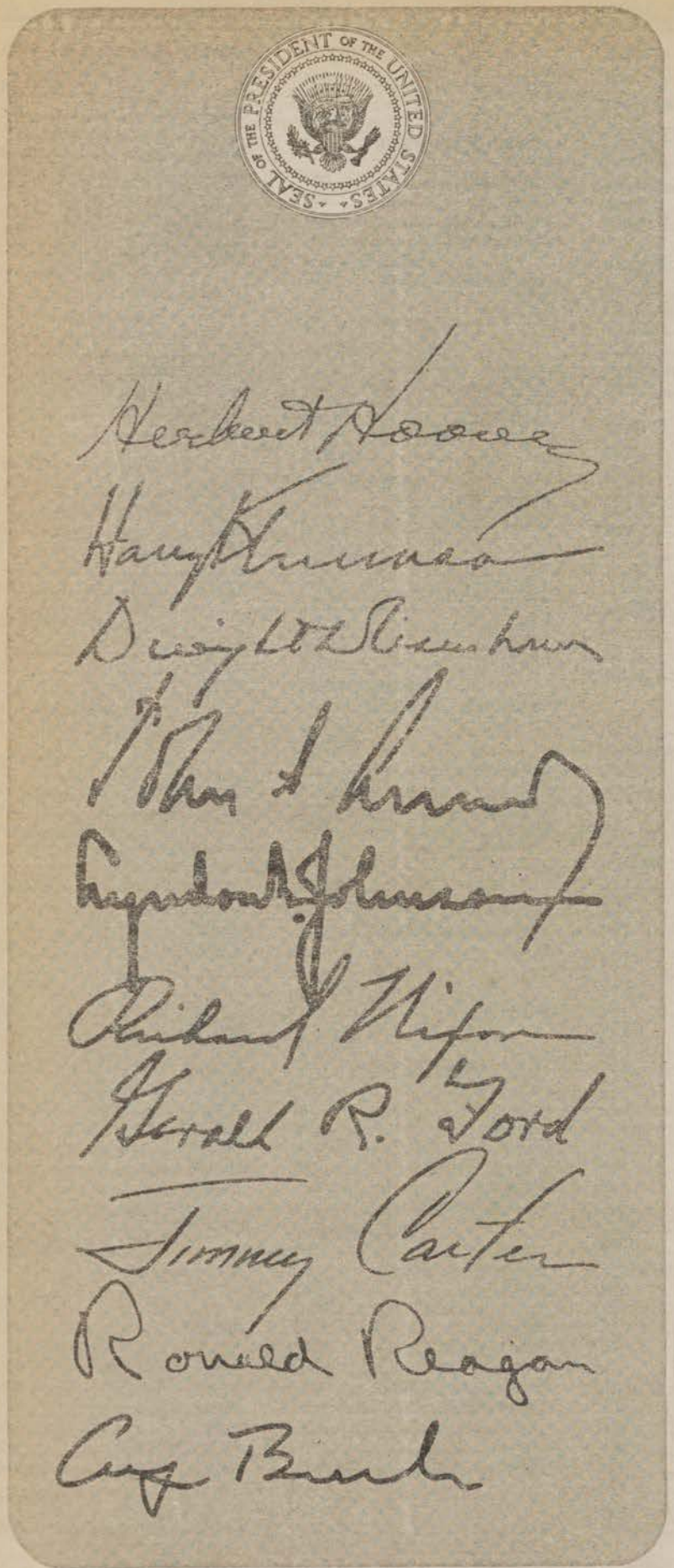
H.R. 3024 / Pub. L. 101-72

To increase the statutory limit on the public debt, and for other purposes. (Aug. 7, 1989; 103 Stat. 182; 1 page) Price: $1.00



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