9-8-86
Vol. 51 No. 173
Pages 31925-32046

federal register

Monday
September 8, 1986

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

Contents

Federal Register

Vol. 51, No. 173

Monday, September 8, 1986

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 51, No. 173
Monday, September 8, 1986

Presidential Documents

Title 3—

The President

Notice of September 4, 1986

Continuation of the South Africa Emergency

On September 9, 1985, by Executive Order No. 12532, I declared a national emergency to deal with the threat to the foreign policy and economy of the United States constituted by the actions and policies of the Government of South Africa. Because those actions and policies continue to pose an unusual and extraordinary threat to the foreign policy and economy of the United States, the national emergency declared on September 9, 1985, must continue in effect beyond September 9, 1986. Therefore, in accordance with Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to South Africa. Additional measures to deal with this threat will be considered upon the completion of consultations with key Allies on joint, effective measures to eliminate apartheid and encourage negotiations for peaceful change in South Africa. This notice shall be published in the **Federal Register** and transmitted to the Congress.

Ronald Reagan

THE WHITE HOUSE,
September 4, 1986.

[FR Doc. 86-20269
Filed 9-4-86; 2:42 pm]
Billing code 3195-01-M

Editorial note: For the text of the President's message to Congress, dated Sept. 4, 1986, on the continuation of the South Africa emergency, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 36).

Rules and Regulations

Federal Register
Vol. 51, No. 173
Monday, September 8, 1986

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement Provisions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comment on the rules to implement the retirement provisions of the Federal Employees Benefits Improvement Act of 1986 (FEBIA) which made several changes in the Civil Service Retirement Spouse Equity Act of 1984 (CSRSEA). These interim rules also include changes to the current interim rules for implementing CSRSEA based on the comments received and our operational experience.

DATE: Interim rules effective September 8, 1986; comments must be received on or before November 7, 1986.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Pay and Benefits Policy, Retirement and Insurance Group, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

Send applications under §§ 831.621 through 831.623 of these rules to the Office of Personnel Management, Employee Service and Records Center, Attention: Spouse Equity Act Coordinator, Boyers, PA 16017.

Send court orders affecting retirement benefits under Subpart Q of these rules to Allotments Branch, Office of Personnel Management, P.O. Box 17, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–1265.

SUPPLEMENTARY INFORMATION: On May 13, 1985, we published (50 FR 20064) interim rules and requested comments to implement the Civil Service Retirement Spouse Equity Act of 1984 (Pub. L. 98–615). A typographical error in the interim rules was corrected on May 22, 1985, 50 FR 21031.

Title II of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, made miscellaneous changes in CSRSEA. These interim rules are necessary to conform our earlier-published interim rules to implement CSRSEA with the changes made by FEBIA. In addition, changes in the interim rules are necessary to correct errors or omissions discovered through comments.

1. Changes Based on Comments

Eleven comments were received in response to our request. Four changes in these interim rules are based on those comments.

Two commenters requested that addresses be included in the rules to notify former spouses where to send (1) court orders under Subpart Q of these rules; and (2) applications for survivor benefits under § 831.622. In response, we have included the appropriate addresses in the "**ADDRESSES**" section of this rulemaking notice.

One commenter pointed out that § 831.620(a) failed to state the commencing date for court-ordered former spouse annuities in cases when the marriage was terminated and the employee retired after May 6, 1985. This oversight has been corrected in these interim rules.

Two commenters stated that it is inappropriate to require postal return receipts as proof of spousal notification under § 831.2007 because the receipt proves only that some piece of mail was delivered, not necessarily the notification form. To correct this deficiency, these interim rules establish that as an alternative to submission of a notification form signed by the spouse, the employee may submit (1) affidavits of witnesses to the notification; (2) proof that the current or former spouse's whereabouts are unknown; or (3) the current or former spouse's current mailing address. The refund application will inform the employee that alternative 3 will result in a 6- to 8-week delay in payment of the refund while we notify the spouse. It will also inform the employee that the refund will be denied if the notice cannot be delivered at the address provided. In addition, we have modified § 831.2007 to clarify that when affidavits of witnesses to the attempted notification are used, the witnesses must attest that they witnessed the attempt to deliver the notification form, not just an oral attempt at notification.

One commenter inquired whether a spouse or former spouse must be notified in accordance with CSRSEA when retirement contributions are transferred from one Federal retirement system to another. This is done to switch credit attained under one system to another system under certain circumstances involving individual entitlements. (For example, under Pub. L. 85–157, August 21, 1957, when Secret Service employees attain sufficient service to be covered under the District of Columbia Police and Firefighters Retirement and Disability System, contributions are transferred to permit the transfer of service credit.) We have added § 831.2010 to clarify that transfers of funds between retirement systems are not refunds; therefore, they are not subject to the spousal notification requirements.

2. Changes To Correct Omissions

After publication of the first interim rule, we discovered several provisions that were unclear or contained minor errors. We have corrected these deficiencies in these interim rules.

Section 831.105 has been amended to expressly provide that interest is to be compounded annually. Compound interest is necessary to implement the intent of the interest provisions of CSRSEA that the Civil Service Retirement and Disability Fund be approximately compensated for the income lost because the applicable survivor reductions were not taken. Interest on the interest lost is essential to the Fund because the money that would have been in the Fund would have earned compound interest.

A new paragraph was added to § 831.105 to specify the formula used in computing interest under CSRSEA deposits. Interest on CSRSEA deposits compounds annually, but accrues monthly. The formula in § 831.105(h) was developed to accomplish this purpose. To compute the interest on each monthly difference between the rate paid to the retiree and the reduced

rate that would have been in effect, 1.06 is raised to the power equal to one-twelfth of the number of months between the date when the benefit was paid and the date when collection of the deposit will begin (the date when collection begins is also the date when the annuity will be reduced to provide the survivor benefit). The 1.06 is the principal (1.00) plus the annual interest rate (.06). The exponent is the time period during which the interest is applied.

For example, if a retiree whose annuity commenced on January 1, 1985, at a rate of $14,700 per year, elected to provide a full survivor annuity for a former spouse, the retiree's annuity would be reduced by $100 per month. If the reduction began on November 1, 1985 (first reflected in the December 1 annuity check) the retiree would owe a deposit of $1027.17, as of December 1, 1985, computed as follows:

Date of check	Difference in rates	Months prior to annuity adjustment	Interest factor	Interest
Feb. 1, 1985	$100	10	.049756	$4.9756
Mar. 1, 1985	100	9	.044671	4.4671
Apr. 1, 1985	100	8	.039610	3.9610
May 1, 1985	100	7	.034574	3.4574
June 1, 1985	100	6	.029563	2.9563
July 1, 1985	100	5	.024576	2.4576
Aug. 1, 1985	100	4	.019613	1.9613
Sept. 1, 1985	100	3	.014674	1.4674
Oct. 1, 1985	100	2	.009759	.9759
Nov. 1, 1985	100	1	.004868	.4868
Dec. 1, 1985	0	0	.000000	.0000
Total	1000			27.1664

If the deposit is not paid in a single lump sum, we will collect it in monthly installments fixed at 25 percent of the net annuity paid December 1, 1985. The retiree's gross annuity is $1125 per month. Assuming Federal income tax withholdings of $222.05 and Federal Employees Health Benefits premiums of $102.95 per month, the retiree would have a net annuity of $800 per month. Collection would be made at the rate of $200 per month for 5 months with a final installment of $37.71 from the May 1, 1986 annuity check, as follows:

Date of check	Additional interest	Revised balance	Payment	Remaining balance
Dec. 1, 1985	$0.0000	$1027.1664	$200	$827.1664
Jan. 1, 1986	4.0266	831.1930	200	631.1930
Feb. 1, 1986	3.0726	634.2656	200	434.2656
Mar. 1, 1986	2.1140	436.3796	200	236.3796
Apr. 1, 1986	1.1507	237.5303	200	37.5303
May 1, 1986	.1827	37.7130	37.71	0.0000

Accordingly, the retiree would pay a total of $1037.71, of which $1000 is the amount by which the annuity would have been reduced and $37.71 is interest.

Section 8341(b)(1) of title 5, United States Code, allows the current spouse of an employee or Member whose annuity is based on a separation before October 11, 1962, a maximum survivor annuity of 50 percent of the employee's or Member's unreduced annuity; the reduction to provide that annuity is computed under the formula provided by section 9 of the Civil Service Retirement Act Amendments of 1956, Pub. L. 84–854, as required by section 1104 of the Civil Service Retirement Act Amendments of October 11, 1962, Pub. L. 87–793. These interim rules provide that the same maximum annuity rate and reduction formula apply also to the *former* spouse of an employee or Member whose annuity is based on a separation before October 11, 1962. (However, the reduction formula to provide a survivor annuity for a current spouse acquired after retirement, or for a former spouse divorced after retirement, will continue to be computed as provided in section 8339(j)(4) of title 5, United States Code.) Sections 831.604, 831.605, 831.612, 831.613, and 831.614 were modified to clearly state these rules.

The definition of "time of retirement" in § 831.603 has been corrected to explain more clearly that it refers to the first day for which annuity benefits are paid. In immediate annuity cases, this will usually be either the day after pay ceases, or the beginning of the month after pay ceases, if the employee worked more than 3 days during the month of retirement. In deferred annuity cases, this will be the former employee's 62nd birthday.

Section 831.606(9) states that in cases when the retiree elects both a fully or partially reduced annuity and an insurable interest annuity, both reductions are computed from the rate of the self-only annuity. It failed to explain that the beneficiary of the insurable interest annuity will receive an annuity equal to 55 percent (50 percent if the annuity is based on a separation before October 11, 1962) of the retiree's rate after the reduction for the insurable interest election but before any reduction to provide the current spouse annuity or former spouse annuity. This has been corrected in these interim rules.

Section 831.608(b)(1) of the current interim rules was superfluous. It has been eliminated from these interim rules.

The formula for computing the amount of the deposit under § 831.621(c)(2) was designed to cover only cases in which the retiree had a single former spouse for whom a spousal annuity had been provided prior to divorce. The formula has been corrected to cover situations when the retiree has had survivor reductions for more than one spouse. The revised formula conforms to our original intent that retirees will not be charged again for any time period when they were receiving a reduced annuity during the marriage to the spouse for whom they are now providing a former spouse annuity.

Section 831.623 has been amended to clarify that the rate of annuity payable to current spouses based on elections under that section will be at the same rate that would have been paid if the election had been at the first opportunity. This clarification principally affects survivors of disability annuitants who retired before October 20, 1969. The maximum annuity rate for those survivors is based on the employee's earned annuity (based on length of actual service) without the benefit of the 40 percent minimum or projection to age 60 applicable to the survivors of disability retirees who retired on or after October 20, 1969.

Section 831.701(d) has been amended to correct a reference to former § 831.1002 which has been renumbered § 831.620.

Section 831.1706(a) was clarified to express its original purpose that only funds to which the employee has an immediate entitlement can be affected by court orders aimed at employee retirement benefits.

3. Changes Based on FEBIA

Section 831.301 has been amended to include the right of former spouses to make the deposits required under Subpart C of this part to obtain credit for post-1956 military service. "Survivor," as used in Subparts C and U of this part, includes former spouses entitled to survivor annuities. In addition, § 831.602 of the interim rules has been amended to cross reference the provision on military deposits in Subparts C and U.

The definition of "former spouse" in § 831.603 was incorrect because it failed to provide that, except for the retroactive cases under §§ 831.621 and 831.622 (section 4(b) of CSRSEA), only persons married to employees or Members after CSRSEA became effective could be "former spouses" under Subpart F. This was required by section 4(a) of CSRSEA which limited the effect of the (section 2) retirement

changes to persons married to employees or Members after CSRSEA became effective. Section 201(a) of FEBIA extended coverage to additional former spouses. Now a person may meet the definition of a "former spouse" if either the marriage to the employee terminates after May 6, 1985, or the employee retires after that date. The definition of former spouse has been changed accordingly.

Under section 203(c)(2) of FEBIA, a current spouse may no longer be the beneficiary of both a fully or partially reduced annuity and an insurable interest annuity. Section 831.606(c) has been rewritten to require spousal consent giving up the right to a current spouse annuity before an insurable interest election can be made to benefit that spouse. The consent requirement prevents the spouse from receiving both annuities. To prevent an unintended inequity, we have provided that this *pro forma* consent will be cancelled if the employee cancels the insurable interest election under § 831.609 or fails to meet the requirements to make the election (e.g., fails to prove that he or she is in good health). Similiarly, we have continued the conversion right under § 831.606(h). That section has been amended to provide the right to cancel the *pro forma* consent when all former spouses' entitlements terminate, if the insurable interest annuity was elected to benefit the current spouse because the former spouse(s) had prior right to the spousal annuity.

Section 831.611(b) implements section 307 of FEBIA for employees who retire after May 27, 1986. These retirees are allowed to increase the amount allotted for a current spouse annuity during the 18-month period after retirement. An election under this section which causes the current spouse annuity and any former spouse annuities to exceed the total allowable survivor annuity will force a reduction in the former spouse annuities except to the extent that the former spouse annuities are required by court order. If a reduction in a former spouse annuity would be contrary to a court order, the court order prevents payment of the current spouse annuity to the extent necessary to comply with the court order and § 831.614.

Sections 831.612 and 831.613 have been amended to reflect the change in effective date of CSRSEA provided in section 201(a) of FEBIA. Under CSRSEA, generally, only retirees who retired on or after May 7, 1985, could elect to provide former spouse annuities for spouses from whom they were divorced after retirement. Under FEBIA and the new § 831.612, all retirees receiving reduced annuities to provide a current spouse annuity will be entitled to elect to provide a former spouse annuity for that spouse if the marriage terminates.

CSRSEA permitted a 2-year time limit in which to elect a reduced annuity to provide a survivor annuity for a spouse acquired after retirement only for retirees who retired after May 6, 1985. Under FEBIA and the new § 831.613, the 2-year election period applies to all marriages on or after February 27, 1986, even if the retiree retired years earlier.

Section 831.613(b)(4)(ii) was added to implement section 203(c)(1) and (c)(3) of FEBIA. If a retiree marries after retirement and elects a reduced annuity to benefit the new spouse, that election automatically voids an insurable interest election to benefit the same person, but gives the retiree the option of voiding an election of an insurable interest annuity if the beneficiary of the insurable interest annuity is a person other than the spouse acquired after retirement.

Section 831.617 was revised to conform to the changes in the rates of child annuities in section 205 of FEBIA. The revised provision sets each child's annuity rate depending on whether the child has a living parent who was the current or former spouse of the employee, Member, or retiree.

The new children's rates under FEBIA will be applied in the cases of children whose annuities commence on or after February 27, 1986, or whose annuities are required to be recomputed because of the death of the deceased employee's widow, former spouse, or another child, on or after that date.

Section 831.618 was revised to conforms to the change in the effective date of the CSRSEA marriage duration requirement under section 201(a) of FEBIA. Under CSRSEA, the former § 831.618 stated the marriage duration requirements before a survivor annuity right attaches based on a death of an annuitant who retired on or after May 7, 1985, or an employee or Member who died while employed in a position under CSRS on or after that date. Section 8341(a) of title 5, United States Code, as amended, provides that a spouse must be married to an employee, Member, or annuitant for only the 9 months immediately preceding death or be the parent of a child of that marriage to be eligible for a survivor annuity. Prior law (which continued to apply to annuitants who retired before May 7, 1985) required 1 year of marriage. Section 8341(i) of title 5, United States Code, provides that the requirement that a surviving spouse of an employee or Member must have been married to an employee or Member for at least 9 months immediately before death is satisfied in any case in which the death was accidental or in which the surviving spouse previously had been married to the individual and the aggregate time married is at least 9 months. These statutory changes were extended by FEBIA to cover all marriages after November 7, 1984 (including marriages by retirees who retired before May 7, 1985).

Section 831.620(e) incorporates the provision of section 204 of FEBIA for prorating the initial cost-of-living increases for former spouse annuities and beneficiaries of insurable interest annuities in the same manner as has been done for employee and current spouse annuities.

Section 831.621 has been amended to incorporate several changes made by FEBIA. Section 831.621 (a), (c), and (e) were changed to permit election of a partially reduced annuity to provide a former spouse annuity in accordance with section 201(d) of FEBIA. Previously, only an election of a fully reduced annuity was permitted under § 831.621. Section 831.621(b)(4) was changed to reflect the new time limit for making the election. That deadline is 12 months after publication of these interim rules.

Section 201(b) of FEBIA extended benefits under section 4(b) of CSRSEA to former spouses of employees who were eligible for immediate annuities but died (before May 7, 1985) while still employees. This change has been incorporated into § 831.622.

Section 831.622(a)(1) includes the five requirements to receive an annuity under section 4(b)(1)(B) of CSRSEA, as amended by section 201(b)(1)(C) of FEBIA. The CSRSEA requirement that the former spouse not be receiving an employer-provided retirement or survivor annuity in order to be eligible has been eliminated.

Section 831.622(a)(2) is the alternate method of qualifying under section 201(b)(3) of FEBIA. Under this provision, former spouses whose marriages were terminated before September 15, 1978, can qualify for annuities under this section if, at the time of application, no one else is receiving or designated to receive an annuity, other than a child's annuity, based on the service of the employee.

Section 831.622(b)(3) was revised to limit the former spouse's responsibility for notifying us about changes in status to giving notice of remarriage before age 55. The changes made by section 201 of FEBIA made the other information required by the previous § 831.622(b)(3) (i.e., eligibility for an employer-provided

retirement or survivor annuity) irrelevant.

Section 831.624 was amended to include references, in paragraphs (a) and (e), to the new deposit requirements in §§ 831.611, 831.628, and 831.629. The deposits are required for changes in election under these sections as provided in section 307 of FEBIA.

Section 201(a) of FEBIA extends survivor annuitant's right to remarry (without loss of the survivor annuity) after age 55 (rather than 60) to all remarriages on or after the date of enactment of CSRSEA (November 8, 1984). CSRSEA applied the age-55 standard only in cases in which the employee retired or died while serving in a position covered by the Civil Service Retirement System (CSRS) on or after May 7, 1985. Section 831.625 has been amended to reflect this change.

Section 307(b) of FEBIA granted retirees who retired before May 28, 1986, an 18-month period in which to increase the survivor protection for their current spouses provided that the current spouse is the same spouse to whom they were married at retirement and the increase does not cause all survivor annuities provided by that retiree to exceed the maximum. The election for these cases is the same as under § 831.611(b) (discussed above) except that, in accordance with section 307(b)(2)(B)(ii) of FEBIA, no interest on the deposit is charged under § 831.628.

Section 831.629 regulates the deposit required for a "later" election made under § 831.611(b) or 831.628. Section 307 of FEBIA provides that the deposit is equal to the sum of reductions that would have been made to the retired employee's annuity if the later election had been made at retirement, plus the additional cost to the CSRS associated with the later election.

We are assuming that 5 percent of the retirees who use this second opportunity to elect a survivor annuity or to increase the survivor base amount constitute—in actuarial terms—an "adverse selection." In other words, the *probability* of their spouse receiving a survivor annuity has increased. (For example, the retirees may have learned of a deterioration in their health status since making the original election.) Also, because a higher mortality rate is projected for this group, their survivors are assumed to receive benefits over a longer period of time. While it is logical to assume that the rate of "adverse selections" is actually much greater than 5 percent, this minimum number was established pending the development of actual mortality experience.

Accordingly, the additional cost associated with allowing this later election is the amount projected to be paid in survivor annuities (offset by projected reductions to the retirees' annuity) in the 5 percent of the cases representing "adverse selections." Spreading this total cost over the entire class of retirees making a later election, we derived an average cost of $245 per $1,000 of change in the designated base for computing the survivor annuity. We will recalculate this cost based on the actual costs to the system after we have had sufficient experience (estimated to require 10–15 years).

Sections 831.1704(d) and 831.1711 were amended to reflect the change in the effective date of CSRSEA provided in section 201(a) of FEBIA. Previously, court orders could award survivor annuities only if both the court order terminating the marriage and the employee's retirement or death while serving in a position covered by CSRS were on or after May 7, 1985. Now, under FEBIA, courts may generally award a survivor annuity provided either of these conditions is fulfilled. Two exceptions remain: Retirees who retired before May 7, 1985, are only subject to the terms of any divorce decree issued on or after that date which requires them to provide a former spouse survivor annuity if they had elected to provide a current spouse survivor annuity for that spouse when they retired, or, in the case of a post-retirement marriage, they had elected to provide a survivor annuity for that spouse before May 7, 1985. The second exception pertains to employees who were divorced before May 7, 1985, and who die in service on or after that date. In such a case, the law does not provide for compliance with a court order awarding a survivor annuity to the former spouse.

The amendment to § 831.1704(e) was required by section 208 of FEBIA which prohibited changes in court orders after the death of the employee.

The amendment to § 831.2009 was to permit court orders to block refunds of retirement deductions in legal separation cases as well as final divorce cases, as provided in section 209 of FEBIA. Before FEBIA, courts could block refunds in divorce cases but not in legal separation cases.

4. Interpretive Guideline

Lastly, we are adding a guideline (as Appendix B to Subpart Q) for interpreting orders which award survivor annuities. This guideline emphasizes the difference between reduced annuities to provide former spouse annuities under section 8339(j) of title 5, United States Code, and insurable interest annuities under section 8339(k) of title 5, United States Code. We hope that this guideline will eliminate the confusion which has been apparent from the telephone inquiries that we have received.

Under section 553(d)(3) of title 5, United States Code, I find that there is good reason to make these amendments effective in less than 30 days. The regulations are effective upon publication to prevent harm to persons entitled to benefits under FEBIA. Delaying rulemaking would be contrary to the public interest as expressed in FEBIA because such a delay could require delayed payments in cases authorized by the revised statute most of which was effective retroactive to May 7, 1985, until implementing regulations could be put in place. Although later payments could be retroactive to May 7, 1985, when entitlement attached on that date, delay could seriously harm entitled persons with an immediate need for payment.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Personnel Management Office, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

PART 831—RETIREMENT

Accordingly, OPM is amending 5 CFR Part 831 as follows:

Subpart A—Administration and General Provisions

1. The authority citation for Subpart A of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2).

2. In § 831.105, paragraph (h) is added to read as follows:

§ 831.105 Computation of interest.

* * * * *

(h) Interest under §§ 831.612, 831.613, 831.621, and 831.623 is compounded annually and accrued monthly.

(1) The initial interest on each monthly difference between the reduced annuity rate and the annuity rate actually paid equals the amount of the monthly difference times the difference between (i) 1.06 raised to the power whose numerator is the number of months between the date when the monthly difference in annuity rates occurred and the date when the initial interest is computed and whose denominator is 12; and (ii) 1.

(2) The total initial interest due is the sum of all of the initial interest on each monthly difference computed in accordance with paragraph (h)(1) of this section.

(3) Additional interest on any uncollected balance will be compounded annually and accrued monthly. The additional interest due each month equals the remaining balance due times the difference between (i) 1.06 raised to the 1/12th power; and (ii) 1.

Subpart C—Credit for Service

3. The authority citation for Subpart C of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

4. Section 831.301 is amended by removing the words "employee or Member (or his or her widow(er))" and inserting in their place "employee, Member, or survivor."

Subpart F—Survivor Annuities

5. The authority citation for Subpart F of Part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; Section 831.621 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99-251.

6. In § 831.602, paragragh (f) is added to read as follows:

§ 831.602 Relation to other regulations.

* * * * *

(f) Subparts C and U of this part contain information about service credit deposits by survivors of employees or Members.

7. In § 831.603, the definitions of "former spouse" and "time of retirement" are revised to read as follows:

§ 831.603 Definitions.

* * * * *

"Former spouse" means a living person who was married for at least 9 months to an employee, Member, or retiree who performed at least 18 months of creditable service in a position covered by CSRS and whose marriage to the employee was terminated prior to the death of the employee, Member, or retiree. Except in §§ 831.621 and 831.622, "former spouse" includes only persons who were married to an employee or Member on or after May 7, 1985, or who were the spouse of a retiree who retired on or after May 7, 1985, regardless of the date of termination of the marriage.

* * * * *

"Time of retirement" means the effective commencing date for a retired employee's or Member's annuity.

8. In § 831.604, paragraphs (c) and (d) are added to read as follows:

§ 831.604 Election at time of retirement of fully reduced annuity to provide a current spouse annuity.

* * * * *

(c) The maximum rate of a current spouse annuity is 55 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position under CSRS on or after October 11, 1962. The maximum rate of a current spouse annuity is 50 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position covered under CSRS between September 30, 1956, and October 11, 1962.

(d)(1) The amount of the reduction to provide a current spouse annuity equals 2½ percent of the first $3600 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $3600, if—

(i) The employee's or Member's separation on which the retirement is based was on or after October 11, 1962; or

(ii) The reduction is to provide a current spouse annuity (under § 831.613) for a spouse acquired after retirement.

(2) The amount of the reduction to provide a current spouse annuity under this section for former employees or Members whose retirement is based on separations before October 11, 1962, equals 2½ percent of the first $2400 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $2400.

9. Section 831.605 is amended by revising paragraph (c)(2) and adding paragraphs (e) and (f) to read as follows:

§ 831.605 Election at time of retirement of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

* * * * *

(c) * * *

(2) Would cause the total of current spouse annuities and former spouse annuities payable based on the employee's or Member's service to exceed 55 percent (or 50 percent if based on a separation before October 11, 1962) of the self-only annuity to which the employee or Member would be entitled.

* * * * *

(e) The maximum rate of a former spouse annuity under this section or § 831.612 is 55 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position under CSRS on or after October 11, 1962. The maximum rate of a former spouse annuity under this section or § 831.612 is 50 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position covered under CSRS between September 30, 1956, and October 11, 1962.

(f)(1) The amount of the reduction to provide a former spouse annuity equals 2½ percent of the first $3600 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $3600, if—

(i) The employee's or Member's separation on which the retirement is based was on or after October 11, 1962; or

(ii) The reduction is to provide a former spouse annuity (under § 831.612) for a former spouse from whom the employee or Member was divorced after retirement.

(2) The amount of the reduction to provide a former spouse annuity under this section for former employees or Members whose retirement is based on separations before October 11, 1962, equals 2½ percent of the first $2400 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $2400.

10. Section 831.606 is amended by revising paragraphs (c), (g), and (h), and by adding a new paragraph (k) to read as follows:

§ 831.606 Election of insurable interest annuity.

* * * * *

(c)(1) In the case of a married employee or Member, an election under this section may not be made on behalf of a current spouse unless that current spouse has consented to an election not to provide a current spouse annuity in accordance with § 831.604(a)(1).

(2) A consent (to an election not to provide a current spouse annuity in accordance with § 831.604(a)(1)) required by paragraph (c)(1) of this

section to be eligible to be the beneficiary of an insurable interest annuity is cancelled if—

(i) The retiree fails to qualify to receive the insurable interest annuity; or

(ii) The retiree changes his or her election to receive an insurable interest annuity under § 831.609; or

(iii) The retiree elects a fully or partially reduced annuity to provide a current spouse annuity under § 831.628.

(3) An election of a partially reduced annuity under § 831.611(b) or § 831.628 to provide a current spouse annuity for a current spouse who is the beneficiary of an insurable interest annuity is void unless the spouse consents to the election.

(4) If a retiree who had elected an insurable interest annuity to benefit a current spouse elects a fully reduced annuity to provide a current spouse annuity (or, with the consent of the current spouse, a partially reduced annuity to provide a current spouse annuity) under § 831.611(b) or § 831.628, the election of the insurable interest annuity is cancelled.

* * * * *

(g) (1) When an employee or Member elects both an insurable interest annuity and a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity and/or a former spouse annuity or annuities, each reduction is computed based on the self-only annuity computation. The combined reduction may exceed the maximum 40 percent reduction in the retired employee's or Member's annuity permitted under section 8339(k)(1) of title 5, United States Code, applicable to insurable interest annuities.

(2) The rate of annuity paid to the beneficiary of an insurable interest election, when the employee or Member also elected a fully reduced annuity or a partially reduced annuity, equals 55 (or 50 percent if based on a separation before October 11, 1962) percent of the rate of annuity after the insurable interest reduction. The additional reduction to provide a current spouse annuity or a former spouse annuity is not considered in determining the rate of annuity paid to the beneficiary of the insurable interest election.

(h) (1) Except as provided in § 831.605(d), if a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity has also elected an insurable interest annuity to benefit a current spouse and if the eligible former spouse dies or remarries before age 55 and no other former spouse is entitled to a survivor annuity based on an election made in accordance with § 831.612 or a qualifying court order, the retiree may elect, within 2 years after the former spouse's death or remarriage, to convert the insurable interest annuity to a fully reduced annuity to provide a current spouse annuity, effective on the first day of the month following the death or remarriage of the former spouse.

(2) An election under paragraph (h)(1) of this section cancels any consent not to receive a current spouse annuity required by paragraph (c) of this section for the current spouse to be eligible for an annuity under this section.

(3) When a former spouse receiving an annuity under section 8341(h) of title 5, United States Code, loses eligibility to that annuity, a beneficiary of an insurable interest annuity who was the current spouse at both the time of the retiree's retirement and death may, within 2 years after the death or remarriage of the former spouse, elect to receive a current spouse annuity instead of the annuity he or she had been receiving.

* * * * *

(k) (1) An election under this section is prospectively voided by an election of a reduced annuity to provide a current spouse annuity under § 831.613 that would benefit the same person.

(2) (i) If the spouse is not the beneficiary of the election under this section, a retiree may prospectively void an election under this section at the time the retiree elects a reduced annuity to provide a current spouse annuity under § 831.613.

(ii) A retiree's election to void an election under paragraph (k)(2)(i) of this section must be filed at the same time as the election under § 831.613.

11. In § 831.608, paragraph (b) is revised to read as follows:

§ 831.608 Waiver of spousal consent requirement.

* * * * *

(b) The spousal consent requirement will be waived if the employee or Member presents a judicial determination regarding the current spouse that would warrant waiver of the consent requirement based on exceptional circumstances.

12. Section 831.611 is revised to read as follows:

§ 831.611 Changes of election after final adjudication.

(a) Except as provided in section 8339 (j) or (k) of title 5, United States Code, or §§ 831.621, 831.623, 831.628, or paragraph (b) of this section, an employee or Member may not revoke or change the election or name another survivor later than 30 days after the date of the first regular monthly payment.

(b) (1) Except as provided in § 831.606 and paragraphs (b)(2) and (b)(3) of this section, a retiree who was married at the time of retirement and has elected a self-only annuity, or a partially reduced annuity to provide a current spouse annuity, or a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity, or an insurable interest annuity may elect, no later than 18 months after the time of retirement, an annuity reduction or an increased annuity reduction to provide a current spouse annuity.

(2) A current spouse annuity based on an election under paragraph (b)(1) of this section cannot be paid if it will, when combined with any former spouse annuity or annuities that are required by court order, exceed the maximum survivor annuity permitted under § 831.614.

(3) To make an election under paragraph (b)(1) of this section, the retiree must pay, in full, a deposit determined under § 831.629, plus interest, at the rate provided under § 831.105(g), no later than 18 months after the time of retirement.

(4) If a retiree makes an election under paragraph (b)(1) of this section and is prevented from paying the deposit within the 18-month time limit because OPM did not send him or her a notice of the amount of the deposit at least 30 days before the time limit expires, the time limit for making the deposit will be extended to 30 days after OPM sends the notice of the amount of the deposit.

(5) An election under paragraph (b)(1) of this section, cancels any spousal consent under § 831.604 to the extent of the election.

(6) An election under paragraph (b)(1) of this section is void unless it is filed with OPM before the retiree dies.

(7) If a retiree who had elected a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or former spouse annuities makes an election under paragraph (b)(1) of this section which would cause the combined current spouse annuity and former spouse annuity (or annuities) to exceed the maximum allowed under § 831.614, the former spouse annuity (or annuities) must be reduced to not exceed the maximum allowable under § 831.614.

13. In § 831.612, paragraph (a) is revised to read as follows:

§ 831.612 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

(a) (1) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired on or after May 7,

1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(2) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired before May 7, 1985, and whose marriage was terminated on or after May 7, 1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity if the retiree while married to the former spouse had elected, prior to May 7, 1985, a reduced annuity to provide a current spouse annuity for that spouse. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(3) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired on or after May 7, 1985, and before February 27, 1986, and whose marriage terminated before May 7, 1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be made no later than February 27, 1988.

* * * * *

14. In § 831.613, the introductory text of paragraphs (a) and (b), and paragraphs (b) (3) and (4) are revised to read as follows:

§ 831.613 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a current spouse annuity.

(a) In cases of retirees who retired before May 7, 1985, and married after retirement but before February 27, 1986:

* * * * *

(b) In cases involving retirees who retired on or after May 7, 1985, or married on or after February 27, 1986:

* * * * *

(3) An election under paragraph (b)(1) or (b)(2) of this section is not effective to the extent that it conflicts with a qualifying court order or would cause the combined current and former spouse annuities to exceed 55 percent (or 50 percent if based on a separation before October 11, 1962) of the retiree's annuity.

(4) (i) Except as provided in paragraph (b)(4)(ii) of this section, a retiree making an election under this section must deposit an amount equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraphs (b)(1) or (b)(2) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(ii) An election under this section may be made without deposit, if that election prospectively voids an election of an insurable interest annuity.

* * * * *

15. In § 831.614, paragraph (a) is revised to read as follows:

§ 831.614 Division of a survivor annuity.

(a) Except as provided in §§ 831.621 and 831.622, the maximum combined total of all current and former spouse annuities (not including any benefits based on an election of an insurable interest annuity) payable based on the service of a former employee or Member equals 55 percent (or 50 percent if based on a separation before October 11, 1962) of the rate of the self-only annuity that otherwise would have been paid to the employee, Member, or retiree.

* * * * *

16. Section 831.617 is revised to read as follows:

§ 831.617 Rates of child annuities.

(a) (1) The rate of annuity payable to a child survivor whose annuity commenced before February 27, 1986, is computed in accordance with the law in effect on the date when the annuity began to accrue, unless the rate of annuity is recomputed under paragraph (e) of this section on or after February 27, 1986.

(2) The rate of annuity payable to a child survivor whose annuity commenced on or after February 27, 1986, or was recomputed under paragraph (e) of this section on or after February 27, 1986, is computed under paragraph (b), (c), or (d) of this section.

(b) Except as provided in paragraph (a) of this section, the rate of annuity of a child survivor is computed under section 8341(e)(2) (i) through (iii) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, when the deceased employee, Member or annuitant was never married to a natural or adoptive parent of that surviving child of the former employee or Member.

(c) Except as provided in paragraphs (a) and (b) of this section, the rate of annuity payable to a child survivor is computed under section 8341(e)(2) (A) through (C) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, whenever a deceased employee, Member, or retiree is survived by a natural or adoptive parent of that surviving child of the employee, Member, or retiree.

(d) Except as provided in paragraph (a) of this section, the rate of annuity payable to a child survivor is computed under section 8341(e)(2) (i) through (iii) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, when the deceased employee, Member, or retiree is not survived by a natural or adoptive parent of that surviving child of the former employee or Member.

(e) On the death of a natural or adoptive parent or termination of the annuity of a child, the annuity of any other child or children is recomputed and paid as though the parent or child had not survived the former employee or Member.

17. In § 831.618, the introductory text of paragraph (a) is revised to read as follows:

§ 831.618 Marriage duration requirements.

(a) The surviving spouse of a retiree who retired on or after May 7, 1985, or of a retiree who retired before May 7, 1985, but married that surviving spouse on or after November 8, 1984, or of an employee or Member who dies while serving in a position covered by CSRS on or after May 7, 1985, or of an employee or Member who died while serving in a position covered by CSRS before May 7, 1985, but married that surviving spouse on or after November 8, 1984, can qualify for a current spouse annuity only if—

* * * * *

18. Section 831.620 is amended by revising the section heading, revising paragraph (a), and adding paragraph (e) to read as follows:

§ 831.620 Commencing and terminating dates of survivor annuities.

(a) A survivor annuity payable from the Civil Service Retirement and Disability Fund commences the day after (1) death of the employee, Member, or retiree; or (2) attainment of age 50 when, under section 12 of the Civil Service Retirement Act Amendments of February 29, 1948, the annuity is deferred until age 50; or (3) a claim is received in OPM when an annuity is authorized for unremarried widows and widowers by section 2 of the Civil Service Retirement Act Amendments of June 25, 1958, 72 Stat. 218; or (4) the later of the date of death of the retiree or the first day of the second month after the date the application for annuity is filed under § 831.622; or (5) the later of the date of death of the employee, Member, or retiree or the first day of the second month after the court order awarding the

former spouse annuity is received in OPM when a former spouse annuity is authorized by court order under section 8341(h) of title 5, United States Code.

* * * * *

(e) Initial cost-of-living increases on current and former spouse annuities, and annuities to beneficiaries of insurable interest annuities are prorated under section 8340(c) of title 5, United States Code.

19. Section 831.621 is amended by revising paragraphs (a), (b)(4), (c), (d), (e)(1), and (e)(2), and adding paragraph (f) to read as follows:

§ 831.621 Election by a retiree who retired before May 7, 1985, to provide a former spouse annuity.

(a) A retiree who retired before May 7, 1985, including a retiree receiving a fully reduced annuity to provide a current spouse annuity, may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity.

(b) * * *

(4) Be filed with OPM before September 8, 1987.

(c)(1)(i) If a retiree who is receiving an insurable interest annuity elects a fully reduced annuity or a partially reduced annuity under this section to benefit the same person, the insurable interest annuity terminates. A retiree who is receiving an insurable interest annuity at the time that an annuity is elected under this section does not owe any further deposit.

(ii) If a retiree who had been receiving an insurable interest annuity, which was terminated to elect a reduced annuity to provide a current spouse annuity for a spouse acquired after retirement, elects to provide a former spouse annuity for a former spouse who was the beneficiary of the insurable interest annuity, the retiree must deposit an amount equal to the sum of the monthly differences between the self-only annuity and a fully reduced annuity or partially reduced annuity (with the same base as elected to provide the former spouse annuity) from the date the insurable interest annuity terminated, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable.

(2) A retiree who elects a fully reduced annuity or a partialy reduced annuity under this section, to provide a former spouse annuity for a former spouse for whom the retiree had elected (during the marriage to that former spouse) a reduced annuity to provide a current spouse annuity, must deposit an amount equal to the sum of the monthly differences between the self-only annuity and the amount of annuity that would have been in effect had a fully reduced annuity or partially reduced annuity (with the same base as elected to provide the former spouse annuity) been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable, except that the retiree will not be charged for any period during which the survivor reduction was in effect for that former spouse.

(3) A retiree who elects a fully reduced annuity or a partially reduced annuity under this section, and is not covered under paragraph (c)(1) or (c)(2) of this section, must deposit an amount equal to the sum of the monthly difference between the self-only annuity and a fully reduced annuity or a partially reduced annuity (with the same base as elected to provide the former spouse annuity) since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable.

(d) If a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity elects a fully reduced annuity or a partially reduced annuity under this section to provide a former spouse annuity, the annuity will be reduced separately to provide for the current and former spouse annuities. Each separate reduction will be computed based on the self-only annuity, and the separate reductions are cumulative.

(e)(1) In response to a retiree's inquiry about providing a former spouse annuity under this section, OPM will send an application form. The application form will include a notice to retirees that filing the application constitutes an official election which cannot be revoked after 30 days after the annuity check in which the annuity reduction first appears.

(2) If the retiree returns the application electing a fully reduced annuity or a partially reduced annuity under this section, OPM will notify the retiree of—

(i) The rate of the fully reduced annuity or partially reduced annuity; and

(ii) The rate of the potential former spouse annuity; and

(iii) The amount of the deposit, including interest, that is due as of the date that the annuity reduction is scheduled to begin; and

(iv) The amount and duration of installment payments if no deposit is made.

* * * * *

(f)(1) A retiree who made an election under this section prior to September 9, 1986 may modify that election by designating a lesser portion of the retiree's annuity be used as the base for the annuity reduction and the former spouse annuity.

(2) Any modification under paragraph (f)(1) of this section must be in writing and received in OPM no later than the date provided for applications in § 831.621(b)(4).

20. In § 831.622, paragraphs (a) and (b)(3) are revised to read as follows:

§ 831.622 Annuities for former spouses of employees or Members retired before May 7, 1985.

(a)(1) The former spouse of a retiree who retired before May 7, 1985 (or of an employee or Member who died before May 7, 1985, was employed in a position covered by CSRS at the time of death, and had fulfilled the age and service requirements to be eligible to retire under section 8336 of title 5, United States Code, at the time of death) is entitled, after the death of the retiree, employee, or Member to a survivor annuity equal to 55 percent of the annuity of the retiree on whose service the survivor annuity is based if the former spouse, at the time of application, meets all of the following requirements:

(i) The former spouse's marriage to the retiree, employee, or Member was dissolved after September 14, 1978. The date of dissolution of a marriage is the date when the marriage between the former spouse and the retiree, employee, or Member ended under the law of the jurisdiction that terminated the marriage, rather than the date when restrictions on remarriage ended. The date of entry of the decree terminating the marriage will be rebuttably presumed to be the date when the marriage was dissolved.

(ii) The former spouse was married to the retiree, employee, or Member for at least 10 years of the retiree's, employee's, or Member's creditable service. Creditability of service is determined in accordance with section 8332 of title 5, United States Code, and subpart C of this part.

(iii) The former spouse has not remarried before reaching age 55.

(iv) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.619(b), before May 9, 1987.

(v) The former spouse is at least 50 years old when filing the application.

(2) A former spouse who is not eligible for an annuity under paragraph (a)(1) of this section and who is the former

spouse of a retiree who retired before May 7, 1985 (or of an employee or Member who died before May 7, 1985, was employed in a position covered by CSRS at the time of death, and had fulfilled the age and service requirements to be eligible to retire under section 8336 of title 5, United States Code, at the time of death) is entitled, after the death of the retiree, employee, or Member to a survivor annuity equal to 55 percent of the annuity of the retiree on whose service the survivor annuity is based if the former spouse, at the time of application, meets all of the following requirements:

(i) The former spouse was married to the retiree, employee, or Member for at least 10 years of the retiree's, employee's, or Member's creditable service. Creditability of service is determined in accordance with section 8332 of title 5, United States Code, and subpart C of this part.

(ii) The former spouse has not remarried before reaching age 55.

(iii) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.619(b), before May 9, 1987.

(iv) The former spouse is at least 50 years old when filing the application.

(v) No current spouse, other former spouse, or insurable interest designee is receiving or has been designated to receive a survivor annuity based on the service of the employee, Member, or retiree.

(3) If two or more eligible former spouses of a retiree, employee, or Member apply for annuities under paragraph (a)(2) of this section based on the service of the same retiree, employee, or Member, and neither meets the requirements of paragraph (a)(1) of this section, the former spouse whose application OPM receives first is entitled to the annuity.

(b) * * *

(3)(i) Former spouses applying for benefits under this section must meet the requirements of paragraph (a) of this section at the time of application.

(ii) An annuity under this section terminates on the last day of the month before the former spouse dies or remarries before age 55. A former spouse who is receiving a former spouse annuity under this section must notify OPM within 30 days after he or she remarries before age 55.

* * * * *

21. In § 831.623, paragraph (c)(2)(iii) is revised and paragraph (f) is added to read as follows:

§ 831.623 Second chance elections to provide survivor benefits.

* * * * *

(c) * * *

(2) * * *

(iii) The amount of the deposit, including interest, that is due as of the date that the annuity reduction is scheduled to begin; and

* * * * *

(f) The rate of a survivor annuity under this section will be computed under the laws in effect at the time of the retiree's separation from the Federal service.

22. Section 831.624 is amended by revising paragraph (a) and adding a new paragraph (e) to read as follows:

§ 831.624 Payments of required deposits.

(a) The deposits required to elect fully or partially reduced annuities under §§ 831.611, 831.612, 831.613, 831.621, 831.623, or 831.628 are not annuity overpayments and their collection is not subject to waiver. They are subject to reconsideration only to determine whether the amount has been correctly computed.

* * * * *

(e) The deposits required by § 831.611 or § 831.628 are controlled by § 831.629.

23. In § 831.625, paragraphs (a) and (b) are revised to read as follows:

§ 831.625 Remarriage.

(a)(1) If a recipient of a current spouse annuity remarried before November 8, 1984, the current spouse annuity terminates on the last day of the month before the recipient remarried before attaining age 60.

(2) If a recipient of a current spouse annuity remarries on or after November 8, 1984, a current spouse annuity terminates on the last day of the month before the recipient remarries before attaining age 55.

(b) A former spouse annuity or eligibility for a future former spouse annuity terminates on the last day of the month before the month in which the former spouse remarries before attaining age 55.

* * * * *

24. New §§ 831.628 and 831.629 are added to read as follows:

§ 831.628 Changes in elections to provide a current spouse annuity by a retiree who retired before May 28, 1986.

(a) Except as provided in § 831.606 and paragraphs (b) and (c) of this section, a retiree who retired before May 28, 1986, was married at the time of retirement, and at the time of retirement did not elect a fully reduced annuity to provide a current spouse annuity may elect a fully reduced annuity or a greater partially reduced annuity to provide a current spouse annuity.

(b)(1) An election under paragraph (a) of this section may be made only by a retiree who is married to the same spouse to whom the retiree was married at the time of retirement.

(2) A current spouse annuity based on an election under paragraph (a) of this section cannot be paid if it will, when combined with any former spouse annuity or annuities that are required by court order, exceed the maximum survivor annuity permitted under § 831.614.

(3)(i) Except as provided in paragraph (b)(4) of this section, to make an election under paragraph (a) of this section, the retiree must pay the deposit computed under § 831.629, in full, no later than November 28, 1987.

(ii) Except as provided in paragraph (b)(4) of this section, failure to pay the deposit, in full, before November 29, 1987, voids an election made under paragraph (a) of this section.

(4) If a retiree makes an election under paragraph (a) of this section and is prevented from paying the deposit within the 18-month time limit because OPM did not send him or her a notice of the amount of the deposit at least 30 days before the time limit expires, the time limit for making the deposit will be extended to 30 days after OPM sends the notice of the amount of the deposit.

(c) If a retiree who had elected a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity makes an election under paragraph (a) of this section that would cause the combined current spouse annuity and former spouse annuity (or annuities) to exceed the maximum allowed under § 831.614, the former spouse annuity (or annuities) must be reduced to conform with that allowed under § 831.614.

(d) An election under paragraph (a) of this section is void unless it is filed with OPM before the retiree dies.

§ 831.629 Deposit required to make an election under § 831.611(b) or § 831.628.

The amount of the deposit required under § 831.611(b) or § 831.628 equals the sum of the monthly differences between the annuity paid to the retiree and the annuity that would have been paid if the additional annuity reduction elected under § 831.611(b) or § 831.628 had been in effect since the time of retirement, plus 24.5 percent of the increase in the designated base (computed as of the time of retirement) on which the survivor annuity is calculated.

Subpart G—Computation of Annuities

25. The authority citation for Subpart G of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

26. In § 831.701, paragraph (d) is revised to read as follows:

§ 831.701 Effective dates of annuities.

* * * * *

(d) Survivor annuities commence as provided in § 831.620.

* * * * *

Subpart Q—Court Orders affecting Civil Service Retirement Benefits

27. The authority citation for Subpart Q of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

28. In § 831.1704, paragraphs (d) and (e) are revised to read as follows:

§ 831.1704 Qualifying court orders.

* * * * *

(d) For purposes of affecting or awarding a former spouse annuity, a court order is not a qualifying court order whenever—

(1) The marriage was terminated before May 7, 1985; and

(i) The employee or Member retired under CSRS before May 7, 1985; or

(ii) The employee or Member died in service; or

(2)(i) The marriage was terminated on or after May 7, 1985; and

(ii) The employee or Member retired under CSRS before May 7, 1985; and

(iii)(A) The employee or Member had elected not to provide a current spouse annuity for that spouse at the time of retirement; or,

(B) In the case of a post-retirement marriage, the annuitant had not elected to provide a survivor annuity for that spouse before May 7, 1985.

(e)(1) Except in cases when divorces occur after retirement, a court order concerning a survivor annuity will not be honored if it is issued after the retirement of the employee or Member involved.

(2) A court order concerning a survivor annuity for a former spouse will not be honored if it is issued after the death of the employee, Member, or retiree involved.

29. In § 831.1706, paragraph (a)(2) is revised and paragraph (a)(3) is added to read as follows:

§ 831.1706 Amounts payable.

(a) * * *

(2) Application for payment of the money by the former employee or Member; and

(3) The former employee's or Member's immediate entitlement to payment of the money subject to the order.

* * * * *

30. In § 831.1711, paragraph (b)(1) is revised to read as follows:

§ 831.1711 Effective dates.

* * * * *

(b)(1) The provisions of this subpart concerning former spouse annuities apply only with respect to a former spouse of an employee, Member, or retiree who retires or dies while employed in a position covered by CSRS on or after May 7, 1985, or a former spouse whose marriage to an employee, Member, or retiree is terminated on or after May 7, 1985, regardless of the date the employee separates from a position covered by CSRS.

* * * * *

31. Appendix B to Subpart Q of Part 831 is added to read as follows:

Appendix B to Subpart Q of Part 831—Guidelines for Interpreting State Court Orders Awarding Survivor Annuity Benefits to Former Spouses

UNITED STATES OF AMERICA

Office of Personnel Management

Compensation Group

Guidelines for Interpreting State Court Orders Awarding Survivor Annuity Benefits to Former Spouses

Recent inquiries and controversies resulting from ambiguous court orders seeking to divide civil service retirement benefits have demonstrated a need for written guidelines explaining the interpretation which the Office of Personnel Management (OPM) will place on terms and phrases frequently used in awarding survivor benefits. These guidelines are intended not only for the use of the Office of Retirement Programs, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Insurable Interest Annuities

Two types of potential survivor annuities may be provided by retiring employees to cover former spouses. Section 8339(j) of title 5, United States Code, provides for reduced annuities to provide "former spouse annuities." Section 8339(k) of title 5, United States Code, provides for "insurable interest annuities." These are distinct benefits, each with its own advantages.

A. OPM will enforce State court orders to provide section 8339(j) annuities. These annuities are less expensive and have fewer restrictions than insurable interest annuities but the former spouse's interest will automatically terminate upon remarriage before age 55. To provide a section 8339(j) annuity, the order must use terms such as "former spouse annuity," "section 8339(j) annuity," or "survivor annuity."

B. OPM will not enforce State court orders to provide "insurable interest annuities" under section 8339(k). These annuities may only be elected at the time of retirement by a retiring employee who is not retiring under the disability provision of the law and who is in good health. The election may also be eliminated to provide a survivor annuity for a spouse acquired after retirement. The parties might seek to provide this type of annuity interest if the non-employee spouse expects to remarry before age 55, if the employee expects to remarry a younger second spouse before retirement, or if another former spouse has already been awarded a section 8339(j) annuity. However, the State court will have to provide its own remedy if the employee is not eligible for or does not make the election. OPM will not enforce the order. Language including the words "insurable interest" or referring to section 8339(k) will be interpreted as providing for this type of survivor benefit.

C. In orders which contain internal contradictions about the type of annuity, such as "insurable interest annuity under section 8339(j)," the section reference will control.

Subpart T—Payment of Lump Sums

32. The authority citation for Subpart T of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

33. In § 831.2007, paragraph (e) is removed and paragraphs (c) and (d) are revised to read as follows:

§ 831.2007 Notification of current and/or former spouse before payment of lump sum.

* * * * *

(c) Proof of notification will consist of a signed and witnessed Statement by the current and/or former spouse on a form provided by OPM acknowledging that he or she has been informed of the former employee's or Member's application for refund and the consequences of the refund on the current or former spouse's possible annuity entitlement. This Statement must be presented to the employing agency or OPM when filing the Application for Refund of Retirement Deductions.

(d) If the current and/or former spouse refuses to acknowledge the notification or the employee or Member is otherwise unable to obtain the acknowledgement, the employee or Member must submit—

(1) Affidavits signed by two individuals who witnessed the employee's or Member's attempt to personally notify the current or former spouse. The witnesses must attest that they were in the presence of the employee or Member and the current or former spouse when the employee or

Member gave or attempted to give the notification form to the current or former spouse and that the employee's or Member's purpose should have been clear to the current or former spouse; or

(2) The current mailing address of the current or former spouse. OPM will attempt to notify (by certified mail—return receipt requested) the current or former spouse at the address provided by the employee or Member. The lump-sum credit will not be paid until OPM receives the signed return receipt.

34. In § 831.2009, paragraph (a) is revised to read as follows:

§ 831.2009 Court orders or decrees preventing payment of lump sums.

(a) Payment of the lump-sum credit to a former employee or Member will be subject to the terms of any court order or decree issued with respect to any former spouse or to any current spouse from whom the employee or Member was legally separated, if—

(1) The court order or decree expressly relates to any portion of the lump-sum credit involved; and

(2) Payment of the lump-sum credit would extinguish entitlement of the current or former spouse to a survivor annuity under section 8341(h) of title 5, United States Code, or to any portion of an annuity under section 8345(j) of title 5, United States Code.

* * * * *

35. Section 831.2010 is added to read as follows:

§ 831.2010 Transfers between retirement systems.

Transfers of employees' contributions between the Civil Service Retirement and Disability Fund and other retirement systems for Federal or District of Columbia employees when made in accordance with Federal statute for the purpose of transferring retirement service credit to the other retirement system are not subject to the notice requirements or court order provisions of this subpart.

[FR Doc. 86-20105 Filed 9-5-86; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 322

[Docket No. 85-011F]

Delivery of Export Certificates

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On February 26, 1986, the Food Safety and Inspection Service (FSIS) published a proposed rule (51 FR 6743) that would permit the filing of a duplicate export certificate with the United States Customs Service within four days of the clearance of a vessel carrying a shipment of meat products. This action is consistent with regulations of the United States Customs Service that allow a delay of four business days in the filing of a Complete Cargo Declaration. In the interim period, the United States Customs Service will clear the vessel on the basis of a statement containing information as to the export certificate number. This action is necessary so that vessels carrying meat products can depart on schedule even though certain export certificates are not on file at the time of departure. Five comments were received on the proposed rule and all supported it. Therefore, FSIS is adopting the proposed rule as final with minor modifications.

EFFECTIVE DATE: October 8, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Fetzner, Director, Export Coordination Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-9051.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or have 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. This rule makes more flexible and less burdensome certain paperwork requirements mandated by the Federal Meat Inspection Act.

Effect on Small Entities

The Administrator, FSIS, has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The rule makes more flexible and less burdensome certain paperwork requirements mandated by the Federal Meat Inspection Act.

Background

On February 26, 1986, FSIS published in the **Federal Register** (51 FR 6743) a proposed rule to amend the Federal meat inspection regulations by adding a provision that would permit a four-day delay in the filing of a duplicate export certificate with the United States Customs Service (Customs). This delay period would enable vessels carrying meat products to depart even though the duplicate of the export certificate covering meat products intended for export had not been filed with Customs. Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), meat products intended and offered for export to and sale in a foreign country must be inspected (21 U.S.C. 615). In addition, the FMIA prohibits the clearance for departure of any vessel carrying meat products for export to and sale in a foreign country until the owner or shipper has obtained from an inspector a certificate indicating that the products are sound and wholesome (unless the Secretary has waived certificate requirements for the country) (21 U.S.C. 617). The FMIA also requires that copies of the certificate be filed with USDA, the owner or shipper of the products intended for export, and the chief officer of the vessel carrying the meat products (21 U.S.C. 618). Section 322.2(e) of the Federal meat inspection regulations (9 CFR 322.2(e)) had required that the duplicate of the export certificate be delivered to the shipper for filing with Customs at the time the master's manifest or supplemental manifest is filed by the chief officer of the vessel with Customs, that is, on the day of departure. However, Customs' law and regulations allow shippers a delay of four business days in the filing of a Complete Cargo Declaration (manifest) if the vessel's cargo declaration is not complete (or if certain required shipper's export declarations are not on file), and a General Declaration is filed at departure time (46 U.S.C. 91, 19 CFR 4.75).

There have been instances where a vessel carrying meat products has been denied clearance by Customs because the export certificate, covering meat products on board, was not available at the time the vessel was due to depart. This can occur frequently because certain importing countries require that a veterinarian sign the export certificate. All such products would be certified as being sound and wholesome, and the certificate would be prepared and the boxes stamped with the number of the export certificate. However, if the veterinarian is on an assignment

covering more than one establishment, or if the product is being shipped from an establishment without veterinary coverage, then the veterinarian may not be able to send the signed certificate, verifying completion of inspection, in a timely manner. In these cases, if the veterinarian notifies plant management that product may be shipped, then the product may be moved from the establishment even without a signed certificate.

This rule permits the shipper, shipper's agent or the vessel's agent to provide to Customs a statement under the shipper's or agent's letterhead signed by the shipper briefly describing the shipment of the product, in those instances where the export certificate is not available at departure time. This description would include the number of boxes covered, number of pounds covered, type of product, and the number of the export certificate that covers the shipment of the product. For example, the following statement would be acceptable: "The *600* boxes, *36,000* pounds of *Beef Tenderloins* in the shipment are covered by *USDA Export Certificate No. MPA 52983.*" The export certificate number is readily available to the shipper because the outside of each container is required to be stamped with the number of the export certificate covering it before the shipment leaves the establishment. Customs will then clear the vessel for departure on the basis of the statement. The duplicate of the signed export certificate will be delivered to Customs by the shipper, shipper's agent, or vessel's agent within four business days of the vessel's departure. The four-day time frame is consistent with Customs' regulations that allow a Complete Cargo Declaration (manifest) or shipper's export declarations to be filed within four business days after clearance.

This rule is expected to impact positively on all shippers and exporters, and on FSIS and the Customs Service, as it provides an alternative to an unnecessarily restrictive regulatory requirement that is inconsistent with Customs' procedures and is currently causing enforcement problems for Customs and vessel delays for shippers transporting meat products as part of or all of their cargo. Since the product has been inspected and certified for export (the export stamp provides this assurance), unavoidable delay in the delivery of the certificate to Customs should not delay a vessel's departure.

Discussion of Comments

FSIS received five comments in response to the proposed rule: one from an industry member; one from a shipping association, one from a steamship operator's association; one from an export company; and one from a government agency, United States Customs Service. All of the commenters supported the intent of the proposed change. Most commenters simply stated their concurrence, and noted that adoption of the proposal would reduce delays in clearing vessels carrying meat products without weakening current regulatory controls and would be consistent with the regulations and procedures used by the United States Customs Service.

The Customs Service recommended a few substantive changes and asked for procedural clarification on certain aspects of the proposal. The following are the substantive issues raised by the Customs Service and FSIS' response to each:

1. *Comment.* The proposed language to amend § 322.2 can be taken to imply that a vessel is not to be cleared unless and until the letterhead statement is presented to Customs. If this is meant to be the case, Customs recommends that language to that effect also be inserted in § 322.2 or § 322.4.

Response. The language proposed for § 322.2 states in part ". . . In the interim period, the vessel will be cleared by Customs on the basis of a statement, under the shipper's or agent's letterhead . . . ." To avoid any questions as to the intent of the amendment, FSIS is adding a sentence to the regulation which clarifies that no vessel with cargo subject to certification is to be cleared by Customs unless either the duplicate of the certificate or the letterhead statement has been presented to Customs.

2. *Comment.* Customs suggests that FSIS specify the delay period as four (4) business days to conform to the Customs' law and regulations.

Response. FSIS intended that this delay period be consistent with Customs' regulations. The final rule states that the delay period is four (4) business days.

FSIS is also deleting a gender-specific reference that was inadvertently included in the proposed rule.

After careful consideration of the comments received on the proposed rule, FSIS is adopting the proposal as published, with the modifications discussed above.

Final Rule

List of Subjects in 9 CFR Part 322

Meat inspection; Exports.

1. The authority citation for Part 322 is revised to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

2. Paragraph (e) of § 322.2 is revised to read as follows:

§ 322.2 Export certificates; instructions concerning issuance.

* * * * *

(e) The duplicate of the certificate shall be delivered to the shipper and shall be delivered by the shipper to the agent of the railroad or other carrier which transports the consignment from the United States otherwise than by water, or to the chief officer of the vessel on which the export shipment is made, or to the vessel's agent and shall be used only by such carrier and only for the purpose of effecting the transportation of the consignment certified. The chief officer of the vessel or the vessel's agent, shipper or shipper's agent shall file such duplicate with the Customs officer within four (4) business days of the clearance of the vessel at the time of filing the complete manifest. In the interim period, the vessel will be cleared by Customs on the basis of a statement, under the shipper's or agent's letterhead, containing the number of boxes, the number of pounds, the product name and the USDA export certificate number that covers the shipment of the product. No clearance shall be given to a vessel carrying meat products unless either the duplicate of the certificate or the prescribed statement referencing the certificate has been presented to Customs.

* * * * *

Done at Washington, DC, on September 3, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-20113 Filed 9-5-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20, 25, and 602

[T.D. 8095]

Estate and Gift Taxes; Qualified Disclaimers of Property

Correction

In FR Doc. 86-17606 beginning on page 28365 in the issue of Thursday, August 7, 1986, and corrected on August 29, 1986, at 51 FR 30857, make the following corrections:

§ 25.2518-2 [Corrected]

1. On page 28373, second column, in § 25.2518-2(d)(4), Example (2), fifth line, "declined" should read "decided";

§ 25.2518-3 [Corrected]

2. On page 28377, second column, in § 25.2518-3(d), Example (15), second line below the equation, "$25,00," should read "$25,000,".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1150-86]

Redelegation of Authority; Federal and Penal Correctional Institutions

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Attorney General is authorized to appoint all necessary officers and employees to control and manage Federal penal (including detention) and correctional institutions under the provisions of 18 U.S.C. 4001(b)(1) and 28 U.S.C. 510. Pursuant to 28 CFR 0.96, the Attorney General has authorized the Director of the Bureau of Prisons to exercise any of the authority, functions, or duties imposed by law on the Attorney General relating to the commitment, control or treatment of persons charged with or convicted of offenses against the United States. Similarly, under the provisions of 8 U.S.C. 1103 and 28 U.S.C. 510, the Attorney General is authorized to appoint such employees of the Immigration and Naturalization Service as he deems necessary, and to delegate to them or to any officer or employee of the Department of Justice any of the duties and powers vested in him regarding the enforcement of the Immigration Laws. The Attorney General has delegated to the Commissioner of the Immigration and Naturalization Service the authority to administer and enforce the Immigration and Naturalization Act and other related immigration laws. This Order allows the Director of the Bureau of Prisons to redelegate his authority to any employee of the Department of Justice. It also allows the Commissioner of the Immigration and Naturalization Service to redelegate his authority to any employee of the Immigration and Naturalization Service or to any employee of the United States.

EFFECTIVE DATE: August 27, 1986.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, Room 770, 320 First Street, NW., Washington, DC 20534 (202/272-6874).

SUPPLEMENTARY INFORMATION: This Order allows the Director of the Bureau of Prisons to redelegate his various duties and responsibilities regarding the management of federal penal and correctional institutions and the custody and care of persons held therein to any employee of the Department of Justice. This redelegation allows greater flexibility in managing federal penal and correctional institutions. The Order also allows the Commissioner of the Immigration and Naturalization Service to redelegate his various duties and responsibilities of enforcing the immigration laws to any employee of the Immigration and Naturalization Service or to any employee of the United States.

This Order pertains to agency management and is therefore not subject to publication for notice and comment under 5 U.S.C. 553. It will not have a significant economic impact on a substantial number of small entities within the meaning of 5 U.S.C. 605. It is not a major rule within the meaning of Executive Order No. 12291.

List of Subjects in 28 CFR Part 0

Government employees, Organization and functions (government agencies).

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Accordingly, by virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Subparts Q and S of Part 0 of 28 CFR are amended to read as follows:

1. The authority citation for Part 0 of Chapter 1 of Title 28 of the Code of Federal Regulations is revised to read as follows and the authority citations which appear throughout Part 0 are removed:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103; 15 U.S.C. 644(k); 18 U.S.C. 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 200(c); 50 U.S.C. app. 2001-2017p; Pub. L. No. 91-513, sec. 501; EO 11919; E.O. 11267; E.O. 11300.

2. In Subpart Q, § 0.97 is revised to read as follows:

§ 0.97 Redelegation of authority.

The Director of the Bureau of Prisons is authorized to redelegate to any of his subordinates any of the authority, functions or duties vested in him by this Subpart Q. The Director may make similar delegations to any other employee of any Bureau, Board, Office, or Division of the Department of Justice with the consent of the head of that Bureau, Board, Office, or Division, and after written notification to the Attorney General or designee. A redelegation of authority is limited to employees of the Department of Justice. Existing redelegations by the Director of the Bureau of Prisons shall continue in force and effect until modified or revoked.

3. In Subpart S, § 0.108 is revised to read as follows:

§ 0.108 Redelegation of authority.

The Commissioner of the Immigration and Naturalization Services may redelegate to any employee of the Service or the Department of Justice any of the powers, privileges, or duties conferred or imposed on the Commissioner by § 0.105. The Commissioner is authorized to confer or impose upon any employee of the United States, with the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed on the Commissioner by § 0.105. Existing redelegations by the Commissioner shall continue in force and effect until modified or revoked.

Dated: August 27, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86-20115 Filed 9-5-86; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 0

[Order No. 1149-86]

Authority To Compromise and Close Civil Claims and Responsibility for Judgments, Fines, Penalties, and Forfeitures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order increases from $2500 to $5000 the settlement authority delegated to the Director of the Bureau of Prisons, the Commissioner of Immigration and Naturalization Service, the Director of the United States Marshals Service, and the Administrator of the Drug Enforcement Administration. This order also redefines "gross amount of the original claim" for purposes of delegation of settlement authority in certain customs law penalty cases.

EFFECTIVE DATE: August 27, 1986.

FOR FURTHER INFORMATION CONTACT: Gregory Walden, Associate Deputy Attorney General, (202) 633-2268.

SUPPLEMENTARY INFORMATION: This order concerns internal Department management and is being published for the information of the general public.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies).

By virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, Title 28 of the Code of Federal Regulations, Part 0, Subpart Y, is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 200(c); 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.169 is amended by revising it to read as follows:

§ 0.169 Definition of "gross amount of the original claim".

The phrase "gross amount of the original claim," as used in this subpart Y and as applied to any civil claim brought under section 592 of the Tariff Act of 1930, as amended (see § 0.45(c)), shall mean the actual amount of lost customs duties involved. In nonrevenue loss cases brought under section 592 of the Tariff Act of 1930, as amended, the phrase "gross amount of the original claim" shall mean the amount demanded in the Customs Service's mitigation decision issued pursuant to 19 U.S.C. 1618, or, if no mitigation decision has been issued, the "gross amount of the original claim" shall mean twenty percent of the dutiable value of the merchandise.

§ 0.172 [Amended]

3. Section 0.172(a) is amended by removing the figure "2,500" and inserting in lieu thereof the figure "5,000."

Dated: August 27, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86–20114 Filed 9–5–86; 8:45 am]

BILLING CODE 4410-01-M

---

28 CFR Part 0

[Order No. 1148–86]

Designation of the Postal Service Under the Protection of Children Against Sexual Exploitation Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Section 2254(b) of title 18 of the United States Code allows the Attorney General to authorize or designate "officers, agents, or other persons" to enforce the civil forfeiture section of the Protection of Children Against Sexual Exploitation Act, as amended by the Child Protection Act of 1984, 18 U.S.C. 2251–2255 (hereinafter referred to as "the Act"). The legislative intent of this portion of section 2254(b) is to permit the efforts of one law enforcement agency to be supplemented by another law enforcement agency.

This order of designation to the Postal Service authorizes the Postal Service to conduct civil forfeitures under the Act. The Postal Service currently has jurisdiction to enforce the substantive offenses of the Act and may seek, through the judicial, process criminal forfeiture thereunder.

This order of designation requires the Postal Service to abide by all rules, regulations, and procedures of the Federal Bureau of Investigation as they relate to the Act.

EFFECTIVE DATE: August 22, 1986.

FOR FURTHER INFORMATION CONTACT: Brad Cates, Director, Asset Forfeiture Office, Criminal Division, United States Department of Justice, Washington, DC 20530; (202) 272–6420.

SUPPLEMENTARY INFORMATION: This order authorizes the Postal Service to perform specific duties of the Attorney General and is, therefore, a necessary act of internal management of the Department of Justice. The order is not a rule within the meaning of Executive Order 12291, section (1)(a). The order does not affect a substantial number of small business entities and is not, therefore, subject to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies).

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Part 0 of title 28 of the Code Federal Regulations is amended as follows:

1. The authority citation of Part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 4201 *et seq.*, 6003(B); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 200(c); 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Part 0 is amended by adding the following orders at the end of the Appendix to Subpart Y:

Attorney General Order No. 1147–86

By virtue of the authority vested in the Attorney General by 18 U.S.C. 2254, the Attorney General hereby designates the Postal Service with the authority to conduct civil forfeitures under Section 2254 of the Protection of Childern Against Sexual Exploitation Act, as amended by the Child Protection of 1984, 18 U.S.C. 2251–2255.

In utilizing the authority hereby granted, all rules, regulations, and procedures of the Federal Bureau of Investigation relating to the aforementioned Act must be followed, including the Federal Bureau of Investigation's Manual of Investigative Operations and Guidelines.

The authority hereby granted to enforce section 2254 of the Protection of Children Against Sexual Exploitation Act, as amended by the Child Protection Act of 1984, is subject to the direction of the Attorney General.

Dated: August 22, 1986.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 86–19870 Filed 9–5–86; 8:45 am]

BILLING CODE 4401-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Approval of Permanent Program Amendments From the State of Alabama Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: The Director, OSMRE, is announcing the approval of program amendments submitted by Alabama to modify its approval permanent regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were submitted on May 20, 1986, and pertain to permitting requirements for coal processing plants and their support facilities, and related definitions.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director, OSMRE, has determined that the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving the program amendments. The Federal rules at 30 CFR Part 901 codifying decisions concerning the Alabama program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: September 8, 1986.

FOR FURTHER INFORMATION CONTACT: Mark Boster, Acting Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254–0890.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Alabama State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Alabama program can be found at 47 FR 22020 (May 20, 1982) and 48 FR 34026 (July 27, 1983). Subsequent actions concerning the Alabama program are identified in 30 CFR 901.15.

II. Proposed Amendment

On May 20, 1986, Alabama submitted a proposed amendment to modify requirements contained in the Alabama Surface Mining Commission rules at 880–X–9J–.11 and 880–X–2A–.06. The amendment relates to requirements for coal processing plants and their support facilities and related definitions. As a result of the July 6, 1984, ruling of the District Court for the District of Columbia in the case entitled *In re: Permanent Surface Mining Regulation Litigation, II*, the requirement to obtain a mining permit was extended to include processing facilities which in any way leach, chemically process, or physically process coal, even if they do not separate coal from its impurities. The Alabama rule is intended to bring these facilities under jurisdiction of the Alabama program in accordance with the court's decision. The effective date of the Alabama rule was June 20, 1986, with permit applications for the affected facilities to be filed by August 20, 1986.

On July 8, 1986, OSMRE announced receipt of the amendments and procedures for a public comment period and for a public hearing on the substantive adequacy of the proposed amendments (51 FR 24719). Since no requests for a public hearing were received, the public hearing scheduled for August 4, 1986, was not held. The comment period ended on August 7, 1986.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendments submitted by Alabama on May 20, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII. Only those provisions of particular interest are discussed in the specific findings which follow, and lack of discussion of a specific provision does not indicate or imply any deficiency in the provision.

1. Subsection 1 of 880–X–8J–.11 pertains to operators of processing plants and associated support facilities and requires operators to obtain a permit in accordance with requirements of this Rule. Subsection 2 specifies information to be included in the mining and reclamation plan and requires that the plan demonstrate that operations will be conducted in compliance with Rule 880–X–10J. Subsection 3 directs that the regulatory authority find, in writing, that operations will be conducted in compliance with requirements of Rule 880–X–10J.

These sections remain unchanged from the precious requirements in the Alabama Surface Mining Commission (ASMC) rule 880–X–8J–.11. The Director finds that these sections remain no less effective than the Federal rules at 30 CFR 785.21 (a), (b), and (c), which contain similar provisions.

2. Subsection 4 of ASMC 880–X–8J–.11 provides that persons operating coal processing plants not previously subject to Rules 880–X–2A–.06, Definitions of Coal Processing, et al., amended under rulemaking 86–1 will have no later than sixty days after the effective date of the rule to apply for a permit or cease operations.

The Director finds the Alabama requirement consistent with the Federal interim final rule at 30 CFR 785.21(d)(2)(ii) (July 10, 1985, 50 FR 28186) which require operators to apply for a permit in accordance with the State schedule approved by OSMRE. The Director further finds that schedule is consistent with and no less effective than the schedule established at 30 CFR 785.21(d)(1) which allows operators of coal preparation plants (in States with no statutory bar to regulating such plants) that were not subject to the requirements of Chapter VII before July 6, 1984, to apply for a permit up to two months after the effective date of the interim final rule.

3. ASMC rule 880–X–8J–.11, subsection 4, paragraphs (a), (a)(1), (a)(2), and (a)(3) allow coal preparation plant operations to continue after the effective date of the amended rules if: (1) The operator files a timely permit application except that if the application is determined to be incomplete the applicant will have 60 days to correct the deficiencies; (2) the ASMC has not yet issued or denied the permit; and (3) the operation complies with interim program performance standards. The Director finds that these exemptions are similar to and no less effective than the exemptions provided in interim final rule 30 CFR 785.21(e).

4. Subsection (4), paragraph (b) of ASMC rule 880–X–8J–.11 provides that upon issuance of a permit under the rule, processing plants shall comply with Chapter 880–X–10J, which contains performance requirements for coal processing plants not located within the permit area for a mine. The Director finds the provision consistent with and no less effective than the Federal provision at 30 CFR 785.21(a) which requires any person who intends to operate a coal preparation plant outside the permit area of a mine, to obtain a permit in accordance with the requirements of the section.

5. Alabama has added a definition of "coal processing" at ASMC rule 880X–2A–.06 to mean "chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal." The Director finds the definition identical to and, therefore, no less effective than the Federal definition of "coal preparation" at interim final rule 30 CFR 701.5 (July 10, 1985, 50 FR 28186).

6. Alabama has amended the definition of "coal processing plant" at ASMC rule 880X–2A–.06(bb) to mean "a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating or other processing or preparation. "The processing plant includes, but need not be limited to, associated facilities: Loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas. The Director finds that, although Alabama uses the term "coal processing plant" while the Federal definition at interim final rule 30 CFR 701.5 uses the term "coal preparation plant," the Alabama definition is substantially similar to the Federal definition and includes all plants and associated facilities included by the Federal definition. The Director, therefore, finds the Alabama definition no less effective than the Federal definition.

7. Alabama has amended its definition of "surface coal mining operations" at ASMC rule 880X–2A–.06(kkkkkk) to insert the word "and" before "the

cleaning, concentrating, or other processing, or preparation of coal; . . ." Although the Director finds this to be a minor, non-substantive change, he notes that the punctuation used in the definition now more closely resembles that in the Federal rule and therefore clarifies that "leaching or other chemical or physical processing" is not modified by the phrase "in situ" and therefore does not restrict regulatory requirements to coal processing plants at or near the mine site. The Director finds, therefore, that the Alabama definition is not less effective than the amended Federal definition in the interim final rule at 30 CFR 700.5 (July 10, 1985, 50 FR 28186).

IV. Public Comments

No public comments were received on this rulemaking.

V. Director's Decision

The Director, based on the findings above, is approving the May 20, 1986 amendments to the Alabama program. The Director is amending 30 CFR Part 901 to reflect the approval of the above State program modifications.

VI. Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 29, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 901—ALABAMA

30 CFR Part 901 is amended as follows:

1. The authority citation for Part 901 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 901.15 is amended by adding a new paragraph (i) to read as follows:

§ 901.15 Approval of regulatory program amendments.

* * * * *

(i) Amendments to the Alabama permanent regulatory program submitted to OSMRE on May 20, 1986, to amend ASMC Rules at 880–X–8J–.11 and 880–X–2A–.06 are approved effective September 8, 1986.

[FR Doc. 86–20139 Filed 9–5–86; 8:45 am]
BILLING CODE 4310–05–M

---

30 CFR Part 938

Approval of Amendment to the Pennsylvania Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is approving, with certain exceptions, program provisions submitted by Pennsylvania as amendments to the State's permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to Pennsylvania's Inspection and Enforcement Policy and Civil Penalty Program for coal mining. Pennsylvania submitted the proposed program amendments on September 30, 1985 (Administrative Record No. PA 568). OSMRE published a notice in the **Federal Register** on October 29, 1985, announcing receipt of the amendments and inviting public comments for 30 days on the adequacy of the proposed amendments (50 FR 43726). On February 4, 1986, OSMRE notified Pennsylvania of its concerns pertaining to the amendments. In response to this letter Pennsylvania submitted additional materials on May 22, 1986. OSMRE reopened the comment period on the amendments for 15 days to provide the public an opportunity to review and comment on the additional materials submitted by the State on May 22, 1986 (51 FR 22309, June 19, 1986).

After providing opportunity for public comment and conducting a thorough review of the program amendments submitted September 30, 1985, and the additional materials submitted May 22, 1986, the Director has determined that, with certain exceptions, the amendments meet the requirements of SMCRA and the Federal regulations and the Director is approving the provisions with the exceptions noted below. The Federal rules at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage the State to conform its program to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: September 8, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South Second Street, Suite L–4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background

The Pennsylvania program was conditionally approved by the Secretary of the Interior on July 31, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** (47 FR 33050–33083). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.15 and 938.16.

II. Submission of Program Amendments

On September 30, 1985, Pennsylvania submitted for OSMRE's review and approval proposed amendments to the

State program Administrative Record (No. PA 568). The amendments modify the State's inspection and enforcement policy and civil penalty program.

On October 29, 1985, OSMRE announced receipt of the amendments in the **Federal Register** and invited comment on the adequacy of the proposed amendments in satisfying the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17 (50 FR 43726).

On February 4, 1986, OSMRE notified the State of its concerns pertaining to the amendments (OSMRE administrative record number PA 593). In response to this letter Pennsylvania submitted additional materials on May 22, 1986 (Administrative Record No. PA 606). OSMRE reopened the comment period on the amendments for 15 days to provide the public an opportunity to review and comment on the additional materials (51 FR 22309, June 19, 1986).

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.15 and 732.17, the Director finds that the program amendments submitted by Pennsylvania on September 30, 1985, as modified by the State's submission to OSMRE dated May 22, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII with the exceptions noted below.

Finding 1

Civil Penalty Program I. and VIII. and Inspection and Enforcement Policy II.B.2.a (5) and II.J.

Amendments to these sections establish a new requirement which provides that in all cases of corporate violations which lead to the issuance of a failure-to-abate cessation order, corporation officials, directors or agents may be subject to individual civil penalties. Individual civil penalties shall be assessed based upon a determination by the Department of Environmental Resources (DER) that the violations are the result of knowing and willful conduct. As initially submitted, the State provisions did not provide for all the sanctions and penalties contained in the Federal statutory provision. Section 518(f) provides authority for assessing individual penalties for all violations, not merely those that lead to a failure-to-abate cessation order. In addition, SMCRA provides for individual criminal penalties as well as civil penalties.

In its February 4, 1986 letter to the State, OSMRE advised Pennsylvania that (1) its Civil Penalty Program should be amended to include provisions for assessing individual civil penalties for all violations, not just those leading to a failure-to-abate cessation order and (2) the State should clarify that nothing in the amendment precludes the Commonwealth from initiating alternative enforcement action under the State's statutory counterparts to sections 518(d), 518(f), 521(a)(4), or 521(c) of SMCRA which are included in the approved State program.

In its May 22, 1986 submission the State addressed item one above by adding section II.8. to its Civil Penalty Program. This provision provides that DER will review each assessment against a corporate permittee to determine if a corporate officer, director or agent willfully and knowingly authorized, ordered or carried out the violation. DER is required to assess individual civil penalties against any principal who willfully and knowingly authorized, ordered or carried out the violation. This provision is no less stringent than section 518(f) of SMCRA.

To address the second concern raised by OSMRE, Pennsylvania added Section II.J. to its Inspection and Enforcement Policy. Section II.J. specifies that alternative enforcement actions are those described in Subsections (C), (D), (E), (F), (H), or (I). Subsections (C), (H), and (I) concern permit suspension of revocation for a pattern of violations, injunction actions, and criminal penalties, respectively, and are no less stringent than the Federal counterparts at 30 CFR 845.15(b)(2) and sections 521(a)(4), 521(c) and 518(e) of SMCRA. Subsections (D), (E), and (F) describe additional "alternative enforcement" actions which have no Federal counterparts.

Subsection (D) provides that an operator's license may be suspended or revoked thereby causing the cessation of mining at all sites permitted or operated by the licensee. This action is somewhat analogous to a permit suspension or revocation action in that the effect is to cease mining until compliance occurs. Subsection (D), therefore, provides for an action no less stringent than the actions set out in 30 CFR 845.15(b)(2).

Subsection (E) provides that DER will withhold or deny an operator's license renewal for outstanding violations. This action is less stringent than 30 CFR 845.15(b)(2) because there is no provision linking the timing of the license renewal to the alternative enforcement action which must be taken when capping a failure-to-abate penalty.

Subsection (F) provides that a bond may be forfeited, which affects the permittee's ability to operate other surface mines by restricting future permit and license actions. This action is not comparable to any of the Federal alternative enforcement actions. First, bond forfeiture is not an enforcement sanction or penalty as are each of the Federal alternative enforcement actions. Second, the Pennsylvania program already required DER to take action to forfeit the bond if an operator refuses or is unable to conduct reclamation of an unabated violation (25 Pa. Code 86.181). Finally, bond forfeiture does nothing to ensure that abatement occurs as required by 30 CFR 845.15(b) (2). For these reasons, subsection (F) is less stringent than 30 CFR 845.15(b) (2).

In addition to finding that two of the actions included in the State's definition of alternative enforcement action under subsection II.J. are less stringent than the actions set out under 30 CFR 845.15(b) (2), OSMRE has two other concerns pertaining to II.J. The State's provision provides that "if the Department decides to pursue alternative enforcement as a means to terminate the civil penalty liability, the Department will initiate *an* alternative enforcement action. . ." (emphasis added). This proposal suggests that DER must elect at the outset to pursue one of the enumerated alternative enforcement actions, but not more than one. The Federal rule, however, envisions that each of the enumerated alternative enforcement actions may be pursued in combination with any or all of the others, rather than to exclusion of the other enforcement actions. In the preamble to the Federal rule, OSMRE agreed with a commenter that the rule should require OSMRE to "take whatever enforcement action *or actions* are most likely to abate a violation in the most expeditious manner possible to deter future violations" (emphasis added) 45 FR 58782, September 4, 1980. Therefore, the Pennsylvania provision is less stringent because it would limit DER's discretion to pursue more than one enforcement action where appropriate in a given situation. In addition section II.J. does not define alternative enforcement actions to include individual civil penalties consistent with 30 CFR 845.15(b) (2). The Federal rules does not distinguish between "alternative enforcement" actions and individual civil penalty actions. Under the Federal rule, any of the enumerated actions, including individual civil penalties, may be pursued to ensure the abatement occurs.

Based on these findings the Director is approving sections I. and VIII. of the State's Civil Penalty Program and sections II.B.2.a.(4) and (5) of the State's Inspection and Enforcement Policy with the following exceptions: (1) Because subsections (E) and (F) section II of the State's Inspection and Enforcement

Policy establish alternative enforcement actions which are less stringent than the actions set out in 30 CFR 845.15(b)(2), OSMRE is disapproving section II.J. of the Inspection and Enforcement Policy to the extent that it defines the actions described under subsections II.E. and II.F. as alternative enforcement actions. This does not preclude Pennsylvania from using these enforcement actions in addition to alternative enforcement actions described in section II of the State's Inspection and Enforcement Policy to ensure that abatement of the violation or reclamation of the site occurs. The State simply may not regard these actions as "alternative enforcement actions" for the purpose of terminating the civil penalty liability. (2) OSMRE is requiring Pennsylvania to amend its program by six months from the date of this notice to clarify that individual civil penalties are one of the alternative enforcement actions and that the State may pursue any of the enumerated alternative enforcement actions in combination with any or all of the others. This requirement is set forth herein under 30 CFR 938.16(g).

Finding 2

Civil Penalty Program II.2.

Section II.2 of Pennsylvania's proposed Civil Penalty Program provides that the Department of Environmental Resources (DER) may terminate or "cap" a failure-to-abate penalty after thirty days if (1) DER decides to pursue an alternative enforcement action and initiates that action within 60 days of the expiration of the abatement period pursuant to Section II.J. of DER's Inspection and Enforcement Policy, or (2) DER will initiate individual civil penalty (ICP) actions agains corporate officers, directors or agents. The Director has determined that the amended provision is consistent with 30 CFR 845.15(b)(2) which establishes a 30-day cap for civil penalties for failure to abate the violation and requires the regulatory authority to take appropriate action pursuant to section 518(e), 518(f), 521(a)(4) or 521(c) of SMCRA within 30 days with the following exception:

The State's proposal does not establish a timeframe within which DER must initiate individual civil penalty actions against corporate officers, directors or agents following termination of the penalty.

As initially submitted, the State's proposal did not establish a timeframe within which an alternative enforcement action must be taken following termination of the penalty. In its May 22, 1986 submission Pennsylvania included a modified section II.2. of the Civil Penalty Program establishing a timeframe within which alternative enforcement actions must be initiated. However, Pennsylvania's provision at section II.2. distinguishes between individual cviil penalty actions and alternative enforcement actions. There is no provision in Pennsylvania linking the timing of the individual civil penalty action which must be taken with the capping of the failure-to-abate penalty. As discussed in Finding 1 above relative to section II.J. of Pennsylvania's Inspection and Enforcement Policy, the Federal rule at 30 CFR 845.15(b)(2) does not distinguish between "alternative enforcement" actions and individual civil penalty actions. To be consistent with the Federal requirements Pennsylvania must amend its program to establish a timeframe within which DER must initiate individual civil penalty actions against corporate officers, directors or agents following termination of the penalty. This could be addressed by merely eliminating the distinction under section II.2. between alternative enforcement actions and individual civil penalty actions. As discussed under Finding 1. the Director is requiring Pennsylvania to amend section II.J. of its Inspection and Enforcement Policy to modify the definition of alternative enforcement action to include individual civil penalty actions. The Director is requiring the State to adopt the change by six months following the date of publication of this notice. This requirement is set forth herein under 30 CFR 938.16(h).

It should also be noted that the Director's approval of section II. 2. of its inspection and Enforcment Policy, which is subject to the required amendment discussed above, is based on the following interpretation of the phrase "may be terminated" as used in that section. The Director interprets the phrase "may be terminated" to apply to the continued assessment of the penalty beyond 30 days and not the failure-to-abate penalty itself which has already been assessed.

Finding 3

Civil Penalty Program II. (4) and Inspection and Enforcement Policy II.B 2.a. (4)

As amended these sections provide a limited exception for mandatory civil penalties for violations resulting in the issuance of a Compliance Order. A mandatory penalty is not required for Compliance Orders that are issued solely for the purpose of extending an abatement date prescribed in a previous inspection report notice. Under Pennsylvania's approved program, either an inspection report notice or a Compliance Order is an analog to the Federal notice of violation. Previously approved State program provisions provide that compliance orders are subject to a mandatory civil penalty.

Unlike Pennsylvania's program the Federal regulations do not require mandatory civil penalties for violations resulting in the issuance of a notice of violation. The Director has determined that Pennsylvania's adoption of provisions allowing a limited exception to the mandatory penalty requirement for compliance orders does not render the State program inconsistent with the Federal requirements.

Finding 4

Inspection and Enforcement Policy (II. E.)

Pennsylvania has amended this provision to provide that an operator's license renewal will be withheld or denied for outstanding violations that are being adjudicated, for cessation orders and for agreements or decrees or written notices from the Department of a declaration of bond forfeiture. The previously existing provision provided that license renewal would be withheld or denied for any outstanding Compliance Order. The Pennsylvania program requirement to obtain a license has no counterpart in the Federal regulations. Under Pennsylvania's program an operator must obtain both a permit and a license. The State program regulations at 86.37 (a)(8) require DER to make a written finding prior to permit issuance that the applicant has corrected or is in the process of correcting or appealing any outstanding violations. The Director has determined that the State program license provision, as amended, does not conflict with the SMCRA or the Federal regulations. Therefore, the Director is approving the amendment provision.

IV. Public Comment

The U.S. Fish and Wildlife Service (FWS) submitted the following comments on the amendment provisions submitted by the State on September 30, 1985.

With respect to the establishment of a 30-day cap for civil penalties under section II.2 of the Civil Penalty Program the FWS noted that this section did not include provisions for criminal penalties and did not require the Department to initiate alternative enforcement action within the 30-day time limit specified in the Federal regulation.

As discussed in Finding 1, Pennsylvania included in its May 22,

1986 submission to OSMRE a new paragraph J. under section II. of the Inspection and Enforcement Policy which provides for DER to pursue any one of several alternative enforcement actions if a decision is made to terminate the civil penalty liability. Criminal penalties are one of the alternative enforcement actions the State may pursue. The criminal penalties which are described under section II.I. of the Inspection and Enforcement Policy are no less stringent than those set forth under the Federal Act and regulations.

With respect to the timeframe for initiating alternative enforcement action following termination of the penalty Pennsylvania's submittal of May 22, 1986, included a modified section II.2. of the Civil Penalty Program establishing such a timeframe. As discussed in Finding 2, the Director has found the State's modified provision to be consistent with the Federal requirements with one exception. The Director is requiring the State to amend its program to address the identified deficiency. This issue is discussed in detail in Finding 2.

The FWS also commented that Pennsylvania's amendment provisions establishing an individual civil penalty requirement were not consistent with section 518 of the Act because they failed to establish criminal penalties of up to $10,000 and imprisonment for not more than one year, or both.

As discussed above, Pennsylvania's amendment, as submitted May 22, 1986, establishes that criminal penalties are one of the alternative enforcement actions the State may pursue if a decision is made to terminate the civil penalty liability. Section II.I. of the Inspection and Enforcement Policy specified that the Department may initiate criminal prosecution in the form of summary action or misdemeanors for any violations. Section 18.5 of the Pennsylvania Surface Mining Conservation and Reclamation Act, which is a component of the approved State regulatory program, provides for criminal penalties of up to $25,000 and imprisonment for not more than one year, or both.

The FWS further commented with respect to the modified requirements for withholding a license or denying license renewal that Pennsylvania should expand these requirements to include criminal penalties. The Pennsylvania program requirement to obtain a license has no counterpart in the Federal regulations. Under Pennsylvania's program, an operator must obtain both a permit and license. The State program regulations require DER to make a written finding prior to permit issuance that the applicant has corrected or is in the process of correcting or appealing any outstanding violations. Because there is no counterpart to Pennsylvania's license requirement in the Federal regulation, the Director has no authority to require the State to amend its license provisions unless these conflict with SMCRA or the Federal regulations. As discussed in Finding 4 above, the Director has determined that Pennsylvania's modified requirement does not conflict with the Federal standards.

V. Director's Decision

The Director has determined that, with the exceptions discussed in the above findings, the Pennsylvania program as modified by the amendments submitted to OSMRE on Septermber 30, 1985, and May 22, 1986, incorporates penalties and sanctions no less stringent than those set forth under sections 518 and 521 of SMCRA and 30 CFR Parts 843 and 845 of the Federal regulations and contains the same or similar procedural requirements relating thereto. Accordingly, the Director is approving the amendments, with the exception discussed in Finding 1 and subject to the requirements set forth under 30 CFR 938.16(g) and (h), and is revising 30 CFR Part 938 to reflect this decision.

VI. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of Interior has determined that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule will not impose any new requirements; rather it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reducton Act.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 29, 1986

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 938.15 is amended by adding a new paragraph (l) as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(l) The amendments to the following sections of the Pennsylvania State program which were submitted to OSMRE on September 30, 1985, and May 22, 1986 are approved effective September 8, 1986.

Civil Penalty Program

Secton I.

Secton II.2., subject to the requirements set forth under 30 CFR 938.16(h).

Secton II.4.

Secton VIII.

Inspection and Enforcement Policy

Secton II.B.2.a.(4).

Secton II.B.2.a.(5).

Secton II.E.

Secton II.J. (except to the extent that this section defines the actions described under subsections II.E. and II.F. of the Inspection and Enforcement Policy as alternative enforcement actions and subject to the requirement set forth under 30 CFR 938.16(g))

3. 30 CFR 938.16 is amended by adding new paragraphs (g) and (h) to read as follows:

§ 938.16 Required program on amendments.

* * * * *

(g) In accordance with 30 CFR 854.15(b)(2) Pennsylvania is required to amend its program by March 9, 1986, to clarify that individual civil penalties are one of the alternative enforcement actions and that the State may pursue

any of the enforcement actions enumerated under section II.J. of the Pennsylvania Inspection and Enforcement Policy in combination with any or all of the other.

(h) Pennsylvania is required to amend its program by March 9, 1986, to establish a timeframe within which DER must initaite individual civil penalty action against corporate officers, directors or agents following termination of the daily penalty for failure to abate a violation in accordance with 30 CFR 845.15(b)(2).

4. A new section 30 CFR 938.12 is added to read as follows:

§ 938.12 State program provisions disapproved.

(a) The following amendment to the Pennsylvania program which was submitted to OSMRE on May 22, 1986, is disapproved:

Section II.J. of the Pennsylvania Inspection and Enforcement Policy is disapproved to the extent that this section defines the actions described under subsections II.E. and II.F. of the Inspection and Enforcement Policy as alternative enforcement actions.

[FR Doc. 86-20138 Filed 9-5-86; 8:45am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 86-47]

Drawbridge Operation Regulations; Nacote Creek, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This document corrects the regulations for the Route 575 Drawbridge across Nacote Creek. This action is necessary to correct errors made relating to the route number and bridge owner name that have recently been brought to the attention of the Coast Guard by the bridge owner.

EFFECTIVE DATE: October 8, 1986.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668-7994.

SUPPLEMENTARY INFORMATION: The final rule for the Route 575 bridge was initially published on Thursday, March 22, 1984 (49 FR 10670). This regulation correctly stated the route number but incorrectly stated the bridge owner. On April 24, 1984, the Coast Guard published a final rule in the **Federal Register** (49 FR 17450) which completely reorganized 33 CFR Part 117. That document omitted the regulations for Nacote Creek. Subsequently on Monday, October 29, 1984 (49 FR 43458) the Coast Guard corrected the omission but incorrectly stated the bridge owner's name and route number. This rulemaking action is purely administrative in nature and merely corrects these errors without substantive changes to the regulations.

Therefore, in accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after the **Federal Register** publication. Following normal rulemaking procedures and delaying its effective date is unnecessary since this document merely corrects errors and makes no substantive changes to the published material.

Drafting Information

The drafters of this notice are Ciro Compagno, project manager, and Mary Ann Arisman, project attorney.

Discussion of Amendments

The bridge owner recently called the Coast Guard's attention to the errors in 33 CFR 117.732 which incorrectly identified the bridge owner as Ocean County and the route number as U.S. 9. Because there is an existing Route 9 drawbridge across Nacote Creek, the error has caused confusion for mariners using this waterway. The Route 9 Drawbridge crosses Nacote Creek at mile 1.5 and is required to open on signal. The bridge crossing Nacote Creek at mile 3.5 is owned by Atlantic County and is Route 575. This document amends this section to correctly identify the bridge owner and route number.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33 Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.732 is revised to read as follows:

§ 117.732 Nacote Creek.

The draw of the Atlantic County (Rte. 575) bridge, mile 3.5 at Port Republic, shall open on signal if at least eight hours notice is given. Public vessels of the United States shall be passed as soon as possible at any time.

Dated: August 25, 1986.

J.C. Uithol,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 86-20159 Filed 9-5-86; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Buffalo, NY regulation 86-02]

Safety Zone Regulations: Buffalo, New York, Niagara River

August 29, 1986.

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a 1500 Foot safety zone, in the vicinity of the Peace Bridge, Buffalo, New York, Niagara River. The zone is needed to protect vessels from a possible safety hazard associated with the barge #45 aground at stanchion #3 on the Peace Bridge. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 14 August 1986 at 3:00 p.m.

It terminates on 10 December 1986 at 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Buffalo, New York. (716) 846-4168.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent possible damage to the vessels involved.

Drafting Information

The drafters of this regulation are LCDR T.G.M. Balunis, project officer for the Captain of the Port, and LCDR M.A. Leone, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with the barge #45 breaking up in the vicinity of the Peace Bridge, Buffalo, New York, Niagara River.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

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

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

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

2. A new § 165.T0902 is added to read as follows:

§ 165.T0902 Safety Zone: New York, Niagara River.

(a) *Location.* The following area is a safety zone: From a starting point (1) L 42 deg.-54 min.-34 sec. N, 078 deg.-54 min. 22 sec. W then due East to point (2) L 42 deg.-54 min.-34 sec. N, 078 deg.-54 min. -17 sec. W then due South passing inside of the second stanchion from U.S. to a point (3) L 42 deg.-54 min.-19 sec. N, 078 deg.-54 min. 17 sec. W then due West to point (4) L 42 deg.-54 min.-19 sec. N, 078 deg.-54 min. -22 sec. W then North along International boundary line to point (1).

(b) *Effective date.* This regulation becomes effective on 14 August 1986 at 3:00 p.m. It terminates on 10 December 1986 at 3:00 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: August 14, 1986.

J. H. Johnson,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 86–20161 Filed 9–5–86; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 23

National Health Service Corps

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: This notice promulgates new regulations (Subparts B and C of Part 23, 42 CFR) to implement the provisions of section 338E of the Public Health Service (PHS) Act (42 U.S.C. 254p) regarding special loans for former National Health Service Corps (NHSC) members to enter private practice and the provisions of section 338C of the PHS Act (42 U.S.C. 254n) regarding private start-up loans. The law requires that the Secretary of Health and Human Services shall, by regulations, set interest rates and repayment terms for private practice option (PPO) special loans. This notice also makes several technical corrections to Subpart A of 42 CFR Part 23.

EFFECTIVE DATE: The rule set forth below is effective on September 8, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James Corrigan, Associate Bureau Director for Legislation and Policy, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7–05, Rockville, Maryland 20857, (301) 443–2380.

SUPPLEMENTARY INFORMATION: On July 3, 1985, the Acting Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, published a Notice of Proposed Rulemaking (50 FR 27465) proposing the following:

- New regulations governing loans made by the Secretary under section 338E of the PHS Act to NHSC scholarship recipients who have completed at least two years of obligated service, to assist them in establishing private full-time clinical practice in designated health manpower shortage areas (Subpart B of Part 23).
- New regulations governing loans made by the Secretary under section 338C of the PHS Act to NHSC scholarship recipients who plan to fulfill all or part of their service obligations through the private practice option provided for in section 338B of the Act, to assist them in acquiring equipment and supplies needed to start up their practices (Subpart C of Part 23).
- Several technical corrections to Subpart A of Part 23, which governs assignment of NHSC personnel.

In response to the invitation for public comment on the proposed regulations, only one comment was received. That comment endorsed the NPRM in all respects. Accordingly, the rule set out below adopts the amendments to Part 23 as proposed in the NPRM.

Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies, pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not have a significant economic impact on a substantial number of small entities. The reason for the Secretary's certification is that the regulation will affect only a small number of health care providers and patients treated by those providers; therefore, the Department has determined that this regulation does not require preparation of a regulatory flexibility analysis.

The Secretary has also determined, in accordance with Executive Order 12291 of February 17, 1981, entitled "Federal Regulation," that the rule does not constitute a "major rule" because it will not have an annual effect on the economy of $100 million or more; result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions; or have 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.

Information Collection Requirements

Sections 23.4(b), and 23.34 (f), (h) and (i) of this rule contain information collection requirements. As required by section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), we submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. The information collection requirements in this regulation have been approved (OMB control number 0915–0101).

List of Subjects in 42 CFR Part 23

Government employees, Health professions, Loan programs, Manpower, Scholarships and fellowships.

Accordingly, 42 CFR Part 23 is amended as set forth below.

Dated: July 11, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Approved: August 18, 1986.

Otis R. Bowen,

Secretary.

PART 23—NATIONAL HEALTH SERVICE CORPS

1. The authority citation for Part 23 is revised to read as follows:

Authority: Secs. 333, 338E(c), and 338C(e)(1), Public Health Service Act. 90 Stat. 2272, as amended, 95 Stat. 905, 97 Stat. 1345 (42 U.S.C. 254f et seq.), 95 Stat. 912 (42 U.S.C. 254p(c)), 95 Stat. 910 (42 U.S.C. 254n(e)(1)).

Supart A is amended as follows:

1. In § 23.4(b), paragraph (b)(5) is revised to read as follows:

§ 23.4 How must an entity apply for assignment?

* * * * *

(b) * * *

(5) If an entity wishes to request an interest free loan (not to exceed $50,000) under section 335(c) of the Act to assist the applicant in establishing the practice of the assigned National Health Service Corps personel, a detailed justification of the amount requested must be included

* * * * *

§ 23.6 [Amended]

2. In § 23.6, a. the word "and" is added before the word "third" and the words "and fourth" are removed in the second sentence of the introductory text of paragraph (b); b. paragraph (b)(2) is removed, and paragraphs (b)(3) and (b)(4) are redesignated (b)(2) and (b)(3) respectively; and c. the last sentence which follows paragraph (b)(4) is removed.

§ 23.7 [Amended]

3. In § 23.7(a)(3), "(a)(3)" is removed immediately after "section 334."

§ 23.10 [Amended]

4. In § 23.10:

a. In the introductory text to paragraph (a), "section 334" is removed and "section 334(a)(3)" is inserted in lieu thereof;

b. The current paragraph "23.10(b)" is renumbered as "23.10(d)" and "a prospective or retrospective" is inserted before "waiver."

c. A new paragraph (b) is added:

* * * * *

(b) The Secretary may waive in whole or in part the reimbursement requirements of section 334(f)(1) of the Act if he or she determines that the National Health Service Corps site is a small health center (as defined by section 334(f)(5) of the Act) that needs all or part of the amount otherwise payable to—

(1) expand or improve its provision of health services;

(2) increase the number of individuals served;

(3) renovate or modernize facilities for its provision of health services;

(4) improve the administration of its health service programs; or

(5) establish a financial reserve to assure its ability to continue providing health services;

d. A new paragraph (c) is added:

* * * * *

(c) Where the Secretary determines that a National Health Service Corps site is eligible for a waiver under paragraph (a)(1) or (2) of this section. the Secretary may waive the application of the reimbursement requirements of section 334(a)(3) of the Act and apply the reimbursement requirements of section 334(f)(1) of the Act. The Secretary may waive in whole or in part the reimbursement requirements of section 334(f)(1) for such a site if he or she determines that the National Health Service Corps site meets the requirements of paragraph (a)(1) of this section. Funds retained by a National Health Service Corps site as a result of such waiver must be used for the purposes set forth in paragraphs (b)(1) through (5) of this section.

Subparts B and C are added to read as follows:

Subpart B—Private Practice Special Loans for Former Corps Members

Sec.

Subpart C—Private Startup Loans

Subpart B—Private Practice Special Loans for Former Corps Members

§ 23.21 Definitions.

As used in this subpart, terms have the same meanings as those given to them in Subpart A, § 23.2. In addition:

"National Health Service Corps scholarship recipient" means an individual receiving a scholarship under the Public Health and National Health Service Corps Scholarship Training Program authorized by section 225 of the Act as in effect on September 30, 1977, and repealed on October 1, 1977, or a scholarship under the NHSC Scholarship Program authorized by section 338A of the Act, formerly section 751 of the Act.

"Private full-time clinical practice" means the provision of ambulatory clinical services for a minimum of 40 hours per week for at least 45 weeks a year, including the provision of hospital coverage services appropriate to meet the needs of patients treated and to assure continuity of care. The 40 hours per week must be performed in no less than 4 days per week with no more than 12 hours of work being performed in any 24-hour period.

§ 23.22 What is the purpose of a private practice loan?

The purpose of the private practice loan is to assist NHSC scholarship recipients in establishing private full-time clinical practices in designated health manpower shortage areas.

§ 23.23 Who is eligible to receive a private practice option loan?

(a) Eligibility for loans is limited to NHSC scholarship recipients who have completed at least 2 years of their service obligations at a NHSC site. NHSC scholarship recipients remain eligible for loans under this subpart for 1 year after they have completed their service obligations at a NHSC site.

(b) Scholarship recipients who are in arrears 31 days or more on a Health Professions Student Loan (42 U.S.C. 294m *et seq.*), Health Education Assistance Loan (42 U.S.C. 294, *et seq.*), Nursing Student Loan (42 U.S.C. 297a *et seq.*), or any other Federally guaranteed or direct student loan are ineligible for this loan program.

(c) NHSC scholarship recipients who have received loans under either this Subpart or Subpart C of this Part are ineligible for loans under this Subpart.

§ 23.24 In what amounts are loans made?

The Secretary may make loans either in the amount of $12,500, if the recipient agrees to practice in accordance with the loan agreement for a period of at least 1 year but less than 2 years, or $25,000, if the recipient agrees to practice in accordance with the loan agreement for a period of at least 2 years.

§ 23.25 How will interest rates for loans be determined?

Interest will be charged at the Treasury Current Value of Funds (CVF) rate in effect on April 1 immediately preceding the date on which the loan is approved and will accrue from the date the loan funds are disbursed to the borrower.

§ 23.26 How is the loan repaid?

Payments shall be made at monthly intervals, beginning 1 month from the date of the loan disbursement, in accordance with the repayment schedule established by the Secretary and set forth in the loan agreement. Only interest payments are required during the first 2 years. The repayment schedule may be extended in accordance with § 23.31(a).

§ 23.27 What happens if scheduled payments are late?

(a) Failure to make full payment of principal and/or interest when due will subject the borrower to the assessment of administrative costs and penalty charges, in addition to the regular interest charge, in accordance with 45 CFR Part 30.

(b) Failure to make full payment of principal and/or interest when due may result in the Secretary placing the borrower in default of the loan. See § 23.28(a).

§ 23.28 What events constitute default?

The following events will constitute defaults of the loan agreement:

(a) Failure to make full payment of principal and/or interest when due, and continuance of that failure for a period of sixty (60) days, or a lesser period of time if the Secretary determines that more immediate action is necessary in order to protect the interests of the Government.

(b) Failure to perform or observe any of the terms and conditions of the loan agreement and continuance of that failure for a period of sixty (60) days.

(c) The institution of bankruptcy proceedings, either voluntary or involuntary, under any State or Federal statute, which may adversely affect the borrower's ability to comply with the terms and conditions of the agreement or the promissory note.

§ 23.29 What happens in the case of a default?

(a) In the event of default, the Secretary may declare the entire amount owed (including principal, accrued interest and any applicable charges) immediately due and payable. Collection of the amount owed will be made in accordance with 45 CFR Part 30.

(b) The borrower is not entitled to written notice of any default and the failure to deliver written notice of default in no way affects the Secretary's right to declare the loan in default and take any appropriate action under the loan agreement or the promissory note.

(c) The failure of the Secretary to exercise any remedy available under law or regulation shall in no event be construed as a waiver of his or her right to exercise that remedy if any subsequent or continued default or breach occurs.

§ 23.30 May the loan be prepaid?

The borrower shall have the option to prepay the balance of any part of the loan, together with accrued interest, at any time without prepayment penalty.

§ 23.31 May loan payments be postponed or waived?

(a) Whenever health, economic, or other personal problems affect the borrower's ability to make scheduled payments on the loan, the Secretary may allow the borrower an extension of time or allow the borrower to make smaller payments than were previously scheduled; however, interest will continue to accrue at the rate specified in the promissory note until the loan is repaid in full. The loan must be fully repaid within 10 years after it was made.

(b) No waiver, full or partial, of repayment of the loan will be granted; except that the obligation of a borrower to repay a loan shall be cancelled upon the death or total and permanent disability of the borrower, as determined by the Secretary.

(c) In order to make a determination under paragraph (a) or (b) of this section, the Secretary may require supporting medical, financial, or other documentation.

§ 23.32 What conditions are imposed on the use of the loan funds?

(a) The borrower must use the total amount of the loan to purchase or lease, or both, equipment and supplies, to hire authorized personnel to assist in providing health services and/or to renovate facilities for use in providing health services in his or her private practice. Equipment and supplies purchased and/or leased, personnel hired and facilities renovated shall be limited to the items requested in the loan application and approved by the Secretary.

(b) The borrower must expend the loan funds within 6 months from the date of the loan or within such other time as the Secretary may approve. Documentation of the expenditure of funds must be furnished to the Secretary upon request.

§ 23.33 What security must be given for these loans?

The Secretary may require the borrower to pledge to the Secretary a security interest in specified collateral.

§ 23.34 What other conditions are imposed?

(a) The borrower must sign a loan agreement describing the loan and practice conditions, and a promissory note agreeing to repay the loan plus interest.

(b) The borrower must agree to enter into private full-time clinical practice in a HMSA for the time period specified in the loan agreement.

(c) The borrower must accept assignment, for the time period specified in the loan agreement, under section 1842(b)(3)(B)(ii) of the Social Security Act as full payment for all services for which payment may be made under part B of title XVIII of that Act.

(d) The borrower must enter into an appropriate agreement, for the time period specified in the loan agreement, with the State agency which administers the State plan for medical assistance under title XIX of the Social Security Act to provide services to individuals entitled to medical assistance under the plan.

(e) During the time period specified in the loan agreement, the borrower must provide health services to individuals at the usual and customary rate prevailing in the HMSA in which services are provided; however, services must be provided at no charge or at a nominal charge to those persons unable to pay for these services.

(f) The borrower must keep and preserve all documents, including bills, receipts, checks, and correspondence which affect the operation of the private practice and the expenditure of loan funds for the period of the practice obligation specified in the loan agreement plus 3 years. Accounts will be maintained under one of the accounting principles identified by the Secretary in the loan agreement.

(g) The borrower must provide the Secretary and the Controller General of the United States, or their representatives, access during normal working hours to accounts, documents, and records for the purposes of audit or evaluation; and must permit the Secretary or his or her representative to inspect the private practice at reasonable times during the period of the practice obligation specified in the loan agreement plus 3 years. All information as to personal facts and circumstances about recipients of services shall be held confidential, and shall not be divulged without the individual's consent except as may be required by law or as may be necessary to provide medical service to the individual or to provide for medical or fiscal audits by the Secretary or his or

her designee with appropriate safeguards for confidentiality of records.

(h) For the entire period of loan repayment, the borrower must acquire, maintain, and when requested, must provide the Secretary with copies of policies of insurance on equipment and supplies in amounts adequate to reasonably protect the borrower from risk, including public liability, fire, theft, and worker's compensation.

(i) If the Secretary retains a security interest pursuant to § 23.33, the borrower must keep and preserve all documents which affect that security interest for the period of the loan repayment and allow the Secretary or his or her designee access, during normal working hours, to those documents.

(j) The borrower must maintain the loan proceeds in a separate account from his or her other transactions and must agree to draw upon this account and expend the loan proceeds in accordance with § 23.32.

(k) The Secretary may impose other conditions which he or she deems appropriate under law or regulation to protect the Government's interests.

§ 23.35 What criteria are used in making loans?

Approval of loan applications will be based on the criteria set forth below:

(a) The need in the HMSA for the applicant's health profession as determined under section 332 of the Act;

(b) The applicant's need for the loan funds; and

(c) The comments from State or local health professional societies on the appropriateness of the applicant's intended private practice; and

(d) The applicant's credit worthiness and projected financial ability to repay the loan.

Subpart C—Private Startup Loans

§ 23.41 What conditions are applicable to loans under this subpart?

The regulations set out in Subpart B of this part are fully applicable to loans awarded under section 338C(e)(1) of the Public Health Service Act, except as noted below;

(a) *Eligibility.* (1) In lieu of § 23.23(a), the following applies to loans made under this subpart:

(i) Eligibility for loans is limited to NHSC scholarship recipients who plan to enter private practice and have not begun fulfilling their scholarship service obligation or are currently fulfilling their scholarship service obligation under section 338B of the Act and have completed less than 2 years of this obligation.

(2) In lieu of § 23.23(c), the following applies to loans made under this subpart:

(i) NHSC scholarship recipients who have received loans under either this subpart or subpart B of this Part are ineligible for loans under this subpart.

(b) *Loan amounts.* (1) In lieu of § 23.24, the following applies to loans made under this subpart:

(i) The Secretary may make loans in the amount of $12,500 if the recipient agrees to practice in accordance with the loan agreement for a period of at least 1 year but less than 2 years or the remaining period of the borrower's NHSC scholarship service obligation, whichever is shorter.

(ii) The Secretary may make loans in the amount of $25,000 if the recipient agrees to practice in accordance with the loan agreement for a period of at least 2 years or the remaining period of the borrower's NHSC scholarship service obligation, whichever is shorter.

(c) *Use of funds.* (1) In lieu of § 23.32(a), the following applies to loans made under this subpart:

(i) The borrower must use the total amount of the loan only to purchase or lease, or both, the equipment and supplies needed for providing health services in his or her private practice. Equipment and supplies purchased and/or leased shall be limited to the items requested in the loan application and approved by the Secretary.

[FR Doc. 86-20174 Filed 9-5-86; 8:45 am]
BILLING CODE 4160-15-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevation are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.)

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the flood plain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or

pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Deputy Administrator, 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 of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

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

2. Section 65.4 is amended as follows:

§ 65.4 List of communities submitting new technical data.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No. 6713).	City of Peoria	April 4, 1986, and April 11, 1986, *Peoria Times.*	The Honorable Edmund Pang, Mayor, City of Peoria, P.O. Box 38, Peoria, AZ 85345.	Mar. 24, 1986, letter of map revision.	040050
Pima (FEMA Docket No. 6713).		April 9, 1986, and April 16, 1986, *Arizona Daily Star.*	The Honorable Sam Lena, Chairman, Pima County Board of Supervisors, 131 West Congress, Tucson, AZ 85701.	Mar. 19, 1986, letter of map revision.	040073
Connecticut:					
Hartford (FEMA Docket No. 6707).	Town of West Hartford	April 1, 1986, and April 8, 1986, *The Hartford Courant.*	The Honorable Barry M. Feldman, West Hartford Town Manager, 28 South Main Street, West Hartford, Connecticut 06107.	Mar. 21, 1986	095082
Texas:					
Dallas (FEMA Docket No. 6700).	City of Coppell	January 30, 1986, and February 6, 1986, *The Coppell News Weekly.*	The Honorable Lou Duggan, Mayor of the city of Coppell, 136 Glenwood Drive, Coppell, TX 75019.	Jan. 21, 1986, letter of map revision.	480170C
Dallas, Denton, Collin, Rockwall (FEMA Docket No. 6707).	City of Dallas	February 12, 1986, and February 19, 1986, *The Dallas Morning News.*	The Honorable A. Starke Taylor, Jr., Mayor of the city of Dallas, Mayor's Office, Room 5E North, 1500 Marilla, Dallas, TX 75201.	Jan. 23, 1986, letter of map revision.	480171C
El Paso (FEMA Docket No. 6700).	City of El Paso	December 27, 1985, and January 3, 1986, *The El Paso Times.*	The Honorable Jonathan Rogers, Mayor of the city of El Paso, 2 Civic Center Plaza, El Paso, TX 79999.	Dec. 11, 1985, letter of map revision.	480214B
Dallas (FEMA Docket No. 6691).	City of Irving	October 16, 1985, and October 23, 1985, *Irving Daily News.*	The Honorable Bobby Joe Raper, Mayor of the city of Irving, Dallas County, P.O. Box 3008, Irving, TX 75061.	Oct. 7, 1985	480180A
Do.	do.	February 21, 1986, and February 28, 1986, *The Irving Daily News.*	The Honorable Bobby Joe Raper, Mayor of the city of Irving, Dallas County, P.O. Box 2288, Irving, TX 75061.	Feb. 7, 1986	480180
Dallas (FEMA Docket No. 6713).	do.	April 9, 1986, and April 16, 1986, *Irving Daily News.*	do.	Mar. 28, 1986, letter of map revision.	480180
Collin and Denton (FEMA Docket No. 6691).	City of Plano	December 11, 1985, and December 18, 1985, *Plano Daily Star-Courier.*	The Honorable Jack Harvard, Mayor of the city of Plano, P.O. Box 358, Plano, TX 75074.	Nov. 26, 1985, letter of map revision.	480140B
Dallas and Rockwall (FEMA Docket No. 6700).	City of Rowlett	January 3, 1986, and January 10, 1986, *The Rowlett Record American.*	The Honorable Bill Payne, Mayor of the city of Rowlett, P.O. Box 99, Rowlett, TX 75088.	Dec. 4, 1985, letter of map revision.	480185B
Tarrant (FEMA Docket No. 6707).	City of Watauga	March 26, 1986, and April 2, 1986, *Mid-Cities Daily News.*	The Honorable Virgil Anthony, Sr., Mayor of the city of Watauga, 7101 Whitley Road, Watauga, TX 76148.	Feb. 18, 1986	480613

Issued: August 20, 1986.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 86-20169 Filed 9-5-86; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

The final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Deputy Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Flood plains.

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

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

§ 67.11 [Amended]

2. Section 67.11 is amended as follows:

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
CALIFORNIA	
Palm Desert (City), Riverside County (FEMA Docket No. 6712)	
Dead Indian Canyon: At the intersection of Portola Avenue and State Highway 74	None
Deep Canyon Channel: At the intersection of Portola Avenue and Haystack Road	None
Palm Valley Stormwater Channel (Palm Valley Drain): At the intersection of Bursera Way and Pitahaye Street	None
Maps available for inspection at the Planning and Engineering Department, 73510 Fred Waring Drive, Palm Desert, California.	
FLORIDA	
Hillsborough County (Unincorporated Areas), (FEMA Docket No. 6685)	
Buckhorn Creek:	
At confluence with Alafia River	*16
Just downstream of Kings Avenue	*26
Tributary Canal:	
At confluence with Buckhorn Creek	*25
About 3900 feet upstream of confluence with Buckhorn Creek	*30
Shallow Flooding (ponding from rainfall): South of Lumsden Avenue and about 0.5 mile west of Kings Avenue	*32
Maps available for inspection at the Department of Development Coordination, P.O. Box 1110, Tampa, Florida.	
Seminole County (Unincorporated Areas) (FEMA Docket No. 6706)	
Lake Irish: Entire Shoreline	*46
Lake 8: Entire Shoreline	*50
Lake Marietta: Entire Shoreline	*46
Banana Lake: Entire Shoreline	*50
Golf Course Lake: Entire Shoreline	*48
Lake 9: Entire Shoreline	*47
Lake 7: Entire Shoreline	*45
Maps available for inspection at the Planning Department, 1101 East First Street, Sanford, Florida.	
ILLINOIS	
Addison (Village), DuPage County (FEMA Docket No. 6706)	
South Fork of Westwood Creek:	
At mouth	*685
Just downstream of Fullerton Avenue	*693
Maps available for inspection at the Collectors Office, 131 West Lake Street, Addison, Illinois.	
Shorewood (Village), Will County (FEMA Docket No. 6712)	
Hammel Creek:	
At mouth	*577
Just downstream of River Road	*616
Hammel Creek Tributary:	
Just upstream of the confluence with Hammel Creek	*606
Just downstream of River Road	*614
Robin Hill Road Split Flow:	
At confluence with Hammel Creek	*605
At divergence from Hammel Creek	*613
Maps available for inspection at the Planning Department, Shorewood Village Hall, Route 52 and Raven Road, Shorewood, Illinois.	
INDIANA	
Dyer (Town), Lake County (FEMA Docket No. 6699)	
Dyer Ditch:	
Just upstream of 213th Street	*624
Just upstream of Lincoln Highway	*630
About 0.25 mile upstream of Lincoln Highway	*637
Just downstream of Novak Road	*639
Shallow flooding (ponding):	
About 500 feet north of the intersection of Novak Road and Louisville and Nashville Railroad	*641
About 0.35 mile northeast of the intersection of Novak Road and Louisville and Nashville Railroad	*637
About 400 feet east of Dyer Ditch and about 500 feet north of Lincoln Highway	*630
Just south of 213th Street and about 0.4 mile west of Dyer Ditch	*623
Maps available for inspection at the Town Hall, 226 East Schulte Street, Dyer, Indiana.	
New Haven (City, Allen County (FEMA Docket No. 6720)	
Dannenfelser-Cochoit Ditch:	
Just upstream of Werling Ditch Road	*769
About 0.25 mile upstream of Werling Road	*769
Just downstream of Green Street	*775
Maps available for inspection at the City Administration Building, 1235 Lincoln Highway East, New Haven, Indiana.	
KANSAS	
Harvey County (Unincorporated Areas) (FEMA Docket No. 6706)	
Mud Creek:	
Just downstream of U.S. Route 50	*1,420
About 100 feet upstream of U.S. Route 50	*1,421
About 650 feet downstream of West First Street	*1,428
Maps available for inspection at the Harvey County Courthouse, Newton, Kansas.	
LOUISIANA	
Alexandria (City), Rapides Parish (FEMA Docket No. 6706)	
Horseshoe Drainage Canal:	
Downstream side of Twin Bridges Road	*80
Approximately 700 feet upstream of Twin Bridges Road	*81
Maps available for inspection at the City Hall, 915 Third Street, Alexandria, Louisiana.	
Hammond (City), Tangipahoa Parish (FEMA Docket No. 6712)	
Ponchatoula Creek:	
Upstream side of East Church Street	*41
Upstream side of Illinois Central Gulf Railroad	*42
Yellow Water River Canal:	
At Blackburn Road (extended)	*43
At upstream corporate limits	*44
Shallow Flooding: Upstream of Illinois Gulf Central Railroad	*42
Maps available for inspection at the City Hall, Hammond, Louisiana.	
MARYLAND	
Queen Annes County (FEMA Docket No. 6699)	
Chesapeake Bay:	
Wells Cove, East Inlet	*9
Intersection of Turtle Drive and State Route 18	*7
Maps available for inspection at the County Commissioners Office, County Annex Building, Centreville, Maryland.	
MASSACHUSETTS	
Newtown (City), Middlesex County (FEMA Docket No. 6699)	
Charles River:	
Most downstream corporate limits	*5
Upstream side of Newton Lower Falls Dam	*47
Approximately 1,000 feet upstream of Washington Street	*49
Downstream side of Wales Street	*64
Downstream side of State Route 9 (Boylston Street)	*67
Approximately 75 feet downstream of Sudbury Aqueduct	*75
Maps available for inspection at the Engineering Department, City Hall, Newton, Massachusetts.	
NEBRASKA	
Omaha (City), Douglas County (FEMA Docket No. 6706)	
Thomas Creek:	
At mouth	*1,080
About 750 feet downstream of 90th Street	*1,085
About 500 feet downstream of Ida Street	*1,090
Big Papillion Creek:	
About 300 feet downstream of West Center Road	*1,024
About 0.25 mile upstream of West Center Road	*1,028
About 300 feet upstream of 105th Street	*1,033
About 0.50 mile upstream of Interstate 680	*1,028
Maps available for inspection at the Planning Department, Omaha/Douglas Civic Center, 1819 Farnam Street, Room 1110, Omaha, Nebraska.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Waterloo (Village), Douglas County (FEMA Docket No. 6720)	
Elkhorn River:	
About 0.93 mile downstream of Union Pacific Railroad	*1,121
About 1.10 miles upstream of State Highway 64	*1,130
Maps available for inspection at the Village Hall, 105 Washington Street, P.O. Box 50, Waterloo, Nebraska.	
NEW JERSEY	
East Brunswick (Township), Middlesex County (FEMA Docket No. 6706)	
Raritan River:	
Entire shoreline within community	*10
Shoreline of South River at confluence with Raritan River	*10
Downstream side of State Route 18	*11
Upstream side of State Route 18	*11
Shoreline of Lawrence Brook at confluence with Raritan River	*10
Upstream side of New Jersey Turnpike	*11
Maps available for inspection at the Department of Planning and County Development, Municipal Building, East Brunswick, New Jersey.	
Sayreville (Borough), Middlesex County (FEMA Docket No. 6706)	
Raritan Bay: Entire shoreline within community	*18
Raritan River:	
Shoreline at Scott Avenue (extended)	*12
At Garden State Parkway Crossing	*10
Shoreline of South River at Washington Road	*10
Shoreline of South River at William Street (extended)	*10
At Bordentown-Amboy Turnpike	*10
Maps available for inspection at the Office of the Borough Clerk, 167 Main Street, Sayreville, New Jersey.	
South Amboy (City), Middlesex County (FEMA Docket No. 6706)	
Raritan River:	
At Rosswell Street (extended)	*15
Upstream side of CONRAIL bridge	*13
Shoreline at Raritan Street (extended)	*12
Maps available for inspection at the City Clerk's Office, City Hall, 319 George Street, South Amboy, New Jersey.	
NEW YORK	
Brookhaven (Town), Suffolk County (FEMA Docket No. 6720)	
Great South Bay:	
Intersection of Noble Street and Blue Point Avenue	*6
Shoreline at Mott Avenue (extended)	*11
Moriches Bay:	
Intersection of Elm Road and Diana Drive	*8
Shoreline at Bay Avenue (extended)	*12
Atlantic Ocean:	
Shoreline at First Walk (extended)	*15
Intersection of Ocean Walk and Pine Walk	*12
Maps available for inspection at the Town Clerk's Office, 205 South Ocean Avenue, Patchoque, New York.	
East Hampton (Town) Suffolk County (FEMA Docket No. 6720)	
Atlantic Ocean:	
Shoreline at South Edison Street (extended)	*15
Intersection of Osprey Road and Marlin Drive	*9
Maps available for inspection at the Town Clerk's Office, Town Hall, 159 Pantigo Road, East Hampton, New York.	
OHIO	
Whitehall (City), Franklin County (FEMA Docket No. 6706)	
Mason Run:	
About 0.25 mile downstream of Main Street	*775
About 0.11 mile upstream of Broad Street	*795
Maps available for inspection at the Service Director's Office, 360 South Yearling Road, Whitehall, Ohio.	
PENNSYLVANIA	
Unity (Township), Westmoreland County (FEMA Docket No. 6706)	
Loyalhanna River:	
Approximately 1,900 feet downstream of Mission Road	*996
Downstream side of Mission Road	*1,000
Downstream side of State Route 982	*1,004
Sewickley Creek:	
Downstream corporate limits	*1,023
Downstream side of State Route 130	*1,033
Upstream side of State Route 583	*1,046
Approximately .44 mile upsteam of State Route 583	*1,071
Township Line Run:	
Downstream corporate limits	*974
Upstream side of Township Route 492	*980
Upstream side of upsteam Robert Shaw Acres Bridge	*995
Approximately .46 mile downstream of L.R. 64174	*1,010
Upstream side of L.R. 64174	*1,034
Approximately 0.72 mile upsteam of L.R. 64174	*1,070
Maps available for inspection at the Township Building, Latrobe, Pennsylvania.	
West Lebanon (Township), Lebanon County (FEMA Docket No. 6699)	
Quittapahilla Creek:	
Approximately 500 feet downstream of 16th Street	None
Downstream side of 16th Street	None
Maps available for inspection at the Lebanon County Planning Department, Room 206, Municipal Building, Lebanon, Pennsylvania.	
TEXAS	
Travis County (FEMA Docket No. 6706)	
Williamson Creek:	
Approximately 30 feet downstream of Oak Hill Bee Caves Road	*834
Approximately 330 feet upstream of Oak Hill Bee Caves Road	*837
Approximately 360 feet downstream of confluence of Tributary 5	*843
Approximately 600 feet upstream of confluence of Tributary 5	*851
Approximately 1,840 feet upstream of confluence of Tributary 5	*860
Williamson Creek Tributary No. 5:	
Approximately 640 feet upstream of confluerice with Williamson Creek	*848
Approximately 960 feet upstream of confluence with Williamson Creek	*851
Maps available for inspection at the Travis County Engineering Office, 314 W-11, Suite 200, Austin, Texas.	
Uvalde (City), Uvalde County (FEMA Docket No. 6712)	
Leona River:	
Downstream corporate limits	*887
Upstream side of East Nopal Street	*891
Upstream side of Studer Street	*902
Upstream corporate limits	*904
Taylor Slough:	
Downstream corporate limits	*907
Approximately 80 feet upstream of FM Highway 1023	*912
Upstream corporate limits	*917
Maps available for inspection at the City Permits Office, Main Street, Uvalde, Texas.	

Issued: August 20, 1986.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 86-20170 Filed 9-5-86; 8:45 am]

BILLING CODE 6718-03-M

Proposed Rules

Federal Register
Vol. 51, No. 173
Monday, September 8, 1986

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

Employment (General)

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

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

DATES: Comments will be considered if received no later than October 8, 1986.

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

FOR FURTHER INFORMATION CONTACT: Donald L. Holum, (202) 632-6817.

SUPPLEMENTARY INFORMATION: Section 1622 of Pub. L. 99-145, approved November 8, 1985, added section 3328, "Selective Service registration," to title 5, United States Code. The section provides that men born in 1960 or later who are required to but did not register under section 3 of the Military Selectvie Service Act (50 U.S.C. App. 453) generally are ineligible for appointment to Federal executive agencies. A non-registrant who is not yet 26 years of age may correct his ineligibility by registering. After a non-registrant becomes 26 years of age or older, he can no longer register to correct his failure. In the latter situation, the section further authorizes OPM to prescribe procedures for determining whether failure to register was knowing and willful.

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

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

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 300

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 54 CFR Part 300 by adding Subpart G to read as follows:

PART 300—EMPLOYMENT (GENERAL)

* * * * *

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

Sec.

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

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

§ 300.701 Statutory requirement.

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

"(a) An individual—

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

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

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

§ 300.702 Coverage.

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

§ 300.703 Definitions.

In this subpart—

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

"Covered job applicant" means a male whose application for appointment is under consideration by an executive agency, and who was born after

December 31, 1959, is at least 18 years of age, and is either a United States citizen or an alien residing in the United States.

"Executive agency" means an agency of the Government of the United States as defined in 5 U.S.C. 101 through 105.

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

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

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

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

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

§ 300.704 Considering applicants for appointment.

(a) An executive agency must request a written statement of Selective Service registration status from each covered job applicant prior to appointment. The applicant must complete, sign, and date in ink the statement on a form provided by the agency unless the applicant furnishes other documentation as provided by paragraph (c) of this section.

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

Applicant's Statement of Selective Service Registration Status

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

Certification of Registration Status

Check one:

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

[ ] I certify that I have been determined by the Selective Service System to be exempt from the registration provisions of Selective Service law.

[ ] I certify I have not registered with the Selective Service System.

[ ] I certify I have not reached my eighteeth birthday and understand I am required by law to register at that time.

Non-Registrants Under Age 26

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

Non-Registrants Age 26 or Over

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

Privacy Act Statement

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

False Statement Notification

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

Legal signature of applicant (please use ink)

Date signed (please use ink)

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

(d) An executive agency will deny further consideration for appointment to individuals who fail to provide the information requested on registration status.

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

§ 300.705 Agency action following statement.

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

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

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

(1) Advise him to register promptly and to submit a new statement immediately to the agency once he has registered.

(2) Provide written notice to an individual who still does not register that he is ineligible for appointment according to 5 U.S.C. 3328 and will be given no further employment consideration. If the individual was certified or otherwise referred by an Office of Personnel Management (OPM) examining office or other office delegated examining authority by OPM, the agency will provide a copy of its written notice to that office.

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

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

the agency will provide a copy of its written notice to that office.

(2) Submit the individual's application, the statement described in § 300.704(b), a copy of the written notice, his request for a decision and explanation of his failure to register, if any, and any other papers pertinent to his registration status for determination to—

Registration Review, Recruiting and Staffing Services Division, Career Entry Group, Room 6A12, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

(e) An agency is not required to keep a vacancy open for an individual awaiting an OPM determination.

§ 300.706 Office of Personnel Management adjudication.

(a) OPM will adjudicate cases forwarded by agencies under § 300.705(d). For those cases in which the applicant requested a decision and presented a written explanation, OPM will determine whether failure to register was knowing and willful. The determination will be made on the record by the Associate Director for Career Entry or his or her designee. The burden of proof will be on the individual to show by a preponderance of the evidence that failure to register was neither knowing nor willful.

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

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

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

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

§ 300.707 Termination of employment.

A person who is a covered job applicant but is serving under appointment made on or after November 8, 1985, and who has not registered as required, will be terminated unless he registers or if he is no longer eligible to register, OPM determines in response to his explanation that his failrue to register was neither knowing nor willful.

[FR Doc. 86-20106 Filed 9-5-86; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-398]

Subpart—Citrus Canker

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend "Subpart—Citrus Canker" regulations by adding provisions allowing, under specified conditions, the issuance of limited permits for interstate movement of calamondin and kumquat plants from quarantined areas to areas not designated as commercial citrus-producing areas. These changes appear to be necessary to relieve current restrictions on interstate trade without increasing the risk of spreading citrus canker disease.

DATE: Written comments concerning this proposal must be received on or before November 7, 1986.

ADDRESS: Written comments should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination Group, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should indicate that they are in response to Docket No. 85-398. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Assistant Director of the Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, USDA, Room 611, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker, a disease caused by the bacterial pathogen, *Xanthomonas campestris* pv. *citri* (Hasse) Dowson, is a devastating disease which is known to affect plants and plant parts (including fruit) of citrus and citrus relatives (Family Rutaceae). This very aggressive disease can rapidly infect plants and plant parts, leading to extensive economic losses throughout entire citrus growing areas.

After the discovery of citrus canker in Florida, regulations captioned "Subpart—Citrus Canker" (contained in 7 CFR 301.75 *et seq.* and referred to below as the regulations) were established to regulate the interstate movement, from anywhere in Florida, of certain articles designated as regulated articles. Interstate movement of regulated articles may be permitted under limited permits, which require compliance with stringent criteria to prevent artificial spread of citrus canker.

Calamondin and Kumquat Plants

Present § 301.75-2(a) lists as regulated articles "plants or plant parts, including fruit and seeds, of . . . . all species, clones, cultivars, strains, varieties, and hybrids of the genera Citrus and Fortunella". Calamondin, a hybrid combination of mandarin orange and kumquat (*Citrus reticulata* and *Fortunella* sp.), and kumquat (*Fortunella margarita*) are named as regulated articles in present § 301.75-2(a). However, there is little likelihood of calamondin and kumquat plants causing the artifical spread of citrus canker as calamondin and kumquat are highly resistant to citrus canker in general, and to the strains found in Florida in particular.

Calamondin and kumquat plants produce a small, bright orange fruit. Some individuals use the extremely sour fruit as a substitute for lemons and limes, but there is no commercial demand for calamondin or kumquat fruit.

There is, however, a commercial demand for calamondin and kumquat plants to be sold as indoor house plants. This document would allow calamondin and kumquat plants to move interstate under limited permits, but would require different permit issuance criteria for the two types of calamondin ornamental trade operations.

Greenhouse-Grown Calamondin Plants

Greenhouse-grown calamondin plants would be packaged and sold within Florida prior to interstate movement as individual plants. The overwhelming majority would be purchased by tourists buying last-minute souvenirs at gift shops and roadside fruit stands prior to leaving Florida. The Department believes that such plants can be

maintained canker free if grown and moved under the carefully controlled conditions proposed in § 301.75–7(e). These conditions include:

1. Growing only in sterile medium on raised benches.

2. Propagating only with cuttings taken from plants located on the same premises.

3. Allowing movement only from nurseries that were not found to be infested with citrus canker after three inspections by Federal and/or State of Florida inspectors, at 30-day intervals prior to shipment, and that have not received any exposed material from infested or exposed properties.

4. Requiring removal of fruit and the placing of individual plants in hermetically sealed plastic bags prior to movement from nurseries.

To assure that consumers will be informed of geographic distribution limitations, § 301.75–7(e) would also require that individual packages for greenhouse-grown calamondin plants carry a bold face statement that the plants are not for distribution to or within American Samoa, Arizona, California, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States. Purchasers would, however, be allowed to move the plants into any non-citrus producing State.

Container-Grown Calamondin and Kumquat Plants

Container-grown calamondin and kumquat nursery plants are usually grown out-of-doors. This proposal would establish criteria in § 301.75–7(f) for the interstate movement of container-grown calamondin and kumquat plants without causing the artificial spread of citrus canker. The proposed criteria would require that distribution of such plants would be limited to only within that area of the United States east of the Mississippi River and north of a line formed by the southernmost borders of Illinois, Indiana, Ohio, New Jersey, and Pennsylvania. This area is considered "safe" as weather conditions will not permit commercial production of citrus or the outdoor survival of citrus plants.

The proposed criteria also requires the following for growing and moving container-grown calamondin and kumquat nursery plants:

1. Growing plants entirely on site and propagating only with cuttings taken from plants located on the same premises.

2. Allowing movement only from nurseries that were not found to be infested with citrus canker after three inspections by Federal and/or State of Florida inspectors, at 30-day intervals prior to shipment, and that have not received any exposed material from infested or exposed properties, and that have not housed citrumelo or trifoliate orange (*Poncirus trifoliata*) since May 1, 1985.

3. Allowing transportation only in sealed, rigid containers or completely enclosed vehicles.

4. Requiring attachment of a waterproof, boldface statement of geographic distribution limitations to each individual plant in containers.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic region; and would 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.

The revisions proposed in this document would relieve unnecessary restrictions on the interstate trade in calamondin and kumquat plants. Under the requirements for issuance of limited permits, as proposed herein, movement of these plants would not threaten citrus production in the United States or increase the artificial spread of citrus canker.

The overwhelming majority of gift shops and roadside stands selling calamondin and kumquat plants are small entities, as are a portion of the nurseries that grow and sell these plants. However, although sales of calamondin and kumquat should increase under this proposal, the economic impact would be minor as calamondin and kumquat are a small part of such small entities' selling or purchasing inventory.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would 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 the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plant diseases, Plant pests, Quarantine, Transportation.

Accordingly, it is proposed to amend "Subpart—Citrus Canker" (contained in 7 CFR 301.75 *et seq.*) as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

2. Section 301.75–6 would be amended by adding a new paragraph (e) to read as follows:

§ 301.75–6 Conditions governing the interstate movement of regulated articles from quarantined areas.

* * * * *

(e) Calamondin and kumquat plants may be moved interstate from a quarantined area with a limited permit issued and attached in accordance with § 301.75–10 and either § 301.75–7(e) or § 301.75–7(f).

3. Section 301.75–7 would be amended by adding new paragraphs (e) and (f) to read as follows:

§ 301.75–7 Issuance and cancellation of certificates and limited permits.

* * * * *

(e) A limited permit shall be issued by an inspector for greenhouse-grown calamondin plants to be packaged and sold within Florida prior to interstate movement as individual plants, if such inspector:

(1) Determines that each individual plant will be sealed hermetically in a plastic bag at the nursery before moving from the nursery premises and will have no fruit attached.

(2) Determines that the calamondin plants have been grown in sterile medium on raised benches, and that cuttings used for propagation have only been taken from plants located on the same premises.

(3) Determines that the nursery where the plants were grown has not received any exposed material from any infested or exposed property.

(4) Determines that the nursery where the plants were grown has received three negative inspections for citrus canker by Federal and/or State of Florida inspectors, at 30-day intervals,

prior to the date of shipment and that all plants were citrus canker free.

(5) Determines that each individual package will have a bold face statement which states that the plant is not for distribution within American Samoa, Arizona, California, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States.

(f) A limited permit shall be issued by an inspector for container-grown calamondin or kumquat nursery plants to be moved from the State of Florida to that area of the United States east of the Mississippi River and north of an imaginary line formed by the southernmost borders of Illinois, Indiana, Ohio, New Jersey, and Pennsylvania, if such inspector:

(1) Determines that the plants will be transported in a sealed, rigid container or a completely enclosed vehicle.

(2) Determines that the plants are from a nursery that has not received any exposed plant material from any exposed or infested property, and has had no citrumelo or *Poncirus trifoliata* plants in the nursery since May 1, 1985.

(3) Determines that the plants have been produced entirely on site and that cuttings used for propagation have only been taken from plants located on the same premises.

(4) Determines that the nursery where the plants were grown has received three negative inspections for citrus canker by Federal and/or State of Florida inspectors, at 30-day intervals, prior to the date of shipment and that all plants were citrus canker free.

(5) Determines that a waterproof, boldface statement will be attached to each plant stating that the plant may be distributed only within that area of the United States east of the Mississippi River and north of an imaginary line formed by the southernmost borders of Illinois, Indiana, Ohio, New Jersey, and Pennsylvania.

Done at Washington, DC, this 3rd day of September 1986.

William F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-20137 Filed 9-5-86; 8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD8 86-05]

Safety Zone; Mississippi River Gulf Outlet

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend its Safety Zone Regulations, 33 CFR Part 165, by disestablishing the safety zone in the Mississippi River Gulf Outlet (MRGO). Improvements to the navigational channel since the safety zone's establishment (**Federal Register** Vol. 46, No. 107/4 June 1981) and the ability of the U.S. Army Corps of Engineers to deal quickly with critical shoaling, have made this safety zone unnecessary. Its removal will provide economic benefits to the shipping industry and the Port of New Orleans without reducing navigation safety.

DATE: Comments must be received on or before October 23, 1986.

ADDRESSES: Comments should be mailed to U.S. Coast Guard, Captain of the Port, 4640 Urquhart Street, New Orleans, Louisiana, 70117-4698. The comments and other materials referenced in this notice will be available for inspection and copying at U.S. Coast Guard Group, 4640 Urquhart Street, New Orleans, Louisiana, 70117-4698, Room A-303. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Scott Newsham at (504) 589-7127.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD8 86-05) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed post card or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LT Scott Newsham, project officer, Chief, Waterways Safety Branch, and LCDR James Vallone, project attorney, Eighth, Coast Guard District Legal Office.

Discussion of Proposed Regulations

On 4 June 1981 the MRGO Safety Zone was established to prevent vessels, including tows, over 600 feet in length, or over 80 feet in beam, or with a draft of over 30 feet from meeting or overtaking one another in that portion of the MRGO between Lighted Buoy 1 [LLNR 2014] and Light 62 [LLNR 2068]. This created single-lane traffic in this portion of the MRGO. This action was in response to substantial channel construction from shoaling and the perceived dangers of varying crosscurrent below the jetties.

In 1985 the U.S. Army Corp of Engineers completed a dredging project, restoring the MRGO to its original project dimensions of 36 feet deep and 500 feet wide. The Corps has indicated to the Captain of the Port, New Orleans that they should be able to deal quickly with any future critical shoaling problems.

Discussions with the Associated Branch Pilots, who provide pilotage for vessels transiting between the seaward entrance of the MRGO and Light 62, indicate that the restoration of the channel to project dimensions, and planned improvements to the aids to navigation, have alleviated the navigational safety concerns which led to their recommendations for the original MRGO Safety Zone.

The New Orleans Steamship Association, comprised of 58 companies of ship owners, agents, operators and stevedores in the Port of New Orleans, and associated with hundreds of vessel owners in international commerce, has recommended that the MRGO Safety Zone be eliminated. The association believes that this will allow for more efficient sailing schedules, which would benefit both the vessel operators and the Port of New Orleans.

St. Bernard and Orleans Parishes, the two parishes through which the MRGO passes, were asked to comment on the possible elimination of the safety zone. St. Bernard Parish offered no objection, while no response was received from Orleans Parish.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Ships will be able to call at the Port of New Orleans with less

restrictions on their sailing schedules. Any economic impact would be beneficial due to reduced vessel operating costs.

Since the impact of this proposal is expected to be minimal the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

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

PART 165—[AMENDED]

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

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

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

§ 165.801 [Removed]

2. Section 165.801 is removed.

Dated: May 14, 1986.

J.E. Lindak,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 86–20162 Filed 9–5–86; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–3075–3]

Certification Program; Emissions Trading and/or Banking; Report Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Report Availability.

SUMMARY: This notice announces the availability of an EPA staff paper which examines the issues surrounding the implementation of a certification program allowing the trading and/or banking of oxides of nitrogen and diesel particulate emission credits to determine compliance with heavy-duty engine emission standards. A supporting economic analysis report prepared for EPA to quantify the benefits of implementing such a program is also available. In addition, the notice requests comment on the staff paper and announces EPA's intention to convene a public workshop on this subject.

DATE: All comments must be submitted by November 7, 1986.

ADDRESSES: Single copies of the staff paper and the economic analysis report may be obtained by contacting: Ms. Jacqueline L. Whelchel, Emission Control Technology Division, U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105, 313–668–4272.

Those persons desiring to provide written comments on the staff paper should submit those comments in duplicate directly to the public contact person indicated below. Commenters desiring to submit proprietary information should clearly distinguish such information from other comments to the greatest extent possible, and label it "Confidential Business Information."

Information covered by such a proprietary claim will be disclosed by EPA only to the extent and by means of the procedures set forth in the 40 CFR Part 2. If no claim of confidentiality accompanies the information when it is received by EPA it may be made available to the public without further notice to the commenter.

FOR FURTHER INFORMATION CONTACT: Ms. Rebecca Kanner, Emission Control Technology Division (SDSB–12), U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105 (313–668–4361).

SUPPLEMENTARY INFORMATION:

Background

As part of the October 15, 1984 Notice of Proposed Rulemaking covering future heavy-duty engine (HDE) oxides of nitrogen (NOx) and heavy-duty diesel engine (HDDE) particulate emission standards, EPA proposed that manufacturers be permitted to use a form of emissions averaging as part of their approach to compliance with these emission standards. In addition, EPA requested comments on the possibility of establishing an emissions trading program for HDE NO_x and HDDE particulate to complement the emissions averaging program (49 FR 40262).

The public comments received in response to the proposed emissions averaging program raised several issues relevant to both emissions averaging and trading. In the course of developing the final rule, EPA was able to address satisfactorily the concerns raised in the comments as they pertained to HDE NO_x and HDDE particulate emission averaging, and these programs were established, applicable beginning with the 1991 model year. However, action on the emissions trading program was deferred pending further study. A decision on emissions trading was postponed because EPA had not proposed a specific program for emissions trading and the court-imposed schedule for promulgation of the final rule did not allow time to deal satisfactorily with the comments received on the emissions trading concept (50 FR 10637).

Shortly following the decision to postpone action on emissions trading, EPA formed a technical committee to study more thoroughly the issues raised with regard to emissions trading, and to develop details of appropriate options for dealing with these issues. Also, the study was expanded to include the possibility of adding a banking program to the trading program. The EPA staff paper mentioned above, prepared by the technical committee, represents the first step in EPA's further evaluation of the possibility of implementing trading and/or banking programs for HDEs.

Summary of the Staff Paper

The EPA staff paper, entitled "Issue Analysis: Trading and Banking of Heavy-Duty Engine NOx and Particulate Emissions Credits," is divided into five main sections. Following a short introduction, a background on trading and banking is presented, including a description of the two concepts and a discussion as to why these programs are being considered. The next section presents some key design goals for trading/banking programs and discusses some constraints on the programs which may be necessary to meet these design goals. This is followed by a discussion of the potential environmental impacts of trading and banking programs, with special emphasis on the potential for fleetwide and temporally-localized emission increases. A discussion of the possible interactions between trading and banking and existing mobile source programs is presented in the ensuing section, and this is followed by a final section discussing the competitive and equity impacts of trading and banking. This final section, which is drawn from the aforementioned economic analysis report, focuses on overall cost savings benefits, equity effects, and anti-competitive effects. The paper closes with a brief summary.

Overall the staff paper is not designed or intended to present EPA's final positions on the issues and concerns described therein. Rather, EPA hopes that the paper will provide focus to those issues requiring consideration and resolution, as well as a framework in which the affected industry and other interested parties can develop comments, suggestions, and further questions on the issues. Based on analyses of these inputs, EPA will determine if it is appropriate to issue a

proposed rulemaking for specific programs on trading and/or banking.

Requests for Public Comment

EPA solicits written public comment on the issues raised in the staff paper and invites additional comments on areas which the staff paper may not have addressed. Specifically, EPA requests that manufacturers provide an evaluation of the potential benefits and negative impacts of implementing such programs, including a quantitative assessment of the potential cost savings. This evaluation should also address the potential equity and competitive effects of these programs. EPA requests comments on concerns regarding the potential for negative environmental impacts and possible means to remedy the problems raised in the staff paper with regard to trading across HDDE subclasses. Comments should also address the question of EPA's authority to establish trading and/or banking programs for HDE NOx and HDDE particulate emissions within the constraints of the mobile source provisions of the Clean Air Act. EPA requests that commenters address the reasons for or against implementation of trading and banking concepts in conjunction with HDE NO_x and HDDE particulate averaging, both in general and with regard to specific types of trading or banking programs.

Although EPA has not pre-scheduled a public workshop on the trading and banking concepts, EPA intends to hold a workshop after reviewing the written comments received on the staff paper. A public workshop will provide an open forum for discussion of the issues raised in the staff paper and allow further comment on the issues. When a public workshop is scheduled, adequate notice and specific details will be provided in a future **Federal Register** notice.

Dated: August 6, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-20031 Filed 9-5-86; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 51, No. 173
Monday, September 8, 1986

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.

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Meeting Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission originally scheduled for September 8, 1986, convening at 1:00 p.m. and adjourning at 4:00 p.m., at the U.S. Commission on Civil Rights, Conference Room #2950, 1405 Curtis Street, Denver, Colorado, (FR Doc. 86–16960, Page 27066) has been cancelled.

Dated at Washington, DC, August 29, 1986.

Ann E. Goode,
Program Specialist for Regional Programs.

[FR Doc. 86–20125 Filed 9–5–86; 8:45 am]
BILLING CODE 6335–01–M

Nevada Advisory Committee; Meeting Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission originally scheduled for September 20, 1986, convening at 10:00 a.m. and adjourning at 2:00 p.m., at the Holiday Inn South, 5851 South Virginia, Reno, Nevada, (FR Doc 86–16583, Page 26457) has been cancelled.

Dated at Washington, DC, August 27, 1986.

Ann E. Good,
Program Specialist for Regional Programs.

[FR Doc. 86–20128 Filed 9–5–86; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Membership of the Office of Inspector General Performance Review Board

In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the Office of Inspector General (OIG) announces the appointment of persons to serve as members of its Performance Review Board (PRB). The OIG PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, and initial recommendations for potential rank awards. The names of all Commerce OIG Senior Executives will be placed on a register from which PRB's will be established, the register will be established on September 15, 1986. The appointment of the member of the OIG PRB from outside of the OIG will be for a period of two years beginning September 15, 1986.

The names and titles of the OIG PRB membership follow. All are OIG employees, except where noted.

Francis D. DeGeorge, Deputy Inspector General
Charles M. Hall, Assistant Inspector General for Planning, Evaluation and Inspections
Bryan B. Mitchell, Acting Deputy Inspector General (Department of Health and Human Services)
John D. Newell, Assistant Inspector General for Automated Information Systems
J. Steven Sadler, Deputy Assistant Inspector General for Auditing
Linda G. Sundro, Counsel to the Inspector General
John R. Szpanka, Assistant Inspector General for Auditing
Randolph M. West, III, Assistant Inspector General for Investigations

FOR FURTHER INFORMATION CONTACT: Marie Van Wyk, Personnel Officer, Department of Commerce, Office of Inspector General, 14th & Constitution, NW., Room 7713, Washington, DC 20230, (202) 377–4948.

Dated: August 29, 1986.

Approved:
Francis D. DeGeorge,
Deputy Inspector General.

[FR Doc. 86–20116 Filed 9–5–86; 8:45 am]
BILLING CODE 3510–11–M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than September 30, 1986, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September, for the following periods:

Antidumping Duty Proceeding	Period
Parts for Self-Propelled Bituminous Paving Equipment from Canada	9/1/85–8/31/86
Metal-Walled Above-Ground Swimming Pools from Japan	9/1/85–8/31/86
Steel Jacks from Canada	9/1/85–8/31/86
Printcloth from the People's Republic of China	9/1/85–8/31/86
Woodwind Pads from Italy	9/1/85–8/31/86
Kraft Condenser Paper from Finland	9/1/85–8/31/86
Steel Bars & Shapes from Canada	9/1/85–8/31/86
Instant Potato Granules from Canada	9/1/85–8/31/86
Sheet Piling from Canada	9/1/85–8/31/86

Countervailing Duty Proceeding	Period
Fresh Cut Roses from Israel	10/1/84-9/30/85
Lime from Mexico	1/1/85-12/31/85
Lambmeat from New Zealand	4/1/85-3/31/86
Portland Hydraulic Cement and Cement Clinker from Mexico	1/1/85-12/31/85
Carbon Steel Wire Rods from Argentina	1/1/83-12/31/85
Cotton Shop Towels from Peru	1/1/85-12/31/85

A request must conform to the Department's interim final rule published in the **Federal Register** (50 FR 32556) on August 13, 1985. Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by September 30, 1986.

If the Department does not receive by September 30, 1986 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-20175 Filed 9-5-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit to Dr. Sidney Lees

On July 8, 1986, notice was published in the **Federal Register** (51 FR 24737) that an application had been filed by Dr. Sidney Lees, Head Bioengineering Department, Forsyth Dental Center, 140 Fenway, Boston, Massachusetts 02115, for importation from Iceland of otic bones and associated tissues from three fin whales.

Notice is hereby given that on August 28, 1986, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Room 805, 1825 Connecticut Avenue, NW., Washington, DC

and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Bldg., Gloucester, Masschusetts 01930.

Dated: September 3, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-20172 Filed 9-5-86; 8:45 am]

BILLING CODE 3510-22-M

United States Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on September 29, 1986 at 9:00 a.m. at Tan-Tar-A Resort, Lake of the Ozarks, Osage Beach, Missouri 65065. Meeting Room information will be posted on the hotel directory.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97-63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order.
II. Approval of the Minutes.
III. Old Business.
  A. Foreign Service Conversion of USTTA Personnel.
  B. Report on China Trip.
  C. Crisis Management.
IV. New Business.
  A. Review of USTTA Operations.
  B. German Test Market Assessment Results.
  C. International Marketing Conference.
  D. Caribbean Basin Initiative.
V. Miscellaneous.
  A. Establish next meeting date.
VI. Adjournment.

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202-377-0140) will respond to public requests for information about the meeting.

Donna Tuttle,

Under Secretary for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 86-20124 Filed 9-5-86; 8:45 am]

BILLING CODE 3510-11-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Information School Board of Visitors; Meeting

AGENCY: Defense Information School Board of Visitors.

ACTION: Notice of Meeting.

SUMMARY: A meeting will be held to discuss military public affairs with the Service Chiefs of Public Affairs and/or their representatives in order to determine trends and issues that would be useful to the Defense Information School. The meeting is open to the public and will be conducted in Room 1E801 (#1), the Pentagon, Washington, DC.

DATES: (September 29, 1986—8:00 a.m. to 4:00 p.m.) and (September 30, 1986—8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Ted Daniel, Director for Management, Office of the Assistant Secretary of Defense for Public Affairs, Room 2E811, the Pentagon, Washington, DC 20301. Mr. Daniel's telephone number is (202) 697–8959.

Patricia H. Means,

OSD, Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–20128 Filed 9–5–86; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Semi-Conductor Dependency

ACTION: Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Semi-Conductor Dependency will meet in closed session on September 24, 1986 at Palisades Corporation, Crystal City, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting this Task Force will evaluate the state of current and projected Department of Defense Foreign Semi-Conductor Dependency.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB panel meeting, concerns matters listed in 5 U.S.C. 552b:(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 2, 1986.

[FR Doc. 86–20129 Filed 9–5–86; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Public Hearings on the Draft Environmental Impact Statement and Dredging Permit Applications for U.S. Navy Gulf Coast Homeporting

The U.S. Navy pursuant to the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations (40 CFR Part 1500), and Executive Order 12382 has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for the proposed Gulf Coast Strategic Homeporting. The DEIS has been distributed to various public officials, federal, state, and local agencies, organizations, individuals, and public libraries in Key West, Florida; Pensacola, Florida; Mobile, Alabama; Pascagoula, Mississippi; Lake Charles, Louisiana; Galveston, Texas, Corpus Christi, Texas and Ingleside, Texas.

Public hearings to inform the public of the study's findings and to solicit comments on the Navy's proposed homeport facilities will be held at the following locations:

Gulfport, Mississippi—Tuesday, September 30, 1986, at 7:00 p.m., Westside Community Center, 4010 West Beach (highway 90), Gulfport, Mississippi.

Key West, Florida—Thursday, October 2, 1986, at 7:00 p.m., City Commission Chambers, 524 Angela Street, Key West, Florida.

Pensacola, Florida—Tuesday, October 7, 1986, at 7:00 p.m., New City Hall, 180 Governmental Center, Pensacola, Florida.

Mobile, Alabama—Wednesday, October 8, 1986, at 7:00 p.m., Mobile Municipal Auditorium, 401 Auditorium Drive, Mobile, Alabama.

Pascagoula, Mississippi—Thursday, October 9, 1986, at 7:00 p.m., LaFont Inn, Highway 90 East, Pascagoula, Mississippi.

Lake Charles, Louisiana—Tuesday, October 14, 1986, at 7:00 p.m., Lake Charles Civic Center Buccaneer Room, Lake Shore Drive, Lake Charles, Louisiana.

Galveston, Texas—Wednesday, October 15, 1986, at 7:00 p.m., Moody Civic Center, 2nd Level, Seawall Boulevard, Galveston, Texas.

Corpus Christi Ingleside, Texas—Thursday, October 16, 1986, at 7:00 p.m., Gregory-Portland High School Auditorium, Wildcat Drive, Portland, Texas.

The hearings will be chaired by the U.S. Navy and, at appropriate sites, co-chaired by the U.S. Army Corps of Engineers. These hearings will also serve as permit hearings for section 404, section 10, and section 103 permit applications for certain sites. All hearings will be held from 7:00 p.m. to completion of public comments or 12:00 midnight.

All interested parties are invited and urged to be present or be represented at this meeting. This includes representatives of federal and non-federal agencies; commercial and business, industrial, transportation, and utilities agencies, civic, ecological, and environmental groups, fish and wildlife organizations; interested and concerned citizens and other interests. All parties will be afforded full opportunity to express their views; but in order to allow all an opportunity to speak, statements will be limited to eight (8) minutes. If longer statements are to be presented, they should be delivered in writing at the hearing or mailed to: Mr. Laurens Pitts, P.E., Southern Division, Naval Facilities Engineering Command, 2420 Mall Drive, Suite 110, North Charleston, South Carolina, 29406.

Oral statements will be heard and transcribed by a stenographer, but for accuracy of record all statements should be submitted in writing. All statements, both oral and written, will become part of the official record on this study.

The public hearing will be reported verbatim. Copies of the transcript of the proceedings may be purchased from the Navy. The cost of a copy will correspond directly to the number of pages enclosed within the transcript.

Final decision on the proposed plans will be made only after full consideration is given to the views of responsible agencies, groups and citizens.

Written statements will be accepted until October 27, 1986.

Questions concerning this public notice may be directed to: Mr. Laurens Pitts at (803) 743–3864.

Dated: September 4, 1986.

Harold L. Stoller, Jr.

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

[FR Doc. 86–20219 Filed 9–5–86; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

National Environmental Policy Act, Additional Public Scoping Meeting for Feed Materials Production Center, Fernald, OH

Notice is hereby given that the Department of Energy (DOE) has scheduled a second public meeting for September 22, 1986, to obtain additional comments on the scope and content of an environmental impact statement (EIS) which DOE will prepare on the proposed renovation and remedial activities at DOE's Feed Materials Production Center (FMPC) near Fernald, Ohio. In addition, the written comment period has also been extended to September 26, 1986.

The meeting will be held at 7:30 p.m. in the Crosby School in Hamilton County, Ohio. Individuals desiring to make oral comments at the second

meeting should mail their requests by September 18 to Mr. James Reafsnyder, Site Manager, Department of Energy, P.O. Box 398705, Cincinnati, Ohio 45239, ATTN: FMPC–EIS. Requests should include a telephone number so that individuals may be advised of the schedule of presentations. Persons may also register at the meeting to provide oral comments and will be called upon to speak. Written comments may also be submitted and should be sent to Mr. Reafsnyder at the same address no later than September 26, 1986.

Background

Originally, a single meeting was scheduled for September 3 and the close of the comment period was set for September 22 as announced in an August 19, 1986, **Federal Register** notice (51 FR 29583). However, since that time, DOE received a number of requests for additional time to prepare comments. Except for the additional meeting and revised dates, the information provided in the August 19 **Federal Register** notice should be referenced for further information. The September 3 meeting was held as scheduled.

Dated at Washington, DC, this 3rd day of September 1986 for the United States Department of Energy.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 86–20234 Filed 9–5–86; 8:45 am]

BILLING CODE 6450–01–M

Intent To Renew Grant Agreement

AGENCY: Department of Energy (DOE).

ACTION: The U.S. DOE announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for the award of additional effort under existing agreement number DE–FGO1–84CE22122 for continuation of their research in daylight design and fenestration performance evaluation. The University of Florida, Florida Solar Energy Center (FSEC), has submitted a renewal proposal.

SUMMARY: The U.S. DOE, Office of Building and Community Systems, Building Systems Division, is preparing a grant modification to fund a renewal proposal submitted by FSEC.

The objectives of this work are to advance the state-of-the-art of daylighting design and fenestration performance evaluation in the areas of characterizing sky luminance distributions, developing a standard practice for fenestration photometry measurements, and developing optical instruments for measuring daylight availability.

Eligibility: Award of this effort has been limited to FSEC, an institute of higher education, because of their high qualifications in the fields of optical physics and fenestration system design and evaluation.

The term of of this renewal shall be from September 29, 1986 through September 28, 1987 and the amount of funds estimated to be awarded are $49,000.

For further information contact: Rosemarie Marshall, MA–453.2, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC 20585

Edward T. Lovett,

Director, Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 86–20191 Filed 9–5–86; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council, Coordinating Subcommittee on U.S. Petroleum Refining; Meeting

Notice is hereby given that the Coordinating Subcommittee on U.S. Petroleum Refining will meet in September 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on U.S. Petroleum Refining will be addressing the current activities of all task groups and providing guidance for future studies. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Coordinating Subcommittee on U.S. Petroleum Refining will hold its fourteenth meeting on Thursday, September 11, 1986, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, DC.

The tentative agenda for the Coordinating Subcommittee on U.S. Petroleum Refining meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review individual drafting assignments.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee on U.S. Petroleum Refining is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee on U.S. Petroleum Refining will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Advanced Fuels, Technology, Extraction and Environmental Controls, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 29, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–20143 Filed 9–5–86; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Finding of No Significant Impact for the Proposed Funding of the Colville Resident Trout Hatchery, WA

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Finding of No Significant Impact (FONSI) for Bonneville Power Administration's proposed funding of the Colville Resident Trout Hatchery.

SUMMARY: The proposed Colville Resident Trout Hatchery would be located on the Columbia River just below Chief Joseph Dam in the State of Washington. The hatchery will mitigate the adverse effects of hydroelectric operations of Chief Joseph and Grand Coulee Dams. BPA has prepared an Environmental Assessment (DOE/EA–0307) on construction and operation of the proposed hatchery. Reasons that impacts of the hatchery are not significant include: The stocking program will not change from the past 20 years; water quality will be protected; no threatened or endangered species will be affected; and the hatchery will be compatible with local land uses. A finding is included that there is no practicable alternative to locating the outfall structure in the floodplain.

FOR FURTHER INFORMATION CONTACT: Environmental Manager, Bonneville Power Administration, P.O. Box 3621—

SJ, Portland, Oregon 97208, telephone (503) 230–5136.

SUPPLEMENTARY INFORMATION: BPA proposes to fund construction and operation of a resident trout hatchery on the Colville Indian Reservation in central Washington. The hatchery would be located on Federal land approximately 3.5 miles downstream of Chief Joseph Dam on the Columbia River (at RM 541.5). The fish reared at the proposed hatchery would replace fish currently provided by Federal hatcheries being phased out for resident trout production. BPA's funding of construction and operation of the hatchery will implement measure 804(e)(15) of the Northwest Power Planning Council's 1984 Columbia River Basin Fish and Wildlife Program.

BPA has prepared an EA to analyze the environmental effects resulting from construction and operation of the hatchery (see EA, pages 20–48). Alternatives to the proposed action that were considered are: (1) An option of purchasing fish from existing state or private fish hatcheries; and (2) a no-action alternative. These alternatives were dismissed from detailed evaluation because they would not adequately meet the purposes for the project (see EA, page 12). Two different site locations (upper and lower) for the proposed action were analyzed in the EA. The upper site has been eliminated from further consideration because of the unavailability of an economically acceptable water supply.

Reasons why the proposed action will not significantly affect the quality of the human environment:

1. The introduction of stocked fish from the proposed hatchery will not change the status quo with regard to impacts on fish and other aquatic species in tribal reservation water bodies because the proposed program generally follows an existing stocking program that has been in effect for approximately 20 years. Standard hatchery management and operational procedures include testing and treatment programs to minimize the probability of fish diseases in stocked watersheds. (See EA, pages 27–30.)

2. Suspended solids or nutrient loading to the Columbia River following treatment in settling ponds will meet Environmental Protection Agency (EPA) requirements on effluent limitations to maintain good water quality. A National Pollutant Discharge Elimination System permit will be obtained from EPA. Accumulated wastes from the hatchery raceways will be vacuumed into settling ponds for a minimum of 1 hour retention time. The settling pond wastes will either be buried on site or used locally as a fertilizer. A localized increase in Columbia River turbidity may result from ground excavation and placement of no more than 10 cubic yards of riprap around the base of the effluent outfall structure. This construction is estimated to last up to 2 weeks. Turbidity created by construction activities will be regulated by restrictions of the Corps of Engineers' (COE) section 404 permit and BPA contract stipulations to not exceed State or local water quality standards. Septic tanks to handle sewage from the hatchery building and associated residences will be designed and installed to protect groundwater quality according to tribal and local ordinances. The quantity of water available at the proposed site is adequate for hatchery operation and will impose no more than a 1-foot depression of groundwater levels in surrounding wells. (See EA, pages 21–27.)

3. Bald eagle use of the site during winter is minimal because there are no desirable perching or foraging areas on the site. A tall pine tree is on adjacent property approximately 400 feet from the proposed hatchery facilities, but other pine trees closer to foraging areas are available across the river, upstream, and downstream. Since construction activities will not take place during winter months and since areas of most human activity will be located as far as possible from the pine tree, BPA has come to a finding of no effect on the bald eagle in a Biological Assessment which is included as Appendix E of the EA. The U.S. Fish and Wildlife Service has concurred with this finding. No other endangered species are known to occur in the project area.

4. The proposed hatchery facilities are not located in a floodplain, wetland, or on prime or unique agricultural land. The lower section of the wastewater outfall line will be located in the 100-year floodplain. DOE has determined that there is no practicable alternative to locating the outfall structure in the floodplain and that the proposed action includes all practicable measures to minimize harm to or within the floodplain. The proposed outfall structure will be designed and built to withstand peak flows. The presence of the outfall structure will not alter the floodplain's physical characteristics. No adverse impacts of floods on human safety, health, and welfare will occur due to the project because the channel discharge capacity will not be changed. (See EA, pages 21–22.)

5. Construction of the hatchery facilities will result in a loss of approximately 5 acres of natural shrub-steppe vegetation along the Columbia River. The percentage of shrub-steppe vegetation lost due to the hatchery is small (5 acres out of 108 acres available for the hatchery site), particularly with respect to the widespread regional availability. Riparian vegetation along the river bank consists of an occasional willow bush and will be avoided when installing the outfall structure. (See EA, pages 31–33.)

6. State and county land use jurisdiction does not extend to tribal reservation lands. However, the EA has been coordinated with State of Washington agencies, Okanogan County commissioners, and the Washington Intergovernmental Review Process. Construction and operation of the hatchery will not conflict with State or local plans or programs. The proposed action will result in a land use change that will require processing through the special procedures outlined in the Colville Confederated Tribes' (CCT) Interim Land Use and Development Ordinance. (See EA, pages 41–43.)

7. Consultation with the Washington State Historic Preservation Office, the CCT, and the COE, Seattle District, has revealed that there are no known archaeological, historical, or unique cultural resources located on the site nor are there any identified religious and/or ceremonial sites within the project area. An archaeological specialist will be present on the site during construction activities to ensure that subsurface resources are either not present or will be properly dealt with if encountered. (See EA, pages 43–44.)

8. BPA evaluated the proposed action with respect to current legislation affecting Federal projects and found it to comply with those laws and regulations (see the EA, pages 20–48). There will be no effect on: (a) special recreational areas such as Wild and Scenic Rivers, National Trails, etc. (EA, page 39); (b) air quality (EA, pages 44–45); (c) noise levels (EA, page 45); (d) solid or hazardous waste disposal (EA, pages 46–47); and (e) aesthetics (EA, pages 47–48).

Related Documents

Frederiksen, Kamine, and Associates, Inc. 1981. Mid-Columbia River Study, Part 1: Hatchery Siting Survey. Prepared for Chelan, Douglas, and Grant County PUD's

Koch, D.L. and G.F. Cochran. 1977. Feasibility Report of a Fish Hatchery on the Colville Indian Reservation at Chief Joseph Dam, Bridgeport, Washington. Prepared for Colville Confederated Tribes, Nespelem, WA.

Raymond Kaiser Engineers. 1985. Colville Fish Hatchery Water Supply Study of Alternative Columbia River Sites. Report No. 85–034–RE prepared for Bonneville Power Administration, Portland, OR.

Public Availability. The EA was distributed for public review to landowners in the area and governmental agencies involved with the project. Copies of this finding will also be distributed to those landowners and governmental agencies that received the EA.

Determination. Based on the information in the EA. the Department of Energy determines that BPA's action is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement will not be prepared.

Issued in Washington. D.C., on August 26, 1986.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 86-20192 Filed 9-5-86 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP86-344-000 and CP86-344-001]

Consolidated Gas Transmission Corp.; Second Notice of Intent To Prepare an Environmental Assessment on the Proposed Line No. TL-460 and Biddlecum Road Measuring Station, Request for Comments, and Notice of Public Meeting

September 3, 1986.

On February 25, 1986, Consolidated Gas Transmission Corporation (Consolidated) applied to the Federal Energy Regulatory Commission (Commission) for a certificate to construct 33.5 miles of 24-inch natural gas pipeline, called Line No. TL-460, in Onondaga and Oswego Counties, New York, and to construct a measuring station at Biddlecum Road in Oswego County. The facilities would be used to deliver gas to Niagara Mohawk Corporation (Niagara Mohawk), an intrastate pipeline and distribution company.

On May 8, 1986, the Commission staff released a notice which described the project, requested public comment on environmental issues, and notified the public of a Commission-sponsored public meeting that was to be held on June 2, 1986, in Baldwinsville, New York.

On May 28, 1986, the Commission staff postponed the public meeting because Consolidated was planning to amend its application in response to a revision in Niagara Mohawk's estimate of delivery requirements. Consolidated filed the amendment with the Commission on June 23, 1986, under Docket No. CP86-344-001.

The amendment changes the operational relationship between Consolidated and Niagara Mohawk but the facility requirements remain essentially the same.[1] Consolidated originally proposed to shift all gas deliveries from the existing Oneida Measuring Station near Oneida, New York, to the proposed Biddlecum Road Measuring Station, retaining the Oneida Measuring Station only for emergencies. However, to deliver the amended volumes estimated by Niagara Mohawk, the Oneida Measuring Station would now be needed routinely during peak periods. A significant portion of the increased volumes would be consumed in Niagara Mohawk's existing franchise areas in Evans Mills, Sackets Harbour, and the Watertown area, and in proposed new market areas in Lewis and St. Lawrence Counties. Also, by shifting the current deliveries at the Oneida Measuring Station to the proposed Biddlecum Road Measuring Station, Consolidated would be able to deliver more gas to Niagara Mohawk in Saratoga County, located in eastern New York, where Niagara Mohawk expects that additional volumes will be needed.

Construction was originally proposed to begin May 1, 1986, and to be completed by October 31, 1986. Consolidated now plans to construct during the same period in 1987.

Location and Land Requirements

Figure 1 shows the location of the project.[2] Fifty-nine percent of the route would occupy or overlap existing electric power and gas pipeline rights-of-way. In these areas, the additional width of clearing required to construct the pipeline would range from 20 to 49 feet. Twenty feet of this clearing would be needed only during construction; thus the additional width of permanent right-of-way Consolidated proposes to use would range from 0 to 29 feet. Where the route would not parallel existing rights-of-way, Consolidated proposes to construct and operate the pipeline within a 60-foot-wide permanent right-of-way. The permanent right-of-way is the area where the easement prohibits the construction of homes and other structures. The Commission staff understands that Consolidated has and plans to negotiate rights-of-way up to 100-feet wide with willing landowners.

The Biddlecum Road Measuring Station would be located in an agricultural field 1 mile south of Biddlecum Road in the town of Schroeppel. Consolidated plans to purchase a 5-acre site and to use 1.4 acres for the facility. The remaining 3.6 acres would be available to the adjacent landowner for agricultural purposes. The facility would be designed to produce noise levels less than an Ldn of 55 dB(A) at the nearest residence.

Consolidated states that about 50 acres of woodland would be cleared during pipeline construction. Five acres would be cleared for construction purposes only and would be allowed to return to forest land. The remaining 45 acres would be kept clear of trees for the life of the project. About 108 acres of cropland and 20 acres of pasture would be disturbed for one growing season. Other lands affected include open fields (34 acres), wetland (18 acres), and residential land (7 acres). The 13 wetland crossings range from 100 to 1,900 feet in length, and would require permits from the New York Department of Environmental Conservation. Other than a 1,200-foot crossing of the Three Rivers State Game Management Area, the staff is not aware of any public parks, forests, or other public lands along the route.

The proposed right-of-way would not cross any property within 50 feet of a home.

Construction and Restoration

Construction is planned to take place in the spring, summer, and fall of 1987. According to Consolidated, about 185 to 200 people would be employed during construction, 60 percent of whom would be local workers. The contractor's personnel would comprise the rest. Construction of Line No. TL-460 would start at Therm City, in Onondaga County, and proceed westward/northward, using a staggered start with right-of-way crews first, bulldozers second, and ditching third, etc. Work crews would be staggered about one week apart so that the total distance between the clearing crew and the cleanup crew is about 10 miles.

The pipeline would cross the Seneca and Oswego Rivers and 34 streams. Various measures are proposed to protect these waterbodies and the wetlands crossed, such as using onshore sediment control structures, keeping petroleum storage and refueling areas at

[1] Consolidated plans to construct approximately 32.5 miles of 24-inch pipeline, instead of 33.5 miles as originally proposed, and to relocate the Biddlecum Road Measuring Station to an open field 1 mile south of Biddlecum Road. This change was made as a result of landowner negotiations and is not related to the amendment.

[2] Not sent to the **Federal Register**, but available from the Commission's Division of Public Reference.

least 50 feet away, and restoring streambanks. Forty-five highways would be crossed by the pipeline. Most paved road crossings would be bored to prevent disruption of pavement or traffic. Unpaved road crossings would be open-cut.

Consolidated's cleanup and restoration plans would include grading, liming, fertilizing, seeding, and mulching for areas where the soil has been disturbed and exposed as a result of construction. A general seed mix that is compatible with the various soil conditions would be used, and all disturbed areas would be mulched to promote germination and prevent the washing of soil and seed. Consolidated has proposed temporary erosion control and restoration measures during construction, with special attention given to highly erodible areas.

Operation and Maintenance

Maintenance functions for the right-of-way would include periodically removing woody vegetation by mowing, repairing depressions caused by settlement of trench fill, repairing drain tiles and terraces, periodically inspecting water crossings, and maintaining an emergency supply of pipe, leak repair clamps, etc., for repairs.

Aerial inspections of the right-of-way would be done to monitor encroachment and to provide information on possible leaks, erosion, exposed pipe, and any other potential problem that could affect the safety and operation of the pipeline. Should maintenance problems occur, Consolidated would dispatch personnel and equipment to alleviate them.

Related Facilities

Consolidated states that Niagara Mohawk would need to construct approximately 1 mile of 12-inch and 23 miles of 24-inch pipeline loop adjacent to its existing delivery lines to transport the proposed volumes. If the New York Public Service Commission grants Niagara Mohawk the authority to open new market areas in St. Lawrence, Lewis, and Saratoga Counties, and if the Commission allows Consolidated to serve Niagara Mohawk in those areas, then Niagara Mohawk would construct additional loop or new pipeline.

Under the U.S. Fish and Wildlife Service regulations implementing the Endangered Species Act of 1973 (50 CFR Part 402, Federal Register No. 51, Vol. 106, June 3, 1986), the Commission is required to ensure that certificated projects are not likely to jeopardize the continued existence of any listed threatened or endangered species or result in the adverse modification of the species' critical habitat. This requirement extends to nonjurisdictional projects that are reasonably certain to occur as a result of approval of a jurisdictional project. The Commission does not yet know where Niagara Mohawk's facilities would be constructed. The Commission staff will set forth a recommended procedure to ensure compliance with the Endangered Species Act and will present it in the environmental assessment.

Alternatives

The Commission staff is presently studying three alternatives. The first alternative would diverge from the proposed route 0.4-mile north of the Seneca River and follow Niagara Mohawk's Oswego-Lafayette powerline northwest across State Route 690 to its intersection with the New York Power Authority's Niagara Adirondack Tie Line powerline. From there it would head northeast along the Tie Line back across State Route 690 where it would join the proposed route. The alternative could potentially reduce the amount of new right-of-way required for the project by using the existing Niagara Mohawk right-of-way which Consolidated proposes to do in other locations. The environmental assessment will also discuss the possibility of joint use of the New York Power Authority's right-of-way.

The second alternative would diverge northeast from the proposed route about 1.3 miles north of the Seneca River, and follow the Niagara Adirondack Tie Line in an easterly direction for about 6 miles. It would then turn and head due north along a fenceline located 0.5-mile west of State Route 481, cross Verplank Road and State Route 481, and join the Niagara Mohawk pipeline at Maider Road. The meter station would be located south of the road. A variation of this alternative would, instead of turning north along the fenceline west of State Route 481, continue east along the powerline and cross the highway, where it would then turn and head northwest along the highway 2.3 miles and join the Niagara Mohawk pipeline. A water main parallels the highway along this portion. The alternative and variation could possibly reduce the amount of new right-of-way required for the project by using the existing New York Power Authority, highway, and water main rights-of-way. The environmental assessment will discuss the possibility of joint use of these rights-of-way. The alternative would cross about 1 mile of the Three Rivers State Game Management Area and a housing development; the variation would cross these areas and the Oneida River.

The third alternative would involve constructing different facilities. Instead of delivering gas to Niagara Mohawk via the Biddlecum Road Measuring Station, the proposed volumes would be delivered at the Oneida Measuring Station by adding pipeline loop on Consolidated's and Niagara Mohawk's existing systems or adding loop and compression. The initial, unverified figures supplied by Consolidated indicate that this alternative would involve facilities and costs ranging from 98.3 miles of 12-, 16-, 24-, and 36-inch pipeline loop with a total cost of $75,868,000 (plus $573,000 annual operating cost), to 45.2 miles of 12-, 16-, and 24-inch pipeline loop and 5,000 horsepower of compression for a total cost of $35,816,000 (plus $1,887,900 annual operating cost). The proposed project is estimated to cost $25,685,000 for construction and $62,119 annually for operation.

Current Issues

The environmental assessment will address the following issues for the proposed route and alternatives. Additional issues will be considered based on public comments.

Land Use—Effect of right-of-way location and width on existing and future uses of land; potential for off-road vehicle problems.

Pipeline Safety—Safety considerations, potential for pipeline accidents.

Restoration—Erosion control, topsoil preservation, revegetation, drain tile repair, soil productivity.

Aesthetics—Effects of appearance of right-of-way and measuring station.

Vegetation and Wildlife—Impacts on wetlands, fisheries, threatened and endangered species.

Geology—Evaluation of potential for geologic hazards.

Public Meeting and Comment Procedure

The Commission staff will hold a public meeting at 7:00 p.m. on September 25, 1986, at the Van Buren Town Hall, 7575 Van Buren Road, Baldwinsville, New York. All members of the public and state and local government officials are invited to attend. Representatives of Consolidated Gas Transmission Corporation will also be present. The purpose of the meeting will be to provide the public an opportunity to identify the environmental issues that should be studied in the environmental assessment. Concerns involving individual right-of-way negotiations will not be discussed or resolved in this forum. The environmental assessment will be used to determine whether or not

the proposal is a major Federal action significantly affecting the quality of the human environment.

A copy of this notice has been distributed to a number of Federal, state, and local agencies, parties to the proceeding, and interested individuals. The deadline for filing written comments is October 24, 1986. All written comments must reference Docket No. CP86-344-001, and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Any recommendations that the Commission address specific issues should be supported by a detailed explanation of the need to consider such issues. *Comments or interventions previously filed with the Commission need not be refiled in response to this notice.*

Additional information about the proposal, including detailed route maps for specific locations, is available from Mr. Cary Secrest, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, telephone (202) 357-9038.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20178 Filed 9-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-523-000 and CP86-524-000]

Iroquois Gas Transmission System; Pipeline Project Notice of Intent To Prepare a Draft Environmental Impact Statement and Request for Comments on its Scope

September 3, 1986.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) has determined that approval of this project would be a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 2.82(b) of the Commission's Rules of Practice and Procedure [18 CFR 2.82(b)], a draft environmental impact statement (DEIS) will be prepared.

Introduction

On May 30, 1986, Iroquois Gas Transmission System (Iroquois) applied to the FERC for a certificate of public convenience and necessity to construct 355.8 miles of 12-, 20-, and 24-inch-diameter natural gas pipeline in New York and Connecticut. Iroquois also filed a companion application for a Presidential permit for the construction, operation, maintenance, and connection of the proposed facilities at the international boundary between the United States and Canada. Iroquois filed its application pursuant to section 7 of the Natural Gas Act (NGA) under the optional expedited certificate procedures of Subpart E of Part 157, the blanket transportation certificate procedures under Subpart G of Part 284, and the blanket facilities certificate procedures under Subpart F of Part 157 of the Commission's Rules of Practice and Procedure.

The optional expedited certificate procedures do not lessen the requirement that Iroquois comply with all applicable environmental laws. Nor do the optional expedited certificate procedures exempt Iroquois from state and local permit requirements. The National Environmental Policy Act applies equally to applications filed under traditional NGA section 7 procedures and to applications filed under the optional expedited certificate procedures. State and local permit requirements relating to construction and other environmental matters apply equally as well.

The new pipeline system, having a capacity to transport 353,000 Mcf of gas per day, would be used to import Canadian gas for delivery to the Brooklyn Union Gas Company, Connecticut Light and Power Company, Connecticut Natural Gas Corporation, New Jersey Natural Gas Company, Southern Connecticut Gas Company, Long Island Lighting Company, South Jersey Gas Company, Public Service Electric and Gas Company, Consolidated Edison Company of New York, Inc., and Elizabethtown Gas Company. Construction of the land portion of the pipeline is proposed to occur between April and October of 1988, while the crossing of Long Island Sound is proposed to take place between October 1987 and March 1988. Iroquois estimates an in-service date of November 1, 1988. However, construction can begin only if the Commission has issued the certificate. The estimated cost of the project is $357,200,000.

Location and Land Requirements

Figure [1] shows the location of the pipeline. Table 1 identifies the towns and counties located along the proposed pipeline route that would be crossed. The proposed Iroquois system would include a mainline and a lateral pipeline. Six route modification alternatives have also been identified by Iroquois. The towns and counties affected by these alternatives are also shown in table 2.

[1] Not printed in the **Federal Register** but available from the Commission's Division of Public Reference.

The mainline would consist of 293.5 miles of 24-inch-diameter pipeline and 36.3 miles of 20-inch-diameter pipe extending from a point on the St. Lawrence River near Iroquois, Ontario and Waddington, New York through eastern New York and western Connecticut, across Long Island Sound to its terminus point near South Commack on Long Island.

The proposed lateral would consist of 26 miles of 12-inch-diameter pipe starting at a point on the mainline near Washington, Connecticut. The lateral route would then run eastward to a point near Farmington, Connecticut.

Iroquois also requests authority to establish delivery points at Waddington, Canajoharie, Wright, and South Commack, New York and Stratford, Southbury, Farmington (2), Roxbury, Huntington, and Milford (2), Connecticut. However, at this time, only the interconnection facilities at Farmington, Roxbury, Huntington, and Milford, Connecticut and at South Commack, New York are proposed for construction. No compression is proposed.

Approximately 4,200 acres of land would be disturbed during construction. Iroquois proposes to use a 100-foot-wide construction right-of-way with 75 feet to be maintained as permanent right-of-way. Except at aboveground facilities, access roads, and where the right-of-way crosses formerly wooded areas, Iroquois states that the right-of-way could be used as it was before construction as long as no structures are built on it.

Pipeline Safety Standards

The proposed pipeline would conform to the minimum pipeline safety standards set by the U.S. Department of Transportation. These standards specify minimum pipe wall thickness, strength, and depth of burial for different population densities encountered along the route. Thicker-walled pipe is normally used at road crossings and at major creek and river crossings. All such crossings would follow the requirements of applicable codes and permits. Pipe would be installed by boring beneath railroad tracks and major state and interstate highways to avoid disrupting their use. The applicant presently states that most local roads would be crossed during construction by digging an open trench.

Construction Procedures

Iroquois estimates that the project will be constructed within a period of 12 months. Construction at any one place along the pipelines would take 6 to 12

weeks between the initial land disturbance and the end of restoration. Iroquois expects that construction would advance at an average rate of 1 mile per day. Five construction spreads would be used, each consisting of various crews to perform the full range of construction activities (i.e., from clearing and grading to restoration). Iroquois proposes to employ environmental inspectors during construction to insure that appropriate techniques to minimize impact are implemented.

Construction would begin with right-of-way clearing and grading. The trench, normally dug by tracked, rotary-wheeled trenching machines, would be deep enough to provide a minimum cover of 30 inches in normal soils and about 18 inches in rock. Trenching in rock generally requires that a tractor-mounted ripper, or blasting and backhoe be used.

The pipe would be strung along the right-of-way and bent as required to conform to the bottom of the trench. Pipe sections would be welded and radiographically inspected in compliance with the U.S. Department of Transportation's Minimum Federal Safety Standards. Before being placed in the trench, the pipe would be coated to inhibit corrosion. After the pipe was placed in the trench, the trench would be backfilled with the spoil excavated from the ditch. Select backfill would be used where the trench was excavated in rock. The backfill would be compacted, and a 2–8 inch crown would be left over the ditch to compensate for settlement.

Land would be returned to near-original contours and restored in accordance with landowner requirements, where possible. Details of the company's erosion control and revegetation plan are not yet available. However, the specific elements of the plan will be analyzed by the staff in the DEIS.

The method of trench excavation across streams and wetlands would vary with the characteristics of each. Small streams would be trenched using a backhoe, clam dredge, dragline, and/or similar equipment. For major river crossings, floating excavation equipment may be required to dig the trench. Blasting would be used for streams and rivers with rock bottoms. Work areas required for major river construction would be located back from the shoreline. Construction across small wetlands would be similar to that used on dry land. Construction in large wetland areas would involve using the push/pull technique. After the trench is dug, the pipe joints would be welded together in one area, flotation devices would be attached to the pipe, and the floating pipeline would be pushed or pulled into place. When the floats are removed, the pipe would settle to the bottom of the trench.

Construction across Long Island Sound would use conventional lay barge techniques to install the pipe. At this time, it is not clear how the pipe would be buried or stabilized. Details of this will be discussed in the DEIS.

After construction, the pipeline would be hydrostatically tested in lengths dictated by elevation differentials and availability of water. Test water would be obtained from rivers, creeks, lakes or other approved sources and would be reused as many times as practicable. The water would be discharged to surface waters in accordance with applicable state and Federal regulations.

Although Iroquois has not filed its final environmental report with the FERC, a preliminary environmental report and detailed route maps have been submitted.[2] From the preliminary report and maps, the staff has determined that construction would be within or near the following areas or water bodies:

Areas of Public Interest

New York

Upper and Lower Lakes State Wildlife Management Area
Fire Fall State Forest
Bonaparte Cave State Forest
Jadwin Memorial State Forest
State Forest Preserve
Lake Taghkanic State Park

Connecticut

Appalachian Trail
Wyantenock State Forest
Above All State Park
Silver Sands State Park

Major Water Bodies

St. Lawrence River
Sucker Brook
Grass River (2)
Harrison Creek
Elm Creek
Oswegatchie River
West Branch Oswegatchie River
Carley Swamp
Indian River
Beaver River
Independence River
Otter Creek
Black River
Sugar River
West Canada Creek
Mohawk River
Canajoharie Creek
Schoharie Creek
Basic Creek
Potic Creek
Hudson River
Roeliff Jansen Kill
Housatonic River (3)
Shepaug River
Pomperang River
Farmill River
Naugatuck River
Peguabuck River
Scott Swamp
Long Island Sound

Outline of Current Issues

The staff's initial review of Iroquois's preliminary environmental report and of comments submitted by intervenors has resulted in a tentative outline of issues to be covered in the DEIS. These include, but are not limited to, the following:

Encroachment on Residential Properties
Safety During Construction and Operation
Wildlife, Fisheries, and Their Habitat
Clearing of Woodlands
Endangered and Threatened Species
Aesthetic Values
Historic/Cultural Resources
Land Use Impacts Including Impacts on Croplands, Orchards, Dairy and Poultry Farms
Wetlands and Stream/River Crossings
Long Island Sound Crossing
Water Supplies/Quality
Blasting
Alternative Routes and System Alternatives

After Iroquois files its final environmental report, the staff will thoroughly review it. As questions arise or more information is required from the applicant, the staff will prepare data requests for response by Iroquois. After comments from this notice are received and analyzed and the various issues are investigated, the staff will prepare a DEIS.

Cooperating Agencies

The following Federal agency has indicated that it wishes to be a cooperating agency in the preparation of the EIS: Department of Defense, U.S. Army Corps of Engineers.

All Federal agencies desiring cooperating agency status should send a request describing how they would like to be involved to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426.

The request should reference Docket Nos. CP86–523–000 and CP86–524–000 and should be received by October 15, 1986. Mr. James P. Daniel should be sent a copy of any request for cooperating agency status. Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agency (FERC).

Comment and Scoping Procedure

The FERC intends to prepare a DEIS for this project. The DEIS will analyze various alternative routes as well as alternatives utilizing the existing interstate gas pipeline systems in the Northeast to transport all or part of the proposed Canadian gas volumes. The DEIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties to the

[2] Iroquois has estimated that the final environmental report will be filed by the end of August or early September 1986.

proceeding. A 45-day period will be allotted for review and comment. After these comments are reviewed, modifications made to the DEIS, and any new issues investigated, a final EIS will then be prepared by the staff and distributed.

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, libraries, newspapers, parties to this proceeding, and the public. Comments on the scope of the DEIS should be filed as soon as possible but no later than October 6, 1986. All written comments *must* reference Docket Nos. CP86–523–000 and CP86–524–000 and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Any recommendations that the EIS address specific issues should be supported with a detailed explanation of the need to consider such issues.

Additional information about the proposal, including detailed route maps of limited areas of the proposed route, is available from Mr. James P. Daniel, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, telephone (202) 357–5364.

Kenneth F. Plumb,

Secretary.

TABLE. 1.—TOWNS AND COUNTIES PROPOSED TO BE CROSSED BY IROQUOIS PIPELINE ROUTE

Towns	Counties
New York State	
Waddington	St. Lawrence.
Lisbon	
Canton	
De Kalb	
Hermon	
Edwards	
Pitcairn	
Diana	Lewis.
Croghan	
New Bremen	
Watson	
Greig	
Turin	
West Turin	
Leyden	
Boonville	Oneida.
Remsen	
Trenton	
Russia	Herkimer.
Norway	
Fairfield	
Salisbury	
Manheim	
Danube	
Minden	Montgomery.
Canajoharie	
Root	
Charleston	
Carlisle	Schoharie.
Esperance	
Duanesburg	Schenectady.
Schoharie	Schoharie.
Wright	
Knox	Albany.
Berne	
Westerlo	
Greenville	Greene.
New Baltimore	
Coxsackie	
Athens	
Greenport	Columbia.
Livingston	
Taghkanic	
Gallatin	
Ancram	
Northeast	Dutchess.
Huntington	Suffolk.
Smithtown	
Connecticut	
Salisbury	Litchfield.
Sharon	
Cornwall	
Kent	
Warren	
Washington	
Roxbury	
Woodbury	
Southbury	New Haven.
Oxford	
Monroe	Fairfield.
Shelton	
Stratford	
Milford	New Haven.
Farmington Lateral:	
Washington	Litchfield.
Bethlehem	
Watertown	
Thomaston	
Plymouth	Hartford.
Bristol	
Burlington	
Farmington	

TABLE. 1.—TOWNS AND COUNTIES PROPOSED TO BE CROSSED BY IROQUOIS PIPELINE ROUTE—Continued

TABLE 2.—TOWNS AND COUNTIES PROPOSED TO BE CROSSED BY IROQUOIS ALTERNATIVE ROUTES

Towns	County
Alternate No. IA & IB Along Power Line:	
Canton	St. Lawrence.
Russell	
Hermon	
Edwards	
Pitcairn	
Diana	Lewis.
Croghan	
New Bremen	
Watson	
Greig	
Alternate No. 2—Around Tailings Pond:	
Edwards	St. Lawrence.
Alternate No. 3—Around Town of Washington:	
Warren	Litchfield.
Litchfield	
Morris	
Bethleham	
Woodbury	
Alternate No. 4—Within Town of Shelton:	
Shelton	Fairfield.
Alternate No. 5—Alternative Crossing of Housatonic River:	
Shelton	Fairfield.
Milford	New Haven.
Alternate No. 6—Through Silver Sands State Park:	
Milford	New Haven.

[FR Doc. 86–20179 Filed 9–5–86; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 4349–006, etc.]

Hydroelectric Applications (Long Lake Energy Corp. et al.); Notice of Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Transfer of License.

b. Project No.: 4349–006.

c. Date Filed: July 23, 1986.

d. Applicant: Long Lake Energy Corporation, Moose River Corporation, Prudential Interfunding Corporation.

e. Name of Project: Moose River.

f. Location: On the Moose River in the Town of Lyonsdale, Lewis County, New York.

g. Filed Pursuant to: Section 9 of the Federal Power Act 791(a)–825(r).

h. Contact Person: Mr. Donald Hamer, Long Lake Energy Corporation, 122 East 42nd St., Suite 1901, New York, NY 10168, (212) 986–0440.

i. Comment Date: October 9, 1986.

j. Description of Project: On May 6, 1986, a major license was issued to the Long Lake Energy Corporation (Long Lake) to construct, operate, and maintain the Moose River Project No. 4349. Long Lake intends to sell its interest in the project to Moose River Corporation (Moose River) and Prudential Interfunding (Interfunding) Corporation to be made effective in two stages. The first transfer is to be made from Long Lake to Moose River effective as of the date of conveyance of the project properties from Long Lake to Moose River and the second transfer to occur so as to add Interfunding as licensee as of the date of the Second Closing. For that reason, Long Lake, Moose River, and Interfunding have filed a request that the project license be transferred to Moose River and Interfunding.

k. This notice also consists of the following standard paragraphs: B and C.

2 a. Type of Application: Major License (over 5 MW)—Existing Dam.

b. Project No.: 6901–001.

c. Date Filed: May 29, 1985.

d. Applicant: City of New Martinsville.

e. Name of Project: New Cumberland.

f. Location: Ohio River in Hancock County, West Virginia and Jefferson County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael Francis, City Attorney, City of New Martinsville, Brennan Francis, P.O.

Drawer 68, New Martinsville, WV 26155, (301) 455–1751.

i. Comment Date: October 30, 1986.

j. Description of Project: The proposed project would utilize the head created by the existing Corps of Engineers' New Cumberland Locks and Dam, and would consist of: (1) a proposed 600-foot-long approach channel with varying widths around 114 feet; (2) a proposed powerhouse containing a generating unit with a rated capacity of 37 MW: (3) a proposed 649-foot-long exit channel with varying widths around 112 feet; and (4) a proposed 1,000-foot-long transmission line tying into the existing Monongahela Power Company System. The applicant estimates an average annual energy generation of 166.25 GWh.

k. Purpose of Project: Power would be sold to Monongahela Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, & C.

3 a. Type of Application: Exemption (5 MW or less).

b. Project No: 8738–001.

c. Date Filed: May 27, 1986.

d. Applicant: Mega Renewables.

e. Name of Project: Walker/Digger Hydroelectric Project.

f. Location: On Digger Creek, near town of Manton, in Tehama County, California (In Sections 19, 20, and 21 of T30N, R2E, MDB&M; in sections 23 and 24, T30N, R1E, MDB&M).

g. Filed Pursuant to: Section 408 of the Federal Energy Security Act, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Fred Castagna, Mega Renewables, 2576 Hartnell Ave., Redding, CA 96002.

i. Comment Date: October 10, 1986.

j. Description of Project: The proposed project would consist of: (1) An inlet structure in the west bank of Digger Creek at elevation 3,085 feet m.s.l.; (2) a 48-inch-diameter, 2-mile-long diversion conduit; (3) a 42-inch-diameter, 1.8-mile-long steel penstock; (4) a powerhouse with a total installed capacity of 3,000 kW operating under a head of 725 feet; and (5) a 2,000-foot-long, 60-kV transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual generation at 9.5 million kWh to be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3a.

4 a. Type of Application: Conduit Exemption.

b. Project No: 9334–001.

c. Date Filed: April 14, 1986.

d. Applicant: Mega Renewables.

e. Name of Project: Bidwell Ditch.

f. Location: On an irrigation conduit in T34N, R5E, near Old Station in Shasta County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Fred Castagna, 2576 Hartnell Ave., Redding, CA 96002, (916) 222–1414.

i. Comment Date: October 10, 1986.

j. Description of Project: The proposed project would use an existing irrigation conduit which delivers water from Lost Creek to the Bidwell Ranch and would consist of a powerhouse containing one generating unit with a rated capacity of 1,800 kW. The average annual generation would be 13.1 GWh.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

5 a. Type of Application: Minor License.

b. Project No: 9815–000.

c. Date Filed: December 31, 1985.

d. Applicant: Bowers Hydro-Electric I, Inc.

e. Name of Project: Eagleville.

f. Location: On the Willimantic River in Tolland County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Albert F. Delaney, Jr., President, Bowers Hydro-Electric I, Inc., 999 Asylum Avenue, Hartford, CT 06105, (203) 728–5111.

i. Comment Date: October 31, 1986.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 22-foot-high and 170-foot-long granite block dam; (2) a reservoir with a water surface area of 83 acres and surface elevation of 277 feet NGVD; (3) a new intake structure at the east bank; (4) a new 25-foot-wide and 60-foot-long canal; (5) a new powerhouse just downstream from the dam crest with 2 turbine-generator units with a total installed capacity of 350 kW; (6) a tailrace; (7) a new 300-foot-long, 13.8 kV buried transmission line; and (8) other appurtenances. Applicant estimates an average annual generation of 1,200,000 kWh. Existing facilities are owned by the Connecticut Department of Environmental Protection.

k. Purpose of Project: Project energy would be sold to the Connecticut Light and Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

6 a. Type of Application: Conduit Exemption.

b. Project No: 9824–000.

c. Date Filed: December 31, 1985.

d. Applicant: Antelope Valley—East Kern Water Agency.

e. Name of Project: Pressure Reducing Station No. 2.

f. Location: At Pressure Reducing Station No. 2 in T9N, R13W, near Rosamond in Kern County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. Jack T. Leonard, Boyle Engineering Corporation, P.O. Box 670, Bakersfield, CA 93302, (805) 325–7253.

i. Comment Date: October 9, 1986.

j. Description of Project: The proposed project would use an existing conduit which delivers water from the California Aqueduct to the Rosamond Water Treatment Plant and would consist of a powerhouse containing two generating units each with a rated capacity of 80 kW. The average annual generation would be 520,000 kWh.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

7 a. Type of Application: Major License (less than 5 MW).

b. Project No.: 9825–000.

c. Date Filed: December 31, 1985.

d. Applicant: City of Ogdensburg, New York.

e. Name of Project: Ogdensburg.

f. Location: Oswegatchie River, St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. William J. Kenney, Esq., Kenney, Carlson & Warren, Suite 209, 2600 Virginia Avenue NW., Washington, DC 20037, (202) 965–7040.

i. Comment Date: October 10, 1986.

j. Competing Application: Project No. 9821–000 Date Filed: 12–31–85.

k. Purpose of Project: The proposed project would consist of: (1) An existing concrete gravity dam 400 feet long and 19 feet high, with a spillway 350 feet long and a crest elevation of 258 feet mean sea level; (2) an existing impoundment of 293 acres surface area and storage capacity of 1,450 acre-feet at a normal maximum surface elevation of 258 feet mean sea level; (3) an existing concrete sluice gate structure to be replaced with proposed flood control gates; (4) a proposed powerhouse to house two proposed turbine-generators of 1,600 kW capacity each; (5) a proposed transmission line; and (6) appurtenant facilities.

The net hydraulic head is 11 feet. The estimated annual energy production is 17,000 megawatt-hours. Project power

would be sold. The existing facilities are owned by Niagara Mohawk Power Corporation and the applicant. The estimated cost of the project is $6 million.

l. This notice also consists of the following standard paragraphs: A4, B, C and D1.

8 a. Type of Application: Exemption Under 5 MW.

b. Project No: P-9984-000.

c. Date Filed:April 28, 1986.

d. Applicant: Rocky Glen Hydro Limited Partnership.

e. Name of Project: Rocky Glen Dam.

f. Location: On the Pootatuck River in Fairfield County, Connecticut.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709.

h. Contact Person: Mr. Joe Keegan, PEPCO, Box 514, Woodbury, CT 06798, (203) 863-5978.

i. Comment Date: October 10, 1986.

j. Description of Project: The proposed project would consist of: (1) Renovating an existing 38-foot-high, 130-foot-long concrete and earth dam with a spillway crest elevation of 170.5 feet NGVD owned by the applicant; (2) an existing 3.8-acre reservoir with a storage capacity of 60 acre-feet with a normal surface elevation of 170.5 feet NGVD; (3) an existing intake canal which is controlled by a sluice gate which directs flows through; (4) an existing conduit 70 feet long; (5) an existing penstock 67 inches in diameter and approximately 35 feet long; (6) an existing mill building which will house two turbine/generators with a total installed capacity of 120 kW; (7) an existing tailrace 90 feet long. The estimated average annual energy produced by the project would be 400,000 kWh per year operating under a net hydraulic head of 40 feet.

k. Purpose of Project: Project power will be sold to the Northeast Utility Company.

l. This notice also consists of the following standard paragraphs: A3, B, C and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

9 a. Type of Application: Preliminary Permit.

b. Project No: 10018-000.

c. Date Filed: June 13, 1986.

d. Applicant: Parkers Branch Lake Industrial Authority.

e. Name of Project: Parker Branch Reservoir Project.

f. Location: On the Rockcastle River in Rockcastle, Jackson, Laurel, and Clay Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Foster Pelton, Project Manager, Acres International Corporation, Suite 1000 Liberty Building, 424 Main Street, Buffalo, NY 14202-3592, (716) 853-7525.

i. Comment Date: November 3, 1986.

j. Description of Project: The proposed project would consist of: (1) A new rock-filled dam with an impervious central core approximately 161 feet high and 900 feet long; (2) a new 8,700-acre reservoir having a storage capacity of 317,200 acre-feet at an elevation of 1,000 feet m.s.l.; (3) a new steel-lined power tunnel 900 feet long and 17 feet in diameter leading to; (4) a new reinforced concrete powerhouse containing a single turbine/generator unit with a capacity of 22,000 kW operating at 112 feet of hydraulic head; (5) a new open channel tailrace; (6) a new four-mile-long 66-kV transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual energy production to be 30,000 MWh.

The Applicant intends to obtain all proprietary rights necessary to construct, operate, and maintain the project.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to Kentucky Utilities Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

10 a. Type of Application: Preliminary Permit.

b. Project No: 10037-000.

c. Date Filed: July 14, 1986.

d. Applicant: WV Hydro, Inc.

e. Name of Project: Cannelton Hydroelectric Development.

f. Location Ohio River, Hancock County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. James B. Price, WV Hydro, Inc., 120 Calumet Ct., Aiken, SC 29801, (803) 642-2749.

i. Comment Date: October 14, 1986.

j. Competing Application: Project No. 10035-000, Date Filed: July 10, 1986.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineer's Cannelton Locks and Dam, and would consist of: (1) A proposed intake structure; (2) a proposed powerhouse, located on the south end of the existing dam, and containing generating facilities with a total installed capacity of 70,000 kW; (3) a proposed tailrace structure; (4) a proposed, 2.5 mile-long, 161-kV transmission line; and (5) appurtenant facilities. The estimated average annual generation is 300 GWH.

l. Purpose of Project: The Applicant intends to sell the project power to Virginia Electric Power Company.

m. This notice also consists of the following standard paragraphs: A8, B, C, & D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $100,000.

11 a. Type of Application: Preliminary Permit.

b. Project No: 10041-000.

c. Date Filed: July 17, 1986.

d. Applicant: Marble Hill Hydro Corp.

e. Name of Project: Rocky Dale.

f. Location: New Haven River, Addison County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Ms. Debra Gable, 121 Maple Avenue, Barre, VT 05641, (802) 476-7598.

i. Comment Date: October 30, 1986.

j. Description of Project. The proposed project would consist of: (1) An existing natural ledge dam with a wooden crib crest 90 feet long and 10 feet high; (2) an existing impoundment with 0.2 acres surface area and no storage capacity at a normal maximum surface elevation of 690 feet mean sea level; (3) a proposed reinforced concrete intake structure 12 feet high, 16 feet wide, and 12 feet deep; (4) a proposed 4-foot-diameter iron penstock 1,600 feet long; (5) a proposed reinforced concrete powerhouse 10 feet wide, 16 feet long, and 15 feet high enclosing a proposed turbine-generator of 600 kW capacity at a net hydraulic head of 100 feet; (6) a proposed excavated tailrace 16 feet wide, 10 feet long, and 6 feet deep; (7) a proposed 4.16-kV transmission line 200 feet long; and (8) appurtenant facilities.

The estimated annual energy production is 2.8 GWh. Project power would be sold to Vermont Power Exchange, Inc. The existing facilities are owned by the Town of Bristol, VT.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates tha tthe cost of the work to be performed under the preliminary permit would be $20,000.

12 a. Type of Application: License (5 MW or Less).

b. Project No.: 9294–000.

c. Date Filed: June 19, 1985.

d. Applicant: Proctor Hill Hydroelectric Company.

e. Name of Project: Proctor Hill.

f. Location: Contoocook River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Warren A. Guinan, Power Technics, Inc., P.O. Box 1469, Dover, NH 03820, (603) 335–2606.

i. Comment Date: November 3, 1986.

j. Description of Project: The proposed project would consist of: (1) Reconstructing an 18.7-foot-high, including 4.25 feet of freeboard, 180-foot-long timber crib dam; (2) a proposed reservoir with a surface area of 65 acres and a gross storage capacity of 380 acre-feet; (3) a proposed low flow generating unit at the dam with a rated capacity of 131 kW; (4) a proposed 1,800-foot-long transmission line; (5) a proposed 1,800-foot-long, 10-foot-diameter penstock; (6) a proposed generating unit with a rated capacity of 1,030 kW; and (7) a proposed 250-foot-long transmission line tying with the first line into the existing Public Service Company of New Hampshire System. The applicant estimates with the total rated capacity of 1,161–kW an average annual energy generation of 4,994,000 kWh.

k. Purpose of Project: Power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

13 a. Type of Application: License (Minor).

b. Project No.: 9343–001.

c. Date Filed: January 6, 1986.

d. Applicant: American Fork Hydro Associates.

e. Name of Project: American Fork Lower Project.

f. Location: American Fork River in Utah County, Utah: Section 28, 32, & 33, Township 4S, Range 2E, SLB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael J. Graham, P.O. Box N, Manti, UT 84642.

i. Comment Date: November 3, 1986.

j. Description of Project: The proposed project would be located within the Uinta National Forest and would consist of: (1) An overflow diversion structure, about 6 feet high and 26 feet long; (2) a steel penstock, 48 inches in diameter and 7,600 feet long; (3) a powerhouse containing trubine-generator units rated at 1,450 kW and operating under about 200 feet of head; (4) a tailrace returning flow to the river; (5) a 12.5–kV transmission line, 275 feet long, connecting to an existing Utah Power and Light Company line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 6,276,877 kWh. This application was filed during the term of the Applicant's preliminary permit for Project No. 9343.

k. Purpose of Project: Project energy would be sold to the Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 10063–000.

c. Date Filed: August 11, 1986.

d. Applicant: Cumberland Mills Hydroelectric Limited Partnership.

e. Name of Project: Cumberland Mills.

f. Location: On the Presumpscot River in Cumberland County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Marc A. Auth, Swift River/Hafslund Company, 10 Harbor Street, Danvers, MA 01923, (617) 777–7040.

i. Comment Date: November 3, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Cumberland Mills dam, comprised of three segments (the 148-foot-long, 12-foot-high main dam with the top elevation of the existing 3.4-foot-high flashboards at 41.62 feet m.s.l.; the 150-foot-long, 20-foot-high wing dam with a crest elevation of 43.5 feet m.s.l.; and the 120-foot-long, "flashboard section", with a crest elevation of 41.62 feet m.s.l.; (2) the existing 26-acre reservoir with a gross storage capacity of 312 acre-feet; (3) a 35-foot-long intake channel; (4) a proposed powerhouse which will contain two generating units with a total installed capacity of 1.8 MW; (5) the existing freshet channel will be modified; (6) the proposed 200-foot-long, 12.47–kV transmission line; and (7) appurtenant facilities.

The applicant estimates that the average annual energy generation will be 10.0 GWh. The name and address of the owner of the existing Cumberland Mills Dam is: S.D. Warren Company, A Division of Scott Paper Company, 89 Cumberland Street, Westbrook, MA 04092.

k. Purpose of Project: The applicant intends to sell the project energy to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic, and recreational aspects of the project. Depending on the outcome of the studies, the applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $85,000.00.

15 a. Type of Application: Minor License (5MW or Less).

b. Project No.: 9387–001.

c. Date Filed: February 18, 1986.

d. Applicant: Tultex Corporation.

e. Name of Project: Avalon Dam Hydro Project.

f. Location: On the Mayo River near the town of Mayodan, Rockingham County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. John F. Miller, Synergics, Inc., 410 Severn Avenue, Suite 409, Annapolis, Md 21403, (301) 268–8820.

i. Comment Date: October 27, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing arch shaped stone masonry Avalon Dam approximately 380 feet long and 20 feet high; (2) a proposed 12.1-acre reservoir having a storage capacity of 126 acre-feet at an elevation of 625.5 feet m.s.l. with; (3) proposed 12-inch-high flashboards; (4) an existing 56-foot-long stone masonry headworks structure; (5) a new powerhouse located at the dam containing a single turbine/generator unit with an installed capacity of 200 kW operating at 20 feet of hydraulic head; (6) a new tailrace approximately 25 feet wide, 10 feet deep and 50 feet long; (7) an existing 2000-foot-long by 26 foot-wide power canal leading to; (8) an existing steel penstock 160 feet long and 9 feet in diameter connecting to; (9) an

existing powerhouse containing a single turbine/generator unit with an installed capacity of 580 kW operating at 36 feet of hydraulic head; (10) an existing tailrace approximately 40 feet wide, 7 feet deep and 150 feet long; (11) a new 490-foot-long 12.4–kV transmission line; and (12) appurtenant facilities. Total installed capacity will be 780 kW. The Applicant estimates the average annual energy would be 3.6 GWh. The project dam is owned by Tultex Corporation.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facilaity to the Duke Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D1.

16 a. Type of Application: Conduit Exemption.

b. Project No.: 9822–000.

c. Date Filed: December 31, 1985.

d. Applicant: Antelope Valley—East Kern Water Agency.

e. Name of Project: Pressure Reducing Station No. 1.

f. Location: At Pressure Reducing Station No. 1 in T8N, R14W, near Quartz Hill in Los Angeles County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. Jack T. Leonard, Boyle Engineering Corporation, P.O. Box 670, Bakersfield, CA 93302, (805) 325–7253.

i. Comment Date: October 6, 1986.

j. Description of Project: The proposed project would use an existing conduit which delivers water from the California Aqueduct to the Rosamond Water Treatment Plant and would consist of a powerhouse containing two generating units, one with a capacity of 118 kW and one with a capacity of 180 kW. The average annual generation would be 1.35 GWh.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

17 a. Type of Application: Conduit Exemption.

b. Project No.: 9823–000.

c. Date Filed: December 31, 1985.

d. Applicant: Antelope Valley—East Kern Water Agency.

e. Name of Project: Rosamond Water Treatment Plant.

f. Location: At the Rosamond Water Treatment Plant in Section 18, T9N, R12W, in Rosamond, Kern County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. Jack T. Leonard, Boyle Engineering Corporation, P.O. Box 670, Bakersfield, CA 93302, (805) 325–7253.

i. Comment Date: October 6, 1986.

j. Description of Project: The proposed project would use an existing conduit which delivers water from the California Aqueduct to the Rosamond Water Treatment Plant and would consist of a powerhouse containing one generating unit having a capacity of 141 kW and an average annual generation of 500,000 kWh.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 10023–000.

c. Date Filed: June 24, 1986.

d. Applicant: Leatherboard Associates.

e. Name of Project: Milton Leatherboard Project.

f. Location: On the Salmon Falls River, in the Town of Lebanon, York County, Maine, and the Town of Milton, Strafford County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert L. Winship, National Hydro Corporation, 77 Franklin Street, Boston, MA 02110.

i. Comment Date: October 27, 1986.

j. Description of Project: The proposed project would consist of one of the following two development alternatives: Development Alternative A.

(1) The existing 350-foot-long Milton Leatherboard Dam varying in height from 2 feet to 37 feet; (2) a reservoir having a surface area of 4 acres, a storage capacity of 60 acre-feet, and a normal water surface elevation of 398.5 feet msl; (3) the existing intake structure; (4) the existing powerhouse containing one new generating unit having an installed capacity of 255 kW; (5) an existing tailrace; (6) a new 3,000-foot-long, 34.5-kV, 3 phase transmission line; and (7) appurtenant facilities. The applicant estimates the annual average generation would be 2,300,000 kWh. The existing dam and project facilities are owned by the Milton Land Corporation and the Milton Leatherboard Company.

Development Alternative B.

(1) the existing 350-foot-long Milton Leatherboard Dam varying in height from 2 feet to 37 feet; (2) a reservior having a surface area of 4 acres, a storage capacity of 60 acre-feet, and a normal water surface elevation of 398.5 feet msl; (3) the existing intake structure; (4) a proposed 625-foot-long, 6.2-foot-diameter penstock; (5) an existing powerhouse containing one new generating unit having an installed capacity of 400 kW; (6) a proposed tailrace; (7) a proposed 3,000-foot-long 34.5-kV 3 phase transmission line; and (8) appurtenant facilities. The applicant estimates the average annual generation would be 3,600,000 kWh.

k. Purpose of Project: All project energy generated would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the applicant would decide whether to proceed with an application for FERC license. The applicant estimates the cost of the studies under permit would be $40,000.

19 a. Type of Application: Preliminary Permit.

b. Project No: 10035–000.

c. Date Filed: July 10, 1986.

d. Applicant: Synergics, Inc.

e. Name of Project: Cannelton Locks and Dam.

f. Location: Ohio River, Hancock County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. R. Mason Cargil, Synergics, Inc., 56 Perimeter Center East, Fifth Floor, Atlanta, GA 30346–2283, (404) 399–1600.

i. Comment Date: October 27, 1986.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Cannelton Locks and Dam, and would consist of: (1) A proposed inlet channel approximately 1,000 feet-long, to be located on the South bank of the river; (2) a proposed powerhouse, 220 feet long and 180 feet wide, containing three generating units with a total generating capacity of 73,500 kW, (3) a proposed exit channel, approximately 900 feet long; (4) a proposed 161–kV transmission line, approximately 3 miles long; and (5) appurtenant facilities. The estimated average annual generation is 388 GWh.

k. Purpose of Project: the project power would be sold to an as yet unspecified power purchaser.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the the studies under the permit would be 110,000.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 10059–000.

c. Date Filed: August 8, 1986.

d. Applicant: Berry Creek Power Company, Inc.

e. Name of Project: Berry Creek.

f. Location: Berry Creek, near Sierraville, in Sierra County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Russell Turner, Berry Creek Power Company, Inc., P.O. Box 7, Sattley, CA 96124, (916) 587–1470.

i. Comment Date: November 3, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) An 8-foot-high, 50-foot-long concrete diversion dam across Berry Creek; (2) a 22-inch-diameter, 6,500-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 1,700 kW, operating under a head of 1,030 feet and a hydraulic capacity of 23 cfs, and producing an estimated annual generation of 3.3 GWh; (4) a concrete lined tailrace returning flows to Berry Creek; and (5) a 1,500-foot-long, 12.5–kV transmission line interconnecting the project to an existing Plumas-Sierra Rural Electric Company line. The proposed diversion dam and penstock would be located on Tahoe National Forest lands. The proposed project would be located in Sections 8 and 9, Township 20 North, Range 14 East, MDB&M, Sierra County, California.

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be between $20,000 and $30,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

21 a. Type of Application: Preliminary Permit.

b. Project No: 10060–000.

c. Date Filed: August 8, 1986.

d. Applicant: Hamlin Creek Power Company, Inc.

e. Name of Project: Hamlin Creek.

f. Location: Hamlin Creek, near Sierraville, in Sierra County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Russell Turner, Berry Creek Power Company, Inc., P.O. Box 7, Sattley, CA 96124, (916) 587–1470.

i. Comment Date: November 3, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 7-foot-high, 40-foot-long concrete diversion dam across Hamlin Creek; (2) a 18-inch-diameter, 6,000-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 450 kW, operating under a head of 570 feet and a hydraulic capacity of 11 cfs, and producing an estimated annual generation of 3.3 GWh; (4) a concrete lined tailrace returning flows to Hamlin Creek; and (5) an 8,000-foot-long, 12.5–kV transmission line interconnecting the project to an existing Plumas-Sierra Rural Electric Company line. The proposed penstock would be located on Tahoe National Forest lands. The proposed project would be located in Sections 14, 22, 23, and 27, Township 20 North, Range 14 East, MDB&M, Sierra County, California.

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be between $20,000 and $30,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the initial development applicant, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of

intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirments of the Rules of Practice and Procedure, 18 CR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the tile "COMMENTS" "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confirned to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 3, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20177 Filed 9–5–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP86–681–000, etc.]

Natural Gas Certificate Filings; ANR Pipeline Co. et al.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP86–681–000]

August 29, 1986.

Take notice that on August 18, 1986, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86–681–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point in Dubois County, Indiana, for natural gas service to Indiana Natural Gas Corporation (INGC) under the certificate issued in Docket No. CP82–480–000 pursuant to Section 7 of the Natural Gas Act, all as

more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that it would install metering facilities for the delivery of up to 150 dt equivalent of natural gas on a peak day to INGC, an existing distribution customer of ANR, for redelivery to commercial and residential customers in Schnellville and Birdseye, Indiana. It is asserted that the deliveries at the proposed delivery point would be within INGC's existing peak day and annual entitlements from ANR and would have no impact on ANR's other existing customers. It is estimated that the cost of installing the proposed facilities would be $67,100.

Comment date: October 14, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. KN Energy, Inc.

[Docket No. CP86-685-000]

August 29, 1986.

Take notice that on August 19, 1986, KN Energy, Inc. (KN), Post Office Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86-685-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate six sales taps on its system in Nebraska and Colorado under the certificate issued in Docket Nos. CP83-140-000 and CP83-140-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

KN proposes to install interconnecting tap facilities for residential, agricultural and commercial end-users, enabling KN to deliver up to 600 Mcf on a peak day and 8,320 Mcf per year (see Appendix for details). It is stated that the installation of the proposed taps is not prohibited by any of KN's existing tariffs and that the deliveries made at the proposed taps would have no significant impact on KN's peak day and annual deliveries.

Appendix

KN Energy, Inc., Docket No. CP86-685-000

Customer	Location	Quantity to be sold (Mcf)		End use	Estimate cost [1]
		Peak day	Annual		
Marvin Hanes	Frontier County, NE	88	2,900	Irrigation	$2,500
New Life Fellowship Church	Yuma County, CO	10	600	Small commercial	[2]
Holdrege Coop Equity	Buffalo County, NE	350	2,900	Grain drying	3,200
Paul Schardt	Thayer County, NE	140	1,200	Grain drying	850
Kevin Choquette	Franklin County, NE	2	120	Domestic	850
William A. Darrenbacher	Washington County, CO	10	600	Small commercial	850

[1] Customers reimburse KN partially by means of a $400 connection charge.
[2] Relocation of tap at KN's request; no connection charge.

Comment date: October 14, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Company

[Docket No. CP86-210-001]

September 2, 1986.

Take notice that on August 13, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-210-001, a petition pursuant to section 7(c) of the Natural Gas Act to amend its certificate of public convenience and necessity authorizing the transportation of natural gas issued in Docket No. CP86-210-000 on December 30, 1985, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Southern indicates that pursuant to the certificate issued in Docket No. CP86-210-000, it is authorized through November 18, 1986, to transport up to 10 billion Btu equivalent of natural gas per day on an interruptible basis for Georgetown Steel Corporation (Georgetown). Southern states that it receives the gas from Georgetown's supplier, Exxon Corporation (Exxon), and redelivers the gas to South Carolina Pipe Line Corporation (South Carolina) at an existing interconnection in Aiken County, South Carolina for ultimate delivery to Georgetown's South Carolina plant.

In Docket No. CP86-210-001, Southern requests that the Commission amend the certificate granted in Docket No. CP86-210-000 to authorize Southern to continue its transportation service on behalf of Georgetown in accordance with the terms and conditions of a replacement transportation agreement betweeen Southern and Georgetown dated July 8, 1986. In order to accommodate Georgetown's increased needs the replacement agreement provides for the transportation of 20 billion Btu equivalent of gas per day on an interruptible basis for a term of one year. Southern indicates that under the new agreement, gas purchased by Georgetown from Exxon, or other suppliers, would be delivered to Southern at four existing interconnections in offshore Louisiana and Marion County, Mississippi. Southern asserts it would continue to redeliver the gas to Georgetown through South Carolina at the existing interconnection in Aiken County.

Southern also requests that its certificate be amended to provide flexible authority so that it could transport gas from additional delivery points in the event Georgetown obtains alternative sources of natural gas. Southern indicates that such authority would not be used to authorize a change in the recipient of the proposed service, the location of the redelivery point or the proposed maximum daily quantity of gas transportation by Southern.

Southern would charge South Carolina 48.2 cents per million Btu for the transportation service except that it would charge 77.6 cents per million Btu for volumes transported and redelivered by Southern on any day to South Carolina under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to South Carolina exceeded the daily contract demand of South Carolina. Southern would collect a Gas Research Institute surcharge of 1.35 cents per Mcf of gas redelivered to South Carolina.

Southern's application states that the proposed transportation services would be conditioned upon the availability of capacity sufficient for Southern to perform the proposed services without detriment or disadvantage to Southern's obligations to its customers who are dependent on its general system supply.

Comment date: September 23, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the

appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20183 Filed 9-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-988-000, etc.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; McMasters & Schroder et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

August 29, 1986.

Take notice that the following filings have been made with the Commission.

1. McMasters & Schroder

[Docket No. QF86-988-000]

On August 18, 1986, McMaster & Schroder (Applicant), c/o Pacific Hydropower Company, P.O. Box 31359, Seattle, Washington 98103-1359, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 12 MW facility (FERC Project Nos. 3239, 6373 and 6374) will be located on the Sandy, Sulphur and Rocky Creeks, in Whatcom County, Washington.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. First American Energy Company/ Culmtech, Ltd.

[Docket No. QF86-964-000]

On August 7, 1986, First American Energy Company/Culmtech, Ltd. (Applicant), P.O. Box 616, Pittston, Pennsylvania 18640, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Inkerman, Pennsylvania. The facility will consist of two circulating fluidized-bed boilers and an extraction/condensing turbine generating unit. Extraction steam produced by the facility will be sold to Green Mall, Ltd. for use in heating ten one-acre greenhouses. The electric power production capacity of the facility will be 80 MW. The primary energy source will be anthracite culm. The installation of the facility will begin on or about January 31, 1987.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20184 Filed 9-5-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of July 25 Through August 1, 1986

During the Week of July 25 through August 1, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 C.F.R. Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

August 28, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 25 through Aug. 1, 1986]

Date	Name an location of applicant	Case No.	Type of submission
July 28, 1986	Inland USA, Inc./Site Oil & Flash Oil Corp., St. Louis, MO.	RR176-2 and RR176-3	Request for Modification/Rescission. If granted: The June 5, 1986, Dicision and Order (Case No. RF176-9 and RF176-10) issued to Site Oil Co. and Flash Oil Corp. would be modified regarding both firm's applications for refund submitted in the Inland USA, Inc. refund proceeding.
July 29, 1986	Ivan Von Zuckerstein, Darien, IL	KFA-0047	Appeal of Information Request Denial. If granted: The June 19, 1986, Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded and Ivan Von Zuckerstein would receive access to a memo from Georgia R. Johnson to Martin Bernard, dated April 13, 1986.
Do	Leonard S. Spector, Washington, DC	KFA-0048	Appeal of an Information Request Denial. If granted: The June 25, 1986, Freedom of Information Request Denial issued by the Office of Classification would be rescinded and Leonard S. Spector would receive access to documents concerning the Iranian nuclear program since 1975.
July 30, 1986	Lenawee Fuels, Inc., Tecumseh, MI	KEE-0059	Exception to the Reporting Requirements. If granted: Lenawee Fuels, Inc. would no longer be required to file form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report".

REFUND APPLICATIONS RECEIVED

[Week of July 25 to Aug. 1, 1986]

Date received	Name of refund proceeding/name of refund applicant	Case No.
July 25, 1986	Conoco/Suttman Oil Co.	RF220-387.
July 28, 1986	Conoco/McMullen Oil Co.	RF220-388.
Do.	Gulf/Ladd Marshall Gulf	RF40-3224.
July 29, 1986	King/Highway Oil, Inc.	RF256-3.
Do.	USA/E-Z Serve, Inc.	RF252-7.
Do.	Beacon/Appolio Distributors.	RF238-66.
Do.	Beacon/Wolverton Oil, Inc.	RF238-67.
Do.	Gulf/Falmouth Coal Co., Inc.	RF40-3225.
Do.	Gulf/Southwire Co.	RF40-3226.
July 28, 1986	OKC/Kansas	RQ13-319.
July 28, 1986 through Aug. 1, 1986.	Mobil Refund Applications.	RF225-9169 through RF225-9893.
July 28, 1986 through Aug. 1, 1986.	Marathon Refund Applications.	RF250-723 through RF250-831.

[FR Doc. 86-20144 Filed 9-5-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-3076-1]

Agency Information Collection Activities, Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Survey of Antifouling Paint Use at Boatyards and Shipyards (EPA ICR #1344). (This is a new collection.)

Abstract: This study of antifouling paint usage at boatyards and shipyards is part of a special review of all registrations for the use of tributyltin (TBT) in antifouling paints. This study is necessary because of the concern that TBT used in antifouling paint may expose nontarget aquatic organisms at concentrations causing acute and chronic effects.

Respondents: Selected boatyards and shipyards in coastal areas.

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503

Dated: August 29, 1986.

Odelia Funke,

Acting Director, Information and Regulatory Systems, Division.

[FR Doc. 86-20195 Filed 9-5-86; 8:45 am]

BILLING CODE 6560-50-M

[ORD-FRL-3075-4]

Health Assessment Document for Polychlorinated Dibenzofurans

AGENCY: Environmental Protection Agency.

ACTION: Reopening of the Public Comment Period.

SUMMARY: This notice announces the reopening of the public comment period for the external review draft of the Health Assessment Document for Polychlorinated Dibenzofurans, EPA-600/8-86/018A, dated June 1986. On July 18, 1986 a notice was published in the **Federal Register** announcing the assessment as being available for public comment from July 18, 1986 through August 18, 1986.

DATES: The Agency will make this document available for public review and comment from the date of this notice through September 22, 1986.

ADDRESSES: To obtain a copy of the draft document, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268, (513) 569-7652, and request the external review draft of the Health Assessment Document for Polychlorinated Dibenzofurans, EPA Document Number EPA-600/8-86/018A. Please provide your name, mailing address, and the EPA document number when requesting a copy of the draft document.

The draft document will also be available for inspection and copying at the EPA Library, EPA Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Comments on the draft document should be sent to: Debdas Mukerjee, Project Officer for Polychlorinated Dibenzofurans, Environmental Criteria and Assessment Office, U.S. Environmental Protection Agency, 26

West St. Clair Street, Cincinnati, Ohio 45268.

FOR FURTHER INFORMATION CONTACT: Debdas Mukerjee, Environmental Criteria and Assessment Office, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268 (513) 569–7531.

Dated: August 29, 1986.

Courtney Riordan,

Acting Assistant Administrator for Research and Development.

[FR Doc. 86–20196 Filed 9–5–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–771–DR]

Major Disaster and Related Determinations; New Hampshire

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–771–DR), dated August 27, 1986, and related determinations.

DATED: August 27, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3616.

Notice: Notice is hereby given that, in a letter of August 27, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from severe storms and flooding during the period July 29 through August 10, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Albert A. Gammal, Jr., of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared major disaster and are designated eligible as follows:

For Public Assistance only:

The Towns of Alstead, Gilsum, Marlow, Nelson, and Sullivan in Cheshire County.

The Towns of Brookline, Greenville, Mason, Milford, and Wilton in Hillsborough County.

The Towns of Acworth and Langdon in Sullivan County.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director.

[FR Doc. 86–20171 Filed 9–5–86; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). Information, including copies of the collection of information and supporting documentation, may be obtained from Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Room 11101, Washington, DC 20573, telephone number (202) 523–5725. Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review

46 CFR 510—Licensing of Ocean Freight Forwarders

FMC requests an extension of clearance for this part which sets forth regulations providing for the licensing of ocean freight forwarders in the U.S. foreign commerce. The Commission estimates that approximately 2600 respondents are annually affected at an estimated cost to them of $320,000. The approximate cost to the Federal Government is the annual budget appropriated to the Office of Freight Forwarders of $233,000.

46 CFR 550.5—Voluntary Letter to Automobile Manufacturers

FMC requests a clearance extension for a voluntary letter addressed to automobile manufacturers requesting information on the cubic measurements and weights of new foreign and domestic automobiles. The information received is compiled in a guide entitled "Automobile Manufacturers' Measurements." The guide is used by carriers transporting automobiles in the domestic offshore trades and is designed to assist in their compliance with 46 CFR 550.5(b)(8)(xiv). It is estimated that annual compliance with this voluntary letter will impose a burden of one manhour for each of 23 respondents.

46 CFR 510, 580 and 582—Certification of Company Policies and Efforts To Combat Rebating in the Foreign Commerce of the United States

FMC requests a clearance for these amendments in Docket No. 86–19 which require that the Chief Executive Officer of every common carrier and ocean freight forwarder in the U.S. foreign commerce file a written certification with the Commission attesting to the company's prohibition against receiving or paying rebates by December 31 of each year. In addition, it broadens the number of parties subject to filing such certificates to include potentially, if requested by the Commission, individual shippers, shippers' associations, marine terminal operators and brokers.

Ocean common carriers and ocean freight forwarders, respectively, will also have to file a certification with their initial tariff or license application. The Commission estimates that approximately 1500 NVOCCs, 700 VOCCs and 1600 freight forwarders will have to file initial and annual anti-rebate certifications.

Joseph C. Polking,

Secretary

[FR Doc. 86–20120 Filed 9–5–86; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the

following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–009648A–033
Title: Inter-American Freight Conference
Parties: A. Bottacchi S.A. de Navegacion C.F.I. e I.; A/S Ivarans Rederi; Brazil-America Container Line; Companhia Maritima Nacional; Companhia de Navegacao Lloyd Brasileiro; Companhia de Navegacao Maritime Netumar; Empresa Lineas Maritimas Argentinas Sociedad Anonima (ELMA S/A); Empresa de Navegacao Allianca S.A.; Flota Mercante del Estato; Frota Amazonica S.A.; Georgia-Aztec Line; Van Nievelt Goudriaan & Co. B.V.; Kimberly Navigation Company; Reefer Express Lines Pty. Ltd.; R.M.C. Lines, Inc.; Transportacion Maritima Mexicana S.A.; United States Lines, Inc.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 202–009968–017
Title: Inter-American Freight Conference Puerto Rico and U.S. Virgin Islands Area
Parties: A. Bottacchi S.A. de Navegacion C.F.I. e I.; A/S Ivarans Rederi; Companhia Maritima Nacional; Companhia de Navegacao Lloyd Brasileiro; Companhia de Navegacao Maritima Netumar; Empresa Lineas Maritimas Argentinas Sociedad Anonima (ELMA S/A); Empresa de Navegacao Allianca S.A.; Frota Amazonica S.A.; Paxicon Line; Suriname Line; Transportacion Maritima Mexicana S.A.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 217–010051–010
Title: Mediterranean Force Majeure Agreement
Parties: Compania Trasatlantica Espanola; Costa Container Line; Farrell Lines, Inc.; Italia di Navigazione, S.A.; Jugolinija; Lykes Bros. Steamship Co., Inc.; Med-America Express Service; Sea-Land Service, Inc.; Zim Israel Navigation Co., Inc.
Synopsis: The proposed amendment would delete the agreement's current termination date of December 13, 1987, and provide that the agreement shall remain in effect indefinitely unless terminated by unanimous vote. It would also restate the agreement to conform to the Commission's regulations concerning form and format.

Agreement No.: 202–010122–015
Title: Inter-American Freight Conference Area River Plate/Puerto Rico and U.S. Virgin Islands/River Plate
Parties: A. Bottacchi S.A. de Navegacion C.F.I. e I.; A/S Ivarans Rederi; Companhia Maritima Nacional; Companhia de Navegacao Lloyd Brasileiro; Empresa Lineas Maritimas Argentinas Sociedad Anonima (ELMA S/A); Transportacion Maritima Mexicana S.A.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

By Order of the Federal Maritime Commission.

Dated: September 3, 1986.

Joseph C. Polking,
Secretary.

[FR Doc. 86–20121 Filed 9–5–86; 8:45 am]
BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants; CAP Air/Ocean, Inc.

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

CAP Air/Ocean, Inc.,3115 Will Clayton Parkway, Houston, TX 77032
Officers: Derrell D. Gardner, President, Edward O. Himly, Jr., Vice President

Rider Distributors, Inc.,1671 W. 38th Place, No. 1408, Hialeah, FL 33012
Officers: Jorge Pelaez, President, Diana Pelaez, Secretary

By the Federal Maritime Commission.

Dated: September 3, 1986.

Joseph C. Polking,
Secretary.

[FR Doc. 86–20122 Filed 9–5–86; 8:45 am]
BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations; Sara Sandford Dodd and Associates, Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1055
Name: Sara Sandford Dodd and Associates, Inc.
Address: 1252 Texas Street, Mobile, AL 36633
Date Revoked: July 17, 1986
Reason: Surrendered license voluntarily

License Number: 2583
Name: C. C. Forwarders, Inc.
Address: 3590 N.W. 50th Street, Miami, FL 33142
Date Revoked: August 23, 1986
Reason: Failed to maintain a valid surety bond

License Number: 1917
Name: Jar Forwarding, Ltd.
Address: 3 Park Row, New York, NY 10038
Date Revoked: August 24, f1986
Reason: Failed to maintain a valid surety bond

Eugene P. Stakem,
Deputy Director, Bureau of Tariffs.

[FR Doc. 86–20123 Filed 9–5–86; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Meeting

The Consumer Advisory Council will meet on Wednesday, October 8, and Thursday, October 9. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The October 8 session is expected to begin at 9:00 a.m. and to continue until 5:00 p.m., with a lunch break from 1:00 to 2:00 p.m. The October 9 session is expected to begin at 9:00 a.m. and to continue until 1:00 p.m. The Martin Building is on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer

Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *1986 Survey of Consumer Finances:* Preliminary report by Board staff on a Board-sponsored 1986 nationwide survey of consumer finances.

2. *APR Demonstration Project:* Briefing by Board staff on the results of a congressionally mandated demonstration project involving the publication and distribution of shoppers guides to credit in three local market areas.

3. *Responses to Branch Closings:* Update on branch closings by commercial banks and on the assessment of closings by Federal Reserve examiners; and discussion (led by a Council planning group) of (1) the banks' perspective and recent industry efforts to help bankers manage more effectively the impact of a branch closing on the community, and (2) possible responses to branch closings (including neighborhood-based altenative strategies) by community groups.

4. *Delayed Funds Availability:* Report by the Council's Ad Hoc Committee on Service Charges on the area of delayed funds availability; and update by Board staff on data collected by Federal Reserve examiners concerning state member banks' responses to the joint policy statement of the Federal Home Loan Bank Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and the Federal Reserve Board encouraging financial institutions to refrain from imposing unnecessary delays in making funds available to depositors.

5. *Consumer Education:* Report from the Council's Committee on Consumer Education; and briefing by Board staff on the scope of the Federal Reserve's consumer education efforts through various media.

6. *Emerging Technologies:* (1) Educational presentation by the Council's Ad Hoc Committee on Emerging Technologies on the smart card technology (tentative); (2) Discussion of a proposed amendment to Regulation E (Electronic Fund Transfers) that would eliminate periodic statement disclosure requirements for the issuer of a debit card (or other access device for making EFTs) when the issuer does not hold the consumer's account.

7. *Community Reinvestment Act (CRA):* Report from the Council's Ad Hoc Committee on the Community Reinvestment Act on its efforts in exploring how Federal Reserve examiners evaluate various CRA activities by banks.

8. *Changes in Financial Organization:* Report from the Council's Ad Hoc Committee on Changes in Financial Organization on issues targeted for further committee study in the area of expanded powers for financial institutions.

9. *Regulation Z—Right of Recission:* Discussion of the Board's proposal to exempt certain refinancings from the Truth-in-Lending right of rescission.

10. *Rise in Second Mortgage Consumer Debt:* Discussion of the rise in second mortgages consumer debt and of the various purposes for which such debt is primarily used.

11. *Adjustable Rate Mortgages (ARMs):* Discussion of the Federal Financial Institutions Examination Council's recommendation that the Federal Reserve Board, Federal Home Loan Bank Board, and the Office of the Comptroller of the currency adopt uniform disclosures for adjustable rate mortgages.

Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Wednesday, October 1, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ms. Bedelia Calhoun, Staff Specialist, at (202) 452–3305; for Telecommunications Device for the Deaf (TDD) users, Earnestine Hill or Dorothea Thompson (202) 452–3544; Board of Governors of the Federal Reserve System, Washington DC 20551.

Board of Governors of the Federal Reserve System, September 2, 1986.

James McAfee,

Associate Secretary to the Board.

[FR Doc. 86–20140 Filed 9–5–86; 8:45 am]

BILLING CODE 6210–01–M

Bayerische Vereinsbank et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each applicaiton is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bayerische Vereinsbank*, Munich Federal Republic of Germany; to engage *de novo* through its subsidiary, AE Capital Management, Inc., New York, New York, in the provision of investment advisory services pursuant to section 225.25(b)(4) of the Board's Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Community Bankshares, Inc.*, Cornelia, Georgia; to engage *de novo* through its subsidiary Community Insurance Agency, Cornelia, Georgia, in the sale of general insurance, which may include, without limitation, life insurance, accident and sickness insurance, casualty insurance, and surety insurance, pursuant to section 4(c)(8)(c)(i) of the Bank Holding

Company Act. These activities will be conducted in Cornelia, Clarkesville, Demorest and Commerce, Georgia.

Board of Governors of the Federal Reserve System, Septemer 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-20141 Filed 9-5-86; 8:45 am]

BILLING CODE 6210-01-M

Riggs National Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 29, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Riggs National Corporation,* Washington, DC, to acquire 100 percent of the voting shares of The Riggs National Bank of Virginia, the successor by merger to Guaranty Bank and Trust Company, Fairfax, Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Lamar Capital Corporation,* Purvis, Mississippi; to become a bank holding company by acquiring 80 percent of the voting shares of Lamar County Bank, Purvis, Mississippi.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dawson Springs Bancorp, Inc.,* Dawson Springs, Kentucky; to merge with Kentucky State Bancorp, Inc., Scottsville, Kentucky, and thereby indirectly acquire Kentucky State Bank of Scottsville, Scottsville, Kentucky. Comments on this application must be received by September 26, 1986.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *UB & T Bancshares, Inc.,* Abilene, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of United Bank and Trust, Abilene, Texas. Comments on this application must be received by September 26, 1986.

Board of Governors of the Federal Reserve System, September 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-20142 Filed 9-5-86; 8:45 am]

BILLING CODE 6210-10-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Being Reviewed by the Office of Management and Budget; Surplus Personal Property Mailing List Application

AGENCY: Federal Supply Service, GSA.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to reinstate a recently expired report.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GAS Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John Hansley, Federal Supply Service (703) 557-0814.

Purpose of Collection: Allows persons to have their names put on a mailing list to be notified of upcoming surplus property sales.

Annual Reporting Burden: 25,000 respondents; 1,667 burden hours.

Copies of Proposal: Copies can be obtained from the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC, 20405, or telephone (202) 566-0668.

Dated: August 29, 1986.

Rodney P. Lantier,

Acting Director, Information Management Division.

[FR Doc. 86-20117 Filed 9-5-86; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services is amended to revise Chapter HA (Office of the Assistant Secretary for Health) and Chapter HC (Centers for Disease Control). These revisions will reflect the transfer of responsibility for the Office on Smoking and Health from the Office of the Assistant Secretary for Health (OASH) to the Centers for Control (CDC). Specifically:

(1) The statement for the Office of the Assistant Secretary for Health (42 FR 61318, December 2, 1977, as amended most recently at 51 FR 16390-91, May 2, 1986) is amended to delete the title and statement for the Office on Smoking and Health (HAG). The responsibilities of this office are transferred to CDC.

(2) The statement for the Center for Health Promotion and Education, Centers for Disease Control (45 FR 67772-67776, October 14, 1980 and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 51 FR 10117, March 24, 1986) is amended to reflect the transfer of functions of the Office on Smoking and Health to the Center for Health Promotion and Education.

Office of the Assistant Secretary for Health

Under Part H, Chapter HA, Office of the Assistant Secretary for Health, HA-10, Organizations, delete item (8), Office on Smoking and Health (HAG). Renumber items (9) through (18) as items (8) through (17).

Under Section HA-20, Functions, delete the title and statement for the *Office on Smoking and Health (HAG).*

Section HA-30, Delegations of Authority. All delegations and redelegations of authority made to PHS officials which were in effect prior to the effective date of this reorganization shall continue in effect pending further redelegations.

Centers for Disease Control

Under Part H, Chapter HC, Centers for Disease Control, Section HC-B, Organization and Functions, revise the statement for the *Center for Health Promotion and Education* by renumbering items (3) through (9) as items (5) through (11), and inserting the following as items (3) and (4):

(3) administers a national program to inform Americans about the dangers of smoking, to reduce the death and disability due to smoking, and to promote research by government and voluntary agencies on smoking and health; (4) assists the Surgeon General in the preparation of his annual report on smoking and health;

This change is effective September 14, 1986.

Otis R. Bowen,

Secretary.

August 11, 1986.

[FR Doc. 86-20173 Filed 9-5-86; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

[Docket No. 86M-0343]

Pacesetter® Systems, Inc.; Premarket Approval of Model 674 Pulse Generator and Model 600 V Programmer

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Pacesetter® Systems, Inc., Sylmar, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Model 674 Pulse Generator and Model 600 AV Programmer. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by October 8, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald F. Dahms, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7594.

SUPPLEMENTARY INFORMATION: On August 2, 1984, Pacesetter® Systems, Inc., Sylmar, CA 91342, submitted to FDA an application for premarket approval of the Model 674 Pulse Generator and Model 600 AV Programmer that is indicated for use as a cardiac pacing system.

On May 13, 1985, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 31, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Donald F. Dahms (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall indentify the form of review requested (hearing or independent advisory committee) and shall submit the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 8, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 28, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-20112 Filed 9-5-86; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Prevention and Control Centers and Community Oncology Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Centers and Community Oncology Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, September 21, 1986, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892. The entire meeting will be open to the public from 7:30 p.m. to adjournment, and the current and future programs of the Centers and Community Oncology Program will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of meetings and rosters of subcommittee members upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, Blair Building, Room 1A07, Bethesda, Maryland 20892 (301/427-

8630) will furnish substantive program information.

Dated: August 29, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-20130 Filed 9-5-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Prevention and Control, Budget and Evaluation Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Budget and Evaluation Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, September 22, 1986, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, Maryland 20892. The entire meeting will be open to the public from 5:30 p.m. to adjournment, and the current and future programs of the Surveillance and Operations Research Branch will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of meetings and rosters of subcommittee members upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, Blair Building, Room 1A07, Bethesda, Maryland 20892 (301/427-8630) will furnish substantive program information.

Dated: August 29, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-20131 Filed 9-5-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Prevention and Control; Prevention Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Prevention Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, September 22, 1986, to be held in Conference Room 3, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892. The entire meeting will be open to the public from 7:30 p.m. to adjournment, and the current and future programs of the Prevention Program will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of meetings and rosters of subcommittee members upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, Blair Building, Room 1A07, Bethesda, Maryland 20892 (301/427-8630) will furnish substantive program information.

Dated: August 29, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-20132 Filed 9-5-86; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, October 3, 1986. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, Building 31, Conference Room 7, C-Wing. The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 27, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-20134 Filed 9-5-86; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Blood Diseases and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, October 27-28, 1986, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The Committee will meet in Building 31, Conference Room 8, C Wing.

The entire meeting will be open to the public from 9:00 AM to 5:00 PM on October 27, and from 9:00 AM to adjournment on October 28, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A-08, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: Afugust 27, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-20135 Filed 9-5-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; President's Cancer Panel; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, September 30, 1986 at the Dana-Farber Cancer Institute, 44 Binney Street, Boston, Massachusetts 02115.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. Agenda items include reports by the Chairman, President's Cancer Panel, and discussions to obtain information regarding center programs supported by the National Cancer Institute. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of Panel members, upon request.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda, Maryland 20892 (301/496–1148) will furnish substantive program information.

Dated: August 29, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–20133 Filed 9–5–86; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Solar Energy and Energy Conservation Bank

[Docket No. N–86–1635; FR 2286]

Meeting of the Solar Energy and Energy Conservation Advisory Committees

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Notice; Meeting of the Solar Energy and Energy Conservation Advisory Committees.

SUMMARY: This Notice announces a meeting of the Solar Energy and Energy Conservation Advisory Committees. The meeting will be held on September 25, 1986 via a telephone conference call originating in Washington, DC. The purpose of the meeting is to discuss Bank business.

FOR FURTHER INFORMATION CONTACT: Walter Preysnar, Office of the Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development, 451 7th Street, SW., Room 7110, Washington, DC 20410; Telephone (202) 755–7166. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Energy Security Act of 1980 established Energy Conservation Solar Energy Conservation Advisory Committees for the purpose of assisting the Board in carrying out the activities of the Bank which relate to energy conserving improvements and solar energy systems. Each committee consists of five members, appointed by the Board from among individuals who are not officers or employees of any governmental entity, as follows:

(1) One individual who is able to represent the views of consumers as a result of the individual's education, training and experience.

(2) One individual who is able to represent the views of financial institutions as a result of the individual's education, training and experience.

(3) One individual who is able to represent the views of builders as a result of the individual's education, training and experience.

(4) One individual who is able to represent the views of architectural or engineering interests as a result of the individual's education, training and experience.

(5)(a) For the Solar Energy Committee, one individual who is able to represent the views of the solar energy industry as a result of the individual's education, training and experience.

(b) For the Energy Conservation Committee, one individual who is able to represent the views of producers or installers of residential and commercial energy conserving improvements as a result of the individual's education, training and experience.

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a)(2), announcement is made of the following meeting:

The Solar Energy and Energy Conservation Advisory Committees will meet on September 25, 1986. The meetings are open to the public and will convene at 3:45 p.m. via a telephone conference call originating from the Department of Housing and Urban Development, 451 7th Street, SW., Room 7202, Washington, DC 20410.

An agenda will be available at the meeting. Inquiries concerning the agenda and the meeting may be made by contacting the Office of the Solar Energy and Energy Conservation Bank at (202) 755–7166.

Authority: Title V, Subtitle A, of the Energy Security Act of 1980, (Pub. L. 96–294, 12 U.S.C. 3601–3620).

Dated: August 18, 1986.

Approved:

Walter Bruce,

Advisory Committee Chairperson.

Dated: August 21, 1986.

Approved:

Richard H. Francis,

Manager, Solar Energy and Energy Conservation Bank.

[FR Doc. 86–20136 Filed 9–5–86; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–711493

Applicant: Jack Woody, National Sea Turtle Coordinator, U.S. Fish & Wildlife Service, Albuquerque, NM.

The applicant requests a permit to export 20 kg. of seized hawksbill turtle (*Eretmochelys imbricata)* shell, to be obtained from the U.S. Fish & Wildlife Service, Division of Law Enforcement, to the Tokelau Village elders, Tokelau Island, Western Samoa, for use in making traditional fishing lures. The natives will use the turtle shell for suubsistence fishing only; the lures will not be entered into commerce. This export will increase the likelihood of the survival of the species by eliminating the need for taking the turtles from the wild.

PRT–711637

Applicant: Roger D. Harris, Berkeley, CA.

The applicant requests a permit to live trap and release salt marsh harvest mice (*Reithrodontomys raviventris)* on Blair Island, San Mateo County, CA. The purpose is to determine the possible occurrence of this species on the property.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: September 2, 1986.

Earl B. Baysinger,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86-20108 Filed 9-5-86; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AA-6648-A2]

Alaska Native Claims Selection; Aleknagik Natives, Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Aleknagik Natives Limited for approximately 2,490 acres. The lands involved are in the vicinity of Aleknagik, Alaska.

Seward Meridian, Alaska

T. 10 S., R. 54 W. (Unsurveyed)

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Anchorage Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until October 8, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-18363 Filed 8-5-86; 8:45 am]

BILLING CODE 4310-JA-M

National Park Service

Revision of Park Boundary; Valley Forge National Historical Park, PA

AGENCY: National Park Service, Valley Forge National Historical Park, Pa., Interior.

ACTION: Notice of revision of park boundary.

SUMMARY: Section 2.(a) of the Act of July 4, 1976, Pub. L. 94-337 (90 Stat. 796) established the Park boundary as depicted on the map entitleld "Valley Forge National Historical Park" dated February 1976, and numbered VF 91,000. The boundary was further revised by an act of June 28, 1980, Pub. L. 96-287 (94 Stat. 601) to include the area as generally depicted on Map numbered VF-91,001 dated June 1979. Portions of this boundary on the north side of the park were located on the centerline of Pawling Road. Subsequent to the establishment of this boundary, a twenty-two hundred foot (2200') section of Pawling Road was relocated. This section begins at a point approximately thirty-five hundred feet east of the Schuylkill River, and was relocated in order to construct an overpass over U.S. Highway 422. The effect of this relocation was to create a narrow strip of privately owned land between the park boundary and the centerline of the new Pawling Road. This strip of land may be suitable for some type of development which could be detrimental to the park. The inclusion of this additional land will increase the area of the park by 2 acres, more or less.

Therefore, pursuant to section 2.(a) of Pub. L. 94-337, notice is given that the boundary of Valley Forge National Historical Park has been revised to coincide with the centerline of that portion of Pawling Road that has been relocated as described above and as depicted as a portion of Tracts 101-43, 101-55, 101-60 and 101-62 on Land Status Map numbered 464/80,017, Segment 101, Sheet 1 of 2 dated August 1980 prepared by the Land Resources Division of the Mid-Atlantic Region of the National Park Service.

SUPPLEMENTARY INFORMATION: The map is on file and available for inspection in the administrative office of the Valley Forge National Historical Park, Valley Forge, Pennsylvania, 19481; in the office of the Mid-Atlantic Region, Land Resources Division, Custom House, Room 502, Second and Chestnut Streets, Philadelphia, Pennsylvania, 19106; and in the office of the National Park Srevice, Department of the Interior, 18th and C Streets, Washington, DC, 20240.

Dated: June 19, 1986.

Don H. Castleberry,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 86-20157 Filed 9-5-86; 8:45 am]

BILLING CODE 4310-70-M

Final Environmental Impact Statement; George Washington Memorial Parkway

ACTION: Notice of Availability of Final Environmental Impact Statement.

SUMMARY: This notice announces the availability of a final environmental impact statement (EIS) for traffic and recreation management, George Washington Memorial Parkway (Spout Run to Theodore Roosevelt Bridge) and Spout Run Parkway.

The document has been reviewed for legal sufficiency by the Regional Solicitor. The 30-day no-action period following the Environmental Protection Agency's notice of availability of the final EIS will end October 14 1986.

ADDRESSES: Public reading copies of the final EIS will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: 202-343-6843

George Washington Memorial Parkway Headquarters, Turkey Run Headquarters, McLean, Virginia 22101, Telephone: 703-285-2600

Arlington Central Library, Virginiana Section, 1015 N. Quincy Street, Arlington, Virginia 22204

Cherrydale Branch Library, 2190 N. Military Road, Arlington, Virginia 22207

Fairfax City Regional Library, 4000 Chain Bridge Road, Fairfax, Virginia 22030

Reston Regional Library, 2355 A Hunters Woods Plaza, Reston, Virginia 22091

Dolly Madison Library, 1244 Oak Ridge Avenue, Vienna, Virginia 22180

Potomac Library, 1000 Falls Road, Potomac, Maryland 20854

Martin Luther King, Washingtoniana Division, 901 G Street NW., Washington, DC 20001

A limited number of copies of the DES and FES are available on request from: Superintendent, George Washington Memorial Parkway, Turkey Run Headquarters, McLean, Virginia 22201.

Dated August 22, 1986.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 86-20158 Filed 9-5-86; 8:45 am]

BILLING CODE 4310-70-M

Statue of Liberty-Ellis Island Centennial Commission Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Statue of Liberty-Ellis Island Centennial Commission will be held at the Department of the Interior, 18th & C

Streets, NW., Washington, DC, on Friday, September 26, 1986. at 9:30 a.m. The Commission will meet to receive a report on proposals for use of the south half of Ellis Island and to conduct such other business as is properly before the meeting.

DATE: September 26, 1986.

FOR FURTHER INFORMATION CONTACT: Keith Eastin, (202) 343–5183.

Keith E. Eastin,

Deputy Under Secretary.

[FR Doc. 86–20182 Filed 9–5–86; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M–86–97–C]

Clinchfield Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Clinchfield Coal Company, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.1103–4 (automatic fire sensor and warning device) to its Lambert Fork No. 2 Mine (I.D. No. 44–06175) located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within in each belt flight.

2. In a separate petition (M–86–96–C), petitioner proposes to use the belt entry as an intake airway.

3. In lieu of a heat detection system, petitioner proposes to use an early-warning fire detection system using a low-level carbon monoxide detection system. The system will be installed and operated with specific conditions in all belt entries used as intake aircourses.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 8, 1986. Copies of the petition are available for inspection at that address.

Dated: August 27, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR. Doc. 86–20152 Filed 9–5–86; 8:45 am]

BILLING CODE 4510–43–N

[Docket No. M–86–117–C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Amonate No. 31 Mine (I.D. No. 46–04421) located in McDowell Country, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that there are rectifiers located along an older haulage which is ventilated with intake air. There are no effective return airways in the immediate vicinity. The intake air passing the rectifiers goes to a bleeder fan which is pulling off the back of the pillar line.

3. As an alternate method, petitioner proposes that:

(a) The structure enclosing the rectifier would be ventilated so that any smoke would be confined to the enclosed area and would activate a warning light on the haulway to warn miners that a fuse link has been broken on the fire extinguishers;

(b) The area in which the rectifier would be located would have both ends enclosed with cement block walls. Two steel doors would be installed which would allow an air current to pass through the structure and they would close automatically when a 135°F fuse link separates;

(c) A dry-type fire extinguisher would be mounted through the top covers of the rectifier and positioned so that, when activated, the dry chemical would be dispersed inside all compartments. The fire extinguisher would be activated by 160°F fuse links;

(d) All entrances for electrical cables would be effectively sealed to prevent the release of smoke. The inside of the enclosure would be well rock dusted and kept free from combustible materials; and

(e) The installation would be examined on a weekly basis to insure that the safety factors were intact.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 8, 1986. Copies of the petition are available for inspection at that address.

Dated: August 27, 1986.

Patricia W. Silvey,

Office of Standards, Regulations and Variances.

[FR Doc. 86–20151 Filed 9–5–86; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (86–59)]

NASA Advisory Council, Aeronautics Advisory Committee, (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Task Team on Computational Fluid Dynamics (CFD) Validation.

DATE AND TIME: September 23, 1986, 8:30 a.m. to 5 p.m.

ADDRESS: General Dynamics Support Training Center, Room 217, Fort Worth Division, 6310 Southwest Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Dr. Randolph Graves, Code RF, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–2828).

SUPPLEMENTARY INFORMATION: The Aeronautics Advisory Committee (AAC) Ad Hoc Task Team on CFD Validation was established to assess CFD verification activities in the Office of

Aeronautics and Space Technology (OAST). This team, chaired by Dr. Richard Bradley, is comprised of nine members and was formed to provide a review of OAST's CFD Verification Programs, to include speed ranges from subsonic to hypersonic for both external and internal aerodynamics/aerothermodynamics. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open

Agenda

September 23, 1986

8:30 a.m.—Discussion of Team Study Plan and specific areas to be studied.

1 p.m.—Assignment of specific study tasks to team members.

5 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 2, 1986.

[FR Doc. 86-20109 Filed 9-5-86; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-410]

Niagara Mohawk Power Corp.; Nine Mile Point Nuclear Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an exemption from the requirements of 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 19, to the Niagara Mohawk Power Corporation (the applicant), for the Nine Mile Point Nuclear Station, Unit 2 (NMP-2), located at the applicant's site in Scriba, New York.

Environmental Assessment

Identification of Proposed Action: The proposed action would exempt the applicant from meeting certain requirements of 10 CFR Part 50, Appendix A, GDC 19, until prior to exceeding five percent of rated power. GDC 19 requires a control room be provided in which actions can be taken to operate the nuclear powerplant safely under accident conditions, including a loss-of-coolant accident (LOCA). GDC 19 further states that adequate radiation protection shall be provided to permit access and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 5 rem whole body, or its equivalent to any part of the body, for the duration of the accident.

In the process of reviewing the radiological consequences of the additional bypass leakage paths submitted by the applicant on June 30, 1986, the staff raised questions concerning the methodology used by the applicant to calculate the X/Q values used to determine the control room operator doses. If the more conservative Murphy-Campe method suggested in the staff's Standard Review Plan (NUREG-0800, Revision 2) is used to determine the X/Q, then the calculated control room doses in the event of a LOCA could exceed those permitted by GDC 19.

For this reason, the applicant has requested an exemption to GDC 19 while the staff evaluates the methodology used by the applicant to calculate the X/Q for the control room doses. If the methodology is determined by the staff to be unacceptable, then the applicant has requested until operation of the plant above five percent of rated power to complete any additional analysis or modifications as needed.

The applicant's request for this exemption, and the bases therefor, are contained in its letter dated August 14, 1986.

The Need for the Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the review of the methodology used to calculate the control room X/Q completed by the staff. In addition, the exemption would allow any additional analysis and/or modifications required to meet GDC 19 to be deferred until prior to operation above five percent of rated power. This exemption will provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operation.

Environmental Impact of the Proposed Action: The exemption would allow any additional analysis and/or modifications required to meet GDC 19 to be completed after fuel load but prior to exceeding five percent of rated power.

The initial source term inventory of the core during operation below five percent of rated power is low. With this lower inventory, if the more conservative method were used to calculate the control room does in the event of a LOCA, the result would be within the dose guideline required by GDC 19. Therefore, the staff concludes that granting the proposed exemption will not increase the probability of an accident and will not result in any post-accident radiological releases in excess of those previously determined for Nine Mile Point Nuclear Station, Unit 2. Moreover the proposed relief would not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station, Unit 2 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources: These actions associated with the granting of the proposed exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Nine Mile Point Nuclear Station, Unit No. 2", dated May 1985.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's submittal that supports the proposed exemption discussed above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant impact on the quality of the human environment.

For further details with respect to this action, see the request for the exemption as listed herein, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Penfield Library, State University College, Oswego, New York 13126.

Dated at Bethesda, Maryland, this 2nd day of September 1986.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, BWR Project Directorate No. 3, Division of BWR Licensing.

[FR Doc. 86-20186 Filed 9-5-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of an exemption from the requirements of Appendix R of 10 CFR Part 50 to the Power Authority of the State of New York (PASNY/the licensee), for the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action: The licensee would be exempted from the requirements of sections III.L.1.b and III.L.2.b of Appendix R to 10 CFR Part 50 to the extent that the reactor coolant level would be permitted to drop below the top of the core during use of alternate safe shutdown procedures following a postulated fire which renders the control room uninhabitable.

The Need for the Proposed Action: The licensee has performed revised analyses to determine the time required for an operator to regain control functions for reactor shutdown at the remote alternate shutdown panels after manual scram of the reactor following a control room fire. The required time has been revised from 10 minutes to 30 minutes. This increase in operator action time would result in a temporary uncovery of the core (i.e., at 10 minutes, no core uncovery occurs).

Environmental Impact of the Proposed Action: The proposed action would not impact the ability to effect safe shutdown of the plant in the event of a fire in the control room, would not pose a threat to the fuel cladding integrity, and would provide an acceptable level of safety, equivalent to that attained by compliance with section III.L. of Appendix R to 10 CFR 50. On this basis, the Commission concludes there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the James A. FitzPatrick Nuclear Power Plant.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has detemined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated June 14, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Penfield Library, State University College of Oswego, New York.

Dated at Bethesda, Maryland, this 2nd day of September 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate No. 2, Division of BWR Licensing.

[FR Doc. 86-20187 Filed 9-5-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-128]

Texas A&M University; Environmental Assessment and Notice of Finding of No Significant Environmental Impact Regarding Proposed Amendment to Facility Operating License No. R-83

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. R-83 for the Texas A&M University TRIGA reactor located on the campus of the Texas A&M University (the licensee) in College Station, Texas.

Environmental Assessment

Description of Proposed Action: By letter dated July 11, 1986, the licensee requested a license amendment to raise the total iodine inventory in a fueled experiment from 1.5 curies to 10 curies for iodine isotopes 131 through 135.

Need for the Proposed Action: Texas A&M desires to irradiate larger masses of fueled experiments rather than irradiate many smaller experiments.

Alternatives to the Proposed Action: The alternative would be to have 7 times as many smaller experiments. However, the preliminary activities for experiment encapsulation plus the post-irradiation handling of the seven 1.5 curie iodine-filled capsules could produce a greater probability of accident than handling one 10 curie capsule of iodine in a larger fueled experiment.

Environmental Impact of a 10 Curie Iodine Inventory: A postulated accident and release of all the iodine inventory into the containment building, followed by a release to the atmosphere would result in a maximum one-hour exposure to a person at the boundary of less than one-twentieth of the allowable whole body exposure limit of 0.5 Rem as per 10 CFR 20.

Alternative Use of Resources: This action does not involve the use of any resources beyond those normally allocated for such activities.

Agencies and Persons Consulted: The staff did not consult other agencies or persons.

Conclusion and Basis for Finding of No Significant Environmental Impact: Based on the foregoing Environmental Assessment, the Commission has concluded that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an Environmental Impact Statement for this proposed action.

For further details with respect to this action, see the licensee's request for a license amendment dated July 11, 1986. This document is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Dated at Bethesda, Maryland, this 27th day of August 1986.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 86-20188 Filed 9-5-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-433]

University of California at Santa Barbara; Finding of No Significant Environmental Impact Regarding Proposed Order Authorizing Dismantling of the Reactor and Disposition of Component Parts

The Nuclear Regulatory Commission is considering issuance of an Order authorizing the University of California at Santa Barbara to dismantle their L-77 reactor facility in Santa Barbara, Santa Barbara County, California and to dispose of the reactor components in accordance with the application dated September 9, 1985, as supplemented.

The Order would authorize dismantling of the facility and disposal of the components in accordance with the licensee's application for decontamination and dismantling dated September 9, 1985, as supplemented. Opportunity for hearing was afforded by the "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" published in the **Federal Register** on October 30, 1985 at 50 FR 45180.

Finding of No Significant Environmental Impact: The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. The Commission has prepared an Environmental Assessment of this action and has concluded that the proposed action will not have a significant effect on the quality of the human environment.

Summary of Environmental Impacts: The environmental impacts associated with the dismantling and decontamination operations are discussed in an Environmental Assessment associated with this action. The operations are calculated to result in a collective radiation exposure of less than 0.05 person-rem to all operating personnel. Collective radiation exposure to the general public will be insignificant. The Environmental Assessment concluded that the operation will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the fact that all proposed operations are carefully planned and controlled, all contaminated components are removed, packaged, and shipped offsite, and that the radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as reasonably achievable (ALARA).

For detailed information with respect to this proposed action, see the application for dismantling, decontamination and license termination dated September 9, 1985, as supplemented, the Environmental Assessment, and the Safety Evaluation prepared by the staff. These documents and this Finding of No Significant Environmental Impact are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTENTION: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland, this 26th day of August 1986.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 86-20189 Filed 9-5-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-433]

University of California at Santa Barbara; the University of California at Santa Barbara L-77 Research Reactor; Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated September 9, 1985, as supplemented, the University of California at Santa Barbara (the Licensee) requested authorization to dismantle the L-77 reactor facility, License No. R-124, located in Santa Barbara, Santa Barbara County, California and to dispose of the component parts, in accordance with the plan submitted as part of the application. A "Notice of Proposed Issuance of Order Authorizing Disposition of Component Parts and Terminating Facility License" was published in the **Federal Register** on October 30, 1985 at 50 FR 45180. No request for hearing or petition for leave to intervene was filed following notice of the proposed action.

The Nuclear Regulatory Commission (the Commission) staff has reviewed the application in accordance with the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts in accordance with the licensee's dismantling plan will be in accordance with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis of the findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment, dated August 26, 1986, for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an Environmental Impact Statement need not be prepared.

Accordingly, the licensee is hereby authorized to dismantle the L-77 reactor facility covered by License No. R-124, as amended, and dispose of the component parts in accordance with its dismantling plan and the Commission's rules and regulations.

After completion of the dismantling and disposal, the licensee will submit a report on the radiation survey it will perform to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the dismantling plan and in the Commission's guidance. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility License No. R-124.

For further details with respect to this action, see (1) the licensee's application for authorization to dismantle the facility and dispose of component parts, dated September 9, 1985, as supplemented, (2) the Commission's related Safety Evaluation, and (3) the Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland, this 26th day of August 1986.

For the Nuclear Regulatory Commission.

Frank Schroeder,

Acting Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 86-20190 Filed 9-5-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-364, (ASLBP No. 815-511-01-ML]

Atomic Safety and Licensing Board Panel; Babcock and Wilson, Parks Township, PA, Volume Reduction Facility; Informal Hearings

Before Administrative Judge: Dr. Oscar H. Paris.

August 28, 1986.

Notice is hereby given that an informal evidentiary hearing will be held concerning the application by Babcock and Wilson (B&W) for an amendment to its special nuclear materials license (No. SNM-414) to allow it to operate a Volume Reduction Services Facility (VRSF) in Parks Township, Pennsylvania. The VRSF would employ a high-force compactor and an incinerator that would be utilized to reduce the volume of low-level radioactive waste (LLW) generated by medical facilities, institutions, industry, and nuclear power plants. After volume reduction, the volume reduced LLW would be shipped elsewhere for disposal. The application was filed on October 31, 1984 pursuant to the Atomic Energy Action of 1954, as amended, and the National Environmental Policy Act of 1969.

The informal hearing will commence on September 30, 1986 at 9:00 a.m., local time, in the Apollo Community Center, 405 North Pennsylvania Avenue, Apollo, Pennsylvania and will continue at the direction of the Presiding Officer.

The subject of the hearing will pertain to fourteen complaints raised by Intervenors John P. Bologna and Frutie Johnson relating to the health and safety of the public and protection of the environment, as admitted in the Memorandum and Order (Ruling on Supplemental Petitions, Procedure, and Schedule) issued June 23, 1986 (LBP-86-19) and amended by the Memorandun and Order (Ruling on Licensee's Request Relating to License Amendment for Compactor) Issued July 1, 1986 (unpublished). A late-filed petition to intervene by Ms. Cindee Virostek on behalf of the Kiski Valley Coation to Save Our Children, dated August 2, 1986 and served August 18, 1986, remains to be ruled on, pending receipt of responses from the parties.

Procedures with respect to the presentation of evidence and examination of witnesses was set forth in LBP-86-19. Questions to be answered by witnesses with respect to their testimony will be set forth in another memorandum and order to be issued in the near future.

The public is invited to attend the informal hearing. An appropriate opportunity will be provided during the course of the hearing for persons not party to the proceeding to make a limited appearance pursuant to 10 CFR 2.715(a), by means of an oral statement on the issues. The terms under which limited appearances are to be made will be established by the Presiding Officer.

It is so ordered.

Bethesda, Maryland

Presiding Officer.

Dr. Oscar H. Paris,

Administrative Judge.

[FR Doc. 86-20176 Filed 9-5-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 707; Docket No. C86-3]

Order on Filing of Complaint of United Parcel Service

Issued September 3, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

On August 28, 1986, United Parcel Service (UPS) filed a complaint with the Commission under 39 U.S.C. 3662. UPS asserts that the rates for parcel post currently do not cover their attributable costs and make no contribution to nonattributable costs. UPS requests that the Commission promptly hold hearings and issue a recommended decision to increase parcel post rates to a level sufficient to cover those costs.

UPS states that it is a competitor of the Postal Service, particularly for parcel post. UPS says that in the most recent omnibus rate case, Docket No. R84-1, the Commission found that parcel post must have a cost coverage of 116 percent to meet the requirements of the Postal Reorganization Act (Act). Citing the Commission's decision in MC86-1, UPS asserts that, in fiscal 1985, parcel post rates did not cover their attributable costs and made no contribution to nonattributable costs. UPS predicts that the cost coverage for parcel post will continue to erode. UPS reports its understanding that a postal rate increase is unlikely for 18 months to 2 years.

UPS argues that the current parcel post rates constitute unfair competition, particularly in the near zones. Citing sections 403(c) and 3622(b)(1) of the Act, UPS says the current schedule constitutes an undue or unreasonable discrimination among users, as well as an undue or unreasonable preference to certain users.

Under the Commission's rules of practice (39 CFR 3001.84) the Postal Service has 30 days to file an answer to a complaint. The date for the Postal Service's filing an answer is therefore September 29, 1986.

The Commission appoints Stephen A. Gold, Director of the Office of the Consumer Advocate, to represent the interest of the general public in this proceeding.

It is ordered:

(1) The Postal Service is to file an answer to the complaint of United Parcel Service by September 29, 1986.

(2) Stephen A. Gold, Director of the Office of the Consumer Advocate, is appointed to represent the interests of the general public in this proceeding.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 86-20111 Filed 9-5-86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24176]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 28, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 22, 1986 to the Secretary, Securities and Exchange Commission, Washington, DC. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as

amended, may be granted and/or permitted to become effective.

James River Paper Company, Inc, et al (31–817)

James River Paper Company, Inc., Tredegar Street, Richmond, Virginia 23217, a Virginia corporation whose ultimate parent is James River Corporation, a Virginia corporation, has filed an application pursuant to Section 2(a)(3) of the Act for an order declaring it and its subsidiaries (collectively, "James River") not to be an electric utility company for the purposes of the Act as a result of the transactions summarized below.

James River Corporation proposes to acquire certain assets from Premoid Corporation, a Delaware corporation ("Premoid"), and its subsidiaries, Whitman Products Limited, a New York corporation ("Whitman"), Agawam Canal Co., Inc., a Delaware corporation ("Agawam"), and Trimco Incorporated, a Massachusetts corporation ("Trimco") (collectively, "Premoid Group"). Certain of the assets ("Assets") will be transferred by the Premoid Group directly to James River, a company engaged in the specialty and communications paper businesses, at the closing of the acquisition. These Assets include (i) a plant in West Springfield, Massachusetts, at which Premoid engages in the specialty paper business and Trimco engages in the business of designing and selling artificial leather products ("Plant"), and (ii) a dam and canal owned by Agawam with which Premoid operates a hydroelectric facility ("Facility") which supplies electric power to the Plant.

Premoid has previously sold excess electric power to Western Massachusetts Electric Company ("Western"). James River also intends to sell electric power produced by the Facility in excess of the requirements of the Plant to Western. For the six months ended June 30, 1985, Premoid produced a total of 3,249,000 KWH of electricity at the Facility and purchased approximately 989,000 KWH from Western. During the period, Premoid used a total of 3,439,000 KWH and sold approximately 800,000 KWH to Western at an approximate price of $28,000. For the six months ended June 30, 1985, the assets to be sold produced net revenues of approximately $22,984,911 and net income after tax of approximately $1,882,649.

For six months ended December 27, 1985, James River had net revenues of approximately $503,134,000 and net income after tax of approximately $7,101,000. Based upon these figures, it is estimated that upon completion of the acquisition of the Assets, James River will derive an estimated 0.005% of its revenues from the sale of electricity produced at the Facility.

It is asserted that James River is primarily engaged in nonutility businesses and will sell only a small amount of electric energy to Western, it is not necessary in the public interest or for the protection of investors and consumers that James River and its subsidiaries be considered an electric utility company for purposes of the Act.

New England Electric System, et al. (70–7088)

New England Electric System ("NEES"), a registered holding company, and eight of its subsidiaries, Granite State Electric Company ("Granite"), Massachusetts Electric Company ("Mass Electric"), the Narragansett Electric Company ("Narragansett"), NEES Energy, Incorporated ("NEES Energy"), New England Electric Transmission Corporation ("NEET"), New England Energy, Incorporated ("NEEI"), New England Power Company ("NEP"), and New England Power Service Company ("NEPSCO"), 25 Research Drive, Westborough, Massachusetts 01582, have filed a post-effective amendment to the application-declaration in this proceeding pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By order in this proceeding date March 26, 1985 (HCAR No. 23642), NEES, Granite, Mass Electric, Narragansett, and NEPSCO were authorized to participate in the NEES Money Pool ("Money Pool") through March 31, 1987. NEP has also received authorization to participate in the Money Pool through December 31, 1987. (HCAR No. 23484 (November 19, 1984)). These companies, together with NEES Energy, NEET, and NEEI, now propose to amend the terms of the Money Pool in the following manner: (1) NEES Energy and NEEI would participate as lenders of their surplus funds; (2) NEET would participate both as a lender of its surplus funds and as a borrower, through March 31, 1987, of up to $10,000,000 outstanding at any one time; (3) a borrower with the ability to issue commercial paper would pay interest at a rate equal to the weighted monthly average of the rates of its own outstanding commerical paper, rather than the outstanding commercial paper of all of the members of the Money Pool, as the current terms provide; (4) members without the ability to issue commercial paper would borrow at an interest rate of 1.08 times the monthly average of the rate for high grade 30-day commercial paper sold through dealers by major corporations as published in the Wall Street Journal; and (5) among borrowers paying the same rate, loan requirements of $1,000,000 or less will be met first.

The Columbia Gas System, Inc., et al. (70–7276)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and TriStar Ventures Corporation ("TVC"), a wholly owned subsidiary of Columbia, have filed an application-delaration pursuant to sections 6(b), 9(a), 10, 12(b), and 13(b) of the Act and Rules 45, 87, 90, and 91 thereunder.

TVC proposes to issue and sell up to $25 million of common stock, $25.00 par value, and/or unsecured installment promissory notes all of which will be acquired by Columbia except that some of the notes may be issued to nonaffiliated third parties, and, if so issued, said notes may be guaranteed by Columbia. TVC proposes to use the proceeds to invest in qualifying cogeneration facilities ("Qualifying Facilities") as defined pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the rules and regulations promulgated thereunder by the Federal Energy Regulatory Commission and as permitted by Public Law No. 99–186, December 18, 1985, 99 Stat. 1180 authorizing gas utility holding company systems to acquire interests in such Qualifying Facilities. These investments in Qualifiying Facilities may be in the form of the acquisition of stock, participation in partnerships and joint ventures, the making and/or guaranteeing of loans, and entry into other contractual arrangements. TVC's investment in any Qualifying Facility will not exceed 50% of that facility's voting securities. Investments in joint ventures will also be subject to a maximum 50% participation level. To permit flexibility, TVC requests authorization to negotiate the acquisition of any such interests subject to the $25 million maximum commitment without further Commission authorization. The interest rate on the installment promissory notes proposed to be issued to Columbia will be equal to the actual cost of money to Columbia for its most recent sale of long-term debt or preferred stock. Such notes will be payable in 15 equal annual installments. No third-party financing obtained by TVC or guaranteed by Columbia will exceed a term of 10 years or bear an interest rate in excess of 115% of the prime rate in effect at the time of issuance.

It is further proposed that TVC will be furnished a variety of management, technical, financial, and legal services by Columbia Gas System Service Corporation, the service subsidiary of Columbia. In addition, employees of Columbia's distribution companies may also provide services to TVC from time to time.

American Electric Power Service Corporation, et al. (70–7296)

American Electric Power Company, Inc. ("American"), a registered holding company, and its subsidiary service corporation, American Electric Power Service Corporation ("Service Corporation"), both located at 1 Riverside Plaza, Columbus, Ohio 43215 have filed with the Commission a declaration pursuant to sections 6(a), 7 and 12(b) of the Act and Rules 42(b)(2) and 50(a)(2) promulgated thereunder.

Service Corporation seeks authorization to issue $10 million principal amount of unsecured, fixed-rate notes to banks or other financial institutions from time to time within 180 days of an order in this matter, pursuant to a fixed-rate term loan agreement ("Term Loan Agreement"). The proceeds of these fixed-rate notes will be used to refinance an unsecured, guaranteed promissory note in the principal amount of $10 million, which matures on October 14, 1986, and bears an interest rate of 11.71% per annum (HCAR No. 22926, May 3, 1983).

The Term Loan Agreement will provide that Service Corporation may pay the lender or lenders the principal amount of each note thereunder and accrued interest thereon, on a quarterly basis and reborrow the principal amount of each note on each repayment date. The fixed-rate notes will mature on a date not less than two nor more than ten years from the date of issuance. No compensating balances of commitment fees will be required. Each such note will bear interest on the unpaid principal amount at a fixed rate of interest no greater than 12% annum. American will guarantee the terms of the Term Loan Agreement.

Northeast Utilities (70–7297)

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company has filed a declaration with this Commission pursuant to section 12(b) of the Act, and Rate 45 thereunder.

NU proposes to guarantee a lease ("Lease") entered into by its subsidiary Northeast Utilities Service Company ("NUSCO") with Century Executive Park West Limited Partnership. NUSCO has determined that additional office facilities are necessary to relieve overcrowding at its Seden Street facility and to permit consolidation of activities currently located at other facilities. Accordingly, NUSCO has entered into the Lease in order to provide such facilities. The Lease is for a term of 11 years, commencing on January 1, 1986, for an annual rental amount of $906,262. NUSCO has the option to cancel the Lease after January 1, 1990.

Kentucky Power Company (70–7298)

Kentucky Power Company ("KPCo"), 1701 Central Avenue, Ashland, Kentucky 41101, a subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

KPCo proposes to sell, in a series of transactions, certain of its assets to South Central Bell Telephone Company ("South Central"). The assets to be sold consist of electric power distribution poles which are jointly used by KPCo and South Central pursuant to a Pole Joint Use Agreement effective January 1, 1986 ("Joint Use Agreement"). Pursuant to the Joint Use Agreement, KPCo may require South Central to purchase up to 5% of the jointly used poles annually until an objective of 55.625% and 44.375% ownership, respectively, by KPCo and South Central is reached. KPCo currently owns approximately 87.5% of all jointly used poles. It is proposed that South Central's purchase of the jointly used poles will be funded by the payment of cash to KPCo in amounts equal to KPCo's Embedded Pole Cost calculated for each of the series of transactions pursuant to the terms of the Joint Use Agreement. In connection with each proposed transaction, the jointly used poles to be sold will be released from the lien of KPCo's Mortgage and Deed to Trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–20185 Filed 9–5–86; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2249]

South Carolina; Declaration of Disaster Loan Area

Newberry and Union Counties and the adjacent County of York in the State of South Carolina constitute a disaster area due to heavy rains and flash flooding which occurred August 18–20, 1986. Applications for loans for physical damage may be filed until the close of business on October 27, 1986, and for economic injury until the close of business on May 27, 1987, at the address listed below. Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Building, 75 Spring Street, SW., Suite 822, Atlanta, Georgia 30303.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Business with credit available elsewhere	8.000
Business withot credit available elsewhere	4.000
Business (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 224906 for physical damage and for economic injury the number is 643400.

(Catolog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: August 27, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86–20118 Filed 9–5–86 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Helena, Montana, will hold a public meeting at 9:30 a.m. on Friday, October 24, 1986, at the Federal Office Building, 301 South Park, Room 289, Helena, Montana, to discusss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Building, 301 South Park, Drawer 10054, Helena, Montana 59626—(406) 449–5381.

Jean M. Nowak,

Director, Office of Advisory Council.

August 26, 1986.

[FR Doc. 86–20119 Filed 9–5–86 8:45 am]

BILLING CODE 8025–01–M

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 29, 1986

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.) The due date for answers, conforming application, or motions 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. 44284

Date Filed: August 25, 1986.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 22, 1986.
Description. Application of Florida Express, Inc., pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations, requests authority to engage in foreign air transportation of persons, property, and mail for scheduled service between the following points: In the State of Florida: Orlando, Fort Lauderdale, Tampa and Palm Beach, on the one hand, and the Bahamas.

Docket No. 44312

Date Filed: August 29, 1986.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 22, 1986.
Description: Application of Compagnie National Air France, pursuant to section 402 of the Act and Subpart Q of the Regulations, for amendment of its foreign air carrier permit to incorporate the route changes which are the subject of the 1986 amendments to the French/U.S. bilateral Air Transport Services agreement.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 86-20154 Filed 9-5-86; 8:45 am]
BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During Week Ending August 29, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44293

Parties: Members of International Air Transport Association.
Date Filed: August 26, 1986.
Subject: Amend Rounding-Off Factor ex-Egypt Fares.
Proposed Effective Date: September 1, 1986.

Docket No. 44294

Parties: Members of International Air Transport Association.
Date Filed: August 26, 1986.
Subject: Delete 3% ULD Increase from UK to Japan.
Proposed Effective Date: October 1, 1986.

Docket No. 44300

Parties: Members of International Air Transport Association.
Date Filed: August 27, 1986.
Subject: Amend Proportional Rates for Japan.
Proposed Effective Date: October 1, 1986.

Docket No. 44301

Parties: Members of International Air Transport Association.
Date Filed: August 27, 1986.
Subject: Special Cargo Amending Resolution from People's Republic of China.
Proposed Effective Date: October 1, 1986.

Docket No. 44302

Parties: Members of International Air Transport Association.
Date Filed: August 27, 1986.
Subject: Family Fare from Japan to USA—New.
Proposed Effective Date: October 1, 1986.

Docket No. 44303

Parties: Members of International Air Transport Association.
Date Filed: August 27, 1986.
Subject: Family Fares from Japan to Guam/Saipan.
Proposed Effective Date: October 1, 1986.

Docket No. 44311

Parties: Members of International Air Transport Association.
Date Filed: August 28, 1986.
Subject: Amend Adjustment Factors—Japan to Europe.
Proposed Effective Date: October 1, 1986.

Docket No. 44314

Parties: Members of International Air Transport Association.
Date Filed: August 29, 1986.
Subject: Increase in Rates from Madagascar.
Proposed Effective Date: September 1, 1986.

Docket No. 44315

Parties: Members of International Air Transport Association.
Date Filed: August 29, 1986.
Subject: Canada/US-Israel Fares.
Proposed Effective Date: September 15, 1986.

Phyllis T. Kaylor,
Chief, Documentary Service Divisions.
[FR Doc. 86-20153 Filed 9-5-86; 8:45 am]
BILLING CODE 4910-62-M

Coast Guard

[CGD 86-052]

Coast Guard Academy Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Coast Guard Academy Advisory Committee to be held in Hamilton Hall at the U.S. Coast Guard Academy, New London, CT on Wednesday and Thursday, October 8 and 9, 1986. The open session on Wednesday will be held from 1:30 p.m. to 3:30 p.m. Another open session will be held on Thursday from 9:00 a.m. to 11:00 a.m. The agenda for this meeting consists of the following items:

1. Faculty
2. Curricula

The Coast Guard Academy Advisory Committee was established in 1973 by Pub. L. 75-38 to advise on the course of instruction at the Academy and to make recommendations as necessary. Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Capt. David A. Sandell, USCG, Dean of Academics/Executive Secretary of the Academy Advisory Committee, U.S.

Coast Guard Academy, New London, CT 06320, phone (203) 444–8275.

Issued in Washington, DC on August 27, 1986.

James C. Irwin,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 86–20163 Filed 9–5–86; 8:45 am]

BILLING CODE 4910–14–M

[CGD–86–042]

Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Sea (72 COLREGS)

AGENCY: Coast Guard, DOT.

ACTION: Notice of granting of certificates of alternative compliance to vessels.

SUMMARY: This notice lists commercial vessels granted Certificates of Alternative Compliance between May 20, 1982 and October 22, 1985. This notice lists vessels which, due to their special construction and purpose, cannot comply fully with certain provisions of the International Regulations for Preventing Collisions at Sea (72 COLREGS) without interfering with the vessels' special functions. The intent of this notice is to allow the mariner to be aware of the listing of these commercial vessels that have been granted Certificates of Alternative Compliance.

EFFECTIVE DATE: September 8, 1986.

FOR FURTHER INFORMATION CONTACT: LTJG Edward D. Zacharias, Office of Navigation, U.S. Coast Guard, (G–NSR–3), 2100 Second Street, SW., Washington, DC, 20593. Telephone (202) 267–0362.

SUPPLEMENTARY INFORMATION: Under the provisions of subsection 1605(c) of Title 33 United States Code, the Coast Guard publishes, in the **Federal Register**, a listing of vessels granted Certificates of Alternative Compliance. Certificates of Alternative Compliance are based on a determination that a vessel cannot comply fully with International Rules of light(s), shape(s), and sound signal provisions without interference with the vessel's special function. The listing consists of commercial vessels granted certificates after authority of issuance was transferred to the Chief of the Marine Safety Division of the Coast Guard Districts on April 1, 1982 (33 CFR 81). The alternative allowed results in the closest possible compliance with Annex I of the 72 COLREGS. The Coast Guard has on record a total of 142 vessels that were granted Certificates of Alternative Compliance between May 20, 1982 and October 22, 1985. These vessels are incapable of complying with the 72 COLREGS light provisions. The following commercial vessels are not in compliance with the 72 COLREGS and have been issued Certificates of Alternative Compliance.

Vessel and Official Number

The following vessel's after masthead lights are obstructed by a crane through their arc for one degree on either side of the centerline of the vessel:

1st Lt Alex Bonnyman.....680897
Cpl. Louis J. Hauge, Jr.....671969

The following vessel's two sets of "restricted in ability to maneuver" lights are obstructed by a crane and shall be positioned on the mast to provide a full 360° arc of visibility:

Dredge Wheeler..... Hull No. 2322

The following vessel's after masthead light is located 22.22 meters above the main deck:

Gem State..... 501712

The following vessels carry the masthead light on the centerline at a horizontal distance of 21.82 meters from the stem:

Glomar Arctic I.....654313
Glomar Arctic II.....654314
Glomar Arctic III.....654315

The following vessels' after masthead light is spaced horizontally 17.26 meters from the forward masthead light:

M/V Gulf Fleet No. 65.....659218
M/V Gulf Fleet No. 66.....661148
M/V Gulf Fleet No. 67.....665295
M/V Gulf Fleet No. 68.....667084
M/V Gulf Fleet No. 69.....669018
M/V Gulf Fleet No. 70.....674683

The following vessel's after masthead light is obstructed by a crane:

S/S Keystone State.....502569

The following vessel displays one all-round light instead of a masthead and sternlight. The vessel displays flare-up lights instead of restricted in ability to maneuver lights:

M/V Lakewood.....127752

The following vessel's forward masthead light is less than 60 feet from the stem of the vessel:

M/V Nantucket Clipper.....677685
M/V Newport Clipper.....661485

The following vessel's sidelights are forward of the masthead light. The vessel displays flare-up lights instead of restricted in ability to maneuver lights. The vessel's dredge side/safe lights are obstructed from view:

M/V Markham Usacoe ID No.....6002795

Dredge

The following vessel's masthead lights for towing are carried in the after mast position and split into two fixtures showing 10 points on either side of the vessel. The Not Under Command and Restricted In Ability To Maneuver lights are split and displayed at the side of the vessel. The shape for indicating a tow in excess of 200 meters cannot be seen from right ahead to 40 degrees forward of the beam on each side of the vessel. The not under command, restricted in ability to maneuver and aground shapes will be displayed on each side of the vessel to achieve all-round visibility. The forward masthead light is carried 5.39 meters (7.7 feet) above the hull. The after masthead light is carried at a horizontal separation of 19.89 meters (65.3 feet) aft of the forward masthead light:

R/V Moanna Wave.....I.D. No. HA 202XS

The following vessel carries a 260° white light at the stern:

M/V Ocean Explorer.....296607

The following vessel carries the sidelights forward of the masthead light:

M/V Tug Ohio.....200669

The following vessels carry the sidelights forward of the masthead light. The vessels after masthead light is 15.0 feet above the forward masthead light:

M/V PBI–MK1..... Hull No. 9511.
PFC. James Anderson, Jr.....679513

The following vessel has the forward and after masthead lights 10 feet off the centerline:

M/V Plattsburgh.....676440

The following vessel carries the forward masthead light 3.58 meters above the hull, and the after masthead light 3.11 meters above the forward masthead light:

M/V Point Counterpoint II.....571776

The following vessels carry the forward anchor light 12 feet 4 inches above the hull. The after anchor light is 1 foot 5 inches higher than the foward anchor light. The sidelights are 7 feet 4 inches in front of the forward masthead light:

Potomac..... ID No. AG 25
PVT. Harry Fisher.....684591

The following vessel carries the masthead light 22.0 feet above the main deck:

M/V Reiss Marine.....591064

The following vessel carries the masthead light 1 meter higher than the sidelights:

M/V Tigertayl.....659626

The following vessel carries the masthead light 16 feet 11 inches above the main deck. The towing masthead lights are spaced 26 inches apart. The sidelights are 26 inches below the towing lights:

M/V Tug South Carolina 224431

The following vessel carries the masthead light 19 feet 10 inches above the main deck. The center towing masthead light is 49 inches above the masthead light, and the top towing masthead light is 36 inches above the center towing masthead light:

M/V tug Superior 210354

The following vessel carries the towing masthead lights 28 inches apart. The sidelights are 28 inches below the lowest towing masthead light and also forward of the masthead light:

M/V Tug Wisconsin 107302

The following vessels carry the masthead light 13.0 feet above the main deck, the towing mathead lights are spaced 16 inches apart, and the sidelights are 16 inches below the lowest towing masthead light:

M/V Arkansas 206972
M/V Arizona 230656
M/V Alabama 214376
M/V Colorado 227317
M/V Kansas 226596
M/V Massachusetts 227318
M/V Minnesota 208339
M/V Nebraska 228273
M/V Nevada 229795
M/V New Mexico 208117
M/V New York 211165
M/V North Dakota 207930
M/V Vermont 212455
M/V Washington 224791
M/V Wyoming 229004
M/V Tug Oklahoma 211746

The following vessels carry the masthead light 13.0 feet above the main deck, the towing masthead lights are spaced 16 inches apart, and the sidelights are foward of the masthead light:

M/V California 225914
M/V Connecticut 226554
M/V Delaware 223616
M/V Idaho 231180
M/V Illinois 212542
M/V Indiana 208915
M/V Iowa 213586
M/V Kentucky 229122
M/V Louisiana 214846
M/V Mississippi 214556
M/V Montana 228335
M/V New Jersey 223623
M/V Oklahoma 211746
M/V Pennsylvania 209376
M/V Rhode Island 230088
M/V Tennessee 214797
M/V Texas 214624
M/V Utah 206840
M/V Virginia 212640

The following vessels carry the after (second) masthead light at a designated horizontal distance from the forward masthead light:

Vessel	Official No.	After masthead light carried at a designated horizontal distance (in meters) from the forward masthead light
M/V Amanda Graham	672038	15.86 m
M/V Argosy Navigator	674683	14.64 m
M/V Argosy Pilot	67484	14.64 m
M/V Big Orange XXI	674377	15.25 m
M/V Gulf Service	682579	18.95 m
M/V Kenda	679511	16.39 m
M/V Laney Chouest	680844	16.46 m
M/V Indian Seal	557401	14.03 m
M/V Argosy Captain	663403	14.60 m
M/V Agnes Candies	659398	15.24 m
M/V Abshire Tide	663944	18.60 m
M/V Jan Tide	663943	18.60 m
M/V Al Tide	624385	14.60 m
M/V Boh Tide	617785	16.01 m
M/V Lulu Tide	620317	14.03 m
M/V Mire Tide	607756	17.10 m
M/V Munson Tide	618064	14.60 m
M/V Norris Tide	598140	15.80 m
M/V Pourciau Tide	619718	14.60 m
M/V Ramey Tide	608076	17.10 m
M/V Sutton Tide	597200	15.80 m
M/V Bolling Tide	619050	16.01 m
M/V Cannon Tide	620434	16.01 m
M/V Guillot Tide	593163	15.80 m
M/V Jensen Tide	606595	17.10 m
M/V Laughlin Tide	590788	15.80 m
M/V Loupe Tide	599087	15.80 m
M/V Toby Tide	618175	16.01 m
M/V Verret Tide	604111	17.10 m
M/V Wise Tide	621939	16.01 m
M/V Marsea Seventeen	6431121	14.60 m
M/V GSI Alaskan	656833	13.87 m
M/V Ramona Graham	656083	16.15 m
M/V Nicor Rebel	655966	17.98 m
M/V Nicor Power	659158	19.50 m
M/V Inter Service	655448	15.24 m
M/V Cape Fear	Hull No. 38	14.63 m
M/V William Tide	Hull No. 1078	15.24 m
M/V Sea-Fab 143	Hull No. 143	15.85 m
M/V Pro Surveyor	Hull No. 170	15.85 m
M/V Pro Navigator	Hull No. 171	15.85 m
M/V Clark Graham	Hull No. 162	15.85 m
M/V Sybil Graham	Hull No. 163	15.85 m
M/V PBR 385	Hull No. 1012	15.20 m
North American Ship Bldg. (Vessel Name Unknown)	Hull No. 125	18.60 m
M/V Petromar Sentry	Hull No. 1077	15.24 m
M/V Petromar Titan	Hull No. 1078	15.24 m
Gulf Outlet Marine Services (Vessel Name unknown)	Hull No. 9	15.24 m
M/V Petromar Quest	Hull No. 1079	15.24 m
M/V Petromar Royale	Hull No. 1080	15.24 m
M/V Point Bravo	Hull No. 1083	15.24 m
M/V Point Chaleur	Hull No. 1084	15.24 m
M/V Point Liberty	Hull No. 1085	15.24 m
M/V Point Normandy	Hull No. 1086	15.24 m
M/V Gulf Fleet 61	Hull No. 182	17.67 m
M/V Gulf Fleet 62	Hull No. 183	17.67 m
M/V Gulf Fleet 63	Hull No. 184	17.67 m
Leevac Shipyards (Vessel Name Unknown)	Hull No. 283	16.76 m
M/V Nicor Republic	Hull No. 35	17.98 m
M/V Nicor Empire	Hull No. 34	17.98 m
M/V Nicor Rebel	Hull No. 33	17.98 m
M/V Nicor Yankee	Hull No. 32	17.98 m
Sterkoder Mek Versted (Vessel Name Unknown)	Hull No. 100	14.50 m
Sterkoder Mek Versted (Vessel Name Unknown)	Hull No. 101	14.50 m
Sterkoder Mek Versted (Vessel Name Unknown)	Hull No. 103	14.50 m
Sterkoder Mek Versted (Vessel Name Unknown)	Hull No. 104	14.50 m
Halter Marine Inc. (Vessel Name Unknown)	Hull No. 1061	15.24 m
(Vessel Name Unknown)	Hull No. 100	17.00 m
Hudson Shipbuilders, Inc. (Vessel Name Unknown)	Hull No. 101	17.00 m
Hudson Shipbuilders, Inc. (Vessel Name Unknown)	Hull No. 106	17.00 m
Champion Swiftships (Vessel Name Unknown)	Hull No. 011	15.14 m
Champion Swiftships (Vessel Name Unknown)	Hull No. 010	15.14 m
Champion Swiftships (Vessel Name Unknown)	Hull No. 009	15.14 m
Leevac Shipyards (Vessel Name Unknown)	Hull No. 286	15.30 m
Leevac Shipyards (Vessel Name Unknown)	Hull No. 287	15.30 m

Dated: August 27, 1986.
Signed:
Martin H. Daniell,
RADM, USCG Chief, Office of Navigation.
[FR Doc. 86-20160 Filed 9-5-86; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 602; Ref: ATF O 1100.99B]

Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 25, Beer

Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* ATF O 1100.99A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 245, Beer, dated July 30, 1984, is canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to breweries. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by the Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To prescribe all forms required by regulations including bonds,

applications, notices, reports, returns and records, under 27 CFR 25.3.

b. To approve applications by a brewer desiring to use a brewery for other purposes, not involving the production of beer or cereal beverage, under 27 CFR 25.23(c).

c. To approve the use of an alternate method or procedure, from those specified in regulations, for details of construction, equipment or methods of operation under 27 CFR 25.52(a)(3).

d. To withdraw approval of an alternate method or procedure, if the revenue is jeopardized or effective administration of the regulations is hindered by the approval, under 27 CFR 25.52(d).

e. To grant hearings and render final decisions on disapproved bonds or consents of surety, under 27 CFR 25.101(b).

f. To require the actual place of production to be shown on labels when the brewer's name, trade name, or brand name includes the name of a city which is not the place where the beer was produced, under 27 CFR 25.142(c).

g. To determine the similarity of a container to a bottle or can and the similarity of a container to a barrel or keg, under 27 CFR 25.155.

5. *Redelegation.*

a. The authorities in paragraphs 4a, 4b, 4c and 4d above may be redelegated to Bureau Headquarters personnel not lower than the position of branch chief.

b. The authorities in paragraphs 4f and 4g above may be redelegated to Bureau Headquarters personnel not lower than the position of ATF specialist.

c. The authority in paragraph 4b above to approve applications to use the brewery for other purposes which are in the public interest because of emergency conditions may be redelegated to regional directors (compliance), who may redelegate this authority to personnel no lower than the position of chief, technical services or area supervisor.

d. The authorities in paragraphs 4b and 4c above may be redelegated to regional directors (compliance) to approve, without submission to Headquarters, requests which are identical to those previously approved by Bureau Headquarters. Regional directors (compliance) may redelegate these authorities to personnel not lower than the position of technical section supervisor.

e. The authority in paragraph 4e above may not be redelegated.

6. *For Information Contact.* Robert Trainor, Procedures Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202) 566-7602.

7. *Effective Date.* This delegation order becomes effective on September 8, 1986.

Approved: August 25, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86-20057 Filed 9-5-86; 8:45 am]

BILLING CODE 4810-13-M

[Notice No. 603; Ref: ATF O 1100.91B]

Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 20, Distribution and Use of Denatured Alcohol and Rum

Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* ATF O 1100.91A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 211, Denatured Alcohol and Rum, dated May 10, 1984, is canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to the distribution and use of denatured alcohol and rum. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To prescribe all forms required by regulations under 27 CFR 20.21(a).

b. To approve, pursuant to written applications, alternate methods or procedures (including alternate construction or equipment, but excluding action on general-use formulas) in lieu of methods or procedures specifically prescribed in regulations, under 27 CFR 20.22(a).

c. To withdraw approval of any alternate method or procedure whenever the revenue is jeopardized or the effective administration of the regulations is hindered, under 27 CFR 20.22(c).

d. To issue permits, pursuant to 27 CFR 20.242, to cover the use of specially denatured spirits by the United States or a governmental agency, under 27 CFR 20.25.

e. To approve the printing of extraneous matter on labels which are to be used on containers of completely denatured alcohol of 5 gallons or less, under 27 CFR 20.147.

f. To authorize other marks to be placed on the Government head or side of a package, under 27 CFR 20.178.

g. To approve applications and grant permits on ATF Form 5150.33, Spirits for Use of the United States, for the procurement and withdrawal of specially denatured spirits for use by the United States or any governmental agency, and to receive evidence of authority to sign for the head of an agency or subagency, under 27 CFR 20.242.

h. To cancel permits issued under 27 CFR 20.245.

i. To authorize the disposition of excess specially denatured spirits in the possession of a governmental agency, under 27 CFR 20.246.

5. *Redelegation.*

a. The authorities in paragraphs 4a and 4c above may be redelegated to personnel in Bureau Headquarters not lower than the position of branch chief.

b. The authorities in paragraphs 4b and 4d through 4i above may be redelegated to personnel in Bureau Headquarters not lower than the position of ATF specialist.

c. The authority in paragraph 4b above may be redelegated to regional directors (compliance) to approve, without submission to Bureau Headquarters, subsequent applications for alternate methods or procedures and processes which are identical to those previously approved by Bureau Headquarters. Regional directors (compliance) may redelegate this authority to personnel not lower than the position of technical section supervisor.

d. The authority in paragraph 4i above may be redelegated to regional directors (compliance), who may redelegate this authority to personnel not lower than the position of technical section supervisor or area supervisor.

e. The authority in paragraph 4c above may be redelegated to regional directors (compliance) to withdraw approval of alternate methods or procedures which were approved at the regional level. Regional directors (compliance) may redelegate this authority to personnel not lower than the position of chief, technical services.

f. The authority in paragraph 4f above may be redelegated to regional directors (compliance), who may redelegate this authority to personnel not lower than

the position of technical section supervisor.

6. *For Information Contact.* Mary B. Lerch, Procedures Branch, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202) 566–7602.

7. *Effective Date.* This delegation order becomes effective on September 8, 1986.

Approved: August 25, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86–20058 Filed 9–5–86; 8:45 am]

BILLING CODE 4820–13–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Jill Cottine, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joe Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 2, 1986.

By direction of the Administrator.

Raymond S. Blunt,

Director, Office of Program Analysis and Evaluation.

Extension

1. Department of Veterans Benefits.
2. Veterans' Job Training Act (previously named the Emergency Veterans' Job Training Act of 1983).
3. VA Forms 22–8929, 22–8930, 22–8931 and 22–8932.
4. On occasion; Monthly; and Quarterly.
5. Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.
6. 217,000 responses.
7. 109,135 hours.
8. Not applicable.

Extension

1. Department of Medicine and Surgery.
2. Authorization and Invoice for Medical and Hospital Services.
3. VA Form 10–7078.
4. Non-recurring.
5. Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.
6. 252,000 responses.
7. 10,080 hours.
8. Not applicable.

[FR Doc. 86–20166 Filed 9–5–86; 8:45 am]

BILLING CODE 8320–01–M

Special Medical Advisory Group; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Special Medical Advisory Group will be held on September 18 and 19, 1986. The session on September 18 will be held at the Sheraton Carlton Hotel, 923 Sixteenth Street, NW., Washington, DC 20006, and the session on September 19 will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The purpose of the Special Medical Advisory Group is to advise the Administrator and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery.

The session on September 18 will convene at 6 p.m. and the session on September 19 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Kathy Eller, Secretary, Office of the Chief Medical Director, Veterans Administration Central Office (phone 202/389–5156) prior to September 12, 1986.

Dated: August 27, 1986.

Rosa Maria Fontanez,

Committee Management Office.

[FR Doc. 86–20167 Filed 9–5–86; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 173
Monday, September 8, 1986

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).

CONTENTS

1

COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue, NW, Room 512, Washington, DC 20425.

DATE AND TIME: Thursday, September 11, 1986, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of July Meeting
III. Staff Director's Report (July and August)
  A. Status of Funds
  B. Personnel Report
  C. Office Director's Reports
IV. Updated Findings and Recommendations of the Alabama Advisory Committee Report on Police/Community Relations in Montgomery
V. Rhode Island SAC Report
VI. Economic Progress of Black Men in America
VII. Commission Appropriation for Fiscal Year 1987
VIII. Civil Rights Development in Northwestern Region

FOR FURTHER INFORMATION PLEASE CONTACT: Barbara Brooks, Press and Communications Division, (202) 376–8314.

William H. Gillers,

Solicitor, 376–8339.

[FR Doc. 86–20265 Filed 9–4–86; 2:14 pm]

BILLING CODE 6335-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

FCC to hold open Commission meeting Wednesday, September 10, 1986 at 2:30 P.M.

September 3, 1986

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, September 10, 1986, which is scheduled to commence at 2:30 P.M., in Room 856, at 1919 M Street, NW., Washington, DC

Agenda, Item No., and Subject

Hearing—1—Title: Motion for Waiver of § 1.301(b) and Petition for Leave to File Applications, Approval of Settlement Agreement and Related Relief in the Los Angeles, California KHJ–TV (RKO) comparative renewal proceeding. Summary: The Commission will consider a Joint Motion to waive its rules prohibiting appeals of ALJ's interlocutory rulings in Docket Nos. 16679 and 16680. The parties request waiver in order to enable the Commission to address the parties' proposed settlement agreement of this comparative case.

Private Radio—1— Title: Amendment of Part 90 Subpart M and S of the Commission's Rules. Summary: The Commission will consider whether to adopt a Notice of Proposed Rule Making which addresses the elimination of Subpart M and the modification of Subpart S as it applies to trunked Specialized Mobile Radio systems.

Common Carrier—1—Title: In the Matter of Notice of Proposed Rulemaking to Amend Part 31 Uniform Systems of Accounts for Class A and B Telephone Carriers to Account for Judgments and other Costs Associated with Antitrust Lawsuits, and Conforming Amendments to the Annual Report Form M (CC Docket No. 85–64). Summary: The Commission will consider a Report and Order adopting policies and rules governing the manner in which carriers subject to the USOA are to record payments incurred for antitrust judgments and settlements, and the expenses of litigating antitrust proceedings.

Mass Media—1—Title: Telecommunications in the TV Vertical Blanking Interval. Summary: The Commission will consider adoption of a Report and Order concerning the use of certain lines in the TV vertical blanking interval for telecommunication purposes.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino FCC Office of Congressional and Public Affairs, telephone number (202) 254–7674.

Issued: September 3, 1986.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–20223 Filed 9–4–86; 10:48 am]

BILLING CODE 6712-01-M

3

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE:

Wednesday, September 24, 1986 (9:00 a.m.—4:30 p.m.)
Thursday, September 25, 1986 (9:00 a.m.—11:30 a.m.)

PLACE: Quality Inn Pentagon City, 300 Army Navy Drive, Arlington, Virginia.

STATUS: Federal Savings and Loan Advisory Council.

CONTACT PERSON FOR MORE INFORMATION:

John M. Buckley, Jr. (202/377–6577)
Debra J. Ahearn (202/377–6924)

MATTERS TO BE CONSIDERED:

1. FSLIC insured institutions vs. FDIC insured institutions—cost of funds currently being paid.
2. Policies and procedures regarding utilization of anticipated additional funds from recapitalization plan.
3. FSLIC/FDIC Mergers.
4. FSLIC institutions converting from FSLIC to FDIC insurance.

No. 7, September 4, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86–20283 Filed 9–4–86; 8:45 am]

BILLING CODE 6720-01-M

federal register

Monday
September 8, 1986

Part II

Occupational Safety and Health Review Commission

29 CFR Part 2200
Rules of Procedure; Final Rule

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: This document thoroughly revises the procedural rules for adjudicative proceedings before the Occupational Safety and Health Review Commission and its Administrative Law Judges. The revisions codify rules that have been developed by Commission and appellate court decisions and modify existing rules or create new rules to remedy recurring procedural problems. The Commission's experience under its present rules had revealed the need for this comprehensive revision. The rulemaking proceedings conducted by the Commission have confirmed this necessity. The Commission therefore adopts these revised rules to allow the parties to conduct their litigation before the Commission and its Judges with greater speed, economy and fairness.

EFFECTIVE DATE: These revised rules will take effect on December 8, 1986. They apply to all cases docketed on or after that date. They also apply to further proceedings in cases then pending, except to the extent that their application would be infeasible or would work injustice, in which event the present rules apply.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, (202) 634-4015.

SUPPLEMENTARY INFORMATION:

Rulemaking Proceedings

On June 25, 1986, the Occupational Safety and Health Review Commission published in the **Federal Register** a proposal to adopt a comprehensive revision of its Rules of Procedure. 51 FR 23184-23208. The notice fully explained the procedures followed by the Commission in developing its proposal and the basis and purpose of the proposed rules. The notice included a request for public comment.

In response, 21 organizations and individuals filed comments with the Commission. These commentators capably represented the full spectrum of those who will be affected by the revised rules. The most extensive comments were filed by the Deputy Solicitor of Labor on behalf of the Secretary of Labor. The Office of the Solicitor represents the Secretary in all adjudicative proceedings before the Commission. The other parties in Commission proceedings are employers who have been cited by the Secretary for alleged violations of the Occupational Safety and Health Act of 1970, affected employees and employee representatives. Four attorneys in private practice who have represented employers in proceedings before the Commission filed comments, as did three unions that have represented affected employees.

Aside from the parties, those most directly affected by the Commission's Rules of Procedure are the Commission's Administrative Law Judges, whose proceedings are governed by these rules. Two Judges served on the Rules Committee that assisted the Commission in developing both the proposed and the final rules. In addition, the Rules Committee solicited the views of all of the Commission's Judges before preparing the committee's recommendations. Finally, nine of the Commission's Judges, including the Chief Administrative Law Judge, presented their comments and suggestions on the proposed rules.

The Commission also received comments from the following groups and individuals: the Administrative Conference of the United States (ACUS); the Motor Vehicle Manufacturers Association; James T. O'Reilly, an author and teacher in the labor and administrative law fields; and Susan Hnatt-Topf, an environmental inspector. The Commission gratefully acknowledges its receipt of all of these comments and assures the commentators that all comments were fully considered, though they may not be specifically mentioned here.

Following its receipt of the comments, the Commission met in joint session with its Rules Committee to consider the comments and to develop the final rules set forth in this document. The meeting was open to the public under the Government in the Sunshine Act, 5 U.S.C. 552b, and sessions were held on four different days. Numerous changes were made in the proposed rules, in response to comments or at the suggestion of individual Commissioners. Other changes urged by the commentators were considered but rejected. The final rules adopted by the Commission are the end product of this deliberative process.

Unchanged Rules

Many of the rules proposed by the Commission elicited only favorable comments or no comments. Those rules require no further discussion. The Commission has adopted those rules for the reasons stated in its notice of proposed rulemaking. 51 FR 23184–23208. Only those rules that commentators proposed changes in or the Commission changed are discussed here.

Computation of Time

Section 2200.4(a) instructs practitioners how to compute "any period of time prescribed or allowed in these rules." The proposed rule included the following provision: "When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and Federal holidays shall be excluded from the computation." The Secretary urged that the number "11" be substituted for "7" to eliminate the difference between the Commission's rule and Fed.R.Civ.P. 6(a) as it was recently amended. The Commission agreed with this suggestion and changed its final rule accordingly.

Extensions of Time

Section 2200.5 establishes procedures governing motions to extend filing deadlines. The proposed rule required that all such motions be made in writing, but "in exigent circumstances" permitted an oral request followed by a written motion. One of the unions urged that this rule be modified to "make clear that the oral requests must be done by conference call to include all the parties to the extent possible and if a party can not be notified the judge should be so advised."

The Commission rejected this suggestion. In its view, any marginal benefit that might be gained by imposing these requirements would be outweighed by the loss of needed flexibility in the procedures for handling requests for extension of time. The commentator presumably is concerned with the problem of a union or employee party not being notified when the Secretary or the employer seeks an extension of time. Based on its experience, the Commission does not believe that this is a significant problem. In the usual situation, the party requesting an extension of time will on his own initiative seek the concurrence of all other parties to the proceeding. If the requesting party does not do this, the judge will normally condition his granting of the motion on prompt notification of all other parties. In those rare situations where a party does not receive notice of the oral request, notice will be given under these revised rules when the follow-up written motion is filed and served. The Commission believes that this provides adequate protection for the non-requesting parties.

The Commission did, however, make an unrelated change in its proposed rule. The first sentence has been modified to make clear that the rule applies to the extension of deadlines established by order of the Commission or its Judges as well as to the extension of time periods prescribed in the Commission's rules. With this slight modification, the Commission adopted its proposed rule as its final rule.

Service and Notice

Section 2200.7 is the Commission's general rule on service and notice requirements. The final rule contains several provisions that differ from the proposed rule, in paragraphs (a), (g), (i) and (j). These changes will be discussed later in this document, in connection with §§ 2200.20, 2200.52 and 2200.60. With the exceptions of the modified provisions in paragraphs (a), (g), (i) and (j), the final revised rule is the same as the present rule.

Filing—Number of Copies

Section 2200.8(c) instructs practitioners as to how many copies of pleadings and other documents they must file with the Commission or the Judge. One of the Judges correctly observed that, under the proposed rule, parties would be required to file multiple copies of documents during the time period when a case is still before the Commission because it has not yet been assigned to a Judge. At that stage of the proceeding, multiple copies serve no useful purpose. The Commission therefore revised its final rule to provide that multiple copies shall be filed only if the case is pending before the Commission for purposes of review. When the case is pending before a Judge or if it has not yet been assigned to a Judge, only the original of the document will be filed.

The same Judge also suggested that there is an inconsistency between §§ 2200.8(c) and 2200.91(h). Section 2200.91(h) requires parties to file an original and *three* copies of a petition for discretionary review or a statement in opposition to a petition. However, § 2200.8(c) requires parties to file an original and *four* copies of documents when the case is pending before the Commission on review.

At the outset, the Commission notes that there is no conflict between these two rules. Section 2200.8(c) is a general provision that applies "[u]nless otherwise . . . stated . . . ." Thus, with respect to PDR's and statements in opposition, the general provision is preempted by the specific provision at § 2200.91(h). Also, while the two requirements are different, they are not inconsistent. For internal administrative reasons, the Commission needs one less copy of PDR's and statements in opposition than it does of other review documents, notably the parties' briefs on review. Thus, the difference between the two rules is intentional.

Trade Secrets and Other Privileged or Confidential Matters

Extensive comments were filed by Mr. O'Reilly concerning the handling of trade secret issues under the Commission's proposed Rules of Procedure. In particular, Mr. O'Reilly raised concerns over future litigation under 29 CFR 1910.1200, the Secretary's hazard communication standard. As pointed out by Mr. O'Reilly, the principal issue in some of the cases arising under this standard will be whether particular information is properly classified as a trade secret.

While Mr. O'Reilly suggested that the Commission develop a separate and more stringent rule for handling § 1910.1200 cases, his comments caused the Commission to re-examine the adequacy of the rule in all cases. As a result of this re-examination, the Commission decided to substantially revise proposed § 2200.11. The Commission believes that the new rule at § 2200.11 that it has adopted as its final rule will provide adequate protection in all cases involving trade secrets, as well as other privileged or confidential information, including cases arising under § 1910.1200.

It bears emphasis that the revised rule applies to all claims of privilege that are asserted before the Commission at any stage in the proceedings. Several of the comments concerning the proposed rule revealed a need to clarify the scope of the rule. For example, the Secretary raised the question of whether the rule would cover an employee's "substantial privacy interest in . . . medical records [maintained by his employer]." He noted that "personally identifiable medical records of an individual" might not, strictly speaking, be considered "privileged" information entitled to protection under the rule, although the Commission and the courts, including the Supreme Court, have recognized the confidential nature of this information. In connection with another rule, Mr. O'Reilly raised the question of whether the term "privileged" includes both the statutory privilege created by section 15 of the Occupational Safety and Health Act, 29 U.S.C. 664, and 18 U.S.C. 1905, and the evidentiary privileges recognized under the Federal Rules of Evidence. Finally, Ms. Hnatt-Topf objected to the prospect that the Commission would "expand" trade secret protection.

Taking this last comment first, the Commission notes that it misapprehends the rule. The Commission's final rule at § 2200.11 contains no substantive provisions governing the determination of what matters are trade secrets and what matters are otherwise classified as "privileged' or "confidential" information. Instead, the Commission's rule merely establishes procedures to be followed to protect the confidentiality of matters that are entitled to protection under other sources of substantive law. In response to the questions raised by the Secretary and by Mr. O'Reilly, the Commission notes that the privileges asserted may be based on statute (e.g., 29 U.S.C. 664 and 18 U.S.C. 1905), the Federal Rules of Evidence, a regulation (e.g., § 1910.1200) or case law (e.g., the employee's privacy interest in his medical records). As stated in § 2200.11(a), the rule applies to any "information the confidentiality of which is protected by law."

The rule also applies to claims that are raised at any point in the proceeding. For example, the rule applies to discovery procedures that could lead to the disclosure of privileged information. Indeed, a specific provision has been included in the rule relating to requests for entry upon land. Often in the Commission's experience, such requests by the Secretary have led to claims by the employer that an entry upon land for the purpose of preparing an expert witness to give testimony at the hearing would lead to the disclosure of trade secrets. Under § 2200.11(f)(3), the Judge has the authority in this situation to stay the proceedings before him so that the Secretary may seek to obtain a search warrant or some other court order compelling entry and containing judicially enforceable protective conditions. In response to comments by unions on a related proposed rule, this provision has been broadly written to cover situations where the party seeking entry is not the Secretary.

The rule also applies in a situation described by Mr. O'Reilly. Mr. O'Reilly noted that, in the process of establishing a trade secrets claim, a party may be compelled to divulge privileged or confidential information. The Commission's final rule is written broadly enough to cover such matters as affidavits or testimony offered in support of a claim of privilege, when the supporting evidence is itself privileged or confidential. (E.g., § 2200.11(d)—"In examining a claim of privilege, the Judge may enter such orders and impose such

terms and conditions on his examination as justice may require . . . .") Other situations in which the Commission anticipates that the rule will be applied include (a) objections to testimony during a hearing on the ground that the evidence sought is privileged and (b) motions to quash subpenas duces tecum on the ground that the documents sought contain privileged information.

Once a claim of privilege is raised, the Judge is given broad discretion under the final rule to take whatever actions are necessary to protect the confidentiality of the allegedly privileged information, including the power to enter protective orders, to condition disclosure upon entry into a written confidentiality agreement, to permanently seal parts of the record, to exclude the public from a hearing room, and even to receive ex parte communications outside of the presence of the other parties and their representatives. The Commission anticipates that all of these powers, and particularly the authority to receive allegedly privileged information ex parte, will be exercised sparingly. The Judge should be mindful of his responsibility to the other parties in the proceeding, who must at a minimum be given sufficient information to enable them to challenge the claim of trade secrets or other privilege. Where these extraordinary powers are exercised, however, the Judge should also exercise his authority under § 2200.11(d)(3) to compel the preparation and service of summaries of or excised copies of documents withheld from full disclosure.

The final rule also contains provisions, in paragraph (f), protecting the confidentiality of information during the pendency of an appeal from a Judge's overruling of a claim of privilege. The Commission notes that a Judge should not reveal information that a party has asserted to be privileged even though the Judge has rejected the claim, so long as the party continues to pursue his claim through appropriate legal channels. *See, e.g., Massman-Johnson (Luling)*, 80 OSAHRC 44/B8, 8 BNA OSHC 1369, 1378, 1980 CCH OSHD ¶ 24,436, p. 29,810 (No. 76–1484, 1980).

References to Cases

One of the Judges opposed the adoption of proposed § 2200.12, a new rule that codifies current Commission practice on the citing of cases. In the Judge's view, the rule is not properly included in the Rules of Procedure. The Commission disagreed and therefore adopted the proposed rule, with a slight modification noted below.

The inclusion of § 2200.12 in the Rules of Procedure makes it more likely that counsel will become aware of the Commission's preferences and thereby aid the work of the Commission. As noted previously in the preamble to the proposed rules, even though the rule uses the term "should," counsel representing parties are nevertheless expected to be guided by the rule and thereby to fulfill their responsibilities to be helpful and informative to the Commission.

The final rule contains one slight change from the proposed rule. While all of the provisions of the rule are advisory, paragraph (b)(1) was revised to make clear that the Commission expects compliance with this provision only where the practitioner has reasonable access to a CCH or BNA reporter.

Employee Election of Party Status

Several commentators, including all three unions that filed comments, objected to the Commission's proposed revision of § 2200.20(a), which governs the election of party status by affected employees or their authorized employee representatives. These comments were directed to two specific provisions of the proposed rule: (a) a requirement that party status be elected "at least ten days before the hearing" and (b) a statement that affected employees or their authorized employee representative "may elect party status concerning any matter in which the Act confers a right to participate." The Commission rejected these comments and adopted the provisions as proposed. However, in response to a request by the Secretary, the Commission added a new provision concerning service of a notice of election, as discussed below.

The question of whether to impose a time limitation on employee elections of party status was a matter that was thoroughly discussed in developing the Commission's proposed rules. In proposing its revision of § 2200.20(a), the Commission took the position that a time limitation was necessary in order to allow for orderly adjudication and to prevent prejudice to the other parties. Nothing in the comments it received has caused the Commission to change its opinion. The Commission remains convinced that allowing last-minute elections of party status by unions or employees can result in the disruption of extensive trial preparation efforts by the Secretary and the employer. A last-minute election can result in the calling of unanticipated witnesses, the introduction of unanticipated exhibits, and the interjection of unanticipated issues or arguments. Under the Commission's revised rules, the Secretary and the employer will be compelled to examine their cases and to state their positions on the issues and their trial plans well in advance of the hearing. Fairness to the Secretary and the employer requires that union parties and affected employee parties do the same.

Two of the union commentators vigorously objected to the provision limiting the election of party status to "any matter in which the Act confers a right to participate." In addition, the Secretary stated his qualified objection, as follows:

> It is the position of the Secretary that employee-parties in cases initiated by the employer notice of contest are entitled to conduct discovery, present and cross-examine witnesses and submit briefs on all issues raised in the case. What employee-parties may not do is raise issues not raised by the Secretary or the employer, object to settlement agreements between the Secretary and employers (except as to the reasonableness of abatement dates), or object to the withdrawal of citations by the Secretary. To the extent that the language of proposed Rule 20 and the comments explaining the revision reflect a contrary view by the Commission, the Secretary must state his objection.

The Commission does not necessarily disagree with the Secretary's view of the rights of employee parties under the Act. The Secretary's statement appears to be a fairly accurate summary of existing case law on the subject, although the question of whether an employee party can raise issues not raised by the other parties is probably an open question at this point. Nevertheless, whether the Commission agrees or disagrees with the Secretary's position is irrelevant to this rulemaking proceeding. Section 2200.20(a) does not codify *any* view of employee rights under the Act. It simply states that, whatever those rights are, affected employees and their authorized employee representatives have exactly the same rights under the Commission's Rules of Procedure. The fear of the union commentators that the proposed rule would have restricted employee rights overlooks the fact that the rule leaves to substantive case law the determination of what those rights are.

While rejecting the comments discussed above, the Commission did make one change from the proposed version of § 2200.20(a). The Secretary noted that, in his experience, employees or unions electing party status frequently do not give the other parties notice of their election. He suggested that the rule include a reference to the service and notice requirements of § 2200.7. The Commission agreed with this comment and accordingly added a sentence to its final rule concerning

service of notice that affected employees or their authorized employee representatives have elected party status. A similar comment was received and a similar change was made to § 2200.21, the rule on interventions.

The Secretary also proposed a related change in § 2200.7(g). That rule sets forth the contents of a notice to affected employees that must be posted after a case is docketed with the Commission. The Secretary suggested that, in view of the Commission's adoption in § 2200.20(a) of a time limitation on the election of party status, the notice to affected employees should warn employees of that limitation. The Commission agreed with this comment and modified § 2200.7(g) accordingly. Under the revised rule, the posted notice states that affected employees must file their notice of intent to participate no later than 10 days before the hearing. Authorized employee representatives receive this same warning when copies of the posted notice are served on them under § 2200.7(h).

Representation of Parties

The Commission received two comments suggesting changes in § 2200.22, which relates to the representation of parties and intervenors in Commission proceedings. Mr. O'Reilly urged the adoption of a new provision excluding self-represented parties (presumably affected employees) from access to trade secrets in cases arising under § 1910.1200, the Secretary's hazard communication standard. He raised the possibility that a person initially denied access to a trade secret under the standard might later gain that access as a party in proceedings before the Commission. The Commission agreed that Mr. O'Reilly had raised a valid concern, but it did not agree that the way to address the problem was by placing a limitation on self-represented parties in the rule at § 2200.22. Instead, the problem raised by Mr. O'Reilly was one of the factors taken into consideration in revising the Commission's procedures for handling trade secrets under § 2200.11. See discussion of that rule, above. Under the final revised rule at § 2200.11, the situation described by Mr. O'Reilly can be prevented by excluding parties or their representatives from the hearing room while the Judge receives privileged information ex parte.

The Commission also rejected as unnecessary a change proposed by the Secretary. Section 2200.22(c) states that, when more than one affected employee elects party status and there is no authorized employee representative, the Judge shall provide for the affected employees "to be treated as one party." The Secretary urged that this rule be modified to expressly grant the Judge authority to designate a representative for the group if the employees are unable to agree on a representative. The Commission considered that this authority is clearly implied in the rule as it was proposed.

Withdrawal of Counsel

The Commission also adopted its proposed § 2200.23 as its final rule. One of the Judges had suggested that the following provision be added to § 2200.23(b), which governs the withdrawal of counsel from a Commission proceeding: "A representative shall not be permitted to withdraw unless another representative enters his appearance or the party or intervenor enters his or its appearance pro se." However, the Commission rejected this suggestion. In the Commission's view, the proposed rule gave Judges sufficient discretion in controlling withdrawals. A rule requiring denial of the motion under the stated circumstances would have been too restrictive.

Notices of Contest

Section 2200.33 deals with the Secretary's receipt of notification of an intent to contest under section 10(c) of the Act. It requires the Secretary to notify the Commission of his receipt of this notice within 15 working days of the receipt and to transmit to the Commission copies of relevant documents and records.

Two comments were received in response to this proposed rule. One of the Judges objected to the extension of the time period prescribed in the rule from 7 to 15 working days. The Commission concluded, however, that the longer period is reasonable because it gives the Secretary an opportunity to pursue informal settlements of some cases under procedures set forth in his administrative directives but does not add significantly to the overall length of the proceeding.

In general, the Commission determined that the time periods for filing various documents under the present rules are inadequate. It concluded that the longer time periods allowed under its revised rules are more realistic given the circumstances of litigation under the Act. Moreover, it anticipated that, by allowing the parties more time under the rules, the necessity of *routinely* filing motions for extension of the time periods established by the rules will be eliminated. The Commission notes that the Secretary in several instances agreed with its view that the time periods under the present rule are inadequate.

The Secretary also filed comments on § 2200.33, in which he argued that the language of the rule should be "modified to explicitly state the requirement that the employer's notice of contest must be in writing." The Commission disagreed. The proposed rule was drafted to conform more closely than the present rule to the relevant statutory language. The proposed rule did not explicitly require a written document because the statute itself does not explicitly include this requirement. Under the statute an oral notice of contest may be adequate to vest jurisdiction in the Commission. The Commission therefore adopted proposed § 2200.33 as its final rule.

Employer Contests

Proposed § 2200.34 concerns the procedures for filing pleadings in a case initiated by an employer notice of contest under section 10(c) of the Act. The Secretary and one Judge filed comments that raised issues with respect to each of the four paragraphs contained in this proposed rule.

Paragraphs (a) and (d) established the deadlines for filing the Secretary's complaint and the employer's answer, respectively. Under the proposed rule, the Secretary was given 30 days to file a complaint (starting from the time he gives notice to the Commission under § 2200.33 of his receipt of notification of an intent to contest). The employer was then given 30 days from his receipt of the complaint to file his answer. The comparable time periods under the present rules are 20 and 15 days, respectively.

One of the Judges objected to the expansion of these two filing deadlines. The Secretary, on the other hand, argued that 30 days would not be sufficient time for him to prepare a complaint conforming to the new pleading requirements of § 2200.35. The Secretary contended that, at a minimum, the filing period should be 45 days.

After first considering and revising the pleading requirements of proposed §§ 2200.35 and 2200.36, see discussion of those rules, infra, the Commission reconsidered the question of what filing deadlines would be appropriate. The Commission concluded that the deadlines stated in the proposed rule are reasonable and adopted the proposed rules at paragraphs (a) and (d) as its final rules. As noted previously, the Commission determined that there was a general need to increase the deadlines established by the rules. With regard to the filing of the complaint and the answer, there was a particular need

to extend the deadlines because the revised rules impose more stringent pleading requirements on the parties and more time will be needed for the parties to comply with those requirements. On the other hand, the Commission concluded that the time period for filing a complaint should not be extended to 45 days, as requested by the Secretary. The Commission's final revised § 2200.35 is a hybrid of fact pleading and notice pleading, requiring less fact pleading than the proposed rule. See discussion of that rule, infra. This should make it possible for the Secretary in most cases to file his complaint within 30 days of his notice to the Commission. More generally, however, the Commission does not believe that in the usual contested case it should take long to draft a complaint. The elements of violations are generally set out clearly in the standards themselves and the Secretary's attorneys will be expected to draw upon the OSHA investigative file to supply any needed factual bases.

The Secretary also directed comments to paragraph (b) of proposed § 2200.34, which provides for the filing, by the employer, of a motion for more definite statement. The Secretary questioned the need for this provision and suggested that it would result in the filing of motions for improper purposes, e.g., as a discovery vehicle or for delay. The Commission rejected this comment. As noted by the Secretary, motions for more definite statement are already part of the Commission's procedures under the present rules, by virtue of § 2200.2 and Fed.R.Civ.P. 12(e). Paragraph (b) of § 2200.34 merely makes this point explicitly. The primary reason for including the provision is that it serves as a foundation for paragraphs (c) and (d) of § 2200.34. Paragraph (c) provides that the Secretary may be ordered to file an amended complaint if a motion for more definite statement is granted. Paragraph (d) provides for an extension of the time period for filing an answer when a motion for more definite statement has been filed.

The Commission emphasizes that the purpose of including paragraph (b) in § 2200.34 is *not* to encourage motions for more definite statement. Under the rule, the employer has the burden of proving that the defect in the complaint is such that he is not able to frame a responsive answer to the Secretary's allegations. *See generally American Can Co.*, 82 OSAHRC 5/A2, 10 BNA OSHC 1305, 1982 CCH OSHD ¶ 25,899 (No. 76–5162, 1982). Motions raising "nitpicking" objections to the way in which the Secretary has framed his complaint will not be looked upon with favor. The Commission believes that its Judges have sufficient discretionary authority under the rules to deal with employers who may file frivolous motions.

The Secretary also objected to a provision in paragraph (c) of proposed § 2200.34. Under the proposed rule, the Commission and its Judges could, on their own initiative, order the Secretary to file an amended complaint. The Secretary objected to this provision for several reasons. The Commission concluded that this objection was meritorious and accordingly deleted the provision from its final rule. With the exception of this revision in paragraph (c), the Commission adopted proposed § 2200.34 as its final rule.

Pleadings Under the Revised Rules

The Commission has substantially revised Subpart C of the Commission's procedural rules, which governs pleadings and motions. The new rules impose strict requirements on pleadings, particularly complaints. Their underlying philosophy departs significantly from that of the Federal Rules of Civil Procedure, which permit but do not require the specificity required by the new rules. The Occupational Safety and Health Act expressly authorizes the Commission to depart from the Federal Rules of Civil Procedure. Section 12(g) of the Act, 29 U.S.C. 661(g), states that the federal rules apply "[u]nless the Commission has adopted a different rule . . . ." The Commission has adopted a different rule in this matter, as it has in many other matters. As we shall explain below, pleadings to be useful in OSHA litigation must necessarily serve different functions than they do under the federal system. This difference in functions is reflected in the different requirements of the pleadings rules.

The Commission's present rule and practice, which have remained largely unchanged since the Commission's earliest days, follow the notice pleading format of the federal rules. Present § 2200.33(a)(2)(ii), requires only that the complaint state with "particularity . . . [t]he time, location, place, and circumstances of each . . . alleged violation . . . ." *See generally Allis-Chalmers Corp.*, 75 OSAHRC 86/F5, 3 BNA OSHC 1629, 1632, 1975–76 CCH OSHD ¶ 20,065, p. 23,872 (No. 5599, 1975) (Commission rules, like federal rules, require only notice pleadings), *aff'd*, 542 F.2d 27 (7th Cir. 1976). The proposed pleadings rules, by contrast, would have imposed a requirement for what has come to be called "fact pleading" by the commentators.

Most of the comments on the proposed pleading rules dealt with the central issue of whether the Commission should retain the "notice pleading" provisions of the present rule or adopt the stricter requirements of the proposed pleadings rules. Over half of the commentators addressed this issue and persuasive arguments were presented on both sides of the question. As noted previously, comments on the Commission's proposed revision of Part 2200 were received from four private practitioners who have represented employers in proceedings before the Commission. Three of these private practitioners specifically noted in their comments that they agreed with the Commission's view that changes in the present rule are needed in order to compel the Secretary to better evaluate the legal sufficiency of his case before he files his complaint. (The fourth private practitioner filed a general comment urging adoption of all of the Commission's proposed rules.) On the other hand, other commentators believed that the pleading requirements of the proposed rule would be unduly burdensome on the Secretary and would seriously impede his ability to enforce the Act.

In recognition of the competing concerns voiced by the commentators, the Commission made substantial changes in its proposed rule in an effort to accommodate the concerns raised by the Secretary and others, while still adhering to the remedial goals that led to the development of the proposed rule. The Commission's final rule at § 2200.35 is a hybrid rule that requires specific pleading of the factual basis of some elements of an alleged violation while allowing less detailed pleading of other elements.

If pleadings are to be useful in OSHA litigation, they cannot merely serve the functions they serve in federal court litigation. In the federal system, a complaint serves two basic functions. It initiates the litigation. Fed.R.Civ.P. 3. It also informs the defendant, by a short and plain statement, of the claim, showing that the plaintiff is entitled to relief. Fed.R.Civ.P. 8(a). The federal rules then leave to extensive and freely available discovery the function of narrowing the issues. Under the Occupational Safety and Health Act, however, it is the citation and the employer's notice of contest that actually initiate the litigation. See section 10(c) of the Act, 29 U.S.C. 659(c) (requiring the Secretary to immediately advise the Commission of notification of intent to contest the citation). Furthermore, as explained in more detail

below, the typical citation has already informed the employer of what OSHA's general objection is. As a practical matter, to permit the complaint to simply incorporate the citation by reference makes the complaint almost useless. Moreover, there is much less justification in OSHA litigation for failing to plead with specificity the allegations of a complaint. Unlike the federal scheme, OSHA litigation is preceded by the functional equivalent of the discovery process—the OSHA inspection and investigation made under sections 8 (a) and (b) of the Act, 29 U.S.C. 657(a) and (b). OSHA standards and regulations also pose more narrow issues than the typical federal statute. Therefore, in OSHA litigation the complaint can and should define the issues more clearly than the complaint filed in federal district courts.

In practice, most complaints before the Commission merely incorporate by reference the allegations of the citation. A copy of the citation is attached to the complaint. These citations "are drafted by non-legal personnel, acting with necessary dispatch." *National Realty & Construction Co.* v. *OSHRC*, 489 F.2d 1257, 1264 (D.C. Cir. 1973). Such complaints typically meet the minimal requirements for notice pleading, for the citations they incorporate by reference usually do inform an employer of what OSHA's general objection is. The Commission observed in the preamble to the proposed rules, however, that except for introducing an allegation of commerce coverage and raising affirmative defenses, pleadings under the present rules typically add nothing to the citation and the notice of contest. The preamble also noted that, because the present rules do not demand more detail than the citation contains, the Solicitor's Office generally files a standardized complaint. As a result, the preamble continued, problems with the Secretary's case that could be discovered and corrected at an early stage are frequently overlooked and the proceedings are unnecessarily prolonged. And because the typical answer broadly denies the only substantive allegation of the complaint—that violations occurred as described in the citation—the pleadings do not narrow the issues significantly. The Commission therefore cannot rely on the notice pleadings of the federal rules to accomplish in its proceedings the function of defining and narrowing issues.

In his comments on the proposed rules, the Secretary pointed out that under old state pleading codes that predated the federal rules, litigation tended to become a battle over the pleadings rather than a trial of the merits. However, the danger of a battle over the pleadings under the revised rules will not be nearly as great as it was under the old pleading codes. It bears emphasis that the Commission's final rules are a hybrid. See discussion on changes in the proposed rules, infra. Some of the pleadings rules still permit more generalized pleading. See, e.g., revised § 2200.35(b)(5). The revised pleadings rules are also accompanied by rules that permit liberal amendments. See revised § 2200. 35(f) (last sentence) and Fed.R.Civ.P. 15(a) (leave to amend "shall be freely given when justice so requires") and 15(b) (pleadings to be conformed to the evidence). Unlike the old code pleading rules, the revised rules do not create a straitjacket for the pleader, requiring him to "commit . . . himself unreservedly to a course of action and a factual statement from which he could not deviate because of rules against 'variance' . . . ." Skinner, "Pre-Trial and Discovery Under the Alabama Rules of Civil Procedure," 9 Ala.L.Rev. 202, 204 (1957), *quoted in* 5 Wright & Miller, *Federal Practice and Procedure: Civil* § 1202, pp. 62–63 (1969).

Thus, if an employer moves under Fed.R.Civ.P. 12(b)(6) to dismiss the complaint on the ground that a necessary allegation is missing, or that a necessary allegation is accompanied by an insufficient factual basis, the Solicitor should move to amend the complaint to meet the objection. If the complaint still lacks a necessary element—either because the Secretary does not have *any* evidence to support it or because the Secretary incorrectly believes that he need not plead or prove it—we would expect the Judge to grant the motion to dismiss. If, however, some factual basis for an allegation is pleaded but the Judge believes that it could not withstand a motion for involuntary dismissal after trial under Fed.R.Civ.P. 41(b), the Judge need not grant the motion to dismiss. The revised rules do not require that the factual basis pleaded in the complaint be as complete as that which the Judge might require after a hearing. The revised rules require only that the complaint contain sufficient facts to provide a reasonable basis for believing that the Secretary may ultimately prevail on the issue. They do not preclude the Secretary from proving additional facts at the hearing to support the allegations in the complaint. Thus, contrary to the Secretary's comments, OSHA will not be required to "assur[e] that each case file will, prior to the initiation of the litigation process, entirely meet the litigation needs that arise in a contested case . . . ." Also, under Fed.R.Civ.P. 12(b)(6), the Secretary's allegations are to be assumed to be true for the purpose of the motion and are to be construed in the light most favorable to the Secretary. Such motions, which are disfavored, may not simply make a broad allegation that the complaint fails to state a claim; they must identify the shortcoming with specificity.

Changes in the Proposed Rule on Complaints

As indicated previously, the Commission, in an effort to meet the competing concerns of the commentators, adopted as its final rule at § 2200.35 a hybrid rule that requires some "fact pleading" and some "notice pleading." The Commission determined that, in order to obtain its objectives of making the pleadings useful and forcing the parties to evaluate their cases at an earlier stage in the proceedings, it was necessary to retain certain features of the proposed rule. Thus, the final rule: (a) Prohibits incorporation by reference of the citation into the complaint, (b) requires the Secretary to set forth in separate paragraphs the differing components of his case-in-chief, and (c) requires the Secretary to plead the factual basis underlying three of the most critical elements of his case—his allegation that the cited standard applies to the cited conditions, his allegation that the employer failed to comply with the standard or with the Act's general duty clause, and his allegation that employees were exposed to or had access to the violative conditions. With respect to other matters, i.e., employer knowledge, the classification of the violation, the appropriateness of the proposed penalty, and the reasonableness of the abatement period, the final rule requires only notice pleading.

The Commission also made changes in paragraph (d) of proposed § 2200.35 in response to specific suggestions. Under the final rule, if a cited standard does not specify a means of abatement or provide specific performance criteria, the complaint must "identify the feasible means by which the employer *could* have abated the allegedly violative condition" (emphasis added). The proposed rule had used the word "should" rather than "could." Also, the final rule deleted the following requirement, which was contained in the proposed rule: "If the cited standard or regulation lists a number of alternative means of abatement, the complaint shall also state which the employer failed to

use." The Secretary correctly observed that, under the circumstances stated, there would be no alleged violation unless the employer failed to use any of the alternative abatement means.

On the other hand, the Commission rejected the Secretary's proposal that paragraph (e) of proposed § 2200.35 be deleted. In the Commission's experience, the information required under that paragraph, which relates to allegations of failure to abate, is not customarily included in the Secretary's notification of failure to abate. The Commission also rejected the Secretary's request that paragraph (f) of proposed § 2200.35 be changed to grant the Secretary an *unqualified* right to amend his contested citations, etc., once as a matter of course before the answer is filed. Under the Commission's revised rule, three limitations are placed on the Secretary's right to make such amendments. The Commission adopted this rule because it codifies longstanding Commission precedent governing the amendment of citations in the complaint. That precedent does not give the Secretary an unqualified right to amend once as a matter of course, but instead requires consideration of the factors that are now codified in paragraph (f). The requirement that the complaint clearly identify the change that is being made in the allegation is carried over from the present rule at § 2200.33(a)(3) and is retained in the revised rule so that the employer may be given fair notice of the effect of the amendment. The Commission stresses, however, that § 2200.35(f) addresses only amendments made without leave of the Judge. Fed.R.Civ.P. 15(a), which states that leave to amend "shall be freely given when justice so requires," applies to all other amendments; except that Fed.R.Civ.P. 15(b) also continues to apply to amendments to conform the pleadings to the evidence.

Contents of the Answer

While the Commission made changes to proposed § 2200.35 for the purpose of reducing the pleading burden on the Secretary, it made changes to proposed § 2200.36 for the purpose of imposing more stringent pleading requirements on employers. The Commission agreed with the Secretary's assertion that the respective burdens placed on the parties under the proposed rules were unequal. The Secretary also argued convincingly that the Commission could not attain its stated objective of refining and narrowing the issues at the pleadings stage of the proceedings unless it imposed stricter requirements on the contents of an answer.

Two changes were therefore made in the proposed rule. One of the Judges had suggested that the following sentence be added to the rule: "General denials shall not be accepted." The Commission agreed with this suggestion and, for emphasis, it placed the sentence at the very beginning of the rule. Under the final pleading rules, the Secretary must break his case-in-chief into its component elements and the employer must then respond specifically and separately to each allegation. In this way (and also through the requirement that affirmative defenses be stated), the revised pleading rules should result in significant refinement and narrowing of the issues early in the proceedings. These procedures should also result in the attainment of another principal goal, that is, requiring both parties to examine the legal elements of their cases and the factual bases of those elements early in the proceedings.

In addition, the Commission adopted, to a limited extent, a requirement for "fact pleading" in the answer. The Commission added a requirement, in paragraph (b) of § 2200.36, that the employer state in its answer, "to the extent they are known or with reasonable diligence could have been known, the facts that are the basis of [its affirmative defenses]." For example, if the employer asserts that § 5(a)(1) of the Act is preempted by a specific standard, it must at a minimum identify the specific standard that it is relying on. To a large extent, the imposition of these pleading requirements is simply a matter of fairness. The Secretary correctly notes that he should not be required to "resort to discovery to determine the factual and legal bases of . . . affirmative defenses."

On the other hand, it again bears emphasis that the pleading requirements for answers, like the pleading requirements for complaints, are not designed for the purpose of creating trials on the pleadings or evidentiary straitjackets. Instead, the intent is that the Secretary be given fair notice of the basis of the employer's claim that a particular affirmative defense is applicable.

Generally, under the revised rules, more detailed pleading is required on those matters on which the particular party bears the burden of proof. For example, the Secretary is required to plead the factual basis in support of his claim that the cited standard applies to the cited conditions because this is a matter that he is required to prove. The Commission disagreed with the Secretary's suggestion that the employer be required to plead the factual basis for denying such allegations. In the Commission's view, the employer has a right to compel the Secretary to prove his case-in-chief if the employer disagrees in good faith with the accuracy of the Secretary's allegations. Accordingly, under the rules, the employer is required to plead the factual basis of a denial only if the denial is based on an affirmative defense, e.g., denial of an allegation that a standard is applicable based on the affirmative defense that another standard is more specifically applicable.

Petitions for Modification of the Abatement Period

No objections were filed to proposed § 2200.37, which governed the Commission's procedures for handling petitions for modification of the abatement period (PMA's). However, the Secretary did request one change in the rule's time periods, which the Commission agreed to. Under paragraph (c)(4) of the proposed rule, the Secretary was required to wait a period of 15 working days before exercising his authority to approve an employer's PMA. (If the Secretary approves the PMA and no objections are filed by affected employees or their representatives, then the matter is resolved without coming before the Commission.) The purpose of this waiting period was to give affected employees or their representatives an opportunity to file objections to the PMA and thus an opportunity to influence the Secretary's decision as to whether to approve or to oppose the PMA.

The Secretary's requested change related to the deadline imposed on him for taking a position on the PMA once the 15-working-day waiting period has expired. Under the present and proposed rules, he was required to make this decision within three working days of the expiration of the waiting period. He asked, however, that he be given 10 working days so that he would be able to conduct a "monitoring inspection" to assist him in deciding whether to approve or oppose a PMA. The Commission concluded that this request was reasonable and revised paragraph (d)(1) of § 2200.37 accordingly.

Statements of Position

As proposed, § 2200.39 authorized parties or intervenors to file statements of position with respect to any or all issues to be heard at any time prior to the hearing. One of the Judges suggested that a sentence be added to the rule empowering Judges to order the filing of such statements. The Commission

agreed with this suggestion, and the final rule therefore includes a provision to that effect.

Sanctions

The Commission's proposed rules included three rules relating to the subject of sanctions for failure to comply with the rules or failure to comply with orders of the Commission or its Judges. Generally speaking, § 2200.52(e) prescribed sanctions against a party for noncompliance with a discovery order, § 2200.41 prescribed sanctions against a party for noncompliance with all other orders or rules, and § 2200.104 prescribed sanctions against a party's representative (as opposed to the party himself). Two commentators, the Secretary and one of the private practitioners, raised similar questions concerning the interrelationship of these sanction provisions, the applicability of sanction provisions under the Federal Rules of Civil Procedure and the adequacy of the sanctions under the Commission's rules. The private practitioner specifically argued for stronger sanctions against representatives of the parties (including, in particular, attorneys for the Secretary), such as "personal liability" for loss due to "frivolous prosecutions, frivolous discovery, and other abuses of the systems."

In response, the Commission revised both §§ 2200.41 and 2200.52 for the purpose of clarifying and strengthening the provisions on sanctions. The sanctions provisions under the Commission's revised rules are much stronger than the provisions under the present rules. However, the Commission declined to include sanctions against a party's representative as part of its own rules. If experience under the revised rules reveals that the need exists, the Commission may well change its rules to provide expressly for personal liability for frivolous attorney conduct.

With respect to the changes that were made in the final rules, the Commission initially made clear that the matter of discovery sanctions is governed by § 2200.52(e) rather than § 2200.41. It did this by adding a new paragraph (c) to § 2200.41, which expressly states that § 2200.52(e) is the relevant provision in determining discovery sanctions. The Commission also strengthened its rule on discovery sanctions by adding two new provisions to § 2200.52(e): (1) A statement that the Judge may include in his order imposing sanctions "any sanction stated in Fed.R.Civ.P. 37" and (2) express authorization to enter a default judgment against the party disobeying a discovery order.

One specific question raised by the comments was whether the adoption of the Commission's proposed rules would result in the preemption of Fed.R.Civ.P. 37. At first glance, it would appear that the answer to this question is "yes" since the Commission now has its own rule (§ 2200.52(e)) on the imposition of sanctions for failure to comply with discovery orders. However, as noted, § 2200.52(e) by its terms authorizes the Judge to impose any sanction stated in Fed.R.Civ.P. 37. Moreover, many of the procedural provisions in the federal rule apply to the Commission's proceedings by virtue of the following statement in § 2200.52(a)(1): "In the absence of a specific provision, procedure shall be in accordance with the Federal Rules of Civil Procedure." The Commission's revised rules say little, if anything, about the procedures to be followed in imposing discovery sanctions.

Prehearing Conference

Although no comments were filed relating to the substance of proposed § 2200.51, several comments were filed relating to the language of the rule. As a result, the last sentence of the rule has been rewritten to (a) restore language inadvertently omitted from the proposed rule, (b) make clear that the rule applies to all parties, not just the Secretary and the employer, and (c) make clear that the rule applies to all representatives of the parties, not just attorneys. As a union commentator correctly noted, "you don't need to be an attorney to enter into stipulations."

General Provisions Governing Discovery

Proposed § 2200.52 was a new rule containing several miscellaneous provisions governing discovery in Commission proceedings. Numerous comments were directed to various provisions of this rule, raising several different issues. The comments relating to paragraph (e) on sanctions and the resulting changes in the proposed rule have been discussed previously in conjunction with the discussion of § 2200.41. Other comments and changes will be discussed in the sections of the preamble that follow this section. The initial question dealt with by the Commission was whether the entire rule should be deleted, as suggested by one of the Commission's Judges. That commentator essentially urged that the Commission rely on the Federal Rules of Civil Procedure, as it does under the present rules. The Commission, however, rejected that approach. In the Commission's view, the present rules governing discovery were inadequate because they did not clearly identify which federal rules applied to the Commission's proceedings and which did not. This ambiguity was created by the preemption provision of § 2200.2. Thus, it was not clear which provisions of the federal rules were preempted by the Commission's rules and which were not.

The Commission believes that its revised rules have significantly reduced the ambiguity in the area of discovery. Essentially, the Rules Committee went through the federal rules governing discovery and specifically incorporated into the Commission's rules those provisions of the federal rules that are suitable to the OSHA context. In the process, the Rules Committee not only simplified the rules but also adapted them to fit into the OSHA enforcement scheme. To a far greater extent, therefore, discovery in Commission proceedings will now be governed by the Commission's own rules.

Discovery Without Approval of Judge

One issue on which there was a wide range of opinions expressed in the comments was the extent to which discovery should be allowed without obtaining the approval of the Commission or a Judge. For example, the Chief Administrative Law Judge expressed the opinion that no discovery of any kind should be allowed without an order permitting discovery. At the other end of the spectrum, one of the Judges argued that all forms of discovery should be allowed without leave of the Judge or the Commission. The Commission reconsidered this issue, but decided ultimately to stay with the "mix" it had suggested in its proposed rules: depositions permissible only by agreement between the parties or with the approval of the Commission or the Judge; 25 requests for admissions and 25 interrogatories permissible without approval; and all other forms of discovery permissible without approval. In essence, the revised rules require prior approval in those situations where the Commission believes that the potential for abuse or the potential burden on the responding party is the greatest.

Entry Upon Land

The provision of the proposed rules that evoked the strongest and most widespread opposition (10 of the 21 commentators opposed it, while only one expressly supported it) was the following provision in proposed § 2200.52(a)(1):

> [E]ntry upon land or other property may not be compelled by the imposition of sanctions under these rules or Fed.R.Civ.P. 34. If a party objects and refuses permission

to enter upon land or other property, such entry shall be sought by application for a search warrant from a federal district court.

The most frequently-voiced objections were the contentions that (a) a federal district court would not have jurisdiction to issue a discovery order in the midst of a pending administrative proceeding and (b) the procedure would lead to disruption and delay. It was also argued that the Commission's Judges are impartial and independent judicial officers who could authorize intrusions for discovery purposes onto private property without running afoul of fourth amendment considerations.

A divided Commission voted to delete the language stated above from the final rule at § 2200.52(a)(1). Dissenting Commissioner Rader believed that the procedure is necessary because a Commission Judge is an Executive branch official and only a judicial branch officer can compel entry upon land in the face of an employer's claim that the requested entry is unreasonable. The Commission majority decided, however, that given the many uncertainties on the matter, the question should be left for adjudicative resolution. It noted that, if a Commission Judge enforced his order compelling entry by dismissing the resisting employer's notice of contest, the employer could then obtain a judicial determination on any fourth amendment claim he may have by appealing the dismissal order first to the Commission and then to a U.S. Court of Appeals. The employer can thus raise any claim that the Judge lacked authority to compel entry.

Because the language stated above has been deleted from the final rule, enforcement of an order compelling entry is governed under the revised rules by the same procedures that govern the enforcement of all other discovery orders. See § 2200.52(e).

Time for Discovery

Proposed § 2200.52(a)(2) established the time period during which the parties could conduct discovery. The beginning date was established by a provision stating that a party could initiate discovery "at any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss." (This same limitation is found in §§ 2200.52–2200.56, which govern the various types of discovery permitted under the Commission's procedures.) The ending date was set by a provision stating that "[d]iscovery requests shall be completed" no later than seven days prior to the hearing date, unless the Judge orders otherwise.

The Commission received comments objecting to both of the dates established under the proposed rule. The Secretary objected to the provision on the beginning of the discovery period, arguing that he should be able to commence discovery procedures with the filing of his complaint. The Commission rejected this comment on the ground that the delay in discovery until the issues have been formulated in the pleadings would eliminate needless, standardized discovery and result in discovery requests fashioned to the circumstances of the particular case.

The Secretary also argued against the deadline on completion of "[d]iscovery requests," suggesting that it might not give him adequate time to prepare his case. Two of the Judges, on the other hand, argued that the rule did not require completion of discovery early enough and that a discovery request initiated only seven days before the hearing could result in a postponement of the hearing. The Commission agreed with the Judges and adopted the goal of completing (rather than initiating) discovery at least seven days before the hearing. Under the final rule, the relevant provision has been altered to require that discovery must be "initiated early enough to permit completion of discovery no later than seven days prior to the date set for hearing, unless the Judge orders otherwise."

Service of Discovery Papers

Several comments were filed concerning various discovery provisions in the proposed rules that raised the same issue with respect to each of the provisions. In general, the proposed rules governing discovery did not provide for service of discovery papers on affected employees or employee representatives that have elected party status. The Commission agreed with arguments, submitted by a union commentator and others, that all parties should be served copies of discovery papers (both requests and responses). However, it disagreed with the proposal that each of the discovery rules be revised to provide for such service. Instead, the Commission added a new provision at two different locations in the Rules: at § 2200.7(a), which establishes general service requirements in Commission proceedings; and at § 2200.52(a)(3), as part of the rule on general provisions governing all discovery. The new rule states that "[e]very paper relating to discovery required to be served on a party shall be served on all parties." Thus, whenever a requesting party serves a discovery document on a responding party, or vice versa, the document must be served on all parties to the proceeding.

Limitations on Discovery

The Commission rejected the Secretary's request that paragraph (c) of proposed § 2200.52 "be clarified so that discovery by the Secretary is not limited because a judge believes that certain information sought could have been obtained during the inspection, either by conducting a more thorough inspection or by issuing an administrative subpoena." As stated in the preamble to the proposed rules, "[p]roposed paragraph (c) on the limitations of discovery essentially codifies case law under the FRCP and the Commission's rules." The proposed rule was not intended as a means for reducing the discovery rights of the Secretary that have been recognized in Commission precedent.

Paragraph (d) of proposed § 2200.52 related to protective orders entered in conjunction with orders compelling discovery. Mr. O'Reilly filed two separate comments concerning this provision. Both raised the question of the adequacy of the protection provided under the rule, and both included suggestions for specific changes in the rule. The Commission declined to make these changes. Paragraph (d) includes an express reference to § 2200.11 and makes clear that the Judge has the authority, in entering a protective order under § 2200.52(d), to exercise any of the powers granted him under § 2200.11. As indicated previously, the Commission believes that its final revised rule at § 2200.11 grants the Judges sufficient authority and flexibility to protect trade secrets and other confidential information, regardless of the context in which the privilege issue is raised.

Responses to Discovery—Time For Filing

Under the proposed rules at §§ 2200.53(b), 2200.54(b), and 2200.55(c), a responding party was given 30 days to respond to requests for production of documents or things, requests for entry upon land, requests for admissions, and interrogatories. Two of the Judges filed comments to the effect that the responding party should be given only 15 days in the usual case. The Commission rejected these comments and adopted the 30-day response times stated in the proposed rules. Based on its experience with litigation under the present rules, the Commission concluded that 15 days is not enough time in many cases to respond to discovery requests. The need for communication between the attorney or

other representative and the client, as well as the need to search through often voluminous records, makes 30 days a more reasonable deadline. As noted previously, the Commission also sought as a general matter to cut back on the number of requests for extensions of time during the prehearing period by giving the parties more time under the rules to file various prehearing documents.

Limitation on Number of Requests for Admissions and Interrogatories

Under the proposed rules at §§ 2200.54(a) and 2200.55(a), the parties were given a limited right to serve requests for admissions and interrogatories without obtaining permission. If the number of requests or interrogatories was less than 25, permission was not needed. Otherwise, the discovery document could only be served with the approval of the Commission or the Judge. Several comments were filed relating to these rules. Two of the commentators argued persuasively that "the complexity of the case" should not be the only factor under the rule warranting the service of more than 25 interrogatories or requests for admissions. In some instances, they pointed out, the sheer number of contested citations requires a larger number of interrogatories or requested admissions. Other comments simply urged clarification of the language of the proposed rules. As a result of these comments, the rules at §§ 2200.54(a) and 2200.55(a) were substantially rewritten, although the substance of the rules has not been changed. The final rules expressly state that the Judge or the Commission may allow more than 25 interrogatories or requests for admission based on either "the complexity of the case or the number of citation items."

Filing of Depositions

One of the Judges recommended that a new provision be added to § 2200.56, the Commission's rule on depositions. The suggested provision would have prohibited the parties from filing copies of discovery depositions with the Commission or the Judge. The commentator argued that these documents merely "clutter" the official files. The two Judges on the Rules Committee, however, argued that discovery depositions can be helpful in preparing a Judge for a hearing and that the suggested rule should not be adopted. The Commission concluded that the real concern of the commentator was the problem of determining which documents are included in the official record; it decided that this matter can be handled administratively. Proposed § 2200.56 was accordingly adopted without change.

Subpenas

Comments were filed urging three unrelated changes in proposed § 2200.57, the Commission's rule on subpenas. One of the Judges requested that a provision be added allowing the Judge or the Executive Secretary to issue subpenas in blank. The Commission concluded that this is an administrative matter, best left to the discretion of the individual Judge, but that it did not wish to encourage the practice suggested by the Judge by writing it into the Commission's rules.

One of the private practitioners filed comments criticizing the Secretary's attorneys for using subpenas duces tecum as a last-minute discovery tool rather than "for the legitimate production of evidence at trial." He urged revision of the rule to prohibit such practices. The Commission concluded that the suggested change in the rules was impractical. Realistically, a Judge cannot be asked to base his decision on whether to issue a subpena duces tecum on the suspected motives of the requesting attorney.

The Secretary requested that a provision be added to § 2200.57(d), requiring that any ruling by a Judge declining to enforce a subpena duces tecum be reduced to writing and include findings of fact and conclusions of law. The Commission rejected this suggestion, finding that it is misdirected. Paragraph (d) of the rule requires that an application for enforcement be made to the Commission. Proposed § 2200.57 was accordingly adopted without change.

Notice of Hearing and Location

Several comments were filed relating to proposed § 2200.60, which generally required a Judge to give at least 30 days notice of the time and place of a hearing, except where "exigent circumstances" are present or the hearing is being rescheduled. In these exceptional circumstances, at least 10 days notice was required.

The Commission decided to adopt its proposed rule as its final rule, after considering conflicting comments that argued both for a longer and for a shorter notice period. As the comments revealed, there are competing considerations to be taken into account in determining how much notice should be given. A 30-day notice requirement represents a reasonable compromise that attempts to accommodate all of these competing concerns.

Two of the Judges raised the same issue of interpretation under the proposed rule. Both Judges asked the Commission to clarify the meaning of the term "place" as it is used in the rule. The Commission agreed that the term "place" refers to the city and state where the hearing will be held. Therefore, less than 30 days notice may be given under the rule of the specific address of the hearing room.

In addition, one of the union commentators raised issues concerning the interrelationship of three of the revised rules: § 2200.60, which provides for service of notice of a hearing on parties and intervenors; § 2200.7, which provides for service of notice of a hearing on represented and unrepresented affected employees; and § 2200.20(a), which provides that the right of affected employees and their representatives to elect party status expires 10 days before the scheduled hearing. The union commentator correctly observed that, in view of the relationship between the hearing date and the cut-off date for electing party status, it is important to give affected employees and their representatives as much advance notice as possible of a scheduled hearing date. The Commission therefore accepted the suggestion that §§ 2200.7 (i) and (j) be revised to require the employer to post notice of a hearing and to serve copies of the notice on authorized employee representatives "[i]mmediately upon receipt" of the hearing notice.

However, the Commission rejected the union's other suggestion—that the cut-off date provision of § 2200.20(a) be automatically waived if less than 30 days notice of a hearing is given to affected employees or their representatives. Under the terms of § 2200.20(a), "[a] notice of election filed less than ten days prior to the hearing is ineffective *unless good cause is shown for not timely filing the notice*" (emphasis added). The Commission concluded that this exception is broad enough to cover situations where failure to file a timely election of party status is the result of failure to receive timely notice of a hearing.

Motion for Postponement of Hearing

The Commission rejected a comment by the Secretary requesting a revision in the proposed rule at § 2200.62(a). The provision in question required a party filing a motion for postponement of a hearing to state the position of the other parties on the motion. The Secretary asked that the provision be modified by including the qualifying language "where possible". The Commission concluded, however, that this qualification would invite abuses of the rule. If truly exceptional circumstances

arise, waiver of the requirement can be obtained under § 2200.107.

Stay of Proceedings

The Commission also rejected a comment by one of the Judges suggesting a revision in proposed § 2200.63. Under the proposed rule, a Commission Judge could, with the concurrence of the Chief Administrative Law Judge, grant a stay motion. The commentator urged that the matter be placed entirely in the hands of the Chief Judge. The Commission disagreed. The participation of the Chief Judge is required to insure uniformity in the treatment of stay motions. However, in the Commission's view, the participation of the Judge to whom the case is assigned is also desirable because he knows the case better than the Chief Judge does and may be aware of valid reasons for departing from the general policy in the particular case.

Payment for Transcripts

Paragraph (b) of proposed § 2200.66 stated that "[e]ach party is responsible for securing and paying for its copy of the transcript." In its comments, ACUS objected to this provision on the ground that it appeared to be in conflict with section 11 of the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 11, which requires agencies to make transcripts of their proceedings available at cost to any person requesting such transcripts. The Commission concluded, however, that there is no conflict between the proposed rule, which it has adopted as its final rule, and the statute cited by ACUS. Nothing in the rule either expressly or implicitly precludes a party from obtaining a copy of the transcript from the Commission under section 11 of the Federal Advisory Committee Act. That is an option available to the parties. Parties are forewarned, however, that they can obtain copies of transcripts much more quickly by ordering them directly from a court reporter. Transcripts received from the Commission under the provisions of the Federal Advisory Committee Act may not be received in time to permit the timely filing of post-hearing briefs.

Powers of Judges

In response to a suggestion from one of the Judges, proposed § 2200.67(k) was revised to make clear that Judges may ask for statements of position from the parties at any time in the proceeding—before, during or after the hearing.

Examination of Witnesses

In his comments, the Secretary raised the question of whether there is an "unintended conflict" between § 2200.69 and Rule 611(c) of the Federal Rules of Evidence, which is made applicable to Commission proceedings under § 2200.71. The potential conflict related to the use of leading questions on "cross-examination" of a party by his own counsel where the party had been called as an adverse witness. The Commission concluded that no change in its proposed rule was necessary because there is no conflict between the two rules. In the situation presented by the Secretary, § 2200.69 would permit cross-examination, but Federal Rule of Evidence 611(c) would govern the use of leading questions.

Disposal of Exhibits

The Secretary suggested that a provision be added to proposed § 2200.70(g), requiring the Executive Secretary to give notice to a party before disposing of a physical exhibit introduced by that party. The Commission concluded that this matter could be taken care of administratively and that no change in the proposed rule was necessary.

Rules of Evidence

Nine commentators addressed the question of whether the Commission should adopt its proposed rule at § 2200.71. That proposed rule stated quite simply that "[t]he Federal Rules of Evidence are applicable." Four commentators, including one of the Judges and three private practitioners who have represented employers in cases before the Commission's Judges, endorsed the adoption of the Commission's proposed rule. Three other commentators apparently argued for retention of the Commission's present rule, which makes the Federal Rules applicable "insofar as practicable." Finally, ACUS and the Chief Administative Law Judge urged the Commission to "consider revising proposed section 2200.71 along the lines of [ACUS] Recommendation 86–2, so as to permit Administrative Law Judges to resort to the Federal Rules of Evidence as a source of guidance without requiring them to exclude any evidence which they believe to be reliable."

The Commission carefully considered the arguments of all the commentators, including the supporting documents submitted by ACUS in support of its position. Nevertheless, it concluded that the reasons it had given, in the preamble to its proposed rules, for following the Federal Rules of Evidence in Commission proceedings, remained valid reasons. See 51 FR 23190. Thus, the rulemaking proceedings confirmed the Commission's views that the rule adopted by the Commission provides clearer guidance to practitioners and allows for the admission of all relevant evidence, including reliable hearsay.

Burdens of Proof

The Commission had proposed to retain without change its current rule on burdens of proof, present § 2200.73, redesignated as proposed § 2200.72. Paragraph (b) of the rule stated that in a PMA case the burden of proof is with the petitioning employer. This paragraph is unnecessary; it merely restates the statutory allocation of the burden of proof in § 10(c) of the Act, 29 U.S.C. 659(c), and is duplicative of former § 2200.34(d)(4), which has been retained in revised § 2200.37(d)(3). Paragraph (a) of the rule stated that, in all notice of contest proceedings, "the burden of proof shall rest with the Secretary." The Secretary commented that paragraph (a) needed to be clarified. The Secretary correctly observed that paragraph (a) has never been applied literally because the Commission has recognized numerous affirmative defenses, such as the invalidity of a standard, to which the employer has the burden of proof. It has also been the Commission's experience that the unequivocal wording of the present rule has misled pro se employers and sometimes even attorneys into believing that they never bore a burden of proof. The Secretary proposed, therefore, that the rule be clarified to reflect that the Secretary bears the burden of proof with respect to those elements deemed to be a part of his prima facie case, and that the employer bears the burden of proof on affirmative defenses.

The Commission agreed with the Secretary that the present rule is misleading but concluded that it could not be rewritten as he proposed without great difficulty. A simple statement that the Secretary bears the burden of proof on matters that are part of his prima facie case provides no guidance. To give the statement some meaning, the Commission would have to state what each element of the Secretary's prima facie case is. The same would be true of all affirmative defenses. To do so in greater detail than is suggested by the allocation of the burdens of pleading in revised §§ 2200.35(b)–(e) and 2200.36(b), would not only be impractical but would tend either to restrict the development of the law or render the rule misleading as case law developed. More fundamentally, the Commission determined that such a rule is not a rule of procedure at all but one of substantive occupational safety and health law, which has been and must be

developed and stated in case law. The Commission also observed that the lack of a rule on burden of proof would have few drawbacks. In 1979, the Federal Mine Safety and Health Review Commission deleted its interim rule on burdens of proof, 44 FR 38226, 38227 (1970), without untoward effect. Finally, the Commission emphasizes that, because Commission case law on burdens of proof is in no way affected by the deletion of present § 2200.73, the parties before it may continue to be guided by that case law.

Redesignated Rules

As a result of the deletion of proposed § 2200.72 from the Commission's final revised rules, the rules on objections, interlocutory review and filing of post-hearing briefs have been redesignated as §§ 2200.72, 2200.73 and 2200.74, respectively.

Offers of Proof

One of the Judges suggested adding a sentence to the proposed rule on offers of proof (the provision adopted as § 2200.72(b)). Under the suggested revision, offers of proof could only be accepted in question-and-answer form. Summaries of rejected testimony presented by the party's representative would not be acceptable. The Commission rejected this suggestion. It noted that the Commission's Judges have the authority, under Federal Rule of Evidence 103(b), to require that offers of proof be presented in question-and-answer form. The Commission, however, declined to adopt a rule that would prohibit summaries in all circumstances. In some instances, it might be preferable to accept a summary rather than going through the more time-consuming question and answer process.

Interlocutory Review

Under paragraph (e) of proposed § 2200.74 (redesignated as final rule § 2200.73), the Commission is authorized to request a Judge to submit his written views on the merits of a petition for interlocutory review. One of the unions commented that this rule should be revised to make clear that the written comments must be served on the parties and made part of the record. The Commission agreed with this comment and modified its final rule accordingly by adding the second sentence in § 2200.73(e).

Petitions for Discretionary Review

One of the unions suggested that proposed § 2200.91 be modified by adding a provision concerning notification to a party that its petition for discretionary review (PDR) has been received. The Secretary also filed a related comment concerning the consequences of failure to file a timely petition. The Commission rejected the union's suggestion. It noted that there are ways for a party to obtain notice of the date on which his PDR is received. For example, the party could mail the document by certified mail, return receipt requested, or he could send an extra copy of the document with a request that it be stamped with the date of receipt and returned to the sender. He could also call the Commission's Executive Secretary and ask when the PDR was received.

It is important to note that the purpose of establishing a deadline for the filing of PDR's is to give the Commissioners adequate opportunity to consider the issues raised in the petitions. The Commissioners have the authority to direct review of a case at any time up until the expiration of their statutory deadline. This includes the authority to direct review in response to a late-filed PDR. However, a party filing an untimely PDR runs the risk of not having his position fully considered by the Commission. He also runs some risk of being told by an appellate court that he failed to exhaust his administrative remedies because he did not comply with the Commission's procedural rules. *See Keystone Roofing Co.* v. *Dunlop*, 539 F.2d 960 (3d Cir. 1976).

Jurisdiction of the Commission on Review

The Commission noted the Secretary's formal statement of opposition to the codification of *Hamilton Die Cast, Inc.*, 86 OSAHRC _____, 12 BNA OSHC 1797, 1986 CCH OSHD ¶ 27,576 (No. 83-308, 1986). Nevertheless, the Commission adopted proposed § 2200.92 as its final rule.

Briefs Before the Commission

Section 2200.93 establishes the procedures for filing briefs with the Commission in cases that are on review. Under the proposed rule, a simultaneous briefing system would have been established. However, the Secretary filed comments strongly objecting to this proposed change in the briefing procedures. The Commission reviewed these arguments and also re-examined the reasons for the Commission's 1978 change from a simultaneous briefing system to the present sequential briefing system. Having fully reconsidered its experience under both sets of rules, the Commission decided to retain a sequential briefing system.

Accordingly, paragraph (b) of the final rule has been totally rewritten to accomplish this result. Parties should note, however, that procedures under the revised rule differ in some respects from procedures under the present rule. For example, new rules have been adopted for determining which party will file the first brief when a direction for review has not specifically granted any petition for discretionary review.

Commission Review of Settlement Agreements

The Commission's present rule at § 2200.100(a) contains the following provision: "A settlement agreement shall be approved when it is consistent with the provisions and objectives of the Act." The Commission proposed to delete this provision from its revised rule at § 2200.100. However, one of the union commentators objected, urging that the Commission retain that part of the sentence concerning review of a settlement agreement to insure that it is consistent with the objectives of the Act. The Commission rejected this suggestion. The Commission believes that deletion of the provision from the Commission's rules is in keeping with the Commission's limited role in reviewing settlement agreements. *See General Electric Co.*, 85 OSAHRC _____, 12 BNA OSHC 1597, 1985 CCH OSHD ¶ 27,452 (No. 83-1227, 1985).

Withdrawal With Prejudice

Two of the proposed rules contained provisions concerning the withdrawal of a notice of contest, citation, notification of proposed penalty, or petition for modification of abatement period. Proposed § 2200.100(b) governed such withdrawals when they are included in the terms of a settlement agreement. Proposed § 2200.102 governed unilateral withdrawals accomplished by filing and service of a notice of withdrawal. Under both of these proposed rules, a presumption would have been created that all withdrawals are with prejudice. However, the parties could agree otherwise in their settlement agreement under proposed § 2200.100(b), and the Judge or the Commission could order otherwise under proposed § 2200.102.

Two commentators objected to the withdrawal-with-prejudice provisions of both rules. Two more commentators objected to the provision only in the context of proposed § 2200.102.

The Commission adopted proposed § 2200.100(b) as its final rule. The Commission believed that, in the usual case, a party enters into a settlement agreement with the expectation that all withdrawals by the opposing party are withdrawals with prejudice. Where the expectation of the parties is otherwise, it

is reasonable to require them to state so explicitly in their settlement agreement.

The Commission deleted the withdrawal-with-prejudice provision from its final rule at § 2200.102, however. The Commission concluded that a general rule that a withdrawal is with prejudice would tend to discourage voluntary withdrawals. The Commission considered adopting a rule that withdrawals would generally be without prejudice, but decided to leave the matter for determination on a case-by-case basis under Fed.R.Civ.P. 41.

Service of Settlement Agreements and Notices of Withdrawal

Comments on the service requirements for settlement agreements under proposed § 2200.100(c) were similar to those on service of notices of withdrawals under proposed § 2200.102. With respect to both of these rules, one of the Judges stated that "[t]he proposed rule overlooks requirement of service upon an authorized employee representative which has not elected party status." With respect to § 2200.102, this statement was accurate. The Commission inadvertently failed to provide for service of notices of withdrawal on non-party authorized employee representatives. With respect to § 2200.100(c), the statement was only partially correct. The proposed rule provided for service of settlement agreements on non-party authorized employee representatives. However, it inadvertently provided for service by posting under § 2200.7(g) rather than personal service under § 2200.7(c).

Under the final rules at §§ 2200.100(c) and 2200.102, these errors have been corrected. In § 2200.100(c) all parties as well as non-party authorized employee representatives must be served in accordance with § 2200.7(c), while non-party affected employees must be served by posting under § 2200.7(g). In § 2200.102, however, there is a limitation on these service requirements. Non-party affected employees and their representatives need only be served if they are still eligible to elect party status under § 2200.20(a). The Commission saw no reason to require service of a notice of withdrawal on anyone who has not elected party status and is no longer eligible to do so.

Section 2200.100(c) contains a similar limitation, but not on the service requirement. Although all affected employees and their representatives are entitled to service of the settlement agreement under the rule, they are given an opportunity to object to the settlement agreement only if they have already elected party status or they are still eligible under § 2200.20(a) to make such an election. One of the union commentators objected to the inclusion of this limitation in the proposed rule. However, the Commission rejected this comment. The Commission saw no reason why the filing of a settlement agreement should give affected employees and their representatives a second chance to elect party status when their opportunity to make such an election has already expired under the express terms of the Commission's rules.

Settlement Judges

Proposed § 2200.101, which would create a new Settlement Judge procedure, drew responses from about half the commentators. They were equally divided on the basic issue of whether the Commission should adopt its proposed rule. The five commentators who opposed the rule, the Secretary and four of the Commission's Judges, each stated the same objection. They did not believe that there is a need for the Settlement Judge procedure.

The Commission disagreed with this argument. It concluded that there are a substantial number of cases in which use of the Settlement Judge procedure can result in settlement of the case and avoidance of needless litigation. The Commission anticipates that this will occur, most commonly, in cases where, at some time during the pre-hearing stage of the litigation, the parties realize that they do not really want to go to trial but would prefer some other means of resolving their dispute. The Commission believes that, if the option of a mediated settlement is provided expressly and is available to the parties, they will utilize the procedure.

Accordingly, the Commission decided to adopt a rule establishing a Settlement Judge procedure. The Commission emphasized, however, that the rule has been adopted and, particularly at the outset, will be implemented, on an experimental basis. The procedure will be used sparingly at first until problems can be worked out.

Nevertheless, while the Commission retained the basic concept of its proposed rule, it also made numerous changes in response to the comments received and to other concerns raised by individual Commissioners. The final rule at § 2200.101 differs substantially from the proposed rule.

Aside from the contention that proposed § 2200.101 was unnecessary, the only other objection raised to its adoption was the Secretary's argument that it "is likely to result in substantial delays in resolving contested cases." The proposed rule contained several provisions designed to decrease this possibility, and these were strengthened under the final rule. Under paragraph (a)(4) of the final rule, when a case is assigned to a Settlement Judge, it is assigned for a limited period (45 days, reduced from 60 days under the proposed rule). Under paragraph (d)(1), the initial settlement period can be enlarged by as much as 20 days (reduced from 30 days under the proposed rule). However, this can only be done when the parties, the Settlement Judge and the Chief Administrative Law Judge all agree to it. The Commission anticipates that this will occur only in cases where, at the end of 45 days, the parties are close to agreement, but they need more time to complete the process. Moreover, under paragraph (d)(2), the Settlement Judge has the power to terminate the process at any time, even before the expiration of the original 45-day period, if he determines that "further negotiations would be fruitless." This provision would cover situations, for example, where the Secretary or the employer objects to continuation of the process. (See related discussion below.)

Accordingly, it is extremely unlikely that use of the Settlement Judge procedure would result in an unproductive delay of 65 days in a particular case. Yet, this is the worst possible result under the rule. The Commission anticipates that the few cases in which proceedings under the rule turn out to be a wasted effort will be outweighed by the cases in which the Settlement Judge procedure leads to a successful conclusion, resulting in savings to all parties and the Commission due to the early termination of the litigation.

Several changes in the rule were made in response to specific suggestions or specific objections by the commentators. Mr. O'Reilly raised concerns about the small number of Administrative Law Judges that are employed by the agency and the possibility of improper communication between two Judges in the same office, one assigned as a Settlement Judge and the other assigned as a hearing Judge on the same case. At Mr. O'Reilly's suggestion, a provision in the proposed rule that encouraged assignment of a case for a hearing to another Judge from the same office as the Settlement Judge was deleted from the final rule. Also, an existing prohibition against discussing the merits of the case with any person was revised to emphasize that the Settlement Judge must not discuss the merits with any other Administrative Law Judge.

Other changes in the rule were made in response to comments from one of the unions and from the Secretary. The

union raised concerns about improper use of documents that are revealed during settlement negotiations for settlement purposes only. In response, the Commission added a provision to paragraph (b)(2) of the final rule stating that such documents may not be used unless they are properly discoverable under the rules and are obtained through discovery or subpena in advance of trial. The Secretary objected to a provision in the proposed rule that would have allowed the Settlement Judge to order the parties, as well as their representatives, to appear at settlement conferences. The Secretary argued that this provision would interfere with the attorney-client privilege, and the Commission agreed with this comment. Under the final rule, the Settlement Judge has the power to recommend that the parties be present at a conference, but he may not compel their presence.

Two conflicting comments were filed on the question of how the procedure should be invoked. One of the Judges argued that the assignment of cases to Settlement Judges should be totally within the discretion of the Chief Administrative Law Judge and the Chairman. He argued against allowing the parties to initiate the process on the ground that this could lead to abuses of the procedure. In contrast, the Secretary objected to a provision in the proposed rule that would have allowed the Chief Judge or the Chairman to assign a case on his own motion to a Settlement Judge. The Secretary asserted that "there is no reason to sidetrack a case before a settlement judge if neither party thinks such action is likely to increase the chance of settlement."

The Commission agreed with the Secretary that there is no point in assigning a case to a Settlement Judge if the parties are unwilling to cooperate. On the other hand, the Commission declined to make initiation of the process totally dependent upon the parties. Under paragraph (a)(2) of the final rule, the Chief Judge or the Chairman may assign a case to a Settlement Judge upon motion of a party or with the consent of the parties. Thus, the Chief Judge, the Chairman or even the Judge to whom the case has been assigned for hearing can initiate the procedure, but the consent of the parties must be obtained before a Settlement Judge will be assigned.

Also in response to the Secretary's comment above, the Commission added the following provision to paragraph (a)(2) of the final rule: "In the event either the Secretary or the employer objects to the use of a Settlement Judge procedure, such procedure shall not be imposed." This provision gives the Secretary and the employer the power to "veto" the assignment of a case to a Settlement Judge. The Commission expressly decided that union parties and affected employee parties should not be given the power to "veto" proceedings under § 2200.101 when the other parties have consented to them. The Commission emphasized, however, that this is the only limitation on the rights of union parties and affected employee parties under the rule. They are otherwise entitled to fully participate in proceedings under § 2200.101.

Two other changes in the proposed rule urged by the Secretary were rejected by the Commission. The Secretary objected to giving the Settlement Judge authority (1) to suspend discovery during the settlement negotiation period and (2) to engage in ex parte communications with representatives of a single party. The Commission concluded, however, that it is necessary for the Settlement Judge to have these powers in order for the procedure to be effective. If the Secretary in a particular case is unwilling to grant this authority to a Settlement Judge, he has the power to prevent this simply by objecting to the use of the Settlement Judge procedure.

Other changes were made in the rule at the suggestion of the individual Commissioners and others during the final Commission meeting on the rules. A provision was added limiting the scope of the rule to cases initiated by an employer notice of contest and Equal Access to Justice Act cases. If experience under the rule proves to be satisfactory, the rule can be revised at a later date to cover other cases where the Secretary and the employer are not the primary litigants, e.g., employee notice of contest cases and cases where affected employees or their representatives object to the granting of a PMA.

Other miscellaneous changes were made. The rule was revised to give parties the option of retaining their Settlement Judge as their hearing Judge. Several provisions in the proposed rule relating to the case assignment process were deleted from the final rule, which gives the Chairman and the Chief Judge greater discretion over these administrative matters. Finally, paragraph (e) of the rule was revised to clarify and narrow the range of non-reviewable matters under the rule. As stated in the final rule, "[a]ny decision concerning the assignment of a particular Settlement Judge or the decision by any party or Settlement Judge to terminate proceedings under this section [§ 2200.101] is not subject to review."

Acknowledgments

The Commission acknowledges the invaluable contribution of its Rules Committee in the development and adoption of these revised Rules of Procedure. The members of that committee were: James D. Burroughs, First Administrative Law Judge, Atlanta, Ga., office; Stanley M. Schwartz, Administrative Law Judge, Dallas, Texas, office; Earl R. Ohman, Jr., General Counsel; Arthur G. Sapper, Deputy General Counsel; and Ray H. Darling, Jr., Executive Secretary. The Commission is thankful for the assistance rendered by each of these individuals.

List of Subjects in 29 CFR Part 2200

Hearing and appeal procedures, Administrative practice and procedure, Ex parte communications, Lawyers.

For the reasons set out in the preamble, Title 29, Chapter XX, Part 2200, is amended as set forth below.

1. The authority citation for Part 2200 continues to read as follows:

Authority: 29 U.S.C. 661(g), unless otherwise noted.

2. Subparts A, B, C, D, E, F, and G are revised to read as follows:

PART 2200—RULES OF PROCEDURE

Subpart A—General Provisions

Subpart B—Parties and Representatives

Subpart C—Pleadings and Motions

Subpart A—General Provisions

§ 2200.1 Definitions.

As used herein:

(a) "Act" means the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678.

(b) "Commission," "person," "employer," and "employee" have the meanings set forth in § 3 of the Act.

(c) "Secretary" means the Secretary of Labor or his duly authorized representative.

(d) "Executive Secretary" means the Executive Secretary of the Commission.

(e) "Affected employee" means an employee of a cited employer who is exposed to or has access to the hazard arising out of the allegedly violative circumstances, conditions, practices or operations.

(f) "Judge" means an Administrative Law Judge appointed by the Chairman of the Commission pursuant to 12(j) of the Act, 29 U.S.C. § 661(j), *as amended by* Pub. L. 95–251, 92 Stat. 183, 184 (1978).

(g) "Authorized employee representative" means a labor organization that has a collective bargaining relationship with the cited employer and that represents affected employees.

(h) "Representative" means any person, including an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding.

(i) "Citation" means a written communication issued by the Secretary to an employer pursuant to 9(a) of the Act.

(j) "Notification of proposed penalty" means a written communication issued by the Secretary to an employer pursuant to 10 (a) or (b) of the Act.

(k) "Day" means a calendar day.

(l) "Working day" means all days except Saturdays, Sundays, or Federal holidays.

(m) "Proceeding" means any proceeding before the Commission or before a Judge.

(n) "Pleadings" are complaints and answers filed under § 2200.34, statements of reasons and contestants' responses filed under § 2200.38, and petitions for modification of abatement and objecting parties' responses filed under § 2200.37. A motion is not a "pleading" within the meaning of these rules.

§ 2200.2 Scope of rules; applicability of Federal Rules of Civil Procedure; construction.

(a) *Scope.* These rules shall govern all proceedings before the Commission and its Judges.

(b) *Applicability of Federal Rules of Civil Procedure.* In the absence of a specific provision, procedure shall be in accordance with the Federal Rules of Civil Procedure.

(c) *Construction.* These rules shall be construed to secure an expeditious, just and inexpensive determination of every case.

§ 2200.3 Use of gender and number.

(a) *Number.* Words importing the singular number may extend and be applied to the plural and vice versa.

(b) *Gender.* Words importing the masculine gender may be applied to the feminine gender.

§ 2200.4 Computation of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Federal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and Federal holidays shall be excluded from the computation.

(b) *Service by mail.* Where service of a document, other than a petition for discretionary review, is made by mail pursuant to § 2200.7, three days shall be added to the prescribed period for the filing of a response. The period of time for filing a petition for discretionary review is governed by § 2200.91(b). Service within the meaning of this rule includes issuance of documents by the Commission or Judge.

§ 2200.5 Extensions of time.

Upon motion of a party for good cause shown, the Commission or Judge may enlarge any time prescribed by these rules or prescribed by an order. All such motions shall be in writing, but in exigent circumstances in cases pending before Judges, an oral request may be made and followed by a written motion. A request for an extension of time should be received in advance of the date on which the pleading or document is due to be filed. However, an extension of time may be granted even though the request was filed after the designated time for filing has expired, but in such circumstances, the party requesting the extension must show good cause for his failure to make the request before the time prescribed for the filing had expired. The motion may be acted upon before the time for response has expired.

§ 2200.6 Record address.

Every pleading or document filed by any party or intervenor shall contain the name, current address and telephone number of his representative, or, if he has no representative, his own name, current address and telephone number. Any change in such information shall be

communicated promptly in writing to the Judge or the Executive Secretary if no Judge has been assigned, and to all other parties and intervenors. A party or intervenor who fails to furnish such information shall be deemed to have waived his right to notice and service under these rules.

§ 2200.7 Service and notice.

(a) *When service is required.* At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor. Every paper relating to discovery required to be served on a party shall be served on all parties.

(b) *Service on represented parties or intervenors.* Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

(c) *How accomplished.* Unless otherwise ordered, service may be accomplished by postage pre-paid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(d) *Proof of service.* Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

(e) *Proof of posting.* Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

(f) *Service on represented employees.* Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in paragraph (c) of this section.

(g) *Service on unrepresented employees.* In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of the docketing of the notice of contest or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer) _____

Your employer has been cited by the Secretary of Labor for violation of the Occupational Safety and Health Act of 1970. The citation has been contested and will be the subject of a hearing before the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION in its Rules of Procedure. Notice of intent to participate must be filed no later than 10 days before the hearing. This notice should be sent to: Occupational Safety and Health Review Commission, 1825 K Street, NW., Washington, DC 20006.

All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted: The reasonableness of the period prescribed by the Secretary of Labor for abatement of the violation has been contested and will be the subject of a hearing before the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

(h) *Special service requirements; Authorized employee representatives.* The authorized employee representative, if any, shall be served with the notice set forth in paragraph (g) of this section and with a copy of the notice of contest.

(i) *Notice of hearing to unrepresented employees.* Immediately upon receipt, a copy of the notice of the hearing to be held before the Judge shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

(j) *Notice of hearing to represented employees.* Immediately upon receipt, a copy of the notice of the hearing to be held before the Judge shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in paragraph (c) of this section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such notice is received by the employer.

(k) *Employee contest; Service on other employees.* Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with § 2200.38, serve a copy thereof on such authorized employee representative in the manner prescribed in paragraph (c) of this section and shall file proof of such service.

(l) *Employee contest; Service on employer.* Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in paragraph (g) of this section.

(m) *Employee contest; Service on other authorized employee representatives.* An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

(n) *Duration of posting.* Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

§ 2200.8 Filing.

(a) *Where to file.* Prior to the assignment of a case to a Judge, all papers shall be filed with the Executive Secretary at 1825 K Street NW, Washington, DC 20006. Subsequent to the assignment of the case to a Judge, all papers shall be filed with the Judge at the address given in the notice informing of such assignment. Subsequent to the docketing of the Judge's report, all papers shall be filed with the Executive Secretary, except as provided in § 2200.90(b)(3).

(b) *How to file.* Unless otherwise ordered, all filing may be accomplished by first class mail.

(c) *Number of copies.* Unless otherwise ordered or stated in this Part:

(1) If a case is before a Judge or if it has not yet been assigned to a Judge, only the original of a document shall be filed.

(2) If a case is before the Commission for review, the original and four copies of a document shall be filed.

(d) *Filing date.* Filing is deemed effected at the time of mailing, except petitions for discretionary review are deemed to be filed at the time of receipt. See § 2200.91.

§ 2200.9 Consolidation.

Cases may be consolidated on the motion of any party, on the Judge's own motion, or on the Commission's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

§ 2200.10 Severance.

Upon its own motion, or upon motion of any party or intervenor, the Commission or the Judge may, for good cause, order any proceeding severed with respect to some or all issues or parties.

§ 2200.11 Protection of claims of privilege.

(a) *Scope.* This section applies to all claims of privilege, whenever asserted. It applies to privileged information, such as trade secrets and other matter protected by 18 U.S.C. § 1905, and other information the confidentiality of which is protected by law. As it is used in this section, "privileged information" encompasses such confidential information.

(b) *Assertion of a privilege.* A person claiming that information is privileged, shall claim the privilege in writing or, if during a hearing, on the record. The claim shall (1) identify the information that would be disclosed and for which a privilege is claimed, and (2) allege with specificity the facts showing that the information is privileged. The claim shall be supported by affidavits, depositions or testimony and shall specify the relief sought. The claim may be accompanied by a motion for a protective order, or motions that the allegedly privileged information be received and the claim be ruled upon *in camera,* that is, with the record and hearing room closed to the public, or *ex parte,* that is, without the participation of parties and their representatives.

(c) *Opposition to the claim.* A party wishing to make a response opposing a claim of privilege, or asserting a substantial need for disclosure in the event a qualified privilege exists, must do so within 15 days but, if the motion is made during a hearing, the Judge may prescribe a shorter time or require that the response be made during the hearing. A response contravening the facts stated by the claimant of the privilege shall be supported by affidavits, depositions, or testimony.

(d) *Examination of claim.* In examining a claim of privilege, the Judge may enter such orders and impose such terms and conditions on his examination as justice may require, including orders designed to assure that the alleged privileged information not be disclosed until after the examination is completed. The Judge may:

(1) Receive the allegedly privileged information *in camera;* he may temporarily seal the portions of the record containing the allegedly privileged information and may exclude the public from the hearing room.

(2) Receive the allegedly privileged information *ex parte;* he may order that the allegedly privileged information not be heard or served on all parties and their representatives; he may hear or examine it without the presence of all parties and their representatives.

(3) Order the preparation of a summary of the allegedly privileged information; he may order that a copy of a document be prepared with the allegedly privileged information excised; he may order that such summaries or documents be served upon other parties or their representatives.

(4) Enter a protective order. See paragraphs (e) and (f) of this section.

(e) *Upholding of claim.* If a claim of privilege is upheld, the Judge may enter such orders and impose such terms and conditions as justice may require, including orders that the privileged information not be disclosed or be disclosed in a specified manner. The Judge may: exclude the privileged information from the record; enter orders under § 2200.52(d), including an order that discovery not be had; revoke or modify a subpena; and permanently seal that portion of the record or other files of the Commission containing the privileged information, permitting access only to the Commission and any reviewing court. The Judge may also permit the information to be disclosed only to persons covered by protective orders under § 2200.52(d) and paragraph (f) of this section.

(f) *Protective Orders.* To govern the examination of a claim of privilege or to govern the treatment of privileged information, the Judge may enter protective orders under § 2200.52(d). The Judge may decline to permit disclosure to persons against whom the Commission could not enforce the order. The order may require that—

(1) An attorney or other representative not disclose the allegedly privileged information to any person, including his client.

(2) Any person to whom the material will be disclosed sign a written confidentiality agreement that the material will not be disclosed except under stated terms and conditions and that stipulates a reasonable preestimate of likely damages.

(3) In the case of an entry upon land, the case be stayed to allow the party seeking entry an opportunity to seek an order of a court or search warrant with protective conditions.

(g) *Rejection of claim.* If the Judge overrules a claim of privilege, the person claiming the privilege may obtain as of right an order sealing from the public those portions of the record containing the allegedly privileged information pending interlocutory or final review of the ruling, or final disposition of the case, by the Commission. Interlocutory review of such an order shall be given priority consideration by the Commission.

§ 2200.12 References to cases.

(a) *Citing decisions by Commission and Judges.—(1) Generally.* Parties citing decisions by the Commission should include in the citation the name of the employer, a citation to either the Bureau of National Affairs' Occupational Safety & Health Cases ("BNA OSHC") or Commerce Clearing House's Occupational Safety and Health Decisions ("CCH OSHD"), the OSHRC docket number and the year of the decision. For example, *Clement Food Co.,* 11 BNA OSHC 2120 (No. 80–607, 1984).

(2) *Parenthetical statements.* When citing the decision of a Judge, the digest of an opinion, or the opinion of a single Commissioner, a parenthetical statement to that effect should be included. For example, *Rust Engineering Co.,* 1984 CCH OSHD ¶ 27,023 (No. 79–2090, 1984) (view of Chairman ———), *vacating direction for review of* 1980 CCH OSHD ¶ 24,269 (1980) (ALJ) (digest).

(3) *Additional reference to OSAHRC Reports optional.* A parallel reference to the Commission's official reporter, OSAHRC Reports, which prints the full text of all Commission and Judges' decisions in microfiche form, may also be included. For example, *Texaco, Inc.,* 80 OSAHRC 74/B1, 8 BNA OSHC 1758 (No. 77–3040, 1980). *See generally* 29 CFR 2201.4(c) (on OSAHRC Reports).

(b) *References to court decisions.*—(1) *Parallel references to BNA and CCH reporters.* When citing a court decision, a parallel reference to either the Bureau of National Affairs' Occupational Safety & Health Cases ("BNA OSHC") or Commerce Clearing House's Occupational Safety and Health Decisions ("CCH OSHD") is desirable. For example, *Simplex Time Recorder Co.* v. *Secretary of Labor,* 766 F.2d 575, 12 BNA OSHC 1401 (D.C. Cir. 1985); *Deering Milliken, Inc.* v. *OSHRC,* 630 F.2d 1094, 1980 CCH OSHD ¶ 24,991 (5th Cir. 1980).

(2) *Name of employer to be indicated.* When a court decision is cited in which the first-listed party on each side is either the Secretary of Labor (or the name of a particular Secretary of Labor), the Commission, or a labor union, the citation should include in parenthesis the name of the employer in the Commission proceeding. For example, *Donovan* v. *Allied Industrial Workers (Archer Daniels Midland Co.),* 760 F.2d 783, 12 BNA OSHC 1310 (7th Cir. 1985);

Donovan v. *OSHRC* (Mobil Oil Corp.), 713 F.2d 918, 1983 CCH OSHD ¶ 26,627 (2d Cir. 1983).

Subpart B—Parties and Representatives

§ 2200.20 Party status.

(a) *Affected employees.* Affected employees and authorized employee representatives, by notice of election filed at least ten days before the hearing, may elect party status concerning any matter in which the Act confers a right to participate. A notice of election filed less than ten days prior to the hearing is ineffective unless good cause is shown for not timely filing the notice. A notice of election shall be served on all other parties in accordance with § 2200.7.

(b) *Employee contest.* Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status by a notice filed at least ten days before the hearing. A notice filed less than ten days prior to the hearing is ineffective unless good cause is shown for not timely filing the notice.

§ 2200.21 Intervention; Appearance by non-parties.

(a) *When allowed.* A petition for leave to intervene may be filed at any time prior to ten days before commencement of the hearing. A petition filed less than ten days prior to the commencement of the hearing will be denied unless good cause is shown for not timely filing the petition. A petition shall be served on all parties in accordance with § 2200.7.

(b) *Requirements of petition.* The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unduly delay the proceeding.

(c) *Granting of petition.* The Commission or Judge may grant a petition for intervention to such an extent and upon such terms as the Commission or the Judge shall determine.

§ 2200.22 Representation of parties and intervenors.

(a) *Representation.* Any party or intervenor may appear in person, through an attorney, or through another representative who is not an attorney. A representative must file an appearance in accordance with § 2200.23. In the absence of an appearance by a representative, a party or intervenor will be deemed to appear for himself. A corporation or unincorporated association may be represented by an authorized officer or agent.

(b) *Affected employees in collective bargaining unit.* Where an authorized employee representative (see § 2200.1(g)) elects to participate as a party, affected employees who are members of the collective bargaining unit may not separately elect party status. If the authorized employee representative does not elect party status, affected employees who are members of the collective bargaining unit may elect party status in the same manner as affected employees who are not members of the collective bargaining unit. See § 2200.20(c).

(c) *Affected employees not in collective bargaining unit.* Affected employees who are not members of a collective bargaining unit may elect party status under § 2200.20(a). If more than one employee so elects, the Judge shall provide for them to be treated as one party.

(d) *Control of proceeding.* A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

§ 2200.23 Appearances and withdrawals.

(a) *Entry of appearance.*—(1) *General.* A representative of a party or intervenor shall enter an appearance by signing the first document filed on behalf of the party or intervenor in accordance with paragraph (a)(2) of this section, or thereafter by filing an entry of appearance in accordance with paragraph (a)(3) of this section.

(2) *Appearance in first document or pleading.* If the first document filed on behalf of a party or intervenor is signed by a representative, he shall be recognized as representing that party. No separate entry of appearance by him is necessary, provided the document contains the information required by § 2200.6.

(3) *Subsequent appearance.* Where a representative has not previously appeared on behalf of a party or intervenor, he shall file an entry of appearance with the Executive Secretary, or Judge if the case has been assigned. The entry of appearance shall be signed by the representative and contain the information required by § 2200.6.

(b) *Withdrawal of counsel.* Any counsel or representative of record desiring to withdraw his appearance, or any party desiring to withdraw the appearance of counsel or representative of record for him, must file a motion with the Commission or Judge requesting leave therefor, and showing that prior notice of the motion has been given by him to his client or counsel or representative, as the case may be. The motion of counsel to withdraw may, in the discretion of the Commission or Judge, be denied where it is necessary to avoid undue delay or prejudice to the rights of a party or intervenor.

Subpart C—Pleadings and Motions

§ 2200.30 General rules.

(a) *Format.* Pleadings and other documents (other than exhibits) shall be typewritten, double spaced, on letter size opaque paper (approximately 8½ inches by 11 inches). All margins shall be approximately 1½ inches. Pleadings and other documents shall be fastened at the upper left corner.

(b) *Clarity.* Each allegation or response of a pleading or motion shall be simple, concise and direct.

(c) *Separation of claims.* Each allegation or response shall be made in separate numbered paragraphs. Each paragraph shall be limited as far as practicable to a statement of a single set of circumstances.

(d) *Alternative pleading.* A party may set forth two or more statements of a claim or defense alternatively or hypothetically. When two or more statements are made in the alternative and one of them would be sufficient if made independently, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may state as many separate claims or defenses as he has regardless of consistency or the grounds on which based. All statements shall be made subject to the signature requirements of § 2200.32.

(e) *Content of motions and miscellaneous pleadings.* A motion shall contain a caption complying with § 2200.31, a signature complying with § 2200.32, and a clear and plain statement of the relief that is sought together with the grounds therefor. These requirements also apply to any pleading not governed by more specific requirements in this Subpart.

(f) *Burden of persuasion.* The rules of pleading established by this Subpart are not determinative in deciding which party bears the burden of persuasion on an issue. By pleading a matter affirmatively, a party does not waive its right to argue that the burden of persuasion on the matter is on another party.

(g) *Enforcement of pleading rules.* The Commission or the Judge may refuse for filing any pleading or motion that does

not comply with the requirements of this Subpart.

§ 2200.31 Caption; titles of cases.

(a) *Notice of contest cases.* Cases initiated by a notice of contest shall be titled:

Secretary of Labor, Complainant, v. *(Name of Contestant),* Respondent.

(b) *Petitions for modification of abatement period.* Cases initiated by a petition for modification of the abatement period shall be titled:

(Name of employer), Petitioner, v. *Secretary of Labor,* Respondent.

(c) *Location of title.* The titles listed in paragraphs (a) and (b) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

(d) *Docket number.* The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Commission.

§ 2200.32 Signing of pleadings and motions.

Pleadings and motions shall be signed by the filing party or by the party's representative. The signature of a representative constitutes a representation by him that he is authorized to represent the party or parties on whose behalf the pleading is filed. The signature of a representative or party also constitutes a certificate by him that he has read the pleading, motion, or other paper, that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 2200.33 Notices of contest.

Within 15 working days after receipt of—

(a) Notification that the employer intends to contest a citation or proposed penalty under section 10(a) of the Act, 29 U.S.C. 659(a); or

(b) Notification that the employer wishes to contest a notice of a failure to abate or a proposed penalty under section 10(b) of the Act, 29 U.S.C. 659(b); or

(c) A notice of contest filed by an employee or representative of employees under section 10(c) of the Act, 29 U.S.C. 659(c), the Secretary shall notify the Commission of the receipt in writing and shall promptly furnish to the Executive Secretary of the Commission the original of any documents or records filed by the employer and copies of all other documents or records relevant to the contest.

§ 2200.34 Employer contests.

(a) *Filing deadline for complaint.* The Secretary shall file with the Commission a complaint conforming to the requirements of § 2200.35 no later than 30 days after the filing of the Secretary's notice to the Commission pursuant to § 2200.33.

(b) *Motion for more definite statement.* Upon a showing by the employer that it cannot frame a responsive answer to the allegations of the complaint, the employer may move for a more definite statement of the Secretary's allegations before filing an answer. The motion shall be filed within twenty days after service of the complaint and shall point out the defects complained of and the details desired. The prompt filing of an amended complaint meeting the objections of the moving party may obviate the necessity for the Judge to rule on the motion.

(c) *Order to file amended complaint.* In response to a motion for more definite statement, the Secretary may be ordered to file an amended complaint. The order will require the Secretary to supply such additional information or further particularization of the complaint's allegations as the Commission or the Judge deems necessary.

(d) *Time to file answer.* (1) *Generally.* Except as provided in paragraph (d)(2) of this section, the employer shall file with the Commission an answer conforming to the requirements of § 2200.36 within 30 days after service of the complaint.

(2) *Exceptions.* If a motion to dismiss or a motion for a more definite statement has been filed, the answer shall be filed within 15 days after the motion is denied. If a motion to amend the complaint or a motion for a more definite statement has been granted, or if an amended complaint has been filed voluntarily under § 2200.35(f) before an answer is served, the answer shall be filed within 30 days after service of the amended complaint.

§ 2200.35 Complaints.

(a) *General requirements.* The purpose of this section is to insure the early ascertainment of the issues to be litigated. Attachment of the citation or notification of failure to abate to the complaint and incorporation of its terms by reference do not comply with this section. The complaint shall contain the following allegations in separately designated paragraphs:

(1) The employer is engaged in a business affecting commerce within the meaning of section 3(5) of the Act, 29 U.S.C. 652(5);

(2) The employer's name, principal place of business and type of business conducted as of the date of the alleged violation or failure to abate; and

(3) The time and place of each alleged violation or failure to abate.

(b) *Complaints concerning contested alleged violations.* Each alleged violation shall be set out in a separate numbered paragraph, which shall have the subparagraphs described below. All allegations that relate to the same alleged violation shall be placed in one paragraph. A paragraph alleging a violation shall in separate subparagraphs state clearly and concisely—

(1) What provision of the Act, standard, regulation, rule or order was violated and the item and citation number in which the alleged violation is set forth;

(2) The factual basis for each allegation necessary to establish that the standard, regulation or rule applies, and what scope or application provision governs its applicability;

(3) The factual basis for each allegation necessary to establish that the cited circumstances, conditions, practices or operations violated the cited provision of the Act, standard, regulation, rule or order;

(4) Where pertinent, the factual basis for the allegation that employees had access to or were exposed to the cited circumstances, conditions, practices or operations;

(5) That the employer knew or could have known with the exercise of reasonable diligence of the cited circumstances, conditions, practices or operations;

(6) Any allegation that the alleged violation is serious, or that the employer willfully committed the alleged violation;

(7) Any allegation that the employer repeatedly committed the alleged violation, each prior citation and item number that serves as the basis for the classification, and the date that each became a final order of the Commission;

(8) That the proposed penalty is appropriate, specifying the amount;

(9) That the proposed abatement date is reasonable, specifying the date.

(c) *Additional requirements for complaints alleging violations of the General Duty Clause.* With respect to each alleged violation of section 5(a)(1) of the Act, 29 U.S.C. 654(a)(1), the

complaint shall also identify the alleged hazard and specify the feasible means by which the employer could have eliminated or materially reduced the alleged hazard.

(d) *Additional requirements for complaints alleging violations of general standards.* With respect to each alleged violation of any standard or regulation under which the obligation of the employer is contingent upon the existence of a hazard (e.g., 29 CFR 1910.94(d)(7)(iii), 1910.94(d)(9)(i), 1910.132(a) and 1926.28(a)), the complaint shall also identify the particular hazard created by the circumstances, conditions, practices or operations that are the basis for the alleged violation. With respect to each alleged violation of any standard or regulation that does not specify a means of abatement and does not provide a specific performance criterion, the complaint shall also identify the feasible means by which the employer could have abated the allegedly violative condition.

(e) *Complaints alleging failure to abate.* With respect to each contested allegation of failure to abate a violation, the complaint shall allege with particularity the failure to abate, specifying its date, location and circumstances. The complaint also shall state the penalty proposed, and allege that the penalty is "appropriate" under section 17(j) of the Act, 29 U.S.C. 666(j). The complaint shall also identify the citation and item number in which the violation was previously cited, the date on which this prior citation became a final order of the Commission, and the date by which abatement was required.

(f) *Amendment of the citation and complaint.* A contested citation, notification of proposed penalty, or notification of failure to abate may be amended once as a matter of course in the complaint before an answer is served if (1) the amended allegation arises out of the same conduct, occurrence or hazard described in the citation; (2) the amendment does not result in incurable harm to the employer in the preparation or presentation of its case; and (3) the complaint clearly identifies the change that is being made in the allegation. All other amendments of the Secretary's allegations, as well as any amendments of the employer's responses, are governed by Federal Rule of Civil Procedure 15.

§ 2200.36 Content of the answer.

(a) *Response to the Secretary's allegations.* General denials shall not be accepted. The answer shall contain in short and plain terms a response to each allegation of the complaint. It shall specifically admit or deny each allegation or, if the employer is without knowledge of the facts, the answer shall so state. A statement of lack of knowledge has the effect of a denial. A failure to respond to an allegation shall be treated as an admission that the allegation is true. Amendment of the answer to correct a failure to respond may be permitted when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the Commission or Judge that the amendment will prejudice him in presenting his case or defense on the merits.

(b) *Affirmative defenses.* (1) The employer shall state in its answer in separate numbered paragraphs any matter that may constitute an avoidance or an affirmative defense and, to the extent they are known or with reasonable diligence could have been known, the facts that are the basis of the defense. Such matters include, but are not limited to, the following: creation of a greater hazard by complying with a cited standard; exemption under section 4(b)(1) of the Act, 29 U.S.C. 653(b)(1); failure to issue a citation with reasonable promptness; infeasibility of compliance; invalidity of the cited standard; preemption of section 5(a)(1) of the Act, 29 U.S.C. 654(a)(1), by a specific standard; preemption of a standard by a more specifically applicable standard under 29 CFR 1910.5(c)(1); res judicata; the six-month limitation period in section 9(c) of the Act, 29 U.S.C. 658(c); or unpreventable employee conduct.

(2) By pleading an avoidance or affirmative defense, the employer does not waive its right to argue that the Secretary has the burden of persuasion concerning the matter. See § 2200.30(f).

§ 2200.37 Petitions for modification of the abatement period.

(a) *Grounds for modifying abatement date.* An employer may file a petition for modification of abatement date when such employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond the employer's reasonable control.

(b) *Contents of petition.* A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(c) *When and where filed; Posting requirement; Responses to petition.* A petition for modification of abatement date shall be filed with the Area Director of the United States Department of Labor who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(1) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near each location where the violation occurred. The petition shall remain posted for a period of 10 days.

(2) Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Area Director. Failure to file such objection within 10 working days of the date of posting of such petition shall constitute a waiver of any further right to object to said petition.

(3) The Secretary or his duly authorized agent shall have the authority to approve any uncontested petition for modification of abatement date filed pursuant to paragraphs (b) and (c) of this section. Such uncontested petitions shall become final orders pursuant to sections 10 (a) and (c) of the Act.

(4) The Secretary or his authorized representative shall not exercise his approval power until the expiration of 15 working days from the date the petition was posted pursuant to paragraphs (c) (1) and (2) of this section by the employer.

(d) *Contested petitions.* Where any petition is objected to by the Secretary or affected employees, such petition shall be processed as follows:

(1) The petition, citation and any objections shall be forwarded to the Commission within 10 working days after the expiration of the 15 working day period set out in paragraph (c)(4) of this section.

(2) The Commission shall docket and process such petitions as expedited proceedings as provided for in § 2200.103 of this Part.

(3) An employer petitioning for a modification of the abatement period shall have the burden of proving in accordance with the requirements of section 10(c) of the Act, 29 U.S.C. 659(c), that such employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's control.

(4) Within 10 working days after the receipt of notice of the docketing by the Commission of any petition for modification of the abatement date, each objecting party shall file a response setting forth the reasons for opposing the granting of a modification date different from that requested in the petition.

§ 2200.38 Employee contests.

(a) *Secretary's statement of reasons.* Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period, the Secretary shall, within 10 days from his receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed by him is not unreasonable.

(b) *Response to Secretary's statement.* Not later than 10 days after receipt of the statement referred to in paragraph (a) of this section, the contestant shall file a response.

(c) *Expedited proceedings.* All contests under this section shall be handled as expedited proceedings as provided for in § 2200.103 of this Part.

§ 2200.39 Statement of position.

At any time prior to the commencement of the hearing before the Judge, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard. The Judge may order the filing of a statement of position.

§ 2200.40 Motions and requests.

(a) *How to make.* A request for an order shall be made by motion. Motions shall be in writing or, unless the Judge directs otherwise, may be made orally during a hearing on the record and shall be included in the transcript. In exigent circumstances in cases pending before Judges, a motion may be made telephonically if it is reduced to writing and filed within a short time. A motion shall state with particularity the grounds on which it is based and shall set forth the relief or order sought. A motion shall not be included in another document, such as a brief or a petition for discretionary review, but shall be made in a separate document. Unless a motion is made by all parties, the moving party shall state in the motion any opposition or lack of opposition of which he is aware.

(b) *When to make.* A motion filed in lieu of an answer pursuant to § 2200.34(b) shall be filed no later than twenty days after the service of the complaint. Any other motion shall be made as soon as the grounds therefor are known.

(c) *Responses.* Any party or intervenor upon whom a motion is served shall have ten days from service of the motion to file a response. A procedural motion may be ruled upon prior to the expiration of the time for response. A party adversely affected by the ruling may within five days of service of the ruling seek reconsideration.

(d) *Postponement not automatic upon filing of motion.* The filing of a motion, including a motion for a postponement, does not automatically postpone a hearing. See § 2200.62 with respect to motions for postponement.

§ 2200.41 Failure to obey rules.

(a) *Sanctions.* When any party has failed to plead or otherwise proceed as provided by these rules or as required by the Commission or Judge, he may be declared to be in default either: (1) On the initiative of the Commission or Judge, after having been afforded an opportunity to show cause why he should not be declared to be in default; or (2) on the motion of a party. Thereafter, the Commission or Judge, in their discretion, may enter a decision against the defaulting party or strike any pleading or document not filed in accordance with these rules.

(b) *Motion to set aside sanctions.* For reasons deemed sufficient by the Commission or Judge and upon motion expeditiously made, the Commission or Judge may set aside a sanction imposed under paragraph (a) of this rule.

(c) *Discovery sanctions.* This section does not apply to sanctions for failure to comply with orders compelling discovery, which are governed by § 2200.52(e).

Subpart D—Prehearing Procedures and Discovery

§ 2200.51 Prehearing conferences and orders.

Prehearing conferences are encouraged. Prehearing conferences may be conducted by a telephone conference call. In addition to the prehearing and scheduling procedures set forth in Fed.R.Civ.P. 16, the Judge may upon his own initiative or on the motion of a party direct the parties to confer among themselves to consider settlement, stipulation of facts or any other matter that may expedite the hearing. Where a prehearing conference is not held, the Judge may in his discretion require the parties or their representatives to prepare and submit an agreed prehearing order setting forth any stipulations among the parties, the disputed issues of fact and law, the names and addresses of witnesses expected to be called and the exhibits expected to be introduced by each party in its case-in-chief, the possibility of settlement, the estimated hearing time, and a proposed hearing date or dates.

§ 2200.52 General provisions governing discovery.

(a) *General.*—(1) *Methods and limitations.* In conformity with these rules, any party may, without leave of the Commission or Judge, obtain discovery by one or more of the following methods:

(i) Production of documents or things or permission to enter upon land or other property for inspection and other purposes (§ 2200.53);

(ii) Requests for admission to the extent provided in § 2200.54; and

(iii) Interrogatories to the extent provided in § 2200.55.

Discovery is not available under these rules through depositions except to the extent provided in § 2200.56. In the absence of a specific provision, procedure shall be in accordance with the Federal Rules of Civil Procedure.

(2) *Time for discovery.* A party may initiate all forms of discovery in conformity with these Rules at any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss. Discovery shall be initiated early enough to permit completion of discovery no later than seven days prior to the date set for hearing, unless the Judge orders otherwise.

(3) *Service of discovery papers.* Every paper relating to discovery required to be served on a party shall be served on all parties.

(b) *Scope of discovery.* The information or response sought through discovery may concern any matter not privileged and that is relevant to the subject matter involved in the pending case. It is not ground for the objection that the information or response sought will be inadmissible at the hearing, if

that information or response appears reasonably calculated to lead to discovery of admissible evidence, regardless of which party has the burden of proof.

(c) *Limitations.* The frequency or extent of the discovery methods provided by these rules may be limited by the Commission or Judge if it is determined that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity to obtain the information sought by discovery in the action; or

(3) The discovery is unduly burdensome or expensive, taking into account the needs of the case, limitations on the parties' resources, and the importance of the issues in litigation.

(d) *Protective orders.* In connection with any discovery procedure, the Commission or Judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That discovery may be had only on specified terms and conditions, including a designation of the time and place, or that the scope of discovery be limited to certain matters;

(3) That discovery be conducted with no one present except persons designated by the Commission or Judge; and

(4) That confidential information not be disclosed or that it be disclosed only in a designated way. See also § 2200.11 on trade secrets.

(e) *Failure to cooperate; Sanctions.* A party may apply for an order compelling discovery when another party refuses or obstructs discovery. For purposes of this paragraph, an evasive or incomplete answer is to be treated as a failure to answer. If a Judge enters an order compelling discovery and there is a failure to comply with that order, the Judge may make such orders with regard to the failure as are just. The orders may issue upon the initiative of a Judge after affording an opportunity to show cause why the order should not be entered, or upon the motion of a party. The orders may include any sanction stated in Fed.R.Civ.P. 37, including the following:

(1) An order that designated facts shall be taken to be established for purposes of the case in accordance with the claim of the party obtaining that order;

(2) An order refusing to permit the disobedient party to support or to oppose designated claims or defenses, or prohibiting it from introducing designated matters in evidence;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed; and

(4) An order dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(f) *Unreasonable delays.* None of the discovery procedures set forth in these rules shall be used in a manner or at a time which shall delay or impede the progress of the case toward hearing status or the hearing of the case on the date for which it is scheduled, unless, in the interests of justice, the Judge shall order otherwise. Unreasonable delays in utilizing discovery procedures may result in termination of the party's right to conduct discovery.

§ 2200.53 Production of documents and things.

(a) *Scope.* At any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss, any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on his or her behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the request is served;

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon.

(b) *Procedure.* The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. It shall specify a reasonable time, place and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 30 days after service of the request. The Commission or Judge may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to in whole or in part, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, that part shall be specified. To obtain a ruling on an objection by the responding party, the requesting party shall file a motion with the Judge and shall annex thereto his request, together with the response and objections, if any.

§ 2200.54 Requests for admissions.

(a) *Scope.* At any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss, any party may serve upon any other party written requests for admissions, for purposes of the pending action only, of the genuineness and authenticity of any document described in or attached to the requests, or of the truth of any specified matter of fact. Each matter of which an admission is requested shall be separately set forth. The number of requested admissions shall not exceed 25, including subparts, without an order of the Commission or Judge. The party seeking to serve more than 25 requested admissions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of requested admissions. The original of the request shall be filed with the Judge.

(b) *Response to requests.* Each matter is deemed admitted unless, within 30 days after service of the requests or within such shorter or longer time as the Commission or Judge may allow, the party to whom the requests are directed serves upon the requesting party: (1) A written answer specifically admitting or denying the matter involved in whole or in part, or asserting that it cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so, or (2) an objection, stating in detail the reasons therefor. The response shall be made under oath or affirmation and signed by the party or his representative. The original shall be filed with the Judge.

(c) *Effect of admission.* Any matter admitted under this section is conclusively established unless the Judge or Commission on motion permits withdrawal or modification of the admission. Withdrawal or modification may be permitted when the presentation of the merits of the case will be subserved thereby, and the party who obtained the admission fails to satisfy the Commission or Judge that the withdrawal or modification will prejudice him in presenting his case or defense on the merits.

§ 2200.55 Interrogatories.

(a) *General.* At any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss, any party may serve interrogatories upon any other party. The number of interrogatories shall not exceed 25 questions, including subparts, without an order of the Commission or Judge. The party seeking to serve more than 25 questions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of interrogatories.

(b) *Answers.* All answers shall be made in good faith and as completely as the answering party's information will permit. The answering party is required to make reasonable inquiry and ascertain readily obtainable information. An answering party may not give lack of information or knowledge as an answer or as a reason for failure to answer, unless he states that he has made reasonable inquiry and that information known or readily obtainable by him is insufficient to enable him to answer the substance of the interrogatory.

(c) *Procedure.* Each interrogatory shall be answered separately and fully under oath or affirmation. If the interrogatory is objected to, the objection shall be stated in lieu of the answer. The answers are to be signed by the person making them and the objections shall be signed by the party or his counsel. The party on whom the interrogatories have been served shall serve a copy of his answers or objections upon the propounding party within 30 days after the service of the interrogatories. The Judge may allow a shorter or longer time. The burden shall be on the party submitting the interrogatories to move for an order with respect to any objection or other failure to answer an interrogatory.

§ 2200.56 Depositions.

(a) *General.* Depositions of parties, intervenors, or witnesses shall be allowed only by agreement of all the parties, or on order of the Commission or Judge following the filing of a motion of a party stating good and just reasons. All depositions shall be before an officer authorized to administer oaths and affirmations at the place of examination. The deposition shall be taken in accordance with the Federal Rules of Civil Procedure, particularly Fed.R.Civ.P. 30.

(b) *When to file.* A motion to take depositions may be filed after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss.

(c) *Notice of taking.* Any depositions allowed by the Commission or Judge may be taken after ten days' written notice to the other party or parties. The ten-day notice requirement may be waived by the parties.

(d) *Expenses.* Expenses for a court reporter, and the preparing and serving of depositions shall be borne by the party at whose instance the deposition is taken.

(e) *Use of depositions.* Depositions taken under this rule may be used for discovery, to contradict or impeach the testimony of a deponent as a witness, or for any other purpose permitted by the Federal Rules of Evidence and the Federal Rules of Civil Procedure, particularly Fed.R.Civ.P. 32.

§ 2200.57 Issuance of subpenas; petitions to revoke or modify subpenas; right to inspect or copy data.

(a) *Issuance of subpenas.* On behalf of the Commission or any member thereof, the Judge shall, on the application of any party, issue to the applying party subpenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence or documents, in his possession or under his control. The party to whom the subpena is issued shall be responsible for its service. Applications for subpenas, if filed prior to the assignment of the case to a Judge, shall be filed with the Executive Secretary at 1825 K Street, NW., Washington, DC 20006. After the case has been assigned to a Judge, applications shall be filed with the Judge. Applications for subpenas shall be made ex parte. The subpena shall show on its face the name and address of the party at whose request the subpena was issued.

(b) *Revocation or modification of subpenas.* Any person served with a subpena, whether ad testificandum or duces tecum, shall, within 5 days after the date of service of the subpena upon him, move in writing to revoke or modify the subpena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpena was issued. The Judge or the Commission, as the case may be, shall revoke or modify the subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpena is otherwise invalid. The Judge or the Commission, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

(c) *Rights of persons compelled to submit data.* Persons compelled to submit data or evidence at a public proceeding are entitled to retain or, on payment of lawfully prescribed costs, to procure copies of transcripts of the data or evidence submitted by them.

(d) *Failure to comply with subpena.* Upon the failure of any person to comply with a subpena issued upon the request of a party, the Commission by its counsel shall initiate proceedings in the appropriate district court for the enforcement thereof, if in its judgment the enforcement of such subpena would be consistent with law and with policies of the Act. Neither the Commission nor its counsel shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

Subpart E—Hearings

§ 2200.60 Notice of hearing; Location.

Except by agreement of the parties, or in an expedited proceeding under § 2200.103, notice of the time, place, and nature of the first setting of a hearing shall be given to the parties and intervenors at least thirty days in advance of the hearing. If a hearing has been previously postponed or if exigent circumstances are present, at least ten days notice shall be given. The Judge will designate a place and time of hearing that involves as little inconvenience and expense to the parties as is practicable.

§ 2200.61 Submission without hearing.

A case may be fully stipulated by the parties and submitted to the Commission or Judge for a decision at any time. The stipulation of facts shall be in writing and signed by the parties or their representatives. The submission of a case under this rule does not alter the burden of proof, the requirements otherwise applicable with respect to adducing proof, or the effect of failure of proof. Motions for summary judgment are covered by Fed.R.Civ.P. 56.

§ 2200.62 Postponement of hearing.

(a) *Motion to postpone.* A hearing may be postponed by the Judge at his own initiative or for good cause shown upon the motion of a party. A motion for postponement shall state the position of the other parties, either by a joint

motion or by a representation of the moving party. The filing of a motion for postponement does not automatically postpone a hearing.

(b) *Grounds for postponement.* A motion for postponement grounded on conflicting engagements of counsel or employment of new counsel shall be filed promptly after notice is given of the hearing, or as soon as the conflict is learned of or the engagement occurs.

(c) *When motion must be received.* A motion to postpone a hearing must be received at least seven days prior to the hearing. A motion for postponement received less than seven days prior to the hearing will generally be denied unless good cause is shown for late filing.

(d) *Postponement in excess of 60 days.* No postponement in excess of 60 days shall be granted without the concurrence of the Chief Administrative Law Judge. The original of any motion seeking a postponement in excess of 60 days shall be filed with the Judge and a copy sent to the Chief Administrative Law Judge.

§ 2200.63 Stay of proceedings.

(a) *Motion for stay.* Stays are not favored. A party seeking a stay of a case assigned to a Judge shall file a motion for stay with the Judge and send a copy to the Chief Administrative Law Judge. A motion for a stay shall state the position of the other parties, either by a joint motion or by the representation of the moving party. The motion shall set forth the reasons a stay is sought and the length of the stay requested.

(b) *Ruling on motion to stay.* The Judge, with the concurrence of the Chief Administrative Law Judge, may grant any motion for stay for the period requested or for such period as is deemed appropriate.

(c) *Periodic reports required.* The parties in a stayed proceeding shall be required to submit periodic reports on such terms and conditions as the Judge may direct.

§ 2200.64 Failure to appear.

(a) *Attendance at hearing.* The failure of a party to appear at a hearing may result in a decision against that party.

(b) *Requests for reinstatement.* Requests for reinstatement must be made, in the absence of extraordinary circumstances, within five days after the scheduled hearing date.

(c) *Rescheduling hearing.* The Commission or the Judge, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

§ 2200.65 Payment of witness fees and mileage; Fees of persons taking depositions.

Witnesses summoned before the Commission or the Judge shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

§ 2200.66 Transcript of testimony.

(a) *Hearings.* Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the Judge before whom the matter was heard.

(b) *Payment for transcript.* The Commission shall bear all expenses for court reporters' fees and for copies of the hearing transcript received by it. Each party is responsible for securing and paying for its copy of the transcript.

(c) *Correction of errors.* Error in the transcript of the hearing may be corrected by the Judge on his own motion, on joint motion by the parties, or on motion by any party. The motion shall state the error in the transcript and the correction to be made. Corrections will be made by hand with pen and ink and by the appending of an errata sheet.

§ 2200.67 Duties and powers of Judges.

It shall be the duty of the Judge to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The Judge shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to the rules and regulations of the Commission, to:

(a) Administer oaths and affirmations;

(b) Issue authorized subpenas;

(c) Rule upon petitions to revoke subpenas;

(d) Rule upon offers of proof and receive relevant evidence;

(e) Take or cause depositions to be taken whenever the needs of justice would be served;

(f) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(g) Hold conferences for the settlement or simplification of the issues;

(h) Dispose of procedural requests or similar matters, including motions referred to the Judge by the Commission and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of his decision;

(i) Make decisions in conformity with § 557 of title 5, United States Code;

(j) Call and examine witnesses and to introduce into the record documentary or other evidence;

(k) Request the parties to state their respective positions concerning any issue in the case or theory in support thereof;

(l) Adjourn the hearing as the needs of justice and good administration require;

(m) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the Commission.

§ 2200.68 Disqualification of the Judge.

(a) *Discretionary withdrawal.* A Judge may withdraw from a proceeding whenever he deems himself disqualified.

(b) *Request for withdrawal.* Any party may request the Judge, at any time following his designation and before the filing of his decision, to withdraw on ground of personal bias or disqualification, by filing with him promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) *Granting request.* If, in the opinion of the Judge, the affidavit referred to in paragraph (b) of this section is filed with due diligence and is sufficient on its face, the Judge shall forthwith disqualify himself and withdraw from the proceeding.

(d) *Denial of request.* If the Judge does not disqualify himself and withdraw from the proceedings, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has closed, he shall proceed with the issuance of his decision, and the provisions of § 2200.90 shall thereupon apply.

§ 2200.69 Examination of witnesses.

Witnesses shall be examined orally under oath or affirmation. Opposing parties have the right to cross-examine any witness whose testimony is introduced by an adverse party. All parties shall have the right to cross-examine any witness called by the Judge pursuant to § 2200.67(j).

§ 2200.70 Exhibits.

(a) *Marking exhibits.* All exhibits offered in evidence by a party shall be marked for identification before or during the hearing. Exhibits shall be marked with the case docket number, with a designation identifying the party or intervenor offering the exhibit, and numbered consecutively.

(b) *Removal or substitution of exhibits in evidence.* Unless the Judge finds it impractical, a copy of each exhibit shall be given to the other parties and intervenors. A party may remove an exhibit from the official record during the hearing or at the conclusion of the hearing only upon permission of the Judge. The Judge, in his discretion, may permit the substitution of a duplicate for any original document offered into evidence.

(c) *Reasons for denial of admitting exhibit.* A Judge may, in his discretion, deny the admission of any exhibit because of its excessive size, weight, or other characteristic that prohibits its convenient transportation and storage. A party may offer into evidence photographs, models or other representations of any such exhibit.

(d) *Rejected exhibits.* All exhibits offered but denied admission into evidence, except exhibits referred to in paragraph (c) of this section, shall be placed in a separate file designated for rejected exhibits.

(e) *Return of physical exhibits.* A party may on motion request the return of a physical exhibit within 30 days after expiration of the time for filing a petition for review of a Commission final order in a United States Court of Appeals under section 11 of the Act, 29 U.S.C. 660, or within 30 days upon completion of any proceedings initiated thereunder. The motion shall be addressed to the Executive Secretary and provide supporting reasons. The exhibit shall be returned if the Executive Secretary determines that it is no longer necessary for use in any Commission proceeding.

(f) *Request for custody of physical exhibit.* Any person may on motion to the Executive Secretary request custody of a physical exhibit for use in any court or tribunal. The motion shall state the reasons for the request and the duration of custody requested. If the exhibit has been admitted in a pending Commission case, the motion shall be served on all parties to the proceeding. Any person granted custody of an exhibit shall inform the Executive Secretary of the status every six months of his continuing need for the exhibit and return the exhibit after completion of the proceeding.

(g) *Disposal of physical exhibit.* Any physical exhibit may be disposed of by the Commission's Executive Secretary at any time more than 30 days after expiration of the time for filing a petition for review of a Commission final order in a United States Court of Appeals under section 11 of the Act, 29 U.S.C. 660, or 30 days after completion of any proceedings initiated thereunder.

§ 2200.71 Rules of evidence.

The Federal Rules of Evidence are applicable.

§ 2200.72 Objections.

(a) *Statement of objection.* Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the Judge, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(b) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

§ 2200.73 Interlocutory review.

(a) *General.* Interlocutory review of a Judge's ruling is discretionary with the Commission. A petition for interlocutory review may be granted only where the petition asserts and the Commission finds:

(1) That the review involves an important question of law or policy about which there is substantial ground for difference of opinion and that immediate review of the ruling may materially expedite the final disposition of the proceedings; or

(2) That the ruling will result in a disclosure, before the Commission may review the Judge's report, of information that is alleged to be privileged.

(b) *Petition for interlocutory review.* Within five days following the receipt of a Judge's ruling from which review is sought, a party may file a petition for interlocutory review with the Commission. Responses to the petition, if any, shall be filed within five days following service of the petition. A copy of the petition and responses shall be filed with the Judge. The petition is denied unless granted within 30 days of the date of receipt by the Commission's Executive Secretary.

(c) *Denial without prejudice.* The Commission's action in denying a petition for interlocutory review shall not preclude a party from raising an objection to the Judge's interlocutory ruling in a petition for discretionary review.

(d) Stay.—(1) *Trade secret matters.* The filing of a petition for interlocutory review of a Judge's ruling concerning an alleged trade secret shall stay the effect of the ruling until the Commission denies the petition or rules on the merits.

(2) *Other cases.* In all other cases, the filing or granting of a petition for interlocutory review shall not stay a proceeding or the effect of a ruling unless otherwise ordered.

(e) *Judge's comments.* The Judge may be requested to provide the Commission with his written views on whether the petition is meritorious. The Judge shall serve copies of these comments on all parties when he files them with the Commission.

(f) *Briefs.* Should the Commission desire briefs on the issues raised by an interlocutory review, it shall give notice to the parties. See § 2200.93—Briefs before the Commission.

§ 2200.74 Filing of briefs and proposed findings with the Judge; Oral argument at the hearing.

(a) *General.* A party is entitled to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the Judge. In lieu of briefs, the Judge may permit or direct the parties to file memoranda or statements of authority.

(b) *Time.* Briefs shall be filed simultaneously on a date established by the Judge. A motion for extension of time for filing any brief shall be made at least three days prior to the due date and shall recite that the moving party has advised the other parties of the motion. Reply briefs shall not be allowed except by order of the Judge.

(c) *Untimely briefs.* Untimely briefs will not be accepted unless accompanied by a motion setting forth good cause for the delay.

Subpart F—Posthearing Procedures

§ 2200.90 Decisions of judges.

(a) *Contents.* The Judge shall prepare a decision that constitutes his final disposition of the proceedings. The decision shall be in writing and shall include findings of fact, conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented on the record. The decision shall include an order affirming, modifying or vacating each

contested citation item and each proposed penalty, or directing other appropriate relief. A decision finally disposing of a petition for modification of the abatement period shall contain an order affirming or modifying the abatement period.

(b) *The Judge's report.*—(1) *Mailing to parties.* The Judge shall mail or otherwise transmit a copy of his decision to each party.

(2) *Docketing of Judge's report by Executive Secretary.* On the twenty-first day after the transmittal of his decision to the parties, the Judge shall file his report with the Executive Secretary for docketing. The report shall consist of the record, including the Judge's decision, any petitions for discretionary review and statements in opposition to such petitions. Promptly upon receipt of the Judge's report, the Executive Secretary shall docket the report and notify all parties of the docketing date. The date of docketing of the Judge's report is the date that the Judge's report is made for purposes of section 12(j) of the Act, 29 U.S.C. 661(j).

(3) *Correction of errors; Relief from default.* Until the Judge's report has been directed for review or, in the absence of a direction for review, until the decision has become a final order, the Judge may correct clerical errors and errors arising through oversight or inadvertence in decisions, orders or other parts of the record. If a Judge's report has been directed for review, the decision may be corrected during the pendency of review with leave of the Commission. Until the Judge's report has been docketed by the Executive Secretary, the Judge may relieve a party of default or grant reinstatement under § 2200.41(b), 2200.52(e) or 2200.64(b).

(c) *Filing documents after the docketing date.* Except for papers filed under paragraph (b)(3) of this section, which shall be filed with the Judge, on or after the date of the docketing of the Judge's report, all documents shall be filed with the Executive Secretary.

(d) *Judge's decision final unless review directed.* If no Commissioner directs review of a report on or before the thirtieth day following the date of docketing of the Judge's report, the decision of the Judge shall become a final order of the Commission.

§ 2200.91 Discretionary review; petitions for discretionary review; statements in opposition to petitions.

(a) *Review discretionary.* Review by the Commission is not a right. A Commissioner may, as a matter of discretion, direct review on his own motion or on the petition of a party.

(b) *Petitions for discretionary review.* A party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a petition for discretionary review. Discretionary review by the Commission may be sought by filing with the Judge a petition for discretionary review within the 20-day period provided by § 2200.90(b). Review by the Commission may also be sought by filing directly with the Executive Secretary a petition for discretionary review. A petition filed directly with the Executive Secretary shall be filed within 20 days after the date of docketing of the Judge's report. The earlier a petition is filed, the more consideration it can be given. A petition for discretionary review may be conditional, and may state that review is sought only if a Commissioner were to direct review on the petition of an opposing party.

(c) *Cross-petitions for discretionary review.* Where a petition for discretionary review has been filed by one party, any other party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a cross-petition for discretionary review. The cross-petition may be conditional. See paragraph (b) of this section. A cross-petition shall be filed with the Judge during the 20 days provided by § 2200.90(b) or directly with the Executive Secretary within 27 days after the date of docketing of the Judge's report. The earlier a cross-petition is filed, the more consideration it can be given.

(d) *Contents of the petition.* No particular form is required for a petition for discretionary review. A petition should state why review should be directed, including: Whether the Judge's decision raises an important question of law, policy or discretion; whether review by the Commission will resolve a question about which the Commission's Judges have rendered differing opinions; whether the Judge's decision is contrary to law or Commission policy; whether a finding of material fact is not supported by a preponderance of the evidence; whether a prejudical error of procedure or an abuse of discretion was committed. A petition should concisely state the portions of the decision for which review is sought and should refer to the citations and citation items (for example, citation 3, item 4a) for which review is sought. A petition shall not incorporate by reference a brief or legal memorandum. Brevity and the inclusion of precise references to the record and legal authorities will facilitate prompt review of the petition.

(e) *When filing effective.* A petition for discretionary review is filed when received. If a petition has been filed with the Judge, another petition need not be filed with the Commission.

(f) *Failure to file.* The failure of a party adversely affected or aggrieved by the Judge's decision to file a petition for discretionary review may foreclose court review of the objections to the Judge's decision. *See Keystone Roofing Co.* v. *Dunlop,* 539 F.2d 960 (3d Cir. 1976).

(g) *Statements in opposition to petition.* Statements in opposition to petitions for discretionary review may be filed in the manner specified in this section for the filing of petitions for discretionary review. Statements in opposition shall concisely state why the Judge's decision should not be reviewed with respect to each portion of the petition to which it is addressed.

(h) *Number of copies.* An original and three copies of a petition or of a statement in opposition to a petition shall be filed.

§ 2200.92 Review by the Commission.

(a) *Jurisdiction of the Commission; Issues on review.* Unless the Commission orders otherwise, a direction for review establishes jurisdiction in the Commission to review the entire case. The issues to be decided on review are within the discretion of the Commission but ordinarily will be those stated in the direction for review, those raised in the petitions for discretionary review, or those stated in any later order.

(b) *Review on a Commissioner's motion; Issues on review.* At any time within 30 days after the docketing date of the Judge's report, a Commissioner may, on his own motion, direct that a Judge's decision be reviewed. In the absence of a petition for discretionary review, a Commissioner will normally not direct review unless the case raises novel questions of law or policy or questions involving conflict in Administrative Law Judges' decisions. When a Commissioner directs review on his own motion, the issues ordinarily will be those specified in the direction for review or any later order.

(c) *Issues not raised before Judge.* The Commission will ordinarily not review issues that the Judge did not have the opportunity to pass upon. In exercising discretion to review issues that the Judge did not have the opportunity to pass upon, the Commission may consider such factors as whether there was good cause for not raising the issue before the Judge, the degree to which the issue is factual, the degree to which proceedings will be disrupted or delayed by raising the issue on review, whether the ability of an adverse party to press a

claim or defense would be impaired, and whether considering the new issue would avoid injustice or ensure that judgment will be rendered in accordance with the law and facts.

§ 2200.93 Briefs before the Commission.

(a) *Requests for briefs.* The Commission ordinarily will request the parties to file briefs on issues before the Commission. After briefs are requested, a party may, instead of filing a brief, file a letter setting forth its arguments, a letter stating that it will rely on its petition for discretionary review or previous brief, or a letter stating that it wishes the case decided without its brief. The provisions of this section apply to the filing of briefs and letters filed in lieu of briefs.

(b) *Filing briefs.* Unless the briefing notice states otherwise:

(1) *Time for filing briefs.* The party required to file the first brief shall do so within 40 days after the date of the briefing notice. All other parties shall file their briefs within 30 days after the first brief is served. Any reply brief permitted by these rules or by order shall be filed within 15 days after the second brief is served.

(2) *Sequence of filing.* (i) If one petition for discretionary or interlocutory review has been filed, the petitioning party shall file the first brief.

(ii) If more than one petition has been filed but only one was granted, the party whose petition was granted shall file the first brief.

(iii) If more than one petition has been filed, and more than one has been granted or none has been granted, the Secretary shall file the first brief.

(iv) If no petition has been filed, the Secretary shall file the first brief.

(3) *Reply briefs.* The party who filed the first brief may file a reply brief. Additional briefs are otherwise not allowed except by leave of the Commission.

(c) *Motion for extension of time for filing brief.* An extension of time to file a brief will ordinarily not be granted except for good cause shown. A motion for extension of time to file a brief shall be filed within the time limit prescribed in paragraph (b) of this section, shall comply with § 2200.40, and shall include the following information: when the brief is due; the number and duration of extensions of time that have been granted to each party; the length of extension being requested; the specific reason for the extension being requested; and an assurance that the brief will be filed within the time extension requested.

(d) *Consequences of failure to timely file brief.* The Commission may decline to accept a brief that is not timely filed. If a petitioning party fails to respond to a briefing notice or expresses no interest in review, the Commission may vacate the direction for review, or it may decide the case without that party's brief. If the non-petitioning party fails to respond to a briefing notice or expresses no interest in review, the Commission may decide the case without that party's brief. If a case was directed for review upon a Commissioner's own motion, and any party fails to respond to the briefing notice, the Commission may either vacate the direction for review or decide the case without briefs.

(e) *Length of brief.* Except by permission of the Commission, a main brief, including briefs and legal memorandums it incorporates by reference, shall contain no more than 35 pages of text. A reply brief, including briefs and legal memorandums it incorporates by reference, shall contain no more than 20 pages of text.

(f) *Table of contents.* A brief in excess of 15 pages shall include a table of contents.

(g) *Failure to meet requirements.* The Commission may return briefs that do not meet the requirements of paragraphs (e) and (f) of this section.

(h) *Number of copies.* The original and four copies of a brief shall be filed. See § 2200.8(c)(2).

§ 2200.94 Stay of final order.

(a) *Who may file.* Any party aggrieved by a final order of the Commission may, while the matter is within the jurisdiction of the Commission, file a motion for a stay.

(b) *Contents of motion.* Such motion shall set forth the reasons a stay is sought and the length of the stay requested.

(c) *Ruling on motion.* The Commission may order such stay for the period requested or for such longer or shorter period as it deems appropriate.

§ 2200.95 Oral argument before the Commission.

(a) *General policy.* Oral argument before the Commission ordinarily will not be allowed.

(b) *Notice of oral argument.* In the event the Commission desires to hear oral agrument with respect to any matter, it will advise all parties to the proceeding of the date, hour, place, time allotted, and scope of such argument at least 10 days prior to the date set.

Subpart G—Miscellaneous Provisions

§ 2200.100 Settlement.

(a) *Policy.* Settlement is permitted and encouraged by the Commission at any stage of the proceedings.

(b) *Requirements.* The Commission does not require that the parties include any particular language in a settlement agreement, but does require that the agreement specify the terms of settlement for each contested item, specify any contested item or issue that remains to be decided (if any remain), and state whether any affected employees who have elected party status have raised an objection to the reasonableness of any abatement time. Unless the settlement agreement states otherwise, the withdrawal of a notice of contest, citation, notification of proposed penalty, or petition for modification of abatement period will be with prejudice.

(c) *Filing; Service and notice.* A settlement submitted for approval after the Judge's report has been directed for review shall be filed with the Executive Secretary. When a settlement agreement is filed with the Judge or the Executive Secretary, proof of service shall be filed with the settlement agreement, showing service upon all parties and authorized employee representatives in the manner prescribed by § 2200.7(c) and the posting of notice to non-party affected employees in the manner prescribed by § 2200.7(g). The parties shall also file a final consent order for adoption by the Judge. If the time has not expired under these rules for electing party status, or if party status has been elected, an order terminating the litigation before the Commission because of the settlement shall not be issued until at least ten days after service to consider any affected employee's or authorized employee representative's objection to the reasonableness of any abatement time. The affected employee or authorized employee representative shall file any such objection within this time. If such objection is filed or stated in the settlement agreement, the Commission or the Judge shall provide an opportunity for the affected employees or authorized employee representative to be heard and present evidence on the objection, which shall be limited to the reasonableness of the abatement time.

(d) *Form of settlement document.* It is preferred that settlement documents be typewritten in conformance with § 2200.30(a). However, a settlement document that is hand-written or printed in ink and is legible shall be acceptable for filing.

§ 2200.101 Settlement Judge procedure.

(a) *Appointment of Settlement Judge.* (1) This section applies only to notices of contests by employers and to applications for fees under the Equal

Access to Justice Act and 29 CFR Part 2204.

(2) Upon motion of any party following the filing of the pleadings (or notice of simplified proceedings), or otherwise with the consent of the parties at any time in the proceedings, the Chief Administrative Law Judge or the Chairman may assign a case to a Settlement Judge for processing under this section whenever it is determined that there is a reasonable prospect of substantial settlement with the assistance of mediation by a Settlement Judge. In the event either the Secretary or the employer objects to the use of a Settlement Judge procedure, such procedure shall not be imposed.

(3) The settlement negotiations under this section shall be for a period not to exceed 45 days.

(b) *Powers and duties of Settlement Judges.* (1) The Judge shall confer with the parties on subjects and issues of whole or partial settlement of the case.

(2) The Judge may allow or suspend discovery during the time of assignment.

(3) The Judge may suggest privately to each attorney or other representative of a party what concessions his or her client should consider, and assess privately with each attorney or other representative the reasonableness of the party's case or settlement position.

(4) The Judge shall seek resolution of as many of the issues in the case as is feasible.

(c) *Settlement conference and other communication.*—(1) *Types of conferences.* In general it is expected that the Settlement Judge shall communicate with the parties by a conference telephone call. The Settlement Judge, however, may schedule a personal conference with the parties under one or more of the following circumstances:

(i) It is possible for the Settlement Judge to schedule in one day three or more cases for conference at or near the same location;

(ii) The offices of the attorneys or other representatives of the parties, as well as that of the Settlement Judge, are located in the same metropolitan area;

(iii) A conference may be scheduled in a place and on a day that the Judge is scheduled to preside in other proceedings under this Part;

(iv) Any other suitable circumstances in which, with the concurrence of the Chief Administrative Law Judge, the Settlement Judge determines that a personal meeting is necessary for a resolution of substantial issues in a case and the holding of a conference represents a prudent use of resources.

(2) *Participation in conference.* The Settlement Judge may recommend that the attorney or other representative who is expected to try the case for each party be present, and without regard to the scope of the attorney's or other representative's powers, may also recommend that the parties, or agents having full settlement authority be present. The parties, their representatives, and attorneys are required to be completely candid with the Settlement Judge so that he may properly guide settlement discussions, and the failure to be present at a settlement conference or the refusal to cooperate fully within the spirit of this rule may result in the termination of the settlement proceeding under this section. The Settlement Judge may make such other and additional requirements of the parties and persons having an interest in the outcome as to him shall seem proper in order to expedite an amicable resolution of the case. No evidence of statements or conduct in proceedings under this section will be admissible in any subsequent hearing, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery or subpena.

(d) *Report of Settlement Judge.* (1) With the consent of the parties, the Settlement Judge may request from the Chief Administrative Law Judge an enlargement of the time of the settlement period not exceeding 20 days. This request and any action of the Chief Administrative Law Judge in response thereto, may be written or oral.

(2) Under other circumstances the Settlement Judge, following the expiration of the settlement period or at such earlier date that he determines further negotiations would be fruitless, shall promptly notify the Chief Administrative Law Judge in writing of the status of the case. If he has not approved a full settlement pursuant to § 2200.100 of these rules, such report shall include written stipulations embodying the terms of such partial settlement as has been achieved during the assignment.

(3) At the termination of the settlement period without a full settlement, the Chief Administrative Law Judge shall promptly assign the case to a different Administrative Law Judge for appropriate action on the remaining issues, unless the parties request otherwise. The Settlement Judge shall not discuss the merits of the case with any Administrative Law Judge or other person, nor be called as a witness in any hearing of the case.

(e) *Non-reviewability.* Any decision concerning the assignment of a particular Settlement Judge or the decision by any party or Settlement Judge to terminate proceedings under this section is not subject to review by, appeal to, or rehearing by any subsequent presiding officer, the Chief Administrative Law Judge, or the Commission.

§ 2200.102 Withdrawal.

A party may withdraw its notice of contest, citation, notification of proposed penalty, and petition for modification of abatement period at any stage of a proceeding. The notice of withdrawal shall be served in accordance with § 2200.7(c) upon all parties and authorized employee representatives that are eligible to elect, but have not elected, party status. It shall also be posted in manner prescribed in § 2200.7(g) for the benefit of any affected employees not represented by an authorized employee representative who are eligible to elect, but have not elected, party status. Proof of service shall accompany the notice of withdrawal.

§ 2200.103 Expedited proceeding.

(a) *When ordered.* Upon application of any party or intervenor or upon its own motion, the Commission may order an expedited proceeding. When an expedited proceeding is ordered by the Commission, the Executive Secretary shall notify all parties and intervenors.

(b) *Automatic expedition.* Cases initiated by employee contests and petitions for modification of abatement period shall be expedited.

(c) *Effect of ordering expedited proceeding.* When an expedited proceeding is required by these rules or ordered by the Commission, it shall take precedence on the docket of the Judge to whom it is assigned, or on the Commission's review docket, as applicable, over all other classes of cases, and shall be set for hearing or for the submission of briefs at the earliest practicable date.

(d) *Time sequence set by Judge.* The assigned Judge shall make rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, may order daily transcripts of the hearing, and shall do all other things appropriate to complete the proceeding in the minimum time consistent with fairness.

§ 2200.104 Standards of conduct.

(a) *General.* All representatives appearing before the Commission and its Judges shall comply with the letter and spirit of the Model Rules of

Professional Conduct of the American Bar Association.

(b) *Misbehavior before a Judge.*—(1) *Exclusion from a proceeding.* A Judge may exclude from participation in a proceeding any person, including a party or its representative, who engages in disruptive behavior, refuses to comply with orders or rules of procedure, continuously uses dilatory tactics, refuses to adhere to standards of orderly or ethical conduct, or fails to act in good faith. The cause for the exclusion shall be stated in writing, or may be stated in the record if the exclusion occurs during the course of the hearing. Where the person removed is a party's attorney or other representative, the Judge shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney or other representative.

(2) *Appeal rights if excluded.* Any attorney or other representative excluded from a proceeding by a Judge may, within five days of the exclusion, appeal to the Commission for reinstatement. No proceeding shall be delayed or suspended pending disposition of the appeal.

(c) *Disciplinary action by the Commission.* If an attorney or other representative practicing before the Commission engages in unethical or unprofessional conduct or fails to comply with any rule or order of the Commission or its Judges, the Commission may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action, including suspension or disbarment from practice before the Commission.

§ 2200.105 Ex parte communication.

(a) *General.* Except as permitted by § 2200.101 or as otherwise authorized by law, there shall be no ex parte communication with respect to the merits of any case not concluded, between any Commissioner, Judge, employee, or agent of the Commission who is employed in the decisional process and any of the parties or intervenors, representatives or other interested persons.

(b) *Disciplinary action.* In the event an ex parte communication occurs, the Commission or the Judge may make such orders or take such actions as fairness requires. The exclusion of a person by a Judge from a proceeding shall be governed by § 2200.104(b). Any disciplinary action by the Commission, including suspension or disbarment, shall be governed by § 2200.104(c).

(c) *Placement on public record.* All ex parte communications in violation of this section shall be placed on the public record of the proceeding.

§ 2200.106 Amendment to rules.

The Commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained herein. The Commission invites suggestions from interested parties to amend or revoke rules of procedure. Such suggestions should be addressed to the Executive Secretary of the Commission at 1825 K Street, NW, Washington, DC 20006.

§ 2200.107 Special circumstances; Waiver of rules.

In special circumstances not contemplated by the provisions of these rules or for good cause shown, the Commission or Judge may, upon application by any party or intervenor or on their own motion, after three days notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

§ 2200.108 Official Seal Occupational Safety and Health Review Commission.

The seal of the Commission shall consist of: A gold eagle outspread, head facing dexter, a shield with 13 vertical stripes superimposed on its breast, holding an olive branch in its claws, the whole superimposed over a plain solid white Greek cross with a green background, encircled by a white band edged in black and inscribed "Occupational Safety and Health Review Commission" in black letters.

Dated: August 28, 1986.

E. Ross Buckley,

Chairman.

Dated: September 2, 1986.

Robert E. Rader, Jr.,

Commissioner.

Dated: August 28, 1986.

John R. Wall,

Commissioner.

[FR Doc. 86-20127 Filed 9-5-86; 8:45 am]

BILLING CODE 7600-01-M

federal register

Monday
September 8, 1986

Part III

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicles Engines; Gaseous Emissions Regulations for 1988 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines and Vehicles; Advance Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-3035-9]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicles Engines; Gaseous Emissions Regulations for 1988 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines and Vehicles

AGENCY: U.S. Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Agency is considering actions in three principal areas related to motor vehicle emission standards and regulations. First, EPA is evaluating more stringent hydrocarbon (HC) exhaust emission standards for light-duty trucks (LDTs). The standards would likely differ by vehicle test weight and would be chosen to be approximately equivalent in stringency to the current light-duty vehicle (LDV) standard. If this approach were adopted, the revised standard for lighter LDTs would probably be 0.41 g/mi, numerically the same as the standard that now applies to light-duty vehicles. For heavier LDTs, the numerical value of the standard would be somewhat higher, perhaps 0.50 g/mi. Second, EPA is contemplating more stringent HC standards for light and heavy LDTs at higher elevations that, as is currently the case, would require the same percentage reduction in emissions at high altitude as is required at low altitude. Using the same regulatory approach as described above for revised low-altitude standards, the resulting high-altitude standards would be 0.49 g/mi and 0.60 g/mi for lighter and heavier LDTs, respectively. Both of these actions are being considered to help address the nationwide problem associated with nonattainment of the ambient air quality standard for ozone.

Third, and finally, the Agency also is contemplating a requirement that lighter heavy-duty trucks (Class IIB) be certified in compliance with the LDT standards using the applicable certification protocols. If adopted, this revision would make mandatory a certification scheme which is currently optional for heavy-duty engine manufacturers. Changing the certification requirements in this manner would make EPA's enforcement program easier to implement and less costly for Class IIB trucks, because the test procedure for LDTs is less complex than for heavy-duty engines.

DATES: In order to insure full consideration in the Agency's preparation of this rulemaking, comments pertaining to this ANPRM should be submitted in writing by October 8, 1986.

ADDRESSES: Written comments should be submitted in duplicate to: Central Docket Section (LE–131A); Attention: Docket No. A–85–22; U.S. Environmental Protection Agency; 401 M Street SW., Washington, DC 20460.

This docket is located at the above address in the West Tower Lobby, Gallery I, and may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Wilcox, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4390.

SUPPLEMENTARY INFORMATION:

I. Background

Although there have been significant gains in the control of motor vehicle emissions, many areas of the nation continue to experience air quality problems associated with motor vehicle-related pollutants. One of the most persistent and pervasive of these is the ozone problem. Presently, 73 urban areas of the country are in violation of the National Ambient Air Quality Standard (NAAQS) for ozone. The more stringent standards identified in today's notice would help address the nationwide ozone problem by reducing HC emissions (i.e., an ozone precursor) from LDTs.

II. Revised LDT HC Standards

At the present time, LDTs must comply with both low- and high-altitude emission standards. The current exhaust HC standard at low altitude is 0.80 g/mi and was promulgated on September 25, 1980 (45 FR 63734). Although the standard applies to all LDTs, this class of vehicles is actually composed of two subclasses, which are governed by different sections of the Clean Air Act (the Act).

The "heavier" LDTs have gross vehicle weight ratings (GVWR) of 6,000 to 8,500 pounds. Under section 202(b)(3)(c) of the Act, vehicles weighing 6,000 pounds or more are considered "heavy-duty vehicles or engines" (HDEs). Thus, the heavier LDTs are subject to the emission control requirements for heavy-duty engines (HDEs) contained in section 202(a)(3). These requirements include a 90 percent or greater reduction in HC emissions from baseline levels. The current 0.80 g/mi HC standard was specifically promulgated under section 202(a)(3)(A)(ii)(I), which requires a 90 percent reduction in HC emissions.

The "lighter" LDTs have GVWRs of 6,000 pounds or less. They fall into neither of the two broad categories—light-duty vehicles (LDVs) and HDEs—for which the Act specifies emission standards. Thus, these LDVs are regulated under section 202(a)(1), which provides EPA with general standard setting authority.

The current low-altitude standard for these vehicles was established on the basis of emissions from heavier LDTs, and is less difficult for lighter LDTs to achieve than for heavier LDTs. Lighter vehicles generally use less fuel to propel them over the road due to their lower weights and smaller frontal areas. As a consequence, these vehicles tend to have lower emission rates. Hence, compliance with the 0.80 g/mi standard by these lighter LDTs requires a smaller percentage reduction in exhaust HC emissions than is required for the heavier trucks in this class (i.e., less than 90 percent). The relative stringency of the current LDT standard can be illustrated by comparing the above percentage emission reductions to that represented by the present LDV standard, which requires more than a 95 percent reduction in exhaust HC emissions.

In contemplating more stringent HC standards for LDTs at low altitude, EPA believes an appropriate overall strategy would be to more closely approximate the emission reductions that are being achieved by LDVs, within the limits of technical feasibility. Due to the great range of vehicle weights that comprise the LDT class, the Agency feels that emission control benefits and cost effectiveness can be maximized by adopting separate standards for each LDT subclass. This approach is patterned after the NO_x standards for 1988 and later LDTs, which were published on March 15, 1985 (50 FR 10606). In that rulemaking, the two subclasses of LDTs were separated on the basis of loaded vehicle weight (LVW): 3,750 pounds LVW or less and greater than 3,750 pounds LVW. The subclasses defined in terms of LVW are largely the same as those defined in terms of GVWR. The only difference in categorization is that a few vehicles that are lighter LDTs under the GVW scheme (i.e., weigh 6,000 pounds GVWR or less) are classified as heavier LDTs under the LVW scheme (i.e., weigh greater than 3,750 pounds LVW). The LVW discriminator is used in conjunction

with the possible HC standards described below.

The Agency has tentatively identified more stringent HC control requirements for LDTs at low altitude that appear to be reasonably achievable by each subclass based on a consideration of their relative sizes and weights. For lighter LDTs, EPA is considering a low-altitude standard that is numerically identical to the LDV standard of 0.41 g/mi. The primary rationale for this choice is that these smaller trucks are very similar in size and function to many LDVs and, therefore, it appears likely that these LDTs could comply with the same standard.

In attempting to identify a standard for heavier LDTs that is roughly equivalent in stringency to the lighter LDT requirement, the Agency believes the LDV standard should be adjusted upward by a factor of 1.2. This adjustment factor was developed in previous EPA actions (e.g., 46 FR 5838), and accounts for the deleterious effect on emission rates caused by the greater weights and frontal areas of the largest LDTs relative to the largest LDVs. Consequently, EPA is considering a revised low-altitude standard of 0.50 g/mi for heavier LDTs.

Turning to the high-altitude standards, the Agency currently regulates emissions from LDTs at higher levels (standard setting) to achieve the same percentage reduction in HC emissions under high-altitude conditions as is required by the low-altitude standard under low-altitude conditions. Since HC emissions from motor vehicles naturally increase at higher elevations due to changes in air density, the numerical value of the high-altitude proportional standard is somewhat greater than the corresponding standard for low altitude. The present exhaust HC standard for high-altitude LDTs is 1.0 g/mi and was promulgated on October 19, 1983 (48 FR 48598). Certain exemptions from the high-altitude standards are allowed for very low-power LDTs.

In considering more stringent HC standards for LDTs at higher elevations, EPA's present intent is to propose continuing the proportional relationship between high-altitude standards and low-altitude standards. The methodology for deriving proportional high-altitude standards was fully described in the **Federal Register** notice that established the original requirements for 1982–83 model year vehicles (45 FR 66984). In summary, the proportional HC standards are derived by multiplying the low-altitude standards by a "proportional factor" of 1.2. This factor represents the ratio of uncontrolled emissions at high altitude to those at low altitude (i.e., the change in HC emissions as a function of elevation). Therefore, EPA has tentatively identified new high-altitude standards, which correspond to the revised low-altitude HC standards described above, as 0.49 g/mi for lighter LDTs and 0.60 g/mi for heavier LDTs.

The current regulatory provisions governing the certification and sale of LDTs at high altitude would be unaffected if EPA promulgated only new proportional high-altitude standards. However, in addition to the possibility of adopting revised proportional standards, the Agency is also considering regulatory requirements for LDTs that closely resemble the current "all-altitude" LDV emission control provisions.[1] This more stringent regulatory option could result in greater emission reductions at higher elevations and would likely enhance model availability in high-altitude areas, where currently only those vehicles certified to high-altitude standards can be sold.

Adopting all-altitude requirements for LDTs would entail two significant changes in the light truck regulations. First, every LDT would be required to *automatically* comply with the applicable HC standards at both low and high altitudes, unless otherwise exempted. Currently, LDTs may be manually adjusted or modified to comply with the high-altitude requirements. Second, LDTs would be subject to the more stringent exemption criteria that apply to LDVs. The primary change in this area would be that as a condition for exempting a particular vehicle, a manufacturer would have to certify for sale at least one version of that vehicle's model type at high altitude. Comments are specifically requested on adopting all-altitude requirements for LDTs, in addition to revising the existing proportional requirements.

In considering the technical feasibility of new low- and high-altitude LDT standards, the Agency notes that because they would approximate the stringency of the existing LDV HC standard, light trucks should be able to comply with the new requirements by using emission control technology which is similar to that used by LDVs. Furthermore, even though EPA has not yet performed detailed technical feasibility or economic analyses, a review of recent emissions certification information shows that many LDTs already use the requisite control technology. This suggests that more stringent LDT HC standards are feasible and may be relatively inexpensive.

Another matter closely related to the question of technical feasibility is that of non-conformance penalties (NCPs). Section 206(g) of the Act permits vehicles weighing over 6,000 pounds GVWR to be sold even if they do not comply with emission standards so long as the manufacturer pays a monetary penalty and the vehicle emission rates are below an upper limit established by EPA. However, NCPs are only available for standards that EPA finds will require "substantial work" to meet. (See generic NCP rule, 50 FR 35374.) The Agency invites comment on the appropriateness of NCPs for the anticipated revision of the HC standards.

The leadtime necessary to ensure compliance with new emission control requirements is generally proportional to the difficulty of the task. As previously described, many LDTs already appear to be equipped with emission control technology that is capable of achieving the anticipated standards. This suggests that the leadtime would be needed primarily for hardware recalibration and emission recertification. If this is the case, and assuming that new LDT standards were promulgated in 1987, there should be adequate time to allow compliance beginning with the 1989 model year. If additional development and emission control hardware are needed, the effective date of the anticipated LDT standards would need to be delayed as appropriate.

Also important to the determination of leadtime is the fact, as noted earlier, that the heavier LDTs fall within the statute's definition of HDE. The statute appears to require that revisions of standards applicable to HDEs provide four years of leadtime before becoming effective. (See "Statutory Authority" section for further discussion of legal requirements.) Assuming the revised HC standard for heavier LDTs were promulgated in 1987, the 1991 model year would be the earliest possible effective date if the four-year leadtime requirement applies. The Agency would, of course, favor implementing any revised HC standards for all LDTs as early as possible, and requests comments on its authority to adopt standards for heavier LDTs as early as the 1989 model year.

The new, more stringent LDT standards should reduce HC inventories of urban areas throughout the nation. Such reductions are needed to help attain and maintain the NAAQS for ozone, a standard that is currently being violated in 73 urban areas of the

[1] The "all-altitude" certification protocols are described in Title 40, 86.087–8 of the Code of Federal Regulations.

country. When the cost of this action is compared with its environmental benefits, the cost effectiveness of the new LDT standards is expected to be very good.

In a related matter, EPA notes that the emission control techniques required for compliance with the new HC requirements will generally provide concurrent reductions in carbon monoxide (CO) emissions. Additional control of this pollutant is desirable because many areas of the country currently violate the NAAQS for CO. In fact, to help ensure this added benefit, the Agency is entertaining the possibility of revising the CO standards for LDT's so they are similar in stringency to the HC standards described above. Comments are specifically requested on the environmental need, technical feasibility, and cost of such requirements.

III. Certifying Class IIB Trucks to Light-Duty Trucks Standards

Heavy-duty vehicles (HDVs) are defined in the Agency's regulations as any motor vehicle with a GVWR greater than 8,500 pounds. The lightest HDVs (Class IIB) range from 8,501 to 10,000 pounds GVWR. Under the current regulations, these light HDVs may be certified to the LDT exhaust emission requirements rather than the applicable heavy-duty requirements. The Agency originally provided this option to reduce certification costs for a manufacturer that might be producing essentially the same engine configuration in both the LDT and light HDV categories. Certifying both to the LDT standards allowed the manufacturers to conduct a single certification program rather than incurring costs for both LDT and HDV certification.

The Agency also found that allowing the option would be environmentally advantageous because certifying Class IIB trucks to the LDT requirements provided a greater degree of emission control than if these trucks were certified to the exhaust emission requirements for heavy-duty engines (HDEs). This resulted because the LDT gaseous emission standards were significantly more stringent than those for Class IIB trucks.[2] The tighter standards more than offset the fact that the HDE dynamometer procedure, where the engine is tested out of the vehicle, is more rigorous due to higher power demands than the LDT chassis dynamometer procedure, where the engine is tested in the vehicle. The relative difficulty of achieving the respective requirements is clearly illustrated by considering the requisite emission controls used by each vehicle type: catalytic technology for LDTs and non-catalytic technology for HDEs.

Historically, it has turned out that manufacturers have not exercised the LDT certification option. However, present indications are that manufacturers of gasoline-fueled HDEs will make extensive use of the option for the 1987 model year. Beginning in that year, the HDE emission standards will become stringent enough to require catalysts on gasoline-fueled Class IIB trucks for the first time.

While manufacturers are apparently finding it advantageous to voluntarily certify gasoline-fueled Class IIB trucks to the LDT exhaust standards, EPA may also benefit from widespread use of the option. The current need to remove and reinstall the engine in the vehicle as part of the heavy-duty engine dynamometer test makes an in-use compliance program (e.g., recall program) significantly more difficult and time-consuming for HDEs than for LDTs. Testing Class IIB trucks according to the chassis test procedure used for LDTs would make the in-use compliance program not only easier to implement, but substantially less costly for the Agency and the manufacturers. This cost savings could be substantial given that Class IIB trucks represent the vast majority of HDE sales. Although reclassifying Class IIB trucks may be the most expedient way to adopt the LDT requirements for these vehicles,[3] this could also be accomplished by revising the heavy-duty requirements for this vehicle category.

In addition to considering the economic ramifications of reclassifying Class IIB trucks as LDTs, the environmental effects of such a change must also be carefully considered. While the Agency has yet to fully analyze the environmental consequences of reclassification, several comments are appropriate at this time. As noted previously, when the LDT option was originally allowed, the LDT exhaust emission control requirements were definitely more stringent than the applicable HDE requirements. Now, except for NOx, the relative stringency of the gaseous emission standards is more difficult to judge, because of the tighter HDE standards which take effect in 1987. The LDT and HDE 1987 gaseous exhaust emission control requirements for Class IIB trucks may, on balance, be comparable, since both sets of requirements require catalytic control technology for gasoline-fueled engines to reduce HC and CO emissions. EPA will continue to assess how the two sets of standards compare.

Aside from the comparability of the LDT and HDE gaseous emission standards, it is important to note that reclassifying Class IIB trucks could offer emission benefits in areas not directly associated with the stringency of the standards. First, current inspection and maintenance (I/M) programs around the country frequently include LDTs, but not HDEs. The reclassification of Class IIB trucks would allow these vehicles to be easily included in existing I/M programs without significant regulatory changes. Second, the evaporative HC standard for gasoline-fueled HDVs in this weight range is 3 g/test, while for LDTs it is 2 g/test. Compliance with the latter standard would reduce evaporative emissions from these vehicles.

With regard to diesel-powered Class IIB trucks, an added consideration related to reclassification is the relative stringency of applicable particulate standards. The particulate standard for LDTs requires the use of trap-oxidizer technology in 1987, whereas the HDE particulate standards will not require traps until 1991. To the degree that the reclassification of Class IIB trucks might result in an earlier introduction of trap-oxidizer technology on those vehicles, further reduction in particulate emissions can be expected. This change would be accompanied by the increased costs associated with trap technology, and likely would present technical challenges to affected diesel engine manufacturers. EPA specifically requests comments on the feasibility of such a change.

Although the Agency has not yet performed detailed technical feasibility and economic analyses, the fact that manufacturers apparently will be voluntarily certifying gasoline-fueled Class IIB trucks to comply with the current LDT standards indicates that most of these trucks already will be equipped with the requisite closed-loop three-way catalyst systems, regardless of the applicable emission standards. Also, HDEs must comply with an idle CO standard that is the same as the LDT standard, and there is no immediately obvious reason why attaining the more stringent LDT evaporative emission standard should be technically difficult for HDEs. Therefore, for gasoline-fueled Class IIB trucks, the LDT standards

[2] Particulate emission standards for diesel-powered vehicles did not exist at the time the option was adopted.

[3] General Motors suggested a similar certification scheme during the 1983 rulemaking to revise the emission regulations for 1984 and later LDTs and HDEs. GM's proposal, however, was linked to higher emission standards.

should be feasible and the cost of control small. The same analysis is applicable to diesel-powered Class IIB trucks, except to the extent that certification of LDT standards might require that trap-oxidizers be introduced earlier than would otherwise occur. Additionally, if technical feasibility proves to be a significant issue for some Class IIB trucks, non-conformance penalties as provided for in section 206 (g) of the Act could be implemented. The users of such trucks would, of course, pay more per vehicle.

In light of the enforcement benefits of reclassifying HDEs with GVWRs from 8,501 to 10,000 pounds as LDTs, the Agency is considering this change for such vehicles.[4] However, as previously noted, the issue of emission control equivalency is not yet completely resolved, and EPA is continuing to study this matter. Furthermore, while the statute gives EPA broad discretion to categorize HDEs, it specifies when and in what way EPA may revise HDE standards, which the reclassification would effectively involve. The statutory issues raised by reclassification are discussed in the "Statutory Authority" section.

To assist the Agency in deciding whether or not to pursue such a reclassification, as well as the timing of the action, comments are specifically requested in the following areas. Gasoline-fueled and diesel engines should be considered separately where appropriate (e.g., the particulate standards). First, to what extent will the LDT certification option be used in future model years and why? Second, what is the relative stringency of the current LDT certification requirements relative to the 1987 and later HDE requirements for Class IIB trucks? Third, what would be the net environmental effects of reclassifying Class IIB trucks as LDTs, relative to their continuing to comply with the applicable HDE emission control requirements? Fourth, what are the important technical or economic issues associated with making the current LDT option mandatory? Fifth, what are the in-use effects on exhaust emission levels? Sixth, what would be the effect on the above topics if revised exhaust HC standards for LDTs are promulgated?

IV. Statutory Authority

A. Revision of LDT HC Standard

The Agency's authority to revise the LDT HC standard stems from two statutory provisions: Section 202(a)(1) for lighter LDTs and section 202(a)(3)(E) for heavier LDTs. The lighter LDTs are regulated under section 202(a)(1), which grants EPA broad authority to prescribe and revise emission standards for new vehicles as needed to protect public health and welfare. (As noted earlier, lighter LDTs are not covered by the statutory provisions which specifically address LDVs and HDEs.) Since LDT HC emissions contribute to the formation of ozone and many urban areas continue to experience ozone levels above the applicable health-based standard, tightening the HC standard for lighter LDTs is clearly within EPA's authority under section 202(a)(1).

Standards issued under section 202(a)(1) are required by section 202(a)(2) to "take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology . . . ." The statute thus delegates to EPA the determination of how much leadtime should be provided for standards applicable to lighter LDTs must provide.

Heavier LDTs are regulated by EPA under section 202(a)(3), which governs HDEs. The current LDT HC standard was promulgated under section 202(a)(3)(A)(ii)(I), which requires a 90 percent reduction in HC emissions. However, section 202(a)(3)(E)(ii) permits EPA to change standards set under section 202(a)(3)(A)(ii) if the Agency determines that the standards should be either more or less stringent in light of studies required by section 202(a)(3)(E)(i) and other available information on the health and welfare effects of the relevant emissions. In the case of HC, a section 202(a)(3)(E)(i) study published in 1980 (45 FR 53730) and subsequent rulemaking analyses (*see* 45 FR 63734, 48 FR 1430, and 48 FR 52170) confirm that mobile source HC emissions contribute to ozone formation and that further reductions in the emissions are needed if the ozone NAAQS is to be met nationwide. While EPA plans to update this section 202(a)(3)(E)(i) study in the future, the basic relationship between mobile source HC and ozone is not in doubt. Given the public health risk posed by continuing nonattainment of the ozone NAAQS, tightening the HC standard for heavier LDTs is well within EPA's statutory authority.

Section 202(a)(3)(E)(ii) also provides that "no such changed standard shall apply for any model year before the model year four years after the model year during which regulations containing such changed standard are promulgated." Apparently, any standard revised under section 202(a)(3)(E)(ii) must provide four years of leadtime regardless of whether the revised standard could be met in less time. EPA requests comments on the applicability of the four-year leadtime requirement to the suggested revision of the HC standard for heavier LDTs.

B. Reclassification of Class IIB Trucks as LDTs

The Agency has broad discretion under section 202(a)(3)(A)(iv) to categorize HDEs for regulatory purposes. The discretion has been exercised in the past to group light HDEs (referred to as "heavier LDTs"), with LDTs in recognition of their similar potential for emission control. Here, EPA would exercise its discretion to include in the LDT category Class IIB trucks in order to achieve the legitimate regulatory goal of more effective enforcement at lower cost.

Of course, standards which apply to HDEs, regardless of how categorized by EPA, must comply with the statutory provisions governing the HDE standard-setting process. Those provisions include requirements that apply to revising standards. Reclassifying Class IIB trucks as LDTs could have the practical effect of revising the standards applicable to those trucks; if the LDT standards are found to differ in stringency from their HDE counterparts, reclassification would subject the formerly Class IIB trucks to different standards. In that case, the requirements for revising HDE standards would appear to apply to reclassifying the Class IIB trucks.

The requirements which apply depend on which standards are found to differ and in what way. HDEs are not yet capable of meeting the NO_x standard set by section 202(a)(3)(A)(ii)(II), so the HDE NO_x standards have been promulgated under sections 202(a)(3) (B) and (C), which provide for temporary revision of the statutorily-set standards. However, section 202(a)(3)(B) requires: (1) That revisions be undertaken in certain window periods, (2) that revised standards provide four years of leadtime, (3) that they be effective for no more and no less than three years, and (4) that consecutive revisions each be more stringent than the last. It thus appears that a reclassification which entails a change in the applicable NO_x standard cannot occur until the current revised NO_x standard has run its three-year course and unless consistent with the other provisions listed above.

[4] In addition to revising the weight discriminators in the LDT and HDE definitions of § 86.082-2, the frontal area discriminators would also be appropriately modified.

The 1987 model year standards governing HC and CO emissions from Class IIB trucks were at the levels required by section 202(a)(3)(A)(ii)(I). As noted above, section 202(a)(3)(E) permits EPA to permanently change the standards set by the statute if the Agency finds that the revision is consistent with protecting public health and welfare. Thus, any change in the stringency of the HC or CO standards applicable to what are now Class IIB trucks would apparently have to be made under section 202(a)(3)(E) in light of available information on the health and welfare effects of HC and CO.

In addition, section 202(a)(3)(E) seems to require that any permanent change of standard—regardless of whether the changed standard is more or less stringent than its predecessor—provide four years of leadtime. If that requirement applies, then a reclassification that involves a change in the stringency of the applicable HC and CO standards could only take effect four years after promulgation.

The HDE particulate standards are promulgated under section 202(a)(3)(A)(iii), which does not specify an allowable level of emissions. Instead, the section requires EPA to set standards which ". . . reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply," giving appropriate consideration to cost and other factors. It is clear that reclassifying Class IIB trucks would subject those vehicles to a more stringent particulate standard than they would otherwise have to meet, at least in the short term. Whether EPA could impose the more stringent standard on the reclassified trucks thus seems to depend on whether the Administrator determines that the requisite technology will be available to those vehicles in time to meet the standard. Section 202(a)(3)(A)(iii) does not specify a minimum leadtime period that revised particulate standards must provide. Thus, at least for the particulate standards, a reclassification of Class IIB trucks could take effect in the model year for which the Administrator determines that the LDT particulate standard will be technologically feasible for the reclassified trucks to achieve.

VI. Request for Comments

The Agency is issuing this ANPRM to maximize public participation early in the rulemaking process. Comments pertaining to any points or aspects raised in today's notice are encouraged. These comments, along with additional EPA analyses, will be used by the Agency in preparing the notice of proposed rulemaking.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Authority: Secs. 202, 206, 207, 208, and 301 of the Clean Air Act (42 U.S.C. 7521, 7525, 7541, 7542, and 7601).

Dated: August 29, 1986.

A. James Barnes,

Acting Administrator.

[FR Doc. 86-20194 Filed 9-5-86; 8:45 am]

BILLING CODE 6560-50-M

federal register

Monday
September 8, 1986

Part IV

Environmental Protection Agency

Protest Appeals of Recipients' Procurement Actions Under Federal Assistance Agreements; Subject Index List of EPA Regional Administrator Protest Appeal Determinations Issued During 1985; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3076-3]

Protest Appeals of Recipients' Procurement Actions Under Federal Assistance Agreements; Subject Index List of EPA Regional Administrator Protest Appeal Determinations Issued During 1985

This notice publishes the subject index list of bid protest appeal decisions issued by EPA Regional Administrators during 1985. These determinations were made pursuant to the EPA protest procedures set forth at 40 CFR 35.939 (assistance awarded prior to May 12, 1982), 40 CFR Part 33, May 12, 1982 Interim Final Rules (assistance awarded between May 12, 1982 and March 28, 1983) and 40 CFR Part 33, March 28, 1983 Final Rules (assistance awarded after March 28, 1983).

This is the Eighth EPA subject index which lists only the decisions for the year stated. The first index, listing Regional Administrator protest appeal determinations issued during the period 1974 through 1977, was published at 43 FR 29086–95 (July 5, 1978). This was supplemented by the index of 1978 determinations published at 44 FR 25812–18 (May 2, 1979), the index of 1979 determinations published at 45 FR 58770–74 (September 4, 1980), the index of 1980 determinations published at 46 FR 30476–80 (June 8, 1981), the index of 1981 and 1982 determinations published at 49 FR 36004 (September 13, 1984), the index of 1983 decisions published at 50 FR 4148 (January 29, 1985) and the index of 1984 decisions published at 50 FR 23061 (May 30, 1985).

The index lists 71 appeal determinations and 6 reconsideration request determinations issued by the EPA Regional Administrators in 1985.

The determinations are cited informally with the names of the assistance recipients and protestors shortened and abbreviated for administrative convenience. Each entry begins by identifying the year the appeal was decided and the sequential determination number for the year. This number is not part of the preferred citation which should state the following: Grantee, State, (EPA Region _____, date of determination) (Protest of _____).

The issues have been divided into two major subject headings and then alphabetized. Procedural protest issues are listed under the heading "Protest Appeals;" substantive procurement issues are listed under the heading "Procurement."

Copies of specific protest appeal determinations may be examined at or obtained from the EPA Offices of Regional Counsel or from the Office of General Counsel in EPA headquarters.

FOR FURTHER INFORMATION CONTACT: J. Kent Holland, Jr., Esquire: Grants, Contracts, and General Law Division (LE–132G), Office of General Counsel, United States Environmental Protection Agency, Washington, DC 20460; (202) 382–5313.

Dated: August 29, 1986.

Gerald H. Yamada,

Acting General Counsel.

Bid Protest Appeals—Procedural Matters

Burden of Proof

85:12 Orlando, FL (IV, 2–8–85) *(Drum Owen Valve Co.)* (burden shifts throughout proceedings where unduly restrictive specifications alleged).

85:49 Frederick, MD (III, 9–17–85) *(RDP Co.)* (shifting burden—where protester alleges unduly restrictive specification and shows that its equipment was eliminated, grantee must show the specification is necessary for minimum performance needs and show rational basis for rejecting protester's equipment).

Choice of Law (See Procurement Index—"State and Local Law")

Exhaustion of Administrative Remedy

85:14 Lake Accotink Park, Fairfax, VA (III, 2–22–85) *(Lyons Const.)* (protester cannot raise new issue on appeal which was not raised in original protest to grantee).

85:19 Kankakee, IL (V, 3–28–85) *(Mehta & Assoc.)* (issue not raised during initial protest cannot be raised on appeal).

Harmless Error

No entries.

Jurisdiction

84:52 Possum Valley Sewer District (III, 2–14–85) *(U-Max Engineering)* (Reconsideration) (where EPA review would require decision on collateral issue pending in State Court, protest may be considered inappropriate for EPA review) (*cf.* Jordan, MI, Region V, 10–21–86).

85:08 Milwaukee, WI (V, 1–31–85) *(Kari-Kool Transports, Inc.)* (reliance on incorrect oral advice given at pre-bid conference is not protestable).

85:11 Austin, TX (VI, 2–8–85) *(Turbo Blowers, Inc.)* (where no federal funds are involved, procurement is not protestable).

85:31 Bradenton, FL (IV, 6–4–85) *(Lakeside Equipment Co.)* (subcontractor substitution made by independent decision of prime contractor is not protestable).

85:32 Warren, OH (V, 6–6–85) *(RAM Engineering Inc.)* (substitution of subcontractor is matter of contract administration and is not protestable).

85:43 Troup, TX (VI, 9–4–85) *(McKinney & Moore, Inc.)* (basic design decision is not protestable).

85:48 Frederick, MD (III, 9–17–85) *(Dresser Industries)* (subcontractor substitution is contract administration issue and is not protestable).

85:54 Anne Arundel, MD (III, 9–27–85) *(Roberts Filter Manufacturing Co., Inc.)* (if owner anticipates receiving EPA funding, procurement actions prior to grant award are protestable).

85:57 Pueblo, CO (VIII, 10–11–85) *(WesTech Engineering, Inc.)* (subcontractor substitution is matter of contract administration and not protestable).

85:58 Pueblo, CO (VIII, 10–11–85) *(Tenco Hydro, Inc.)* (independent action of prime contractor is not a grantee decision and is not protestable).

85:59 Georgetown, MN (V, 10–18–85) *(Robert J. Roberts & Associates, Inc.)* (unless contract will receive EPA funding, procurement regulations do not apply and issues are not protestable).

85:61 Jordan, MI (V, 10–21–86) *(Veit & Company)* (protest appeal may be decided by EPA even though there is a pending law suit in State court) (*cf.* Possum Valley, III, 2–14–85).

85:63 State of New Jersey, NJ (II, 12–2–85) *(Marvec All State, Inc.)* (where no EPA grant participation is anticipated, EPA will not hear a protest appeal).

85:70 Modesto, CA (IX, 12–20–85) *(Industrial Pump Supply)* (equipment supplier may protest prime contractor rejection of its equipment where prime contractor's decision was directed by the recipient. However, technical disputes concerning performance are matters of contract administration which are not reviewed by EPA) (*cf.* New York, II, 3–5–84).

Parties to Appeal

No entries.

Procedures

84:52 Possum Valley Sewer District (III, 2–14–85) *(U-Max Engineering)* (Reconsideration) (where EPA review would require decision on collateral issue pending in State Court, protest may be considered inappropriate for review).

85:07 Maine Dept. of Environmental Protection (I, 1–30–85) *(Metcalf & Eddy)* (where failure of protester to notify other interested parties of protest caused no prejudice, the appeal will be considered).

85:09 Carthage, MO (VII, 1–31–85) *(LaForge & Budd Const. Co.)* (grantee is not required to prepare a memo or rationale to accompany its written protest determination).

85:15 Lake Accotink Park, Fairfax, VA (III, 2–22–85) *(Lyons Const.)* (only those matters raised before grantee on protest can be raised during appeal).

85:19 Kankakee, IL (V, 3–28–85) *(Mehta & Assoc.)* (issue not raised during initial protest cannot be raised on appeal).

85:25 Shubuta, MS (IV, 4–29–85) *(Video Pipe Services, Inc.)* (letter addressed to recipient instead of EPA is not a proper appeal).

85:35 Willoughby, OH (V, 7–1–85) *(Quasar Const., Inc.)* (letter addressed to City is not proper appeal to EPA).

85:47 Sioux City, IA (VII, 9–13–85) *(Industrial and Municipal Engineering, Inc.)* (protest may not be denied on procedural grounds where grantee failed to notify bidders that the procurement was subject to EPA regulation).

85:50 Lorain, OH (V, 9–17–85) *(Mosser Const., Inc.)* (where grantee decides protest in favor of protester, other parties to the protest may appeal to EPA without first filing a protest) (where bid rejected as nonresponsive EPA will not consider arguments that bidder could be rejected as nonresponsible) *(cf.* Anne Arundel, III, 9–27–85).

85:54 Anne Arundel, MD (III, 9–27–85) *(Robert Filter Manufacturing Co., Inc.)* (although interested parties must be notified of protest, failure to give notice will not justify rejection of protest where no prejudice resulted) (EPA may rely on all information available and is not restricted to the arguments raised by the parties).

85:61 Jordan, MI (V, 10–21–85) *(Veit & Co.)* (protest appeal may be decided by EPA although there is a pending law suit in State court) *(cf.* Possum Valley, III, 2–14–85).

85:62 Broomfield, CO (VIII, 11–26–85) *(Summit Const., Inc.)* (where project engineer recommended rejection of low bid, it was reasonable for grantee to accept a protest directly from that decision).

85:67 Monterey, CA (IX, 12–17–85) *(Dillingham Const., Inc.)* (where third-low bidder failed to participate in protest proceedings initiated by the second-low bidder and had notice of the basis for its protest, it improperly waited until EPA issued appeal determination and then protested award that grantee made in accordance with the EPA determination).

85:70 Modesto, CA (IX, (12–20–85) *(Industrial Pump Supply)* (it is not a conflict of interest for the project engineer who rejected equipment to decide the subsequent bid protest for the grantee.

Rational Basis Test (See also Engineering Judgment)

85:09 Carthage, MO (VII, 1–31–85) *(LaForge & Budd Const.)* (EPA refers to other appeal decisions and GAO decisions) (EPA will not reverse grantee decision concerning who is low bidder under State law unless clear showing of violation of State law or federal regulation).

85:12 Orlando, FL (IV, 2–8–85) *(Drum Owen Valve Co.)* (no EPA deference to engineer's technical judgment where inaccurate information used or where City's reason for rejection was speculative in nature).

85:49 Frederick, MD (III, 9–17–85) *(RDP Co.)* (EPA defers to technical judgment of engineer provided there is rational basis for specification).

85:50 Lorain, OH (V, 9–17–85) *(Mosser Const., Inc.)* (potential savings must be material before rejecting bid because it exceeds engineer's estimate).

85:62 Broomfield, CO (VIII, 11–26–85) *(Summit Const., Inc.)* (grantee lacked rational basis for finding bid nonresponsive and bidder nonresponsible).

Reconsideration

84:52 Possum Valley, PA (III, 2–14–85) *(U-Max Engineering)* (limited review does not permit rearguing points previously discussed and determined).

85:39 Lewes, DE (III, 8–28–85) *(Mixing Equipment Co., Inc.)* (denied where no factual mistake or error of law).

85:54 Anne Arundel, MD (III, 7–18–85) *(Roberts Filter)* (EPA did not err in looking beyond the arguments made by the parties).

85:60 Westborough, MA (I, 12–10–85) *(Dorr-Oliver, Inc.)* (denied) (where no newly discovered evidence, issue of law, factual mistake or error of law, the decision will not he reconsidered).

Regulations

85:42 Glenwood and Long Beach, MN (V, 8–9–85) *(J & S Contracting)* (grantee elected to follow Part 33 regulations instead of Part 35 which was in effect on date of grant award) (appeal decisions interpreting certain Part 35 requirements continue to be followed and applied by EPA).

85:59 Georgetown, MN (V, 10–18–85) *(Robert of Roberts & Associates, Inc.)* (explanation of whether Parts 33 and 35 apply).

85:68 Monterey, CA (IX, 12–17–85) *(Fluor Constructors, Inc.)* (EPA may rely on protest appeal determinations issued under Part 35 regulations and principles stated in those regulations.

Review by EPA

85:07 Maine Dept. of Environmental Protection, MA (I, 1–30–85) *(Metcalf & Eddy)* (review of competitive negotiations is limited to whether bid evaluation was based on RFP criteria).

85:09 Carthage, MO (VII, 1–31–85) *(LaForge & Budd Const.)* (EPA refers to other appeal decisions and GAO decisions) (EPA will not reverse grantee decision concerning who is low bidder under State law unless clear showing of violation of State law or federal regulations).

85:45 Newberg, OR (X, 9–11–85) *(Contractors, Inc.)* (deference given to grantee's responsibility determination).

Sua Sponte Review

85:27 Lansing, MI (V, 5–17–85) *(Acrision, Inc.)* (where protest was untimely, EPA summarily dismissed appeal but reversed the merits).

84:52 Possum Valley, PA (III, 2–14–85) *(U-Max Engineering)* (Reconsideration) (where no blatant violation of EPA regulations, EPA will not exercise discretion to review).

85:47 Sioux City, IA (VII, 9–13–85) *(Industrial & Municipal Engineering, Inc.)* (protests were defective but brought to EPA's attention serious defects in grantee procurement, EPA reviewed merits of protests).

85:51 Rantoul, IL (V, 9–18–85) *(American Surfpac Corp.)* (EPA has authority to independently review grantee procurement actions).

85:53 Anne Arundel County, MD (III, 9–27–85) *(Allied Contractors, Inc.)* (EPA may review late protest on its merits).

Standing

85:19 Kankakee, IL (V, 3–28–85) *(Mehta & Assoc.)* (subcontractor may not protest prime's method of evaluating its equipment).

85:39 Lewes, DE (III, 7–19–85) *(Mixing Equipment Co.)* (supplier has standing to protest specifications on prequalification but if protester can meet specifications it cannot challenge them as unduly restrictive).

85:48 Frederick, MD (III, 9–17–85) *(Dresser Industries)* (subcontractor

substitution is not protestable) (subcontractor lacks standing to challenge grantee's evaluation of responsiveness of competitor supplier's equipment).

85:56 Westchester County, NY (II, 10–9–85) *(Crouse Combustion Systems, Inc.)* (bidder who withdrew bid before contract award lacks standing to protest award to another bidder).

85:57 Pueblo, CO (VIII, 10–11–85) *(WesTech Engineering, Inc.)* (substituted subcontractor cannot protest prime's decision to substitute firms).

85:60 Westborough, MA (I, 10–21–85) *(Dorr-Oliver, Inc.)* (where supplier was able to compete but chose not to, it lacks standing to protest the later approval by recipient of another supplier's equipment).

85:68 Monterey, CA (IX, 12–17–85) (IX, 12–17–85) *(Fluor Constructors Inc.)* (a nonresponsive bidder has no adversely affected direct financial interest and, therefore, lacks standing).

85:70 Modesto, CA (IX, 12–20–85) *(Industrial Pump Supply)* (equipment supplier may protest prime contractor rejection of its equipment where prime contractor's decision was directed by the recipient. However, technical disputes concerning performance are matters of contract administration which are not reviewed by EPA).

Summary Disposition

85:08 Milwaukee, WI (V, 1–31–85) *(Kari-Kool Transports, Inc.)* (reliance on incorrect oral advice given at pre-bid conference is not protestable).

85:33 Milwaukee, WI (V, 6–19–85) *(Staff Electric Co.)* (where grantee waives failure to notarize bid as a minor irregularity and gives legal opinion that State law permits the waiver, EPA will not review the matter where there is no overriding federal interest).

85:35 Willoughby, OH (V, 7–1–85) *(Quasar Const., Inc.)* (protest challenged the waiver of minor bid irregularities of a competitor such as signature and seal) (where bidder is not next in line for award, EPA will not review).

Time Limitations

84:52 Possum Valley, PA (III, 2–14–85) *(U-Max Engineering)* (Reconsideration) (timeliness of protest is of paramount importance).

85:02 New York, NY (II, 1–17–85) *(Schiavone Const. Co.)* (appeal clock starts when protest determination received by address listed on protester's letterhead even if not received by main office at that time).

85:05 Carson City, NV (IX, 1–18–85) *(Nevada Const. & Mining)* (protest untimely where filed more than 7 days after protester had notice that contract was awarded to another bidder).

85:25 Shubuta, MS (IV, 4–29–85) *(Video Pipe Services, Inc.)* (appeal received by EPA 7 days after protester receives grantee determination is untimely).

85:27 Lansing, MI (V, 5–17–85) *(Acrison, Inc.)* (appeal of prequalification rejection dismissed because not filed within 7 days of notice of rejection). *But See* Chelan, WA (X, 6–24–86), which permits prequalification protests filed more than 7 days after receipt of decision if the protest challenges the specifications and is filed before prime contract bid opening.

85:30 Pittsylvania, PA (III, 5–24–85) *(J & D Constructors, Inc.)* (where contractor was default terminated for failing to provide performance bonds, its protest was untimely for being not filed within 7 days).

85:35 Willoughby, OH (V, 7–1–85) *(Quasar Const. Inc.)* (appeal untimely where filed more than 7 days after receipt of grantee's determination).

85:41 Red Oak, IA (VII, 8–5–85) *(Elliott Equipment Co.)* (protest was untimely because it challenged specifications and was not filed before bid opening).

85:42 Glenwood and Long Beach, MN (V, 8–9–85) *(J & S Contracting, Inc.)* (protest was untimely because it challenged specifications and was not filed before bid opening).

85:50 Rantoul, IL (V, 9–18–85)) *(American Surfpac Corp.)* (protest alleging improprieties in specification is timely where filed before bid opening) (this is generally so if protester knew of the improprieties for more than 7 days before filing. *See* Chelan, WA (X, 6–24–86)).

85:54 Anne Arundel, MD (III, 9–27–85) *(Roberts Filter Manufacturing Co., Inc.)* (unduly restrictive specifications must be challenged prior to bid opening—protester cannot wait until equipment is rejected after bid opening to file its protest). (*See also* Southbridge, I, 1–24–86)

85:55 Little Blue Valley, MO (VII, 10–1–85) *(Roots Division of Dresser Industries)* (where brand name or equal specifications exclude supplier's equipment, protest must be filed prior to bid opening—supplier cannot wait until equipment is rejected to file protest).

85:62 Broomfield, CO (VIII, 11–26–85) *(Summit Construction, Inc.)* (where protest was based on action of project engineer rather than grantee, grantee may consider it).

85:64 Augusta, GA (IV, 12–5–85) *(Beiler Equipment Co., Inc.)* (where alleged improprieties in specifications were clearly apparent in the IFB, protest was not filed prior to bid opening).

85:67 Monterey, CA (IX, 12–17–85) *(Dillingham Const., Inc.)* (where the third-low bidder did not participate in proceedings initiated by the second-low bidder, bidders' subsequent protest of the award was untimely where it had adequate notice of basis for protest).

85:71 Binghamton, NY (II, 12–26–85) *(American Bio Tech)* (telegraph appeal notice was timely but subsequent submittal of detailed supplemental statement was untimely).

Waiver (See Procurement Index—"Waiver")

Procurement

A/E Services

85:07 Maine Dept. of Environmental Protection (I, 1–30–85) *(Metcalf & Eddy)* (EPA will not review grantee's judgment of what specific services are required for remedial action).

85:10 Lake County Sanitation District (IX, 2–5–85) *(Peak & Assoc.)* (bid evaluation of technical proposal is matter of procurement discretion and will not generally be disturbed by EPA).

Award Prime Contract

85:14 Washington Suburban Sanitary Commission (III, 2–22–85) *(Hycon and Professional Services Group)* (although state law gives grantee discretion in matters of contract award, that discretion is limited by fundamental federal procurement requirements).

Bid Shopping

85:31 Bradenton, FL (IV, 6–4–85) *(Lakeside Equipment Co.)* (subcontractor substitution is not protestable).

85:50 Frederick, MD (III, 9–17–85) *(Dresser Industries)* (EPA regulations do not prohibit bid shopping and EPA views equipment listing as informational only unless IFB clearly makes it a matter of responsiveness).

85:57 Pueblo, CO (VII, 10–11–85) *(WesTech Engineering, Inc.)* (bid shopping not prohibited unless state, local law or the bidding documents so provide).

85:58 Pueblo, CO (VIII, 10–11–85) *(Tenco Hydro, Inc.)* (bid shopping not prohibited by EPA).

85:65 Jacksonville, AR (VI, 12–12–85) *(Tenco Hydro, Inc.)* (EPA neither

prohibits nor requires bid shopping—see *EPA Report to Congress: Wastewater Treatment Contracting and Bid Shopping*, June 1978).

Bidders & Offerors

85:56 Westchester County, NY (II, 10–9–85) *(Crouse Combustion Systems, Inc.)* (grantee may obtain cost concessions from lowest bidder after bid opening).

Bids

Acceptance Period

No entries.

Addendum

85:38 Clarence, NY (II, 7–18–85) *(Hydro-Group, Inc.)* (failure to sign formal acknowledgment of receipt of IFB addendum may be waived as minor irregularity where bidder included a quotation for the additional item in its bid and specifically referred to addendum).

Alternates

85:61 Jordan, MI (V, 10–21–85) *(Veit & Co.)* (where bidders were required to list unit prices for several alternates but further required to choose one alternate to base its lump sum bids, a bid is nonresponsive if the bidder fails to list a unit price for one of its alternates).

85:37 Bradenton, FL (IV, 7–15–85) *(ICOS/Hycon)* (where failure to comply with bid terms reflect on responsibility rather than responsiveness they may be waived) (in order to be responsive on one alternate it was not necessary to submit bid on other alternate).

Ambiguity

85:40 Johnson County, KS (VII, 7–25–85) *(Martin Eby Const.)* (where contrary to terms of IFB, bid was conditioned upon grantee approving proposed "or equal" equipment before award, this caused ambiguity concerning bidder's obligation if equipment substitution was later required and made bid nonresponsive).

Base Bids

No entries.

Cancellation of Solicitation

85:47 Sioux City, IA (VII, 9–13–85) *(Industrial & Municipal Engineering, Inc.)* (EPA reversed grantee and directed solicitation be cancelled and readvertised).

Evaluation

85:07 Maine Dept. of Environmental Protection (I, 1–30–85) *(Metcalf & Eddy)* (where RFP stated cost was of secondary importance, grantee may award contract to more expensive proposal).

85:10 Lake County Sanitation District (IX, 2–5–85) *(Peak & Assoc.)* (A/E procurement—where RFP did not provide that proposer's failure to respond adequately to one of the evaluation factors would result in his rejection, grantee's affirmative evaluation was reasonable).

85:12 Orlando, FL (IV, 2–8–85) *(Drum Owen Valve Co.)* (performance based reason for rejection must be based on more than speculation of problems).

85:16 Mission, TX (IV, 3–1–85) *(Evirondyne Inc.)* (evaluation cannot be based on undisclosed, subjective criteria) (data submission requirement must he based on underlying need for considering data).

85:24 Chelan, WA (X, 4–26–85) *(Walker Process Corp.)* (A/E improperly rejected equipment for failing to meet design features which were not specified).

85:29 San Antonio, TX (VI, 5–23–85) *(Pollution Control, Inc.)* (may not reject equipment on basis of criterion not disclosed in IFB) (IFB clause requiring "experience" in making "similar" equipment cannot be used to require experience in making exactly the same equipment).

85:40 Johnson County, KS (VII, 7–25–85) *(Martin Eby Const.)* (by reviewing bidder's alternate equipment proposal before awarding contract, grantee failed to evaluate the bids in accordance with IFB criteria which stated "or equal" equipment would only be evaluated after award).

85:48 Frederick, MD (III, 9–17–85) *(Dresser Industries)* (subcontractor lacks standing to challenge grantee's evaluation of its competitor's equipment).

Extension

85:62 Broomfield, CO (VIII, 11–26–85) *(Summit Constructors, Inc.)* (active participation in protest proceeding evidences intent to extend bid).

Late

85:36 Chemung County, NY (II, 7–3–85) *(Tougher Ind., Inc.)* (bid nonresponsive where IFB stated late bids would not be accepted and bid was 2 minutes late) (grantee has discretion in applying GAO strict treatment of late bids).

Mistake

85:08 Carthage, MO (VI, 1–31–85) *(LaForge & Budd Const.)* (extrinsic evidence may be used to show intended bid where no bid displacement) (words over numbers reconciliation clause will not be strictly enforced where intended bid is clearly apparent).

85:17 Mackinac Is., MI (V, 3–13–85) *(Barton-Malow Co. & Omega Const.)* (mistake in bid on entire project did not affect bid on individual pump station).

85:66 Newport, RI (I, 12–17–85) *(Peabody N.E., Inc.)* (bid displacement allowed where mistake and intended bid are apparent on the face of the bid—extended amount price was put in unit price column).

Preparation Costs

No entries.

Public Notice

85:47 Sioux City, IA (VII, 9–13–85) *(Industrial & Municipal Engineering, Inc.)* (where grantee failed to advertise in newspapers and journals of general circulation and only allowed 17 days from notice to bid opening, EPA required resolicitation).

Qualified

85:40 Johnson County, KS (VII, 7–25–85) *(Martin Eby Const.)* (bid that was conditioned on grantee approving "or equal" equipment before award is nonresponsive where IFB provided for post award equipment evaluation only.

Rejection of all Bids

85:47 Neenah-Menasha, IL (V, 3–28–85) *(Flour Bros. Const. Co.)* (where low bid had to be rejected for being late and other bids were deemed too expensive, grantee had rational business reasons for rejecting all bids).

85:02 Lowell, MA (I, 1–11–85) *(Gioiosa & Sons, Inc.)* (not justified by unbalanced bidding) (recipient does not have unfettered discretion).

85:22 Detroit, MI (V, 4–18–85) *(ETS Towers, Inc.)* (IFB failed to specify experience evaluation criteria necessary for determining which bids satisfied requirements—harm to bidder required readvertising the project).

Signature

85:33 Milwaukee, WI (V, 6–19–85) *(Staff Electric Co.)* (failure to notarize bid as required by state law may be waived as minor irregularity).

85:35 Willoughby, OH (V, 7–1–85) *(Quasar Const., Inc.)* (failure to notarize bid waived as minor irregularity).

Time to Prepare

85:47 Sioux City, IA (VII, 9–13–85) *(Industrial & Municipal Engineering, Inc.)* (advertising 17 days in advance of bid opening was inadequate) (adequate notice must be placed in newspapers and journals of general circulation).

Unbalanced

85:02 Lowell, MA (I, 1–11–85) *(Gioroso & Sons, Inc.)* (Penny bidding is not contrary to federal principles unless it causes bid to be materially unbalanced making it impossible to determine the low bid).

85:35 Willoughby, OH (V, 7–1–85) *(Quasar Const., Inc.)* (whether unbalanced bid can be accepted depends on whether it is reasonably certain to result in lowest price).

Unit Pricing

No entries.

Bonds

85:30 Pittsylvania, PA (III, 5–24–85) *(J & D Constructors, Inc.)* (failure to provide performance bonds within 10 days of contract award was rational basis for grantee to reject bidder as nonresponsible).

85:51 Rantoul, IL (V, 9–18–85) *(American Surfpac Corp.)* (performance bond which ensured performance for 3 years was reasonable where suppliers had no similar equipment in service) (inability of one supplier to obtain bond does not prove undue burden where other suppliers did obtain bond) (EPA no longer requires grantee to accept bond in lieu of experience).

Buy American Act

85:28 Osage Beach, MO (VII, 5–22–85) *(Marley Pump Co.)* (because grantee demonstrated that foreign components comprised under 50% total value of the product, the preference did not apply).

85:55 Little Blue Valley, MO (VII, 10–1–85) *(Roots, Dresser)* (until prime selects supplier, compliance with the Act cannot be determined) (*See also,* Chelan, Washington, X, 6–24–86).

Conflict of Interest

85:19 Kankakee, IL (V, 3–28–85) *(Mehta & Assoc.)* (no evidence of conflict presented, appeal dismissed as without merit).

85:70 Modesto, CA (IX, (12–20–85) *(Industrial Pump Supply)* (it is not a conflict of interest for the project engineer who rejected equipment to decide the subsequent bid protest for the grantee).

Engineering Judgment

85:13 Dothan, AL (IV, 2–21–85) *(American Bioreactor Co. & Fluid Systems, Inc.)* (rational basis for experience requirements).

85:42 Glenwood and Long Beach, MN (V, 8–9–85) *(J & S. Contracting, Inc.)* (rational performance based reasons for requiring single material is given deference by EPA.) (when EPA defers to engineer it does not mean it believes the specifications reflect the best engineering judgment and no opinion is offered regarding relative merits of the material or equipment or their suitability for particular engineering applications).

85:49 Frederick, MD (III, 9–17–85) *(RDP Co.)* (protest appeal sustained where design features were not supported by rational performance based needs).

85:55 Little Blue Valley, MO (VII, 10–1–85) *(Roots, Dresser)* (performance reasons for design features).

Experience Requirements

85:13 Dothan, AL (IV, 2–21–85) *(American Bioreactor Co. and Fluid Systems, Inc.)* (City was justified in rejecting equipment which manufacturer had never before fabricated or designed to the size needed).

85:16 Mission, TX (VI, 3–1–85) *(Envirodyne, Inc.)* (experience clause was ambiguous where it did not define applicable period of experience to be objectively applied).

85:22 Detroit, MI (V, 4–18–85) *(ETS Towers, Inc.)* (experience requirements must be objectively stated evaluation criteria).

85:29 San Antonio, TX (VI, 5–23–85) *(Pollution Control, Inc.)* (where IFB required bidders to have experience manufacturing "similar" equipment, a bidder cannot be rejected for not having manufactured "exactly" the same equipment).

85:37 Bradenton, FL (IV, 7–15–85) *(ICOS/Hycon)* (where IFB states experience requirement was for purpose of determining bidders ability, it is a matter of responsibility not responsiveness and can be cured after bid opening).

85:45 Newberg, OR (X, 9–11–85) *(Contractors, Inc.)* (experience of key personnel was a matter of responsibility not responsiveness and the affirmative finding of responsibility is a discretionary decision which will not be reviewed in the absence of fraud or bad faith).

85:70 Modesto, CA (IX, 12–20–85) *(Industrial Pump Supply)* (where bidder was rejected for lack of experience, EPA found the IFB adequately defined experience and recipient had rational basis for rejecting bidder) (grantee may require proven product rather than newly designed one).

Innovative Technology

84:43 Troup, TX (VI, 9–4–85) *(McKinney & Moore, Inc.)* (more restrictive specifications are permissable).

Invitation for Bids (IFB)

General

85:08 Milwaukee WI (V, 1–31–85) *(Kari-Kool Transports, Inc.)* (bidder unjustifiably relied on oral representations made at pre-bid conference).

Ambiguity

85:22 Detroit, MI (V, 4–18–85) *(ETS Towers, Inc.)* (requirement that experience be documented failed to state how experience would be objectively evaluated).

85:45 Monterey, CA (IX, 9–12–85) *(Mortenson/Natkin)* (no ambiguity where IFB clearly states that failure to list subcontractor renders bid nonresponsive and adds no other language describing rejection or permitting acceptance of nonconforming bid) (explanation of "two prong" test applied in other EPA decisions).

85:67 Monterey, CA (IX, 12–17–85) *(Dillingham Const., Inc.)* (City correctly found bid responsive where bidding documents did not clearly and unequivocally put bidders on notice that failure to comply with requirements that typically concern responsibility would render a bid nonresponsive) (EPA will examine not only the language in relevant portions of IFB but consider the bid documents in their entirety to determine overall clarity).

Defective

No Entries.

License Requirement

85:05 Carson Citv, NV (IX, 1–18–85) *(Nevada Const. & Mining)* (EPA would not consider whether state licensing law requiring license prior to bidding unreasonably restricted competition, since bidder's delay in applying for the license contributed to his inability to obtain it in time).

Listing Subcontractors

85:06 Addison, IL (V, 1–25–85) *(Sollitt Const. Co.)* (where IFB clearly required bidders to list manufacturers,

bid was properly rejected for failing to comply).

85:06 Addison, IL (V, 3–19–85) *(Sollitt Const. Co.)* (Reconsideration) (bid was nonresponsive because it named several subcontractors but did not identify which was to be used).

85:17 Mackinac Is., MI (V, 3–13–85) *(Barton-Malow Co. & Omega Const.)* (where IFB is ambiguous, subcontractor listing is matter of responsibility rather than responsiveness).

85:20 Leesburg, VA (III, 4–2–85) *(James Federline and MCI Const., Co.)* (failure to list subcontractors did not render bid nonresponsive).

85:32 Warren, OH (V, 6–6–85) *(RAM Engineering, Inc.)* (MBE subcontractor substitution is not protestable because it is a matter of contract administration, not procurement).

85:37 Bradenton, FL (IV, 7–15–85) *(ICOS/Hycon)* (bid cannot be rejected for failure to list subcontractors where IFB did not expressly require it as a matter of responsiveness).

85:45 Newberg, OR (X, 9–11–85) *(Contractors, Inc.)* (bid cannot be rejected for failure to list subcontractors where IFB did not expressly require it as a matter of responsiveness).

85:46 Monterey, CA (IX, 9–12–85) *(Mortenson/Natkin)* (bid failing to list equipment manufacturer must be rejected where IFB clearly stated listing was a matter of responsiveness—under Part 33 regulation IFB need not state that bid will be rejected, provided it clearly states bid will be nonresponsive and contains no conflicting language suggesting grantee may he permitted to accept nonresponsive bid).

85:65 Jacksonville, AR (VI, 12–12–85) *(Tenco Hydro, Inc.)* (where IFB did not state that failure to list subcontractors would render bid nonresponsive, grantee may award contract to bidder that did not accurately list its subcontractors) (listing a supplier in its bid did not obligate prime to award subcontract to that supplier).

85:67 Monterey, CA (IX, 12–17–85) *(Dillingham Const. Inc.)* (failure of listed equipment to meet the specifications does not render prime's bid nonresponsive where IFB required that equipment be listed but did not require that bids be rejected for listing unqualified equipment.)

85:68 Monterey, CA (IX, 12–17–85) *(Fluor Constructors, Inc.)* (same analysis as Monterey, *Dillingham*, IX, 12–17–85, this subject index).

Minority Business and Women's Business Enterprise (MBE/WBE)

85:14 Washington Suburban Sanitary Commission (III, 2–22–85) *(Hycon & Professional Services Group) (documentation was matter of responsibility, not responsiveness).*

85:15 Lake Accotink Park, Fairfax VA (III, 2–22–85) *(Lyons Const.)* (documentation a matter of responsibility).

85:18 Lake Geneva, WI (V, 3–18–85) *(Camosy Const.)* (MBE documentation is matter of responsibility where IFB did not clearly state otherwise).

85:19 Kankakee, IL (V, 3–28–85) *(Mehta & Assoc.)* (prime may rely on MBE's self certification) (prime's evaluation of subcontractor is not protestable).

85:23 Unalaska, AL (X, 4–26–85) *(Rockford Corp.)* (failure to include documentation did not render bid nonresponsive where IFB did not clearly recuire it).

85:26 Scales Mound, IL (V, 5–14–85) *(Smith & Andrews Const. Co.)* (EPA policy is to treat MBE documentation as matter of responsibility but grantee made it matter of responsiveness and rejected nonconforming bid accordingly).

85:32 Warren, OH (V, 6–6–85) *(RAM Engineering, Inc.)* (subcontractor substitution is not protestable) (unsubstantiated allegation that prime negotiated in bad faith does not meet burden of proof needed for protest) (WBE firm has no standing to challenge the goal established by grantee).

85:34 Cannon Falls, MN (V, 6–28–85) *(Lysne Const., Inc.)* (bid responsive where it documented positive efforts and reasons for not meeting MBE goal).

85:50 Lorain, OH (V, 9–17–85) *(Mosser Const., Inc.)* (grantee cannot reject bid as nonresponsive when bidding documents contain contradictory language and, when read as a whole make documentation a matter of responsibility).

85:51 Rantoul, IL (V, 9–18–85) *(American Surfpac Corp.)* (bonding requirement did not violate SBE/MBE policy where several firms obtained the required bonds).

85:53 Anne Arundel County, MD (III, 9–27–85) *(Allied Contractors, Inc.)* (bidder can meet requirements by either meeting goal or showing good faith efforts) (documentation a matter of responsibility) (EPA affirmed grantee determination of good faith).

85:57 Pueblo, CO (VIII, 10–11–85) *(WesTech Engineering, Inc.)* (substitution of firms for business reasons does not violate EPA policy) (prime's business decision to place one large order instead of dividing into smaller orders will not be reviewed by EPA).

85:58 Pueblo, CO (VIII, 10–11–85) *(Tenco Hydro, Inc.)* (prime's substitution of firms does not violate EPA regulation and is not protestable) (substitution does not violate affirmative steps) (protester lacks standing to challenge the way grantee calculated MBE participation).

85:65 Jacksonville, AR (VI, 12–12–85) *(Tenco Hydro, Inc.)* (MBE policy does not prohibit bid shopping) (prime did not bid shop but rather substituted the MBE based on a reconsideration of previous offers which were less expensive—prime did not negotiate prices with subcontract offerors after bid opening and was not required to do so) (no violation of the policy that total projects be divided into small tasks where it is not economically feasible to do so).

85:66 Newport, RI (I, 12–17–85) *(Peabody N.E., Inc.)* (bid documents when read as a whole did not make submission of certificates a matter of responsiveness).

Negotiated Procurement

85:07 Maine Dept. of Environmental Protection, MA (I, 1–30–85) *(Metcalf & Eddy)* (review of competitive negotiations is limited to whether bid evaluation was based on RFP criteria).

85:10 Lake County Sanitation District (IX, 2–5–85) *(Peak & Assoc.)* (A/E procurement—where RFP did not provide that proposer's failure to respond adequately to one of the evaluation factors would result in his rejection, grantee's affirmative evaluation was reasonable.

Prequalification

85:01 Ft. Lauderdale, FL (V, 1–8–85) *(Compost Systems Co.)* (City changed deadline for prime contract bid submittal but enforced the original deadline for submitting prequalification packages thereby incorrectly rejecting package submitted after that deadline but more than 30 days before the revised bid opening date).

85:13 Dothan, AL (IV, 2–21–85) *(American Bioreactor and Fluid Systems, Inc.)* (rejection of proposed composting system which manufacturer had never before designed and fabricated to the required dimensions was affirmed).

85:16 Mission, TX (IV, 3–1–85) *(Envirodyne Inc.)* (must be based on specifications, not on undisclosed

subjective criteria) (data submission requirement must be rationally based on underlying need for considering data).

85:24 Chelan, WA (X, 4–26–85) *(Walker Process Corp.)* (where only manufacturer could prequalify, it was unjustified sole source procurement).

85:27 Lansing, MI (V, 5–17–85) *(Acrison, Inc.)* (equipment rejected for prequalification because insufficient data submitted—protester did not show grantee lacked rational basis for equipment design features) (time limitations for filing protest). (*But see* Chelan, WA (X, 6–25–86)).

85:39 Lewes, DE (III, 7–19–85) *(Mixing Equipment Co.)* (requiring submission of working drawings that describe project modifications that will be required by use of equipment does not unduly restrict competition) (failure to submit information gives rational basis for rejecting equipment) (IFB authorizing only general contractors to submit equipment for prequalification unduly restricts competition).

85:44 Chariton, IA (VII, 9–9–85) *(Electrical Control Systems, Ltd.)* (proposal may be rejected as nonresponsive for not providing required information needed for determining responsiveness to specifications).

85:48 Frederick, MD (III, 9–17–85) *(Dresser Industries)* (successful bidder permitted to substitute a nonprequalified supplier for a prequalified supplier named in its bid).

85:49 Frederick, MD (III, 9–17–85) *(RDP Co.)*.

Responsibility

85:14 Washington Suburban Sanitary Commission (III, 2–22–85) *(Hycon and Professional Services Group)* (MBE documentation is matter of responsibility unless bid documents unambiguously state it to be matter of responsiveness).

85:15 Lake Accotink Park, Fairfax VA (III, 2–22–85) *(Lyons Const.)* (documentation a matter of responsibility).

85:17 Machinac Is., MI (V, 3–13–85) *(Barton-Malow Co. & Omega Const.)* (where IFB ambiguous, subcontractor listing is matter of responsibility rather than responsiveness).

85:18 Lake Geneva, WI (V, 3–18–85) *(Camosy Const.)* (MBE documentation is matter of responsibility where IFB did not clearly state otherwise).

85:20 Leesburg, VA (III, 4–2–85) *(James Federline, Inc. & MCI Const., Co.)* (grantee determination of nonresponsibility based on prior poor contract performance was rationally based) (failure to list registered contract number in bid is matter of responsibility not responsiveness) (subcontractor listing) (inclusion of "experience, equipment and financial statement" is matter of responsibility, not responsiveness).

85:22 Detroit, MI (V, 4–18–85) *(ETS Towers, Inc.)* (documentation of experience is a matter of responsibility rather than responsiveness where bid documents did not clearly make it responsiveness).

85:26 Scales, Mound, L; (V, 5–14–85) *(Smith & Andrews Const. Co.)* (EPA policy to treat MBE documentation as matter of responsibility).

85:30 Pittsylvania, PA (III, 5–24–85) *(J & D Constructors, Inc.)* (responsibility determination is discretionary grantee decision which will not be reversed unless it lacks rational basis or is made in bad faith) (grantee found bidder nonresponsible because it failed to obtain performance bonds within required time after contract award).

85:34 Cannon Falls, MN (V, 6–28–85) *(Lysne Const. Co.)* (MBE compliance demonstrated after bid opening).

85:37 Bradenton, FL (IV, 7–15–85) *(ICOS/Hycon)* (experience requirements could be cured after bid opening since IFB made it a matter of responsibility).

85:45 Newberg, OR (X, 9–11–85) *(Contractors, Inc.)* (affirmative finding of responsibility will not be reviewed in the absence of fraud or bad faith) (manufacturers listing and experience of key personnel were matters of responsibility).

85:52 Seneca, IL (V, 9–18–85) *(Mehta & Associates, Ltd. and Shafer Engineering)* (where grantee found bidders nonresponsible due to lack of experience and adequate manpower, EPA will not reverse determination absent showing of clear error or lack of rational basis).

85:53 Anne Arundel County, MD (III, 9–27–85) *(Allied Contractors, Inc.)* (EPA affirmed grantee finding that bidder made good faith MBE efforts).

85:62 Broomfield, CO (VIII, 11–26–85) *(Summit Const., Inc.)* (information developed post bid opening involves responsibility, not responsiveness) (bid may be rejected where owner determines bidder does not intend to comply with specifications) (grantee rejection of bidder lacked a rational basis and was reversed by EPA).

85:66 Newport, RI (I, 12–17–85) *(Peabody N.E., Inc.)* (bid documents when read as a whole did not make submission of certificates a matter of responsiveness).

85:69 Anne Arundel, MD (III, 12–20–85) *(Johnson Const. Co.)* (documentation was a matter of responsibility rather than responsiveness) (where grantee had rational basis for rejecting bid for failing to meet MBE requirements, EPA upheld the decision).

Responsiveness

85:06 Addison, IL (V, 1–25–85) *(Sollitt Const. Co.)* (bid was nonresponsive for failing to list equipment manufacturers when IFB clearly required it).

85:06 Addison, IL (V, 3–19–85) *(Sollitt Const. Co.)* (Reconsideration) (failure to identify intended subcontractor rendered bid nonresponsive).

85:23 Unalaska, AK (X, 4–26–85) *(Rockford Corp.)* (bid that failed to include MBE/EEO documentation was responsive since IFB did not clearly require documentation with the bids).

85:26 Scales Mound, IL (V, 5–14–85) *(Smith & Andrews Co.)* (bid properly rejected for failing to include MBE documentation).

85:37 Bradenton, FL (IV, 7–15–85) *(ICOS/Hycon)* (where failure to comply with bid terms reflect on responsibility rather than responsiveness they may be waived) (in order to be responsive on one alternate it was not necessary to submit bid on other alternate).

85:40 Johnson County, KS (VII, 7–25–85) *(Martin Eby Const.)* (where bid conditioned upon prior approval of "or equal" equipment and IFB specified it would be evaluated post award only, bid was nonresponsive).

85:43 Troup, TX (VI, 9–4–85) *(McKinney & Moore, Inc.)* (bid offering equipment that failed to conform to the specifications was nonresponsive).

85:44 Chariton, IA (VII, 9–9–85) *(Electrical Control Systems, Ltd.)* (under prequalification procedure, equipment was rejected for failure of bidder to submit required information and data with its proposal).

85:45 Newberg, OR (X, 9–11–85) *(Contractors, Inc.)* (defined as a bid in exact accord with the material terms of the IFB) (manufacturer's listing was not a matter of responsiveness).

85:46 Monterey, CA (IX, 9–12–85) *(Mortenson/Natkin)* (where IFB clearly states that failure to list subcontractors will render bid nonresponsive and IFB does not add language describing bid rejection, a bid which fails to comply is nonresponsive and must be rejected).

85:54 Anne Arundel, MD (III, 9–27–85) *(Roberts Filter Manufacturing Co., Inc.)* (bid offering clay instead of

specified plastic underdrains was nonresponsive).

85:55 Little Blue Valley, MO (VII, 10–1–85) *(Roots Division of Dresser Industries)* ("or equal" equipment must be rejected where it does not meet specified design features).

85:61 Jordan, MI (V, 10–21–85) *(Veit & Co.)* (bid was nonresponsive because it failed to bid on one of the required alternative unit items).

85:62 Broomfield, CO (VIII, 11–26–85) *(Summit Const., Inc.)* (bid responsiveness must be determined at time of bid opening based on information submitted in bid) (information developed subsequent to bid opening cannot be used to determine responsiveness) (by submitting responsive bid, bidder agrees to supply equipment meeting specifications and may be required to provide different equipment if that listed in its bid is determined not to meet the specifications) (absent prequalification requirement, grantee need not evaluate equipment listed by low bidder prior to contract award) (rejection of prime bidder because one item of equipment will not qualify as "or equal" was not proper).

85:64 August, GA (IV, 12–5–85) *(Beiler Equipment Co., Inc.)* (equipment failing to meet specifications is properly rejected and bidder cannot rely on grantee's oral statement that led him to believe the nonresponsive equipment would be accepted).

85:68 Monterey, CA (IX, 12–17–85) *(Fluor Constructors, Inc.)* (failure of equipment listed in bid to meet the specifications does not render prime bid nonresponsive where by its bid, bidder has committed to meeting the specifications and substituting other equipment if necessary).

85:69 Anne Arundel, MD (III, 12–20–86) *(Johnson Const. Co.)* (MBE documentation is not a matter of responsiveness unless the IFB clearly so states) (documentation was a matter of responsibility rather than responsiveness) (where grantee had rational basis for rejecting bidder for failing to meet MBE requirements, EPA upheld the decision).

Small Business (SBE)

85:51 Rantoul, IL (V, 9–18–85) *(American Surfpac Corp.)* (bonding requirement did not violate SBE/MBE policy where several firms obtained the required bonds) (grantee adequately divided its procurement requirements to comply with EPA policy).

Specifications

Ambiguous (*See* Invitation for Bid (IFB))

Brand Name or Equal .

85:39 Lewes, DE (III, 7–19–85) *(Mixing Equiment Co.)* (improper to use brand name or equal specifications unless it is impractical or uneconomical to use other types of specifications) (specifications defective for not identifying salient requirements).

85:39 Lewes, DE (III, 8–28–85) *(Mixing Equipment Co.)* (Reconsideration) (listing all the specifications of named brand is not a proper listing of salient features).

85:40 Johnson County, KS (VII, 7–25–85) *(Martin Eby Const.)* (where IFB stated that "or equals" would only be evaluated after contract award, grantee improperly accepted a bid that was conditioned on preaward approval of equipment).

85:49 Frederick, MD (III, 9–17–85) *(RDP Co.)* (where IFB was ambiguous concerning what salient features were required, a supplier would be unable to determine or demonstrate that its product is "equal").

85:55 Little Blue Valley, MO (VIII, 10–18–85) *(Roots, Dresser)* (permitting award to supplier whose equipment does not meet specifications would prejudice responsive bidders).

85:67 Monterey, CA (IX, 12–17–85) *(Dillingham Const., Inc.)* (failure of equipment listed in bid to satisfy specifications does not render prime bid nonresponsive where, by its bid, bidder had committed to meeting the specifications and substituting other equipment if necessary).

Competition

85:42 Glenwood and Long Beach, MN (V, 8–9–85) *(J & S Contracting)* (specification limiting competition is not improper unless supplier would be unable to determine or demonstrate that its product is "equal").

85:44 Chariton, IA (VII, 9–9–85) *(Electrical Control Systems, Ltd.)* (requiring equipment supplier to be a manufacturer unduly restricts competition).

85:51 Rantoul, IL (V, 9–18–85) *(American Surfpac Corp.)* (bonding requirement did not violate SBE/MBE policy where several firms obtained the required bonds) (grantee adequately divided its procurement requirements to comply with EPA policy).

85:58 Pueblo, CO (VIII, 10–11–85) *(Tenco Hydro, Inc.)* (prequalified supplier cannot protest that independent decision of prime to substitute another firm harmed its ability to compete).

Design

85:43 Troup, TX (VI, 9–4–85) *(McKinney & Moore, Inc.)* (basic design decision is not protestable).

Local Preference

No Entries.

Minimum Needs (See Performance Based and Unduly Restrictive)

No Entries.

Nonrestrictive (See Unduly Restrictive)

No Entries.

Oral Statements

85:08 Milwaukee, WI (V, 1–31–85) *(Kari-Kool Transports, Inc.)* (reliance on incorrect oral advice given at pre-bid conference is not protestable).

85:18 Lake Geneva, WI (V, 3–18–85) *(Camosy Const.)* (Grantee's oral statements at pre-bid conference do not have force of law and cannot be basis for protesting City's subsequent responsibility determination).

85:64 Augusta, GA (IV, 12–5–86) *(Beiler Equipment Co., Inc.)* (a bidder who relies on oral statements regarding bidding documents does so at its own risk).

Performance Based

85:24 Chelan, WA (X, 4–26–85) *(Walker Process Corp.)* (EPA funds minimum performance needs, not ideal or best design—the specifications improperly focused on design features instead).

85:44 Chariton, IA (VII, 9–9–85) *(Electrical Control Systems, Ltd.)* (EPA rejects arguments that extra safety and economic stability factors that a manufacturer can provide are justified by the minimum performance needs of the project).

85:49 Frederick, MD (III, 9–17–85) *(RDP Company)* (for engineer to specify particular equipment he must show what is unique about a project that justifies it) (must compare operational efficiency of various equipment performing same task but having different configurations) (no rational performance based reasons given for design features).

Salient Requirements (See Brand Name or Equal)

No Entries.

Sole Source

85:24 Chelan, WA (X, 4–26–85) *(Walker Process Corp.)* (it was improper to formally advertise for procurement where only one offeror was able to effectively compete) (City

failed to justify need for sole source and failed to perform cost analysis).

85:42 Glenwood and Longbeach, MN (V, 8–9–85) *(J & S Contracting, Inc.)* (specification allowing a single material which can be obtained from several sources is not "sole source" specification).

85:43 Troup, TX (VI, 9–4–85) *(McKinney & Moore, Inc.)* (equipment available from a sole source must be procured through negotiation not formal advertising) (grantee should probably find out whether there are two equipment sources before deciding to procure as subcontract items under formally advertised prime bids) (if only one supplier can be used by all primes there is potential for unreasonable bid prices by the supplier).

Unduly Restrictive

85:24 Chelan, WA (X, 4–26–85) *(Walker Process Corp.)* (grantee's description of requirements focused on design features rather than performance characteristics) (specification would require manufacturers to duplicate competitor's design).

85:42 Glenwood and Long Beach, MN (V, 8–9–85) *(J & S Contracting)* (specification limiting competition is not improper unless its restrictive features are not necessary to the minimum project needs) (grantee explained rational performance basis for requiring single material).

85:44 Chariton, IA (VII, 9–9–85) *(Electrical Control Systems, Ltd.)* (requiring supplier to be a manufacturer is unduly restrictive—EPA rejects arguments that extra safety and economic stability factors that a manufacturer can provide are justified by the minimum performance needs of the project).

85:49 Frederick, MD (III, 9–17–85) *(RDP Company)* (where protester shows its equipment was eliminated, engineer must justify why particular project needs particular equipment—cannot require more than is necessary for the minimum performance needs) (specification that requires manufacturer to duplicate competitor's design places a premium on design rather than performance) (even where manufacturer *can* duplicate competitor's design, competition is discouraged).

State and Local Law

85:14 Washington Suburban Sanitary Commission (III, 2–22–85) *(Hycon and Professional Services Group)* (although state law gives grantee discretion in matters of contract award, that discretion is limited by federal procurement requirements).

85:20 Leesburg, VA (III, 4–2–85) *(James Federline, Inc. and MCI Const., Inc.)* (in determining questions of State law, EPA relies on State authorities and will accept a grantee's interpretation of State law unless it lacks a rational basis).

85:33 Milwaukee, WI (V, 6–19–85) *(Staff Electric Co.)* (where grantee waives failure to notarize bid as a minor irregularity and gives legal opinion that State law permits the waiver, EPA will not review the matter where there is no overriding federal interest).

Subcontract Award

85:44 Chariton, IA (VII, 9–9–85) *(Electrical Control Systems, Ltd.)* (requiring equipment supplier to be a manufacturer unduly restricts competition).

85:48 Frederick, MD (III, 9–17–85) *(Dresser Industries)* (successful bidder was permitted to substitute a nonprequalified supplier for a prequalified supplier named in its bid).

85:57 Pueblo, CO (VIII, 10–11–85) *(WesTech Engineering, Inc.)* (subcontract substitution is matter of contract administration, not protestable).

85:58 Pueblo, CO (VIII, 10–11–85) *(Tenco Hydro, Inc.)* (prime contractor's decision concerning subcontract award, substitution of firms, is not protestable) (EPA policy not to interfere in business judgments of primes) (no EPA restriction of prime requiring subcontractors to meet additional experience, bonding, warranty requirements).

Waiver

85:16 Mission, TX (IV, 3–1–85) *(Envirodyne, Inc.)* (grantee used unduly restrictive specifications and attempted to waive them to accept a nonresponsive offeror).

85:21 Wheatfield, NY (II, 4–12–85) *(Milherst Const., Inc.)* (grantee could waive IFB requirement that bids on two sections of a project must contain identical unit prices since it had a negligible effect and no unfair advantage occurred).

85:33 Milwaukee, WI (V, 6–19–85) *(Staff Electric Co.)* (failure to notarize bid as allegedly required by State law may be waived as minor irregularity).

85:37 Bradenton, FL (IV, 7–15–85) *(ICOS/Hycon)* (failure to comply with terms of bid such as certificates and forms may be waived and cured after bid opening where items reflect on responsibility rather than responsiveness).

85:38 Clarence, NY (II, 7–18–85) *(Hydro-Group, Inc.)* (failure to sign formal acknowledgment of receipt of IFB addendum waived as minor informality where bidder included a quotation for the additional addendum item in its bid and referred to the addendum).

[FR Doc. 86–20197 Filed 9–5–86; 8:45 am]
BILLING CODE 6560–50–M

Reader Aids

Federal Register

Vol. 51, No. 173

Monday, September 8, 1986

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

31089-31308.....2
31309-31604.....3
31605-31756.....4
31757-31924.....5
31925-32046.....8

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12532 (See Notice of September 4, 1986).... 31925
Administrative Orders:
Notice:
September 4, 1986..... 31925
Proclamations:
5519..... 31309
5520..... 31311

5 CFR

831..... 31927
Proposed Rules
300..... 31954

7 CFR

2..... 31757
226..... 31313
301..... 31605
908..... 31758
1136..... 31759
1230..... 31898
1475..... 31316
Proposed Rules:
301..... 31956
1065..... 31133
1068..... 31133
1079..... 31133
1137..... 31340

8 CFR

Proposed Rules:
214..... 31637

9 CFR

322..... 31937
Proposed Rules:
92..... 31637

10 CFR

477..... 31316
Proposed Rules:
2..... 31340
50..... 31341

14 CFR

21..... 31317
39..... 31089, 31090, 31607, 31608
71..... 31097
75..... 31097
91..... 31098
95..... 31319
97..... 31322
Proposed Rules:
21..... 31644
23..... 31644
39..... 31133-31137, 31342, 31343, 31647, 31779
71..... 31138, 31648

17 CFR

Proposed Rules:
150..... 31648

18 CFR

Proposed Rules:
37..... 31651, 31781

19 CFR

111..... 31760
171..... 31760
178..... 31760

21 CFR

81..... 31323
175..... 31098
178..... 31099, 31760
193..... 31324
357..... 31763
369..... 31763
510..... 31100
558..... 31763

24 CFR

511..... 31764

26 CFR

1..... 31610, 31613
20..... 31938
25..... 31938
602..... 31610, 31613, 31938

28 CFR

0..... 31939, 31940
Proposed Rules:
16..... 31781

29 CFR

2200..... 32002

30 CFR

901..... 31940
938..... 31942
Proposed Rules:
733..... 31139

32 CFR

199..... 31100
205..... 31325
286g..... 31103
706..... 31103-31112
Proposed Rules:
40..... 31651

33 CFR

117..... 31112, 31113, 31946
165..... 31113, 31114, 31946
Proposed Rules:
165..... 31958

34 CFR

Proposed Rules:
614.....31754

36 CFR

13.....31619
800.....31115
1254.....31617

38 CFR

Proposed Rules:
21.....31782

39 CFR

10.....31325
233.....31328

Proposed Rules:
111.....31673

40 CFR

52.....31125, 31127, 31129, 31328
261.....31330
271.....31618

Proposed Rules:
86.....31783, 31959, 32032
260.....31783
261.....31140, 31783
262.....31783
264.....31783
265.....31783
268.....31783
270.....31783
271.....31783

41 CFR

Proposed Rules:
201-33.....31674

42 CFR

23.....31947
405.....31454
412.....31454

Proposed Rules:
57.....31920

43 CFR

36.....31619
2880.....31764

Proposed Rules:
2800.....31886
2880.....31886

44 CFR

64.....31330
65.....31635, 31950
67.....31951

Proposed Rules:
10.....31788
67.....31675, 31678

47 CFR

0.....31303
1.....31303
2.....31303
13.....31303
21.....31303
22.....31335
63.....31303
80.....31206
81.....31206
83.....31206
87.....31303
90.....31303
94.....31303

Proposed Rules:
15.....31147
67.....31149
68.....31149
76.....31147
80.....31306

48 CFR

5.....31424
7.....31424
13.....31424
16.....31424
19.....31424
24.....31424
31.....31424
47.....31424
50.....31424
52.....31424
223.....31765
228.....31765
242.....31765
252.....31765
914.....31335
933.....31335
952.....31335
970.....31335

Proposed Rules:
32.....31194
45.....31196
48.....31197
52.....31194, 31197
515.....31344
538.....31344
552.....31344
1317.....31687
1352.....31687

49 CFR

571.....31765

Proposed Rules
391.....31150

50 CFR

17.....31412
20.....31430
23.....31130
36.....31619
655.....31774, 31775
663.....31776

Proposed Rules
630.....31151

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 5, 1986

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$5.50	Jan. 1, 1986
3 (1985 Compilation and Parts 100 and 101)	14.00	[5] Jan. 1, 1986
4	11.00	Jan. 1, 1986
5 Parts:		
1–1199	18.00	Jan. 1, 1986
1200–End, 6 (6 Reserved)	6.50	Jan. 1, 1986
7 Parts:		
0–45	24.00	Jan. 1, 1986
46–51	16.00	Jan. 1, 1986
52	18.00	Jan. 1, 1986
53–209	14.00	Jan. 1, 1986
210–299	21.00	Jan. 1, 1986
300–399	11.00	Jan. 1, 1986
400–699	19.00	Jan. 1, 1986
700–899	17.00	Jan. 1, 1986
900–999	20.00	Jan. 1, 1986
1000–1059	12.00	Jan. 1, 1986
1060–1119	9.50	Jan. 1, 1986
1120–1199	8.50	Jan. 1, 1986
1200–1499	13.00	Jan. 1, 1986
1500–1899	7.00	Jan. 1, 1986
1900–1944	23.00	Jan. 1, 1986
1945–End	23.00	Jan. 1, 1986
8	7.00	Jan. 1, 1986
9 Parts:		
1–199	14.00	Jan. 1, 1986
200–End	14.00	Jan. 1, 1986
10 Parts:		
0–199	22.00	Jan. 1, 1986
200–399	13.00	Jan. 1, 1986
400–499	14.00	Jan. 1, 1986
500–End	23.00	Jan. 1, 1986
11	7.00	Jan. 1, 1986
12 Parts:		
1–199	8.50	Jan. 1, 1986
200–299	22.00	Jan. 1, 1986
300–499	13.00	Jan. 1, 1986
500–End	26.00	Jan. 1, 1986
13	19.00	Jan. 1, 1986
14 Parts:		
1–59	20.00	Jan. 1, 1986
60–139	19.00	Jan. 1, 1986
140–199	7.50	Jan. 1, 1986
200–1199	14.00	Jan. 1, 1986
1200–End	8.00	Jan. 1, 1986
15 Parts:		
0–299	7.00	Jan. 1, 1986
300–399	20.00	Jan. 1, 1986
400–End	15.00	Jan. 1, 1986

Title	Price	Revision Date
16 Parts:		
0–149	9.00	Jan. 1, 1986
150–999	10.00	Jan. 1, 1986
1000–End	18.00	Jan. 1, 1986
17 Parts:		
1–239	26.00	Apr. 1, 1986
240–End	19.00	Apr. 1, 1986
18 Parts:		
1–149	15.00	Apr. 1, 1986
150–399	25.00	Apr. 1, 1986
400–End	6.50	Apr. 1, 1986
19	29.00	Apr. 1, 1986
20 Parts:		
1–399	10.00	Apr. 1, 1986
400–499	22.00	Apr. 1, 1986
500–End	23.00	Apr. 1, 1986
21 Parts:		
1–99	12.00	Apr. 1, 1986
100–169	14.00	Apr. 1, 1986
170–199	16.00	Apr. 1, 1986
200–299	6.00	Apr. 1, 1986
300–499	25.00	Apr. 1, 1986
500–599	21.00	Apr. 1, 1986
600–799	7.50	Apr. 1, 1986
800–1299	13.00	Apr. 1, 1986
1300–End	6.50	Apr. 1, 1986
22	28.00	Apr. 1, 1986
23	17.00	Apr. 1, 1986
24 Parts:		
0–199	15.00	Apr. 1, 1986
200–499	24.00	Apr. 1, 1986
500–699	8.50	Apr. 1, 1986
700–1699	17.00	Apr. 1, 1986
1700–End	12.00	Apr. 1, 1986
25	24.00	Apr. 1, 1986
26 Parts:		
§§ 1.0–1.169	29.00	Apr. 1, 1986
§§ 1.170–1.300	16.00	Apr. 1, 1986
§§ 1.301–1.400	13.00	Apr. 1, 1986
§§ 1.401–1.500	20.00	Apr. 1, 1986
§§ 1.501–1.640	15.00	Apr. 1, 1986
§§ 1.641–1.850	16.00	Apr. 1, 1986
§§ 1.851–1.1200	29.00	Apr. 1, 1986
§§ 1.1201–End	29.00	Apr. 1, 1986
2–29	19.00	Apr. 1, 1986
30–39	13.00	Apr. 1, 1986
40–299	25.00	Apr. 1, 1986
300–499	14.00	Apr. 1, 1986
500–599	8.00	[1] Apr. 1, 1980
600–End	4.75	Apr. 1, 1986
27 Parts:		
1–199	20.00	Apr. 1, 1986
200–End	14.00	Apr. 1, 1986
28	16.00	July 1, 1985
29 Parts:		
0–99	11.00	July 1, 1985
*100–499	7.00	July 1, 1986
*500–899	24.00	July 1, 1986
900–1899	9.00	July 1, 1986
1900–1910	21.00	July 1, 1985
1911–1919	5.50	[2] July 1, 1984
1920–End	20.00	July 1, 1985
30 Parts:		
0–199	16.00	July 1, 1985
200–699	8.50	July 1, 1986
700–End	13.00	July 1, 1985
31 Parts:		
0–199	11.00	July 1, 1986
200–End	16.00	July 1, 1986

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	[3] July 1, 1984
1–39, Vol. II	19.00	[3] July 1, 1984
1–39, Vol. III	18.00	[3] July 1, 1984
1–189	13.00	July 1, 1985
190–399	23.00	July 1, 1986
400–629	15.00	July 1, 1985
630–699	13.00	July 1, 1986
700–799	15.00	July 1, 1986
800–999	7.50	July 1, 1985
1000–End	5.50	July 1, 1985
33 Parts:		
1–199	20.00	July 1, 1985
200–End	14.00	July 1, 1985
34 Parts:		
1–299	15.00	July 1, 1985
300–399	11.00	July 1, 1986
400–End	18.00	July 1, 1985
35	7.00	July 1, 1985
36 Parts:		
1–199	9.00	July 1, 1985
200–End	14.00	July 1, 1985
37	9.00	July 1, 1985
38 Parts:		
0–17	16.00	July 1, 1985
18–End	11.00	July 1, 1985
39	12.00	July 1, 1986
40 Parts:		
1–51	16.00	July 1, 1985
52	21.00	July 1, 1985
53–80	23.00	July 1, 1985
81–99	18.00	July 1, 1985
100–149	18.00	July 1, 1985
150–189	13.00	July 1, 1985
190–399	19.00	July 1, 1985
400–424	14.00	July 1, 1985
425–699	13.00	July 1, 1985
700–End	8.00	July 1, 1985
41 Chapters:		
1, 1–1 to 1–10	13.00	[4] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[4] July 1, 1984
3–6	14.00	[4] July 1, 1984
7	6.00	[4] July 1, 1984
8	4.50	[4] July 1, 1984
9	13.00	[4] July 1, 1984
10–17	9.50	[4] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[4] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[4] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[4] July 1, 1984
19–100	13.00	[4] July 1, 1984
1–100	7.50	July 1, 1985
101	19.00	July 1, 1985
102–200	8.50	July 1, 1985
201–End	7.50	July 1, 1986
42 Parts:		
1–60	12.00	Oct. 1, 1985
61–399	7.00	Oct. 1, 1985
400–429	16.00	Oct. 1, 1985
430–End	11.00	Oct. 1, 1985
43 Parts:		
1–999	10.00	Oct. 1, 1985
1000–3999	18.00	Oct. 1, 1985
4000–End	8.50	Oct. 1, 1985
44	13.00	Oct. 1, 1985
45 Parts:		
1–199	10.00	Oct. 1, 1985
200–499	7.00	Oct. 1, 1985
500–1199	13.00	Oct. 1, 1985
1200–End	9.00	Oct. 1, 1985
46 Parts:		
1–40	10.00	Oct. 1, 1985
41–69	10.00	Oct. 1, 1985
70–89	5.50	Oct. 1, 1985
90–139	9.00	Oct. 1, 1985
140–155	8.50	Oct. 1, 1985
156–165	10.00	Oct. 1, 1985
166–199	9.00	Oct. 1, 1985
200–499	15.00	Oct. 1, 1985
500–End	7.50	Oct. 1, 1985
47 Parts:		
0–19	13.00	Oct. 1, 1985
20–69	21.00	Oct. 1, 1985
70–79	13.00	Oct. 1, 1985
80–End	18.00	Oct. 1, 1985
48 Chapters:		
1 (Parts 1–51)	16.00	Oct. 1, 1985
1 (Parts 52–99)	12.00	Oct. 1, 1985
2	15.00	Oct. 1, 1985
3–6	13.00	Oct. 1, 1985
7–14	17.00	Oct. 1, 1985
15–End	17.00	Oct. 1, 1985
49 Parts:		
1–99	7.00	Oct. 1, 1985
100–177	19.00	Nov. 1, 1985
178–199	15.00	Nov. 1, 1985
200–399	13.00	Oct. 1, 1985
400–999	16.00	Oct. 1, 1985
1000–1199	13.00	Oct. 1, 1985
1200–1299	13.00	Oct. 1, 1985
1300–End	2.25	Oct. 1, 1985
50 Parts:		
1–199	11.00	Oct. 1, 1985
200–End	19.00	Oct. 1, 1985
CFR Index and Findings Aids	21.00	Jan. 1, 1986
Complete 1986 CFR set	595.00	1986
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1986
Individual copies	3.75	1986

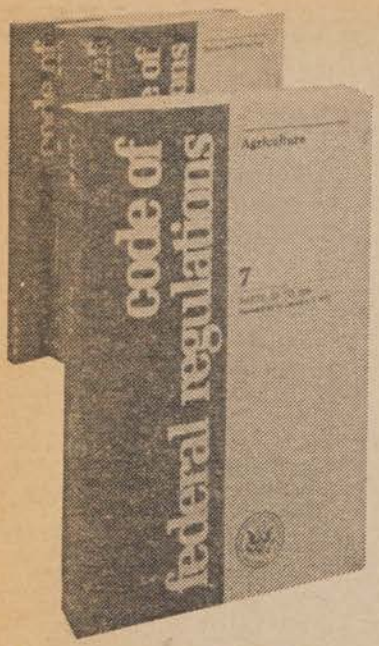
[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[3] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[4] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.



Just Released

Code of Federal Regulations

Revised as of July 1, 1986

Quantity	Volume	Price	Amount
	Title 29—Labor		
_____	Parts 100–499 (Stock No. 822–007–00091–1)	$7.00	$_____
_____	Parts 900–1899 (Stock No. 822–007–00093–7)	9.00	_____
	Title 30—Mineral Resources		
_____	Parts 200–699 (Stock No. 822–007–00098–8)	8.50	_____
	Title 31—Money and Finance: Treasury		
_____	Parts 0–199 (Stock No. 822–007–00100–3)	11.00	_____
_____	Part 200–End (Stock No. 822–007–00101–1)	16.00	_____
		Total Order	$_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form

Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No._____

VISA®

MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		