

federal register

Tuesday
June 2, 1987



Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, and Boston,
MA, see announcement on the inside cover of this issue.



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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

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

BOSTON, MA

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

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Rules and Regulations

Federal Register

Vol. 52, No. 105

Tuesday, June 2, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1600

Employee Elections To Contribute to the Thrift Savings Plan; Request for Comments on Interim Rule

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Amendment to interim rule with request for comments.

SUMMARY: On March 2, 1987, the Board published interim regulations in 5 CFR Part 1600 governing employee elections to contribute to the Thrift Savings Plan. Section 1600.2(d) of these regulations addresses the situation where an employee, for reasons beyond his or her control, was unable to make an election within the time period prescribed by the regulations. On May 13, 1987, the Board issued regulations governing the correction of administrative errors which also addresses situations where an employee fails to participate or is delayed in participating in the Thrift Savings Plan for reasons beyond his or her control. The Board's error correcting regulations are intended to be the single point of reference for addressing problems of belated employee participation as well as administrative errors on the part of the agencies or the Board. Therefore, it is necessary to amend § 1600.2(d) to avoid inconsistent action on the part of agencies who are resolving questions of belated employee participation in the Thrift Savings Plan.

DATES: Amendment effective June 2, 1987, comments must be received by July 24, 1987.

ADDRESS: Comments may be sent to: John J. O'Meara, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 653-2573.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thrift Investment Board (the Board) was established by Pub. L. 99-335 (June 6, 1986), the Federal Employee's Retirement System Act of 1986 (codified principally at 5 U.S.C. 8401 through 8479), as amended by Pub. L. 99-509, the Omnibus Budget Reconciliation Act of 1986, and Pub. L. 99-556, the Federal Employees' Retirement System Technical Corrections Act of 1986, to administer the Thrift Savings Plan for Federal employees. Regulations of the Board are contained in Title 5, CFR, Chapter IV, Parts 1600-1699. The Executive Director of the Board is publishing an amendment to CFR 1600.2.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal government procedures for correcting errors involving employee participation in the Thrift Savings Plan.

Paperwork Reduction Act

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

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

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. This amendment is being published as an interim regulation because the statutory commencement of the Thrift Savings Plan was April 1, 1987, and it is necessary for the Board to have a procedure in place in order to ensure that situations involving belated employee elections are addressed in a uniform manner by the applicable agencies.

List of Subjects in 5 CFR Part 1600

Administrative practice and procedure, Employee benefit plans, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,
Executive Director.

PART 1600—EMPLOYEE ELECTIONS TO CONTRIBUTE TO THE THRIFT SAVINGS PLAN

For the reasons set forth in the preamble, 5 CFR Part 1600 is amended as follows:

1. The authority citation for Part 1600 continues to read as follows:

Authority: 5 U.S.C. 8351, 5 U.S.C. 8432(b)(1)(A), 5 U.S.C. 8474 (b)(5) and (c)(1).

2. 5 CFR 1600.2(d) is revised to read as follows:

§ 1600.2 Periods for making elections.

* * * * *

(d) *Belated elections.* When an employee, for reasons beyond his or her control, was unable to make an election within the time limits prescribed by these regulations, the employee's agency shall take appropriate action in accordance with 5 CFR 1605.2.

[FR. Doc. 87-12501 Filed 6-1-87; 8:45 am]

BILLING CODE 6820-SB-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 900

Procedure for the Conduct of Referenda in Connection With Marketing Orders for Eggs and Spent Fowl; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; Correction.

SUMMARY: This document corrects the title of signatory of the final rule concerning the procedure for the conduct of referenda in connection with the marketing order for eggs and spent fowl.

FOR FURTHER INFORMATION CONTACT: Richard N. Hooper, (202) 447-4906.

SUPPLEMENTARY INFORMATION: In FR Doc. 87-9334 beginning on page 13630 in the issue of Friday, April 24, 1987, make the following correction:

On page 13632, in the first column, after the signature, the title "Administrator; Financial Management Division" is corrected to read

"Administrator, Agricultural Marketing Service".

Signed in Washington, DC on May 26, 1987.
J. Patrick Boyle,
 Administrator.
 [FR Doc. 87-12310 Filed 6-1-87; 8:45 am]
 BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Revocation of Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; revocation, correction.

SUMMARY: The Nuclear Regulatory Commission is correcting the document appearing in the *Federal Register* on November 1, 1985 (50 FR 45597) that revoked policy statements published by the Commission which have been superseded by agency action or became obsolete in some other way and listed current NRC policy statements. This action is necessary to include an obsolete policy statement in the list of policy statements being revoked. The policy statement was inadvertently omitted from the list of revoked policy statements in the November 1, 1985 document.

EFFECTIVE DATE: July 2, 1987.

ADDRESS: Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-7086 or Toll Free 800-368-5642.

SUPPLEMENTARY INFORMATION: On page 45598, the following statement should be inserted as item 23 in the list of policy statements being revoked:

23. Consideration of Psychological Stress Issues (47 FR 31762; July 22, 1982)—Superseded by *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983).

Dated at Washington, DC, this 28th day of May, 1987.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,
 Secretary of the Commission.
 [FR Doc. 87-12516 Filed 6-1-87; 8:45 am]
 BILLING CODE 7590-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Conduct of Members and Employees of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The rule revises the Commission's Code of Conduct for Commission members and employees to conform to section 9(d) of the Commodity Exchange Act, as amended by the Futures Trading Act of 1986, regarding transactions that are forbidden or authorized to be engaged in by Commission members and employees.

EFFECTIVE DATE: July 2, 1987.

FOR FURTHER INFORMATION CONTACT: Joel R. Maillie, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-9880.

SUPPLEMENTARY INFORMATION: On March 4, 1987, the Commission published for public comment a proposal to revise its Code of Conduct, 17 CFR 140.735-1 *et seq.* (1986), which generally establishes ethical standards for Commission members and employees (52 FR 8588). The revisions to the Code of Conduct were proposed to conform to amendments to section 9(d) of the Commodity Exchange Act made by the Futures Trading Act of 1986, Pub. L. 99-641 (signed November 10, 1986). The Commission received no comments in response to the notice of proposed rulemaking and has decided to adopt the rule as proposed. The Commission's action relates solely to agency organization, procedure, and practice.

Regulatory Flexibility Act; Paperwork Reduction Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of proposed rules on small entities. It is not anticipated that these revisions to the Code of Conduct will impose any new burden on small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule promulgated herein will not have a significant economic impact on a substantial number of small entities.

Because the rule adopted herein does not contain a collection of information requirement, or an "information collection request" within the meaning of 44 U.S.C. 3502(4), the Commission has

determined that the provisions of the Paperwork Reduction Act do not apply.

List of Subjects in 17 CFR Part 140

Commodity futures, Conflict of interests, Ethics, Organizations and functions.

PART 140—[AMENDED]

Accordingly, the Commission, pursuant to the authority contained in sections 2(a)(11), 8a(5), and 9(d) of the Commodity Exchange Act, 7 U.S.C. 4a(j) and 12a(5), and Pub. L. 99-641, Executive Order 11222, 3 CFR, 1964-65 Comp., as amended, and 5 CFR 735.104, amends its Code of Conduct, Subpart C of Part 140 of Chapter I of Title 17 of the Code of Federal Regulations as specified below:

1. The authority citation for Part 140, Subpart C, continues to read as follows:

Authority: Sec. 8a(5), 49 Stat. 1501, as amended (7 U.S.C. 12a(5)); E.O. 11222, 3 CFR, 1964-1965 Comp.; 5 CFR 735.104.

2. In § 140.735-4 paragraphs (b) (1) and (2) are revised to read as follows:

§ 140.735-4 [Amended]

* * * * *

(b) * * *

(1) Participate, directly or indirectly, in any transaction

(i) Involving a contract of sale of any commodity for future delivery;

(ii) Involving any commodity that is of the character of, or is commonly known to the trade as, an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty; or

(iii) For the delivery of any commodity that is or is to be executed pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract or similar contracts when subject to regulation by the Commission under section 19 of the Act; except that the prohibitions in paragraphs (b)(1) (i) and (ii) of this section shall not apply to:

(A) A transaction in connection with a farming, ranching, oil and gas, mineral rights or other natural resource operation in which the Commission member or employee has a financial interest, if the Commission member or employee is not involved in the decision to engage in, and does not have prior knowledge of, the actual futures or option transaction and has previously notified the General Counsel in writing of the nature of the operation, the extent of the member's or employee's interest, the types of transactions in which the operation may engage and the identity of the person or persons who will make trading decisions for the operation; or

(B) A transaction entered into by any investment company (e.g., a mutual fund) of similar pooled investment entity other than one operated by a person who is a commodity pool operator with respect to that entity, in which the direct or indirect ownership interest of the Commission member or employee is limited to and represents less than 1% of the total ownership interest of the fund or entity and with which the Commission member or employee has no other relationship;²

(2) Participate, directly or indirectly, in any investment transaction involving an actual commodity if

(i) The transaction involves the use of nonpublic information, or

(ii) The transaction is effectuated by an instrument regulated by the Commission, and is not in connection with a transaction permitted under paragraph (b)(1) of this section, or

(iii) The transaction is effected by an instrument functionally equivalent to an instrument regulated by the Commission;³

* * * * *

² Attention is directed to section 9(b) of the Commodity Exchange Act, which makes it a felony for any member or employee of the Commission, or agent thereof, to participate, directly or indirectly, *inter alia*, any commodity futures, option or leverage transaction, unless authorized to do so by Commission rule or regulation. Attention is also directed to 17 CFR 4.5, which excludes certain otherwise regulated persons from the definition of "commodity pool operator" with respect to the operation of specific investment entities enumerated in the regulation.

Although not required, if they choose to do so, Commission members of employees may use powers of attorney or other arrangements in order to meet the notice requirements of, and to assure that they have no control or knowledge of futures or option transactions permitted under paragraph (b)(1)(A) of this section. A Commission member of employee considering such arrangements should consult with the Office of the General Counsel in advance for approval. Should a Commissioner or employee gain knowledge of an actual futures or option transaction that has already taken place and the market position represented by that transaction still remains open, he or she should promptly report that fact and all other details to the General Counsel and seek advice as to what action, including recusal from pending matters involving that market, may be appropriate.

³ Attention is directed to section 9(d) of the Commodity Exchange Act that provides, among other things, that it shall be a felony for any Commission member or employee to participate in any investment transaction in an actual commodity that the Commission by rule or regulation has prohibited to Commission members and employees. A transaction involving an instrument that is the "functional equivalent to an instrument regulated by the Commission" would include, for example, but is not limited to, a transaction in a stock index effectuated through the purchase or sale of an option traded on a national securities exchange where the stock-index also underlies a futures contract regulated by the Commission. Attention is also directed to § 140.735-16 of this Part for information regarding interpretative and advisory service by the General Counsel of the Commission.

Issued in Washington, DC on May 28, 1987, by the Commission

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 87-12479 Filed 6-1-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 24, 146, and 178

Harbor Maintenance Fee; Extension of Comment Period

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

ACTION: Interim regulations; extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning interim amendments of the Customs Regulations to implement provisions of the Water Resources Development Act of 1986 (the Act) which authorizes the Customs Service to assess a harbor maintenance fee of 0.04 percent (.0004) on the value of commercial cargo loaded on or unloaded from a commercial vessel at a port within the definition of the Act. The harbor maintenance fee applies to port uses by commercial vessels which load or unload merchandise or passengers unless specifically exempted from the fee. The proceeds of the fee collected by Customs, together with certain other fees, are deposited in the Harbor Maintenance Trust Fund which is made available, subject to appropriations, to the U.S. Army Corps of Engineers for the improvement and maintenance of U.S. ports and harbors.

The amendments were made on an interim basis by the publication of T.D. 87-44 in the *Federal Register* of March 30, 1987 (52 FR 10198), due to the limited period of time available to initiate the changes before the law became effective on April 1, 1987. However, written comments were invited for consideration before a final rule is issued. Comments were to have been received on or before May 29, 1987. Customs has received several requests to extend the comment period because additional time is required to prepare reasonably responsive comments. Customs believes the request have merit. Accordingly, the period of time for the submission of comments is being extended 90 days.

DATE: Comments are requested on or before August 28, 1987.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: Jean F. Maguire, Director, User Fee Task Force (202-566-5868).

Dated: May 28, 1987.

Harry B. Fox,

Acting Director, Office of Regulations & Rulings.

[FR Doc. 87-12615 Filed 5-29-87; 3:27 pm]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens in the United States; Removal of Physicians From Schedule A

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is amending its regulations relating to the certification of immigrant aliens for permanent employment in the United States. The amendments remove alien graduates of foreign medical schools from the *Schedule A* precertification list.

EFFECTIVE DATE: These amendments apply to applications for permanent alien labor certification received for processing on or after July 2, 1987. However, those alien graduates of foreign medical schools who: (1) Are in possession of a statement signed by the appropriate Regional Health Administrator (RHA), Department of Health and Human Services (HHS), required by 20 CFR 656.22(c)(2)(ii) (1986) of DOL's regulations, as of the effective date of the final rule; and (2) file a visa petition accompanied by the statement of the RHA, HHS, and the documentation required by 20 CFR 656.20(d) (1986) within one year of the date the statement of the RHA, HHS,

was signed, shall be allowed to complete the *Schedule A* process. Those aliens who have requested but have not received a shortage statement by the effective date of the final rule shall not be allowed to complete the *Schedule A* process.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certification. Telephone: 202-535-0163.

SUPPLEMENTARY INFORMATION: On January 24, 1986, the Employment and Training Administration (ETA) of the Department of Labor (DOL) published in the *Federal Register* a Notice of Proposed Rulemaking proposing to amend ETA's regulations at 20 CFR Part 656 to remove alien graduates of foreign medical schools from the *Schedule A* precertification list (51 FR 3191). This document adopts final regulations based upon that January 24, 1986, Notice of Proposed Rulemaking. ETA's regulations for the certification of immigrant aliens for permanent employment in the United States are issued pursuant to section 212(a)(14) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(14). However, those alien physicians (and surgeons) who are of exceptional ability in a science or art will remain on *Schedule A*, Group II.

Permanent Alien Employment Certification Process

Pursuant to the Immigration and Nationality Act (INA), before the Department of State (DOS) and the Immigration and Naturalization Service (INS) issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor must first certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. 8 U.S.C. 1182(a)(14).

Department of Labor Regulations

Pursuant to 8 U.S.C. 1182(a)(14), DOL has promulgated regulations at 20 CFR Part 656 to implement the labor certification process for the permanent employment of immigrant aliens in the United States.

The regulations at 20 CFR Part 656 set forth the fact-finding process designed to develop information sufficient to

support the granting or denial of a permanent labor certification. Part 656 also sets forth the responsibilities of employers who desire to permanently employ immigrant aliens in the United States, and the responsibilities of the alien beneficiaries of permanent alien labor certifications.

Schedule A Precertification List

DOL has published, at 20 CFR 656.10, a list of occupations (*Schedule A*) for which the Director, U.S. Employment Service, has determined that there are not sufficient United States workers who are able, willing, qualified, and available, and that the wages and working conditions of U.S. workers similarly employed will not be adversely affected by the employment of aliens. DOL has delegated to the DOS and the INS the authority to determine if an alien falls within one of the occupational categories on *Schedule A*, and, if so, to issue a permanent alien labor certification for the alien. 20 CFR 656.22. The *Schedule A* determination of the INS or Department of State is not appealable within DOL. 20 CFR 656.22(h)(2).

Alien Graduates of Medical Schools

Regulations at 20 CFR 656.10(a)(2) and 20 CFR 656.22(b) (1986) provide for the precertification of alien graduates of medical schools in specific shortage areas for specific medical specialties as designated by the Department of Health and Human Services (HHS). ETA is amending these regulations by deleting alien graduates of foreign medical schools from the DOL's *Schedule A* precertification list. Physicians (and surgeons) will still, however, be allowed to be the beneficiaries of permanent labor certification applications. No change is made by this rule in DOL's regulations which allow employers to file applications for labor certification under the basic labor certification process at 20 CFR 656.21. Further, alien physicians (and surgeons) of exceptional ability in a science or art will remain on *Schedule A*. 20 CFR 656.10(b).

Under the regulations prior to this revision, a signed statement is required from the appropriate Regional Health Administrator (RHA), Public Health Service (PHS) Regional Office, HHS, as documentation of a physician's (and surgeon's) *Schedule A* eligibility. 20 CFR 656.22(c)(2) (1986). The signed statement from the RHA certifies that the area in which the alien intends to be employed is a geographic area which has been designated by the Secretary of HHS as a Health Manpower Shortage Area (HMSA) for the alien's medical specialty or has been identified otherwise by the

Secretary of HHS as having an insufficient number of physicians in the alien's medical specialty (hereinafter referred to as an inadequately served area).

In August 1984, HHS wrote to the Assistant Secretary of Labor for Employment and Training informing him that as a result of an internal HHS study of the current labor certification program, HHS had come to the conclusion that major changes in HHS participation in the program were warranted. HHS proposed discontinuing, beginning with Fiscal Year 1985, making labor shortage certifications through PHS regional offices. The reasons for this proposal were as follows:

- Less than one-third of the physicians certified remain for any significant amount of time providing direct patient care in the shortage areas for which they were certified;
- Methodological problems exist in developing and keeping accurate information for inadequately served areas for other than the primary care specialties;
- Neither the Congress nor HHS recognizes the existence of a national shortage of physicians in the United States;
- The recent HHS report to the President and the Congress on the Status of Health Personnel in the United States indicated that the aggregate number of physicians in the United States is projected to exceed requirements in 1990 and 2000; and
- Scarce HHS resources for this activity, given its apparent limited utility.

HHS recommended removal of physicians from *Schedule A*, or, in the alternative, leaving only those physicians on *Schedule A* that are to be employed in the HMSAs. The HMSA lists, which are maintained only for primary care physicians and psychiatrists, according to HHS have a high degree of currency and reliability, are published annually in the *Federal Register*, and are widely recognized as being accurate and correct. In addition, to date, 90 percent of all positive certifications issued by PHS have been based on the lists of HMSAs and only 10 percent have been based on the lists of inadequately served areas. However, as indicated above, less than one-third of the physicians certified for direct patient care work in the shortage areas or specialties for which they obtained certification for any length of time. Thus, the labor certification program has not had significant effect in alleviating the

shortage of physicians in the HMSAs or in the inadequately served areas. Consequently, DOL proposed to remove physicians (and surgeons) from *Schedule A*.

Comments on Proposed Rule

The Notice of Proposed Rulemaking (NPRM) invited interested parties to submit written comments on the proposed amendments on or before February 24, 1986. Comments on the NPRM were received from six different organizations and individuals, including the American Immigration Lawyers Association (AILA). The following issues were raised by the commenters:

- Insufficient data were provided to support the statement in the preamble to the NPRM that less than one-third of the physicians certified remain for any significant amount of time providing direct patient care in the shortage areas for which they were certified. AILA also stated that the data supporting this reason for removing physicians from *Schedule A* should be made public.
- Data with respect to HMSAs for primary care physicians is current and reliable; therefore, only the other areas and specialties should be deleted from *Schedule A*.
- That neither Congress nor HHS recognizes the existence of a national shortage of physicians is irrelevant to the present regulation since *Schedule A* does not provide for precertification on a national basis, but only for area shortages by specialty.
- Projections that the aggregate number of physicians in the United States is expected to exceed requirements in 1990 and 2000 is irrelevant with respect to specific shortage areas, and, therefore, does not support removing physicians from *Schedule A*.
- Scarcity of HHS resources as a reason for removing physicians from *Schedule A* was questioned since only 103 *Schedule A* certifications on behalf of physicians were issued in Fiscal Year 1984. Further, removing physicians from *Schedule A* merely shifts the administrative burden to the State employment service and Regional Certifying Officers of DOL.
- Two commenters suggested as an alternative to removing physicians from *Schedule A*, that the certification be contingent upon a commitment of the physician to provide medical services in the shortage area for a specified length of time.
- Two commenters inquired as to what effect the proposed rule would have on *Schedule A* applications that were in process as of its effective date.

An analysis of the comments is presented below in the same order they were presented above.

Less Than One-Third of the Physicians Certified Remain in Shortage Areas for any Significant Length of Time

The Bureau of Health Professions, Health Resources and Service Administration, HHS, has recently issued a report entitled *Labor Certification of Foreign Physicians Under Schedule A—An Assessment of Program Impact* which supports the statements made in the preamble that less than one-third of the physicians certified remain for any significant amount of time providing direct patient care in the shortage areas for which they were certified.

This statement is documented in the above cited report published in 1986 by HHS's Health Resources and Services Administration, Bureau of Health Professions, Office of Data Analysis and Management. The report describes a study of those physicians certified under the program in 1981 and 1982. The study was carried out in 1984 by the Public Health Service regional office personnel who had done the staff work on shortage/underserved area certifications for *Schedule A* labor certification purposes. The study concluded that:

(1) The 436 shortage/underserved area certifications issued in 1981 and 1982 represented, at most, 382 different physicians. (Some physicians requested multiple certifications for different areas.)

(2) Of these 382 physicians, at least 145 were seeking residency of other training positions, rather than positions in direct patient care. (To remedy this, beginning in 1983 HHS required verification that the positions sought were not training positions before issuing area certifications.)

(3) Of the remaining 237 physicians, 227 were identified as having sought positions in direct patient care; whether the positions sought by the other 10 were for training or direct patient care could not be determined.

(4) Of the 227 physicians who sought positions in direct patient care, it was determined that 141 (or 63 percent) actually served for some period of time in a shortage/underserved area for which he/she had obtained a certification.

(5) Of these 141 physicians, 66 were still practicing at the certified location in 1984. This represents 29 percent (or less than one-third) of the 227 who originally requested certification for positions in direct patient care (and 17 percent of the total 382 physicians certified).

Copies of the report can be obtained by writing to the Director, Office of Data Analysis and Management, BHPR, HRSA, Parklawn Building Room 8-41, 5600 Fishers Lane, Rockville, Md. 20857.

Reliability of Data on HMSAs and Inadequately Served Areas

The possibility of deleting only those physicians from *Schedule A* that would be employed in inadequately served areas was discussed and rejected in the preamble to the proposed rule. As indicated above, the distribution of physicians has improved significantly over the past few years and can be expected to continue to improve as the number of physicians in the United States is expected to exceed requirements in 1990 and 2000. Further, as indicated above, less than one-third of the physicians certified remain for direct patient care work in the shortage areas and specialties for which they were certified for any length of time. Thus, the labor certification program has not had significant effect in alleviating the shortage of physicians in the HMSAs or in the inadequately served areas.

Absence of National Shortage

The distribution of physicians has improved substantially since Congress in section 906 of the Health Professions Educational Assistance Act (HPEAA, Pub. L. 94-484) directed DOL and then Health, Education and Welfare (renamed Health and Human Services) to work together so that DOL could make equitable determinations with regard to applications for permanent labor certification by alien graduates of medical schools. The improved distribution has been reflected in a significant number of areas being deleted from the list of HMSAs published by HHS in the *Federal Register*. The distribution of physicians is now such that the inclusion of shortage area physicians in the *Schedule A* labor certification program can no longer be justified. This is especially so in light of the fact that less than one-third of the physicians certified remain for any significant amount of time providing direct patient care in the shortage areas for which they were certified. It should also be noted, that the National Health Service Corps which is provided for by section 331 of the HPEAA continues to exist. Under section 331 of the HPEAA, medical school graduates, in return for scholarship aid to complete medical school, agreed to provide medical services in shortage areas for a specified length of time.

Further, as noted above, the basic labor certification process at 20 CFR 656.21 is not affected by these amendments. Employers can, as for any other occupation, file an individual labor certification on behalf of a physician (or surgeon). The reduction in recruitment provisions of the basic process at 20 CFR 656.21(i) of course, would, be available to employers desiring to employ physicians in shortage areas, if the employer satisfactorily documents that it has adequately tested the labor market with no success at least at the prevailing working conditions.

There are a number of occupations which are probably in short supply for one or more areas, although the national supply/demand factors are in approximate balance. However, physicians are the only occupational group on *Schedule A* which provides for certification by shortage area rather than on a national basis. It is preferable that employers meet the needs of shortage areas under the basic process rather than under *Schedule A*.

Projections That The Aggregate Number of Physicians Is Expected To Exceed Requirements

Discussed above under "Absence of National Labor Shortage."

Scarcity of Resources

The amount of work HHS has to do to administer its part of the *Schedule A* labor certification program is considerably larger than was expected at the time physicians were added to *Schedule A*. The HHS Has to respond to a large volume of general information requests received each year, and respond in writing to all written requests for shortage statements. This includes cases where the alien's intended area of employment is not a shortage area, as well as those cases where the alien's area of employment is a shortage area. This workload will no longer exist after physicians are removed from *Schedule A*.

On the other hand, DOL will probably experience some increase in its workload as it is expected that those employers who previously filed under *Schedule A* for physicians will in the future use the basic labor certification process. However, DOL will readily be able to accommodate any expected increase in applications within its current labor certification structure in its 10 regional offices, including existing staffing and procedures.

Issuance of Certification Contingent Upon Commitment of Alien Physician To Provide Medical Services in Shortage Area for a Specified Length of Time

Issuing contingent certifications was considered and rejected at the time DOL developed the regulations prior to this revision which placed physicians on *Schedule A*. DOL had serious reservations concerning its authority to issue certifications contingent upon conditions being fulfilled after the alien began the certified employment. Further, DOL does not have the resources to enforce such a contingency provision at this time even if questions regarding the authority of DOL to issue such a regulation were answered affirmatively.

Effect of Final Rule on Alien Medical Graduates Who Have Begun *Schedule A* Process

Those alien graduates of foreign medical schools who: (1) Are in possession of a statement signed by the appropriate RHA, HHS, required by 20 CFR 656.22(c)(2)(ii) (1986) of DOL's regulations as of the effective date of the final rule; and (2) file a visa petition accompanied by the statement of the RHA, HHS, and the documentation required by 20 CFR 656.20(d) (1986) within one year of the date the statement of the RHA, HHS, was signed shall be allowed to complete the *Schedule A* process. Those aliens who have requested but have not received a shortage statement by the effective date of the final rule shall not be allowed to complete the *Schedule A* process.

Regulatory Impact

The economic and other impact of this proposed rule is not so great as to make it a major rule requiring the development of a regulatory impact analysis. See Executive Order No. 12291, 3 CFR, 1981 comp., p. 127 (February 17, 1981).

The rule would not have a significant impact on a substantial number of small entities. It would only affect those few employers who petition for foreign medical graduates pursuant to DOL's *Schedule A* precertification list. For that reason at the time of publication of the proposed rule, the Department of Labor had certified to the Chief Counsel for Advocacy, Small Business Administration, pursuant to the Regulatory Flexibility Act, that the rule would not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b).

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.203, "Certification for Immigration Workers."

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Aliens, Employment, Fraud, Labor, Unemployment, Wages.

Final Rule

Accordingly, Part 656 of Chapter V of Title 20, Code of Federal Regulations, is amended as follows:

PART 656—[AMENDED]

1. The authority citation for Part 656 is revised to read as follows, and the separate authority citations following the sections in Part 656 are removed:

Authority: 8 U.S.C. 1182(a)(14); 29 U.S.C. 49 *et seq.*

§ 656.10 [Amended]

2. Section 656.10 is amended by removing paragraphs (a)(2) and (a)(4)(ii) from *Schedule A*, and by redesignating the remaining paragraphs in § 656.10(a) as set forth in the following redesignation table:

Old section	New section
656.10(a)(3).....	656.10(a)(2)
656.10(a)(4) introductory text...	656.10(a)(3) introductory text
656.10(a)(4)(i).....	656.10(a)(3)(i)
656.10(a)(4)(iii).....	656.10(a)(3)(ii)

§ 656.22 [Amended]

3. Section 656.22 is amended by removing paragraph (c)(2) and redesignating paragraph (c)(3) as paragraph (c)(2).

§ 656.50 [Amended]

4. Section 656.50 is amended by removing the definitions for "Regional Health Administrator" and "Secretary of Health and Human Services (HHS)".

§ 656.61 [Removed]

5. Section 656.61 is removed.

Signed at Washington, DC, this 27th day of May, 1987.

William E. Brock,
Secretary of Labor.

[FR Doc. 87-12446 Filed 6-1-87; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of several new animal drug applications (NADA's) resulting from the merger of Essar Corp. and Quality Plus Products Co., Inc., to Quality Plus Essar Corp.

EFFECTIVE DATE: June 2, 1987.

FOR FURTHER INFORMATION CONTACT:

David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Essar Corp., P.O. Box 1590, Fort Dodge, IA 50501, and Quality Plus Products Co., Inc., P.O. Box 1590, Fort Dodge, IA 50501, informed FDA that each firm had merged to form Quality Plus Essar Corp., P.O. Box 459, Fort Dodge, IA 50501. Those approved NADA's affected by the merger are:

NADA No.	Product name
044-756	Tevcodyme Tablets (phenylbutazone).
045-416	Tevcodyme Injectable (phenylbutazone).
055-002	Tevcocin (chloramphenicol injection).
055-059	Tevcocin Tablets (chloramphenicol).
095-218	Dexamethasone Tablets 25 milligrams.
100-128	Medipak Tylan 10 (tylosin Type A article).
107-506	Diethylcarbamazine Citrate Tablets.
118-032	Carbam Palatabs (diethylcarbamazine citrate).
118-979	Butatron Oral Gel (Phenylbutazone).
120-615	Sustain III Bolus (sulfamethazine).
126-504	Nitrozone Ointment (nitrofurazone).
128-089	Zonometh Solution (dexamethasone sterile solution).
132-137	Nitrozone Solution (nitrofurazone).

The agency is amending the regulations in 21 CFR 510.600(c) (1) and (2) to reflect the change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10, 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by removing the entry for "ESAR Corp." and adding a new sponsor entry alphabetically, and in paragraph (c)(2) by revising the entry for "053617," to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Quality Plus Essar Corp., P.O. Box 459, Fort Dodge, IA 50501	053617

(2) * * *

Drug labeler code	Firm name and address
053617	Quality Plus Essar Corp., P.O. Box 459, Fort Dodge, IA 50501.

Dated: May 26, 1987.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-12437 Filed 6-1-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Nitrodan

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of a new animal drug application (NADA) held by Eight In One Pet Products, Inc. The NADA provides for use of a 3 percent nitrodan dog food supplement. Elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: June 12, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia E. Hasemann, Center for

Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA 39-769, which is sponsored by Eight In One Pet Products, Inc. The NADA provides for use of a 3 percent nitrodan canine dog food supplement as a wormer. This document removes 21 CFR 520.1540, which reflects approval of the NADA.

In addition, because the firm is no longer sponsor of any approved NADA's, 21 CFR 510.600 is amended by removing the firm from the list of sponsors of approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Sec. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry for "Eight In One Pet Products, Inc." and in paragraph (c)(2) by removing the entry for "035466."

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

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.1540 [Removed]

4. Section 520.1540 *Nitrodan* is removed.

Dated: May 26, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-12439 Filed 6-1-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Levamisole Hydrochloride Drench and Drinking Water; Technical Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the new animal drug regulations that provided for the safe and effective use of levamisole hydrochloride as an anthelmintic in drench or tablet form for the treatment of sheep and in drench concentrate for cattle (35 FR 18458; December 4, 1970). The packet for the sheep drench product was incorrectly shown as weighing 4.68 grams. The correct weight for the packet is 46.8 grams. This document corrects the error.

EFFECTIVE DATE: June 2, 1987.

FOR FURTHER INFORMATION CONTACT: Donald A. Gable, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 4, 1970 (35 FR 18458), FDA amended § 135c.18 (21 CFR 135c.18; currently § 520.1242a (21 CFR 520.1242a)) to reflect approval of new animal drug applications (NADA's) 39-357V, 42-740V, and 42-837V filed by American Cyanamid Co. (currently Agricultural de Puerto Rico, Inc.), for levamisole hydrochloride. The approvals were for use of the drug as an anthelmintic in drench or tablet form for the treatment of sheep and in drench concentrate for cattle. The packet weight for the drench product for sheep incorrectly appeared as 4.68 grams. This document amends § 520.1242a by inserting 46.8 grams as the correct weight of the packet.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

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

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10, 5.83.

§ 520.1242a [Amended]

2. Section 520.1242a *Levamisole hydrochloride drench and drinking water* is amended in paragraph (f)(2)(i) by changing "4.68" to read "46.8."

Dated: May 22, 1987.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-12440 Filed 6-1-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends portions of 21 CFR Part 1301 to allow for registration of dispensers of controlled substances for a period of three years. The effect of this action is to reduce the administrative burden of annual registration on retail pharmacies, hospitals/clinics, practitioners and teaching institutions.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Sheahan, Deputy Chief, Regulatory Support Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1570.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the Federal Register on April 7, 1987 (51 FR 11091 through 11092) to amend portions of 21 CFR Part 1301. This proposed rulemaking provided opportunity for interested parties to submit comments or objections in writing on or before May 7, 1987.

One comment was received in response to the Notice of Proposed Rulemaking. A letter dated April 22, 1987 from Caroline M. Antonellis, R.Ph., Supervisor, Outpatient Pharmacy at The Children's Hospital, Boston, Massachusetts stated that she supports

the proposed change to extend the registration period.

In the Notice of Proposed Rulemaking, pertaining to fee amounts, the revision to § 1301.11(c) inadvertently included researchers in Schedules II through V as being among those registrants who will be receiving three-year registrations. Researchers are not included in the three year registration period. This final rule corrects this error by transferring the reference to researchers in Schedules II through V from paragraph (c) to paragraph (d) so that it is clear that all researchers will receive annual registrations.

The Deputy Assistant Administrator hereby certifies that this rule will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This regulatory change will reduce the administrative burden to the majority of those individuals and businesses registered with DEA.

Pursuant to sections 3(c)(3) and 3(e)(2)(B) of Executive Order 12291, this final rule has been submitted to the Office of Management and Budget for review, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b) and delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator hereby orders that 21 CFR Part 1301 be amended as follows:

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Security measures.

PART 1301—[AMENDED]

1. The authority citation for Part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.11 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1301.11 Fee amounts.

(c) For each registration or reregistration to dispense, or to conduct instructional activities with, controlled substances listed in Schedules II through

V, the registrant shall pay a fee of \$60 for a three-year registration.

(d) For each registration to conduct research or instructional activities with a controlled substance listed in Schedule I, or to conduct research with a controlled substance in Schedules II through V, the registrant shall pay a fee of \$20.

* * * * *

3. Section 1301.12 is revised to read as follows:

§ 1301.12 Time and method of payment; refund.

Fees shall be paid at the time when the application for registration or reregistration is submitted for filing. Payments should be made in the form of a personal, certified, or cashier's check or money order made payable to "Drug Enforcement Administration." Payments made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. These fees are not refundable.

4. Section 1301.31 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 1301.31 Time for application for registration; expiration date.

* * * * *

(c) At the time a manufacturer, distributor, researcher, analytical lab, importer, exporter or narcotic treatment program is first registered, that business activity shall be assigned to one of twelve groups, which shall correspond to the months of the year. The expiration date of the registrations of all registrants within any group will be the last date of the month designated for that group. In assigning any of the above business activities to a group, the Administration may select a group the expiration date of which is less than one year from the date such business activity was registered. If the business activity is assigned to a group which has an expiration date less than three months from the date of which the business activity is registered, the registration shall not expire until one year from that expiration date; in all other cases, the registration shall expire on the expiration date following the date on which the business activity is registered.

(d) At the time a retail pharmacy, hospital/clinic, practitioner or teaching institution is first registered, that business activity shall be assigned to one of twelve groups, which shall correspond to the months of the year. The expiration date of the registrations of all registrants within any group will be the last day of the month designated for that group. In assigning any of the above business activities to a group, the

Administration may select a group the expiration date of which is not less than 28 months nor more than 39 months from the date such business activity was registered. After the initial registration period, the registration shall expire 36 months from the initial expiration date.

Dated: May 19, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-12478 Filed 6-1-87; 8:45 am]

BILLING CODE 4410-09-M

POSTAL SERVICE

39 CFR Part 963

Addition to Judicial Officer's Authority; Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: The Postal Service is correcting two errors in the new rules of practice for administrative hearings under the pandering advertisements statute. Notice of the adoption of these rules was published in the *Federal Register* on May 20, 1987 (52 FR 18911).

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: John Ventresco, (202) 268-3085.

SUPPLEMENTARY INFORMATION: In FR Doc. 87-11489, in the issue of Wednesday, May 20, 1987, the Postal Service published a final rule on transferring responsibility for administrative hearings it conducts under the pandering advertisements statute, 39 U.S.C. 3008, from its Regional Counsel to its Judicial Officer. In implementation of this transfer, the Judicial Officer adopted new rules of practice designated as 39 CFR Part 963, replacing those now codified as 39 CFR Part 916. The Judicial Officer has made two corrections. In one section, a pronoun alternative has been dropped to conform to the style used in the remainder of the rules. In another section, an inadvertent use of the word "or" which produced an unintended meaning has been corrected.

For the foregoing reasons, the Postal Service hereby corrects FR Doc. 87-11489, beginning on page 18911 in the issue of Wednesday, May 20, 1987, as follows:

List of Subjects in 39 CFR Part 963

Organization and functions (Government agencies), Administrative practice and procedure, Pandering advertisements, Postal Service.

PART 963—[AMENDED]

§ 963.3 [Corrected]

1. On page 18912, middle column, in § 963.3, in the third line of paragraph (e), strike out "or her".

§ 963.17 [Corrected]

2. On page 18913, middle column, in § 963.17, in the fourth sentence of paragraph (a), the fourth line from the bottom, strike out "or".

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-12469 Filed 6-1-87; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 31 and 32

[CC Docket No. 85-64; FCC 86-384]

Common Carrier Services; Accounting Treatment of Antitrust Litigation Costs

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended the Uniform System of Accounts for telephone companies to state that payments arising from judgments and settlements of antitrust proceedings, and other violations of Federal law, shall be recorded in Account 370, a "below-the-line" account. Expenses incurred in defending antitrust lawsuits shall continue to be recorded in the operating accounts. However, such cumulative litigation expenses will be disallowed in the next appropriate tariff proceeding after an adverse antitrust judgment entered against a carrier has become non-appealable, or when a settlement is entered after an adverse antitrust summary judgment ruling which terminates the action, or after a verdict or judgment against the carrier.

EFFECTIVE DATES: The amendment to Part 31 shall be effective December 2, 1987. The amendment to Part 32 shall be effective January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert W. Spangler, Accounting and Audits Division, Common Carrier Bureau (202) 634-1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* adopted September 10, 1986 and released May 15, 1987. The full text of the Commission's decision is available for inspection and copying

during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. In a *Notice of Proposed Rulemaking (Notice)* released May 3, 1985, (50 FR 19421, May 8, 1985) this Commission initiated an inquiry into the manner in which telecommunications carriers should account for the costs incurred in defending, settling and paying judgments in antitrust lawsuits, as well as suits alleging civil or criminal violation of any other Federal law. We proposed to amend the text of § 31.370 to state that judgments paid after a finding that the carrier had violated the antitrust laws shall be recorded in that account, along with payments for plaintiffs' attorney fees and treble damage awards. We also proposed to include in Account 370 payments made in settlement of antitrust cases, whether such payments were made before or after judgment. Finally, we called for comments, but took no position, on the appropriate accounting classification for expenses incurred in litigating antitrust cases. We invited commentors to address the propriety of several approaches to this issue, including continuation of our current practice whereby such expenses are recorded in several operating accounts. We asked commentors to pay particular attention to the incentives or disincentives which our proposals might create, as we did not want our accounting practices to unduly influence the corporate decision-making process.

2. Twenty parties filed comments, and 15 parties filed reply comments. We received comments from telephone companies, State regulatory commissions, State consumer advocates and a trade association. The trade association also asked us to expand the scope of this proceeding to include the accounting classification of other expenses incurred in regulatory and judicial proceedings. (We are denying that request, as the issues raised are being addressed in other proceedings.)

3. Although the focus of this proceeding is the manner in which carriers account for litigation costs, we acknowledged in the *Notice* that our decision will have an influence on the ability of carriers to recover litigation costs through the ratemaking process. This is because Account 370 is a "below-the-line" account, and there is a

presumption that expenses recorded therein will not be reflected in the charges to ratepayers. However, we are not establishing herein a *per se* disallowance of costs which are included in Account 370 for ratemaking purposes (just as inclusion of costs in "above-the-line" accounts does not establish a *per se* allowance of such costs for ratemaking). Rather, we conclude that if a carrier seeks to have costs recorded in Account 370 recognized for ratemaking purposes, it must in the first instance provide evidence as to the reasonableness of including costs which were incurred in connection with alleged violations of law in a revenue requirement that is used to compute charges paid by ratepayers.

4. We reject the argument that our classification of litigation costs should follow the manner in which such costs are treated for income tax purposes. Account 370 serves in part as a repository for a variety of transactions that are usually too tangential to the provision of regulated telecommunications services to warrant inclusion in the rate computations for such services. Some of those entries would unquestionably be accepted as legitimate corporate expenditures for tax purposes or in a shareholder suit alleging corporate waste. Moreover, accounting for such costs in a "below-the-line" account, even though they are recognized as allowable business deductions in the Internal Revenue Code, does not violate the will of Congress. The use of terms such as "ordinary" and "extraordinary" in an unrelated context provides no clue to the choice that Congress would make if it were establishing a detailed system of accounts for a regulated business. We also note that our statutory basis for prescribing accounts is broad and affords us considerable discretion. Moreover, we have heretofore adopted policies that resulted in expenses being treated differently for tax and regulatory purposes, such as in depreciation practices, and such dissimilar treatment has not been considered to be contrary to the will of Congress.

5. We proposed to require that judgments arising from a finding that a carrier has violated the antitrust laws be recorded in Account 370, on the theory *inter alia*, that being found guilty of violating a statute should not be regarded as a routine part of operating a business. The telephone companies, however, argued that antitrust lawsuits are a recurring part of a company's operations, especially in an industry moving from a monopoly to a

competitive environment, and that judgments are a normal operating expense. We reject the carriers' position on this issue. The antitrust laws establish important public policy, and a finding that the law has been violated should be sufficient to isolate the judgment costs in an account established for expenses which are not part of the recurring costs of operating the business. Moreover, we do not agree that the judgment costs are merely remedial payments rather than punitive awards. Even if this distinction existed in antitrust law, it is not of significance in our accounting treatment of the payments. Also, we disagree that antitrust judgments are similar to judgments rendered against a carrier as a result of tort actions, contract disputes, etc. (which are recorded in operating accounts). Antitrust violations are of special concern to this Commission, especially those related to the company's regulated activity. Finally, we reject the position that judgments should be recorded in operating accounts because the antitrust laws are "surrounded by uncertainties and the ever-changing standards applied by the Courts." Courts do not casually reach a judgment that the laws have been violated, and we are unwilling to have such arguments govern our accounting classifications. A course of conduct that leads to an antitrust judgment is often the result of a corporate strategy that could benefit shareholders if the management succeeds in avoiding liability, but such conduct rarely, if ever, produces any benefit for ratepayers.

6. We also proposed to record settlements reached after an adverse judgment is entered in Account 370, because the key factor in our decision on the accounting classification is the establishment by a court that the law has been violated. Although the carriers argue against such treatment, on grounds similar to those advocated for judgments, we adopt the proposal in the *Notice*. Settlements reached before judgment are more problematic, as the fact of settlement does not imply wrongdoing. However, we find it appropriate to require such settlements to be recorded in Account 370, as proposed. Although carriers may have entered settlements in the operating accounts in the past, this Commission did not conduct any proceeding to determine the appropriateness of such classification, and did not issue any opinion on the subject. Rather, we previously questioned the validity of the carriers' practices in this regard, and expressed our concern that a

classification rule is needed. We do not wish to establish accounting classifications that encourage needless litigation. However, if we permit settlements to be recorded routinely in operating accounts, there is an incentive which is of special concern in rate-regulated industries: carriers may be more willing to settle cases at any expense to avoid potential disallowance. Such costs should not be passed on through the ratemaking process unless this Commission so permits, and it is the responsibility of the carrier to provide the justification in the first instance. Because we do not wish to discourage settlements which are beneficial to ratepayers, we will consider requests carrier requests for recognition of settlement payments for ratemaking purposes on an *ad hoc* basis.

7. In the *Notice*, we did not set forth a proposal for recording the expenses incurred in defending antitrust cases. We now conclude that our present practice of recording such expenses in the operating accounts is the preferable procedure. We believe that such expenses should not be recorded in Account 370, because there is no manner by which such expenses could be reclassified and recognized later if the carrier is vindicated. Moreover, this approach would encourage carriers to request waivers of our rules so that expenses might be recorded in operating accounts. Aside from the administrative burdens of this activity, our action regarding such reclassification might be interpreted by the parties as an indication of our views on the merits of the ongoing proceeding. We also reject the recording of 50% of the expenses in Account 370 and 50% in the operating accounts as being arbitrary. In the *Notice* we asked for comments on the use of a deferral account for litigation expenses, with the expenses amortized to operating accounts only if the carrier won the case. We have decided not to implement this proposal (although it might be appropriate on an *ad hoc* basis). This approach is inconsistent with our recognition that carriers regularly incur litigation expenses. Moreover, the costs would be deferred over lengthy periods of time, with uncertainty as to their recovery. Accordingly, we will continue our present accounting treatment for litigation expenses.

8. We stated in the *Notice* that carriers should not be allowed to avoid the financial consequences of their unlawful actions by passing those

expenses to the ratepayers. To insure implementation of that policy, we require that after an adverse antitrust judgment is final and non-appealable, or when a settlement is entered after an adverse antitrust summary judgment ruling which terminates the action, or after a verdict or judgment, all litigation expenses incurred in the proceeding shall be effectively moved "below the line" through the ratemaking process in the next appropriate tariff proceeding. Litigation expenses so recaptured will thus be a revenue requirement adjustment, with interest on the cumulative expenses calculated at a rate equal to the maximum allowable rate of return for the period for which interest is computed. Any affected carrier would, of course, be free to challenge this disallowance in the context of the tariff filing.

Ordering Clauses

Accordingly, it is ordered, that pursuant to sections 4(i), 219 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 219 and 220, Part 31 of the Commission's Rules is revised, as shown at the end of this document, effective six months from the date of publication of the rule in the *Federal Register*, and Part 32 of the Commission's Rules is revised, as shown at the end of this document, effective January 1, 1988.

It is further ordered, that NATA's Petition to Enlarge is denied.

It is further ordered, that the Secretary shall serve a copy of this *Report and Order* on each state commission.

It is further ordered, that the Secretary shall cause a summary of this *Report and Order* to be published in the *Federal Register*.

List of Subjects

47 CFR Part 31

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

William J. Tricarico,
Secretary.

Parts 31 and 32 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 31—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS A AND CLASS B TELEPHONE COMPANIES

1. The authority citation for Part 31 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 219, 220, 48 Stat. 1077 as amended, 1078; 47 U.S.C. 219, 220.

2. Section 31.370 introductory text is revised to read as follows:

§ 31.370 Extraordinary income charges.

This account shall include charges to income from nonrecurring transactions that are not customary business activities of the company. This account shall also include penalties and fines paid on account of violations of U.S. statutes, including judgments arising from a violation of antitrust laws, and payments in settlement of civil and criminal suits alleging such violations.

Items

* * * * *

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 32 continues to read as follows:

Authority: 47 U.S.C. 154, 219, 220.

2. Section 32.7620 is revised to read as follows:

§ 32.7620 Extraordinary income charges.

This account shall be debited with nontypical, noncustomary and infrequently recurring losses which would significantly distort the current year's income computed before such extraordinary items, if reported other than as extraordinary items. This account shall also include penalties and fines paid on account of violations of U.S. statutes, including judgments arising from a violation of antitrust laws, and payments in settlement of civil and criminal suits alleging such violations. Income tax relating to the amounts recorded in this account shall be recorded in Account 7630, Current Income Tax Effect for Extraordinary Items—Net, and Account 7640, Provision for Deferred Income Tax Effect of Extraordinary Items—Net.

[FR Doc. 87-12234 Filed 6-1-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety
Administration

49 CFR Part 571

[Docket No. 86-05; Notice 02]

Federal Motor Vehicle Safety
Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice amends Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, to suspend the stopping distance requirements of S5.3.1 of the standard for buses other than school buses (non-school buses). Currently, S5.3.1 applies only to those non-school buses. The agency is taking this action because NHTSA has concluded that there is no safety need for the standard to be applied more stringently to manufacturers of non-school buses than to manufacturers of school buses. The agency will consider reinstating these requirements when it addresses the issue of reinstating stopping distance requirements for all heavy vehicles.

EFFECTIVE DATE: This rule becomes effective June 2, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Crash Avoidance Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-4927.

SUPPLEMENTARY INFORMATION: This rule amends Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems*, to suspend the stopping distance requirements of S5.3.1 of the standard for buses other than school buses (non-school buses). The notice of proposed rulemaking relating to this subject was published on July 9, 1986 (51 FR 24877).

Standard No. 121 specifies minimum performance requirements for air-braked trucks, buses and trailers. The standard has been in effect for trailers since January 1, 1975, and for trucks and buses since March 1, 1975. Requirements are established for the service, emergency and parking brake systems of those vehicles. Major requirements of the standard are that vehicles stop in specified distances and that the wheels not lock at speeds above 10 miles per hour (mph) during those stops. The "no lockup" requirement ensures that skidding due to wheel lockup and loss of lateral stability is minimized. Controlled lockup above 10 mph is allowed if other

conditions are met, such as the use of anti-lock systems.

A prerequisite to the maintenance of stability and directional control of any automotive vehicle is that its tires continue rolling. A sliding tire can generate very little lateral force to control its direction of motion. Paragraph S5.3.1 FMVSS No. 121 specifies stopping in limited distances from 20 to 60 mph, in the loaded and unloaded conditions on dry surfaces, and 20 mph with wet surfaces, with the vehicle remaining in a 12-foot wide lane and with limits on wheel lockup.

Background

Following implementation of Standard No. 121's requirements for trucks and buses in March 1975, the agency found a pattern of erratic behavior in the performance of the antilock systems used by manufacturers of transit and intercity buses to meet the "no lockup" requirements of the standard (S5.3.1). In 1976, NHTSA suspended (until January 1, 1977) the service brake stopping distance requirement (including the "no lockup" requirement) for all buses to provide a period in which modified antilock hardware and newly-introduced systems could be field-evaluated (41 FR 1598; January 9, 1976). Subsequent notices extended the suspension of the requirements for transit and intercity buses until January 1, 1978, and the suspension of the requirements for school buses until April 1, 1978.

In March 1978, after the service brake stopping distance requirements for transit and intercity buses were allowed back into effect, the agency determined that the school bus service brake stopping distance requirements of the standard should remain suspended. 43 FR 12015 (March 23, 1978). The agency made this decision in order to maintain the status quo, since the Department had initiated a series of actions that were intended to resolve major issues with regard to the reliability, effectiveness and costs of the antilock system generally used at that time to meet the standard. Given that NHTSA was in the process of evaluating Standard No. 121, the agency had concluded that it would be inappropriate to change the status quo as it affected manufacturers of vehicles not then subject to the stopping distance and "no lockup" requirements of S5.3.1. NHTSA thereby postponed the reimplementation of the service brake stopping distance requirements of Standard No. 121 as they applied to air brake school buses. The suspension of those requirements for school buses remains in effect today.

As to trucks and trailers, in April 1976, the U.S. Court of Appeals (9th Circuit) invalidated portions of Standard No. 121 that apply to those vehicles, including the "no lockup" requirements of S5.3.1 and S5.3.2. *PACCAR v. National Highway Traffic Safety Administration*, 573 F.2d 632 (9th Cir. 1978), cert. denied, 439 U.S. 862 (1978). NHTSA did not believe that any requirements of Standard No. 121 were invalidated for buses, because of a statement made in a footnote of the opinion that "[t]he part of the standard that regulates air-braked buses is not at issue here." The agency determined that this explicit statement that the court had not considered the merits of the bus requirements was intended to emphasize the limitation of its decision to trucks and trailers. Since the court did not consider those requirements, the fact that its decision left them undisturbed did not suggest any ratification of them. Thus, PACCAR did not increase the burden which the agency must meet in justifying a revision of the bus requirements.

The Blue Bird Body Company (Blue Bird), a manufacturer of buses and school buses, petitioned NHTSA to amend Standard No. 121 to exclude non-school buses from its service and emergency brake stopping distance requirements. Blue Bird requested this change because the service brake stopping distance requirements do not apply to school buses but do apply to non-school buses. In Blue Bird's view, this situation is unreasonable and overly burdensome to manufacturers of non-school buses. Blue Bird also questioned the practicability of the requirements, noting that it was losing its existing domestic supplier of antilock systems and might have to use a foreign manufacturer.

According to the petitioner, Blue Bird needs an antilock system to enable its short wheelbase, forward-engine buses to meet the requirement for 20 mph unloaded stops on surfaces with a skid number of 81. Antilock systems are installed to automatically modulate brake application pressures to avoid skidding in cases where the brake application is so strong, or the road surface so slippery, that wheel lockup would normally occur. Blue Bird's buses are able to meet the stopping distance requirements of the standard without the use of an antilock system under all other test conditions, because the driver of the vehicle is able to control wheel lockup by modulating the brakes. However, during the 20 mph unloaded test on a surface with a skid number of 81, there is insufficient time to modulate the brakes and, as a result, the rear

brakes on Blue Bird's buses lock. Blue Bird stated that, although the rear wheels skid, the bus stops smoothly within the 35-foot stopping distance required by the standard, and no part of the bus leaves the roadway.

Blue Bird believed that if heavy trucks, truck-trailer combinations and school buses can be excluded from Standard No. 121's "no lockup" requirements, then non-school buses should likewise be excluded. The petitioner argued that the school buses and non-school buses it produces are essentially the same, except for differences in components or designs installed to meet Federal or State school bus standards (such as color, seating systems, lighting equipment, body panel joint strength and fuel systems). In its petition, Blue Bird pointed out that, in general, school buses have been required to have safety features beyond those required on other motor vehicles. The petitioner believed that there was no logic to require non-school buses to meet the stopping distance requirements of Standard No. 121 if school buses—virtually identical vehicles—are excluded from those requirements. If school buses were excluded from the requirements of the standard because there was no safety need to address, the petitioner argued it would follow that non-school buses should also be excluded from those requirements for the same reason. Blue Bird believed there are no valid reasons for different brake standards for nearly identical vehicles, and requested NHTSA to eliminate this apparent anomaly.

Proposed Rulemaking

The agency concluded that Blue Bird's request to amend the service brake stopping distance requirements had merit. On July 9, 1986, NHTSA published a notice in the *Federal Register* (51 FR 24877) which granted the part of the petition relating to the service brake stopping distance requirements and proposed rulemaking to revise those requirements. The petitioner's request to exempt non-school buses from the requirements of paragraph S5.7.1 was denied. Because S5.7.1 specifies emergency brake system requirements that all buses must meet, the agency concluded that the argument that non-school buses are unfairly subject to those requirements was without merit.

The agency believed Blue Bird's arguments relating to the service brake stopping distance requirements of Standard No. 121 deserved further consideration because of the unusual circumstances surrounding the applicability of those requirements. NHTSA explained in the notice of

proposed rulemaking (NPRM) that the court's decision in *PACCAR* and the suspension of the school bus service brake stopping distance requirements of the standard have created an historical anomaly in that the service brake stopping distance performance requirements (including the "no lockup" requirements of S5.3.1) have been suspended or otherwise made inapplicable to trucks, trailers and school buses, but remain in effect for non-school buses. NHTSA believed that a resolution of the issues raised by Blue Bird was needed because the application of S5.3.1 results in non-school buses being subject to more stringent requirements than school buses. There was no logical basis for the exclusive application of S5.3.1 to this particular category of vehicle, since notwithstanding Standard No. 121, higher levels of safety are generally required of school buses than any other vehicle type.

As explained in the NPRM, the agency believed an application of S5.3.1 to school buses alone or to school buses plus one or more other types of vehicles could be more appropriate since the population of affected vehicles would include the type of vehicle (school buses) generally regarded as having the greatest safety need. However, since S5.3.1 applies to buses only, an anomaly has resulted from the standard's exclusion of school buses and application only to a type of vehicle with a lesser safety need. NHTSA believed non-school buses are not so unique or peculiar to justify the distinction between them and other vehicles for which the requirements have been suspended. NHTSA thus found merit in the petitioner's argument that the requirements of S5.3.1 are inappropriate at this time for non-school buses if no comparable requirements are set for school buses.

The agency proposed to amend Standard No. 121 to suspend the service brake stopping distance requirements of S5.3.1 for non-school buses. NHTSA emphasized its rulemaking action should not be construed in any manner as commenting negatively on antilock performance or the potential use of antilock systems in the motor vehicle industry. The agency explained such a presumption would be mistaken since NHTSA has been actively involved with research on antilock systems, evaluating the performance of technology available currently in Europe and the stopping distance performances of existing vehicles. Because vehicle braking capability is a primary concern with NHTSA, the agency stated that stopping

distance requirements might be reinstated in the future for all heavy vehicles.

Comments

Because a basis for the agency's proposed rulemaking was to alleviate the unfair burden imposed on manufacturers who produce both school buses and non-school buses by the application of S5.3.1, NHTSA was interested in comments from manufacturers producing both types of vehicles. The agency received one comment from a vehicle manufacturer, Ford Motor Company, who supported the rulemaking action as a domestic manufacturer and importer of motor vehicles. Two other comments were received on the proposal, one from the Insurance Institute for Highway Safety (IIHS) and the other from Ms. Barbara Witherspoon, who is a nursing professor at Florida Junior College in Jacksonville, Florida. IIHS and Professor Witherspoon were against adoption of the proposal.

The commenters addressed two main issues concerning the agency's proposed rulemaking: the effect of the amendment on safety, and the reinstatement of stopping distance requirements.

Effect on Safety

The commenters were divided in their assessment of the safety issues. Professor Witherspoon argued that, while Blue Bird's request seems logical from an equitable standpoint, it "diverges from and dilutes the concern for public safety." Conversely, Ford Motor Company supported the proposed amendment to Standard No. 121 and believed that no safety need is being served by holding the one class of vehicles—non-school buses—to a more stringent requirement than heavy trucks, truck-trailer combinations and school buses.

NHTSA concurs with the argument implied by Ford that higher levels of safety would result if trucks, trailers and school buses were subject to the stopping distance requirements of S5.3.1 in addition to non-school buses. However, the agency does not agree that absolutely no safety need is served by applying S5.3.1 to non-school buses only. NHTSA continues to attach great importance to proper vehicle braking performance, which is demonstrated by the extensive research it has conducted on vehicle braking systems and the agency's enunciated goal of reinstating stopping distance requirements for all vehicle types. Nevertheless, NHTSA is unable to justify burdens resulting from the fortuitous and incongruous continued application of those

requirements to non-school bus manufacturers.

NHTSA does not believe that the negative safety effects of this rulemaking will be significant because it is anticipated that this rule will affect only a small population of non-school buses, i.e., those that are unable to meet S5.3.1 without the use of antilock systems. As discussed earlier in this notice, Blue Bird already meets all but the low speed stopping distance requirement of the standard without the use of antilock. Even in that low speed stop, Blue Bird can meet the stopping distance requirement, but the wheels lock up. Further, NHTSA believes that most buses are able to meet the service brake stopping distance requirements without an antilock system and the agency does not anticipate manufacturers changing their vehicle designs in a way that would negatively affect conformance with the requirements. NHTSA believes that manufacturers of non-school buses will determine that it is in their best interest to continue to voluntarily meet those requirements. In this regard, NHTSA has determined to amend Standard No. 121 in a manner that leaves intact the specifications of S5.3.1, so as to provide manufacturers a set of guidelines which they may use to ascertain the performance level of their vehicles. Of course, as explained in the NPRM, leaving intact the specifications of S5.3.1 also facilitates reinstatement of stopping distance requirements for trucks, trailers and buses in the future.

IIHS objected to NHTSA's reasoning that the service brake stopping distance requirements of S5.3.1 should be suspended because no comparable requirements are set for school buses. IIHS argued that the typical operating environments (speeds, highways used, distances traveled) of school and non-school buses are so different that there is no logical need to have equivalent safety requirements.

NHTSA does not agree that the typical operating environments for school buses and other buses justify the different performance requirements for the two types of vehicles. We also note that we did not rely on any such difference in environments when allowing the present anomaly to exist. While buses carrying school children are typically seen on low-speed streets, they also use freeways and high-speed roadways to transport children on school activity trips. Those "activity buses" are school buses under NHTSA's regulations, subject to the same school bus safety standards as the buses used in neighborhood vicinities or urban

traffic. Similarly, non-school buses can be used on local streets as well as high-speed roadways. Therefore, the agency has determined that school buses and other buses typically operate in similar environments and there is no logical basis for subjecting non-school buses to the requirements of S5.3.1 which have been suspended for school buses.

Research and Reinstatement of Safety Requirements

In the NPRM, NHTSA states that it found merit in the petitioner's argument that the requirements of S5.3.1 are inappropriate at this time for non-school buses if no comparable requirements are set for school buses. At the same time, NHTSA explained that the agency was more inclined to suspend than to rescind the requirements because NHTSA might reinstate new stopping distance requirements in the future for trucks, trailers and buses. The IIHS commented that "[t]hese two directions are incompatible."

The meaning of that comment is not entirely clear to the agency. If IIHS is basing its statement on the belief that the future rulemaking to consider reinstating stopping distance requirements will not include those for school buses, NHTSA wishes to clarify that it did not mean to imply that school buses will be excluded from consideration. Since "school buses" are "buses" under NHTSA's regulatory definitions, school buses are included in the group of heavy vehicles for which reinstatement of stopping distance requirements will be considered.

IIHS argued that an amendment to Standard No. 121 along the lines proposed in the NPRM would signal U.S. suppliers of brake systems to "forget" modern brake technology for buses and large trucks, which would result in a degradation of large vehicle braking performance. NHTSA disagrees. Since S5.3.1 currently does not apply to most large vehicles, this amendment would not significantly affect the state-of-the-art technology relating to large vehicle braking performance. Also, such a message would be inconsistent with statements made by the agency in the past, most recently by the announcement in the NPRM concerning the likelihood of future rulemaking action on heavy vehicle braking performance. Further, the agency's research activities on antilock technology and stopping distance performances of existing vehicles should also effectively signal the agency's interest and activity in reinstating service brake stopping distance requirements.

With respect to NHTSA's request for comments relating to the possible reinstatement of the school bus stopping distance requirements, commenters were generally supportive of reinstatement. IIHS believed that NHTSA should encourage the development and application of antilock brakes for all heavy vehicles, including school buses. Ms. Witherspoon stated that, if Standard No. 121 has afforded some degree of safety in complying vehicles, requirements for school buses should be reinstated. NHTSA has found these comments helpful and will evaluate them further along with other available information when it considers proposing school bus stopping distance requirements in the future.

For the reasons given above, NHTSA is amending Standard No. 121 to suspend the requirements of S5.3.1 applicable to buses. As explained above, NHTSA will keep the specifications of S5.3.1 intact as currently set forth in the standard in order to facilitate reinstatement of affected sections in the future and to provide guidance to manufacturers who choose to manufacture their vehicles to the performance levels specified therein.

Effective Date

This rule is effective upon publication in the **Federal Register**. The agency finds good cause for an immediate effective date because this amendment relieves a restriction whose isolated application to bus manufacturers has been determined by NHTSA to be inappropriate. The rule does not specify different or additional requirements and requires no leadtime for preparation by vehicle manufacturers.

Cost and Benefits

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant with the meaning of the Department of Transportation's regulatory policies and procedures. The economic and other impacts of this rulemaking action will be so minimal that a full regulatory evaluation is not required. The revision to Standard No. 121 made by this rule is intended to relieve an unfair restriction on bus manufacturers. This amendment might reduce manufacturing costs slightly for manufacturers who would no longer need to procure antilock systems or maintain a separate inventory of those systems. However, NHTSA has concluded that the impacts would not be significant because most bus manufacturers meet the requirements of

Standard No. 121 without using antilock systems.

Regulatory Flexibility Act

NHTSA has considered also the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

Few, if any, bus manufacturers would qualify as small entities. Any bus manufacturers that do qualify as small businesses might benefit to a small extent by this rule, since excluding buses from the stopping distance requirements allows manufacturers (such as Blue Bird) to produce buses without antilock systems.

Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new motor vehicles and new motor vehicle equipment. However, these entities will not be affected by the changes made by this rule since the revisions to Standard No. 121 will not significantly affect the price of buses.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.121, S3 is amended by revising the last paragraph to read as follows:

§ 571.121 Standard No. 121; Air Brake Systems.

* * * * *

S3. * * *

Notwithstanding any language to the contrary, sections S5.3.1, S5.3.1.1, S5.3.2, S5.3.2.1, S5.3.2.2, S5.7.1, S5.7.3(a) and S5.7.3(b) of this standard are not applicable to trucks and trailers, and section S5.3.1 of this standard is not applicable to buses.

* * * * *

3. In § 571.121, S5.3.1 introductory text is revised to read as follows:

* * * * *

S5.3.1 *Stopping distance—trucks and buses.* When stopped six times for each combination of weight, speed, and road condition specified in S5.3.1.1, in the sequence specified in Table I, the vehicle shall stop at least once in not more than the distance specified in Table II, measured from the point at which movement of the service brake control begins, without any part of the vehicle leaving the roadway and without lockup of any wheel at speeds above 10 mph except for: * * *

* * * * *

Issued on May 28, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-12510 Filed 6-1-87; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register

Vol. 52, No. 105

Tuesday, June 2, 1987

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

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

7 CFR Part 656

Procedures for the Protection of Archeological and Historical Properties Encountered in SCS-Assisted Programs

AGENCY: Soil Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Soil Conservation Service (SCS) removes and reserves six sections of its regulation protecting archeological and historic properties. The purpose of this action is to eliminate procedures that are inconsistent with current requirements.

DATE: Comments should be received on or before August 1, 1987.

ADDRESS: Gail Updegraff, Director, Economics and Social Sciences Division, USDA/SCS, P.O. Box 2890, Washington, DC 20013-2890.

FOR FURTHER INFORMATION CONTACT: Gail Updegraff, Director, Economics and Social Sciences Division, or Diane Gelburd, National Cultural Resources Specialist, Economics and Social Sciences Division, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013, (202) 447-2307; or Ronald Anzalone, Advisory Council on Historic Preservation, The Old Post Office Building, 1100 Pennsylvania Avenue NW., Room 809, Washington, DC 20004, (202) 786-0505.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA criteria established to carry out Executive Order 12291, Improving Government Regulations, and has been classified "not significant." On July 18, 1977, SCS published in the *Federal Register* (42 FR 36804) its final rule "Procedures for the Protection of Archeological and Historical Properties Encountered in SCS-Assisted Programs" (7 CFR Part 656). Amendments to this rule were

published in the *Federal Register* on June 19, 1978, and on June 23, 1979 (43 FR 26277 and 44 FR 27158). Proposed revisions of this rule were published in the *Federal Register* on January 29, 1981 (46 FR 9611), on August 20, 1982 (47 FR 3692), on December 9, 1983 (48 FR 55123), and on August 15, 1986 (51 FR 29251). A withdrawal of the August 15, 1986 proposed rule was published in the *Federal Register* on December 22, 1986 (51 FR 45775) because the proposed rule was inadvertently processed and signed without the benefit of Office Management and Budget review required by Executive Order 12291.

This action is being taken to ensure compliance with a programmatic memorandum of agreement and the new final rule, Protection of Historic Properties (36 CFR Part 800), published in the *Federal Register* on September 2, 1986 (51 FR 31115). The rule sets forth the process of Advisory Council on Historic Preservation review and comment for implementing section 106 of the National Historic Preservation Act, as amended (16 U.S.C. 470f).

The determination has been made pursuant to the provisions of Executive Order 12291 that the preparation of a regulatory impact analysis is not required. The rule is not considered major under Executive Order 12291. The regulation concerns agency policy and guidelines.

It has also been determined, pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534), that the rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 656

Historic preservation, Soil conservation.

Accordingly, the Soil Conservation Service proposes to amend Part 656 as follows:

PART 656—[AMENDED]

The authority citation for Part 656 is revised to read as follows:

Authority: Public Law 86-523, 74 Stat. 220, as amended (16 U.S.C. 469 *et seq.*); Pub. L. 89-665, 80 Stat. 915, as amended (16 U.S.C. 470 *et seq.*); 7 CFR 2.62.

§§ 656.4-656.9 [Removed and Reserved] Reserved]

2. Sections 656.4, 656.5, 656.6, 656.7, 656.8, and 656.9 are proposed to be removed and reserved.

Wilson Scaling,

Chief.

[FR Doc. 87-12019 Filed 6-1-87; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 22

Program Fraud Civil Remedies Act of 1986

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed rule.

SUMMARY: The Program Fraud Civil Remedies Act of 1986 (Act) establishes an administrative remedy for false claims or statements submitted to various federal "authorities," including the Department of Labor. Anyone who, with knowledge or reason to know, submits a false, fictitious or fraudulent claim or statement to any of these "authorities" is liable for up to a \$5,000 penalty and an assessment of double damages. These proposed regulations establish the policies and administrative procedures the Department of Labor will follow in implementing the provisions of the Act, and specifies the hearing and appeal rights of persons subject to penalties and assessments under the Act.

DATE: Comments, in duplicate, must be received by July 2, 1987.

ADDRESS: Send comments to Dennis McDaniel, Office of the Solicitor, Department of Labor, Room N2428, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Dennis McDaniel ((202)-523-7721).

SUPPLEMENTARY INFORMATION: On October 21, 1986, the President signed the Omnibus Reconciliation Act of 1986, which enacted the Program Fraud Civil Remedies Act of 1986. The Act provides an administrative remedy for false claims or statements submitted to various authorities and provides up to a \$5,000 penalty and an assessment of double damages against anyone who

submits a false claim or statement. These regulations establish the policies and procedures the Department of Labor will follow in carrying out the provisions of the Act.

The Act vests authority to investigate false claims and statements under its provisions in an agency's Investigatory Official. Based upon the results of an investigation, the agency Reviewing Official determines, with the concurrence of the Attorney General, whether to refer the matter to a Presiding Officer for an administrative hearing. Any penalty or assessment imposed under the Act may be collected by the Attorney General, through the filing of a civil action, or by offsetting amounts, other than tax refunds, owed the particular party by the Federal Government. For purposes of this Act, these regulations designate the Inspector General of the Department, or his designee, as the Investigatory Official for the Department of Labor. They also designate the Solicitor of the Department of Labor, or his designee, as the Reviewing Official under the Act. Any administrative adjudication under the Act will be presided over by an administrative law judge in the Department of Labor's Office of Administrative Law Judges.

The Report of the Senate Governmental Affairs Committee states that the Committee, "expects that the regulations would be substantially uniform throughout government." (S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1986)). Pursuant to this latter mandate, on March 6, 1987, final model regulations under the Act were issued by the President's Council on Integrity and Efficiency. All "authorities" were urged by the President's Council to adopt the model regulations in their entirety, absent "compelling circumstances necessitated by an agency's organizational or program uniqueness. The Department of Labor has adopted the final model regulations in this rulemaking.

Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect in the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or foreign

markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that this proposed rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the rule does not, in itself, impose any additional requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain collection of information requirements.

List of Subjects in 29 CFR Part 22

Administrative practice and procedures; Claims; Government contracts; Grant programs.

Accordingly, Subtitle A of Title 29 of the Code of Federal Regulation is amended by adding a new Part 22 to read as follows:

PART 22—PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

- Sec.
- 22.1 Basis and purpose.
 - 22.2 Definitions.
 - 22.3 Basis for civil penalties and assessments.
 - 22.4 Investigation.
 - 22.5 Review by the reviewing official.
 - 22.6 Prerequisites for issuing a complaint.
 - 22.7 Complaint.
 - 22.8 Service of complaint.
 - 22.9 Answer.
 - 22.10 Default upon failure to file an answer.
 - 22.11 Referral of complaint and answer to the ALJ.
 - 22.12 Notice of hearing.
 - 22.13 Parties to the hearing.
 - 22.14 Separation of functions.
 - 22.15 Ex parte contacts.
 - 22.16 Disqualification of reviewing official or ALJ.
 - 22.17 Rights of parties.
 - 22.18 Authority of the ALJ.
 - 22.19 Prehearing conferences.
 - 22.20 Disclosure of documents.
 - 22.21 Discovery.
 - 22.22 Exchange of witness lists, statements, and exhibits.
 - 22.23 Subpoenas for attendance at hearing.
 - 22.24 Protective order.
 - 22.25 Fees.
 - 22.26 Form, filing and service of papers.
 - 22.27 Computation of time.
 - 22.28 Motions.
 - 22.29 Sanctions.

- Sec.
- 22.30 The hearing and burden of proof.
 - 22.31 Determining the amount of penalties and assessments.
 - 22.32 Location of hearing.
 - 22.33 Witnesses.
 - 22.34 Evidence.
 - 22.35 The record.
 - 22.36 Post-hearing briefs.
 - 22.37 Initial decision.
 - 22.38 Reconsideration of initial decision.
 - 22.39 Appeal to authority head.
 - 22.40 Stays ordered by the Department of Justice.
 - 22.41 Stay pending appeal.
 - 22.42 Judicial review.
 - 22.43 Collection of civil penalties and assessments.
 - 22.44 Right to administrative offset.
 - 22.45 Deposit in Treasury of United States.
 - 22.46 Compromise or settlement.
 - 22.47 Limitations.

Authority: Pub. L. 99-509, secs. 6101-6104, 100 Stat. 1874; to be codified at 31 U.S.C. secs. 3801-3812.

§ 22.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99-509, sections 6101-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part—

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 22.2 Definitions.

(a) "*ALJ*" means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

(b) "*Authority*" means the United States Department of Labor.

(c) "*Authority head*" means the Secretary of Labor or the Deputy Secretary of the Department of Labor.

(d) "*Benefit*" means, except as the context otherwise requires, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(e) "*Claim*" means, any request, demand, or submission—

(1) Made to the authority for property, services, or money (including money

representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(i) For property or services if the United States—

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

(f) "Complaint" means the administrative complaint served by the reviewing official on the defendant under § 22.7.

(g) "Defendant" means any person alleged in a complaint under § 22.7 to be liable for a civil penalty or assessment under § 22.3.

(h) "Department" means the United States Department of Labor.

(i) "Government" means the United States Government.

(j) "Individual" means a natural person.

(k) "Initial decision" means the written decision of the ALJ required by § 22.10 or § 22.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

(l) "Investigating official" means the Inspector General of the Department of Labor or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

(m) "Knows or has reason to know," means that a person, with respect to a claim or statement—

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

(n) "Makes", wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

(o) "Person" means any individual, partnership, corporation, association, private organization, State, political subdivision of a State, municipality, county, district, and Indian tribe, and includes the plural of that term.

(p) "Representative" means an attorney or other representative meeting the qualifications of a non-attorney representative found at 29 CFR 18.34 and designated by a party in writing.

(q) "Reviewing official" means the Solicitor of the Department of Labor or his designee who is—

(1) Not subject to supervision by, or required to report to, the investigating official; and

(2) Not employed in the organizational unit of the authority in which the investigating official is employed.

(r) "Statement" means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from,

the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contractor for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 22.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity.

including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) *Applications for certain benefits.*

(1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph(c)(2) of this section received by such individual, such individual may be held liable for penalties and under this section only if such claim or statement is made by such individual in making application for such benefits with respect to such individual's eligibility to receive such benefits.

(2) For purposes of this paragraph, the term "benefits" means benefits under the Black Lung Benefits Act, which are intended for the personal use of the individual who receive the benefits or for a member of the individual's family.

(d) No proof of specific intent to defraud is required to establish liability under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each person may be held liable for a civil penalty under this section.

(f) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 22.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) He or she may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official

shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 22.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 22.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 22.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 22.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 22.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 22.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 22.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 22.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section),

the amount of money or the value of property or services demanded or requested in violation of § 22.3(a) does not exceed \$150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

§ 22.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 22.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 22.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

- (2) An acknowledged United States Postal Service return receipt card; or
 (3) Written acknowledgment of the defendant or his representative.

§ 22.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

- (1) Shall admit or deny each of the allegations of liability made in the complaint;
- (2) Shall state any defense on which the defendant intends to rely;
- (3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and
- (4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

§ 22.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 22.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 22.8, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 22.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been

issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 22.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 22.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 22.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 22.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

- (1) The tentative time and place, and the nature of the hearing;
- (2) The legal authority and jurisdiction under which the hearing is to be held;
- (3) The matters of fact and law to be asserted;
- (4) A description of the procedures for the conduct of the hearing;
- (5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and
- (6) Such other matters as the ALJ deems appropriate.

§ 22.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 22.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 22.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 22.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and

circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 22.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 22.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to decide upon the validity of Federal statutes or regulations.

§ 22.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 22.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the

allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 22.4(b) are based unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 22.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 22.9.

§ 22.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 22.22 and 22.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 22.24.

(3) The ALJ may grant a motion for discovery only if he finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 22.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 22.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 22.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 22.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall

be deemed to be authentic for the purpose of admissibility at the hearing.

§ 22.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 22.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 22.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 22.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 22.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by

personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 22.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

§ 22.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 22.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 22.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 22.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 22.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 22.32 Location of hearing.

(a) The hearing may be held—

- (1) In any judicial district of the United States in which the defendant resides or transacts business;
- (2) In any judicial district of the United States in which the claim or statement in issue was made; or
- (3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 22.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 22.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence, so as to:

- (1) Make the interrogation and presentation effective for the ascertainment of the truth,
- (2) Avoid needless consumption of time, and
- (3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the

witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

- (1) A party who is an individual;
- (2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or
- (3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 22.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided herein, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 22.24.

§ 22.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable

fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 22.24.

§ 22.36 Post hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 22.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 22.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 22.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all defendants with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 22.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five

days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 22.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 22.39.

§ 22.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 22.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30 day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head. At the same time the authority head shall serve the defendant with a statement describing the defendant's right to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 22.3 is final and is not subject to judicial review.

§ 22.40 Stays ordered by the Department of Justice

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 22.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a

motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 22.42 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 22.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 22.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under §§ 22.42 or 22.43, or any amount agreed upon in a compromise or settlement under § 22.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 22.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 22.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 22.42 or during the pendency of any action to collect penalties and assessments under § 22.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the

pendency of any review under § 22.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 22.47. Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 22.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 22.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Signed at Washington, DC, this 26th day of May 1987.

William E. Brock,

Secretary of Labor.

[FR Doc. 87-12449 Filed 6-1-87; 8:45 am]

BILLING CODE 4510-21-M

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket Nos. S-205, S-206, and S-207]

Safety Standards; Scaffolds, Stairways and Ladders Used in the Construction Industry and Fall Protection in the Construction Industry

AGENCY: Occupational Safety and Health Administration, (OSHA), Labor.

ACTION: Extension of written comment period; clarification of hearing request procedures and extension of period for submission of hearing requests; and clarification of the scope of the proposed fall protection standards.

SUMMARY: This notice extends the time in which written comments and requests for a hearing may be submitted concerning the notices of proposed rulemaking which OSHA issued on November 25, 1986 on Scaffolds (51 FR 42680), Fall Protection (51 FR 42718), and Stairways and Ladders (51 FR 42750) used in the construction industry. This notice also clarifies the procedures for submitting hearing requests, and clarifies OSHA's intent to apply the proposed fall protection standards to steel erection activities other than initial connection of steel framing members.

DATE: Written comments and requests for a hearing on the proposal must be postmarked by August 14, 1987.

ADDRESS: Comments and requests for a hearing must be submitted, in quadruplicate, to the Docket Office, Dockets S-205, S-206, and S-207, Room N-3670, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-7894. All materials submitted will be available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

Background

OSHA issued Notices of Proposed Rulemaking on November 25, 1986 (51 FR 42680, 51 FR 42718 and 51 FR 42750) which proposed to revise the interrelated safety standards in 29 CFR Part 1926 for scaffolds (Subpart L), fall protection (Subpart M), and stairways and ladders (Subpart X) used in construction work. Interested persons were initially given until February 23, 1987 to comment on the proposals. OSHA received several requests for an extension of the comment period based on the complexity of the issues presented. On February 26, 1987, OSHA published a notice (52 FR 5790) extending the comment period to June 1, 1987.

Comment Period and Hearing Requests

OSHA now believes that the initial extension of the comment period still does not allow sufficient time for interested parties to comment, because of the complexity of the subject matter, the extent of the proposed revisions, and the fact that all three proposed regulations, effectively, request comments from the same interested parties. Therefore, OSHA is extending the comment period until August 14, 1987, to ensure that interested persons have a reasonable opportunity to participate in the rulemaking proceedings.

The notices of proposed rulemaking and the first comment period extension notice informed the public of the opportunity to request an informal public hearing on the proposed rules. The time period for filing such requests is also hereby extended to August 14, 1987.

The previous notices set forth five conditions that objections and hearing requests must satisfy. OSHA has received several hearing requests which do not indicate the subject matter to be

covered or the information on which a request relies in raising issues for a hearing. In view of the complexity of these rulemakings and the wide range of issues covered by the proposals, it is especially important to OSHA and to all interested parties that the subjects to be addressed and evidence to be presented at the hearings be clearly indicated. Therefore, OSHA is clarifying and restating the conditions for submitting objections and hearing requests. Interested persons who have submitted hearing requests which do not meet the conditions will be so informed and will be given an opportunity to resubmit them.

Objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;
2. The objections and hearing requests must be postmarked by August 14, 1987.
3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which each objection is taken, or concerning which a hearing request is made, and must state the grounds therefor;
4. Each objection and hearing request must be separately stated and numbered; and
5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Scope of Proposed Subpart M

A review of the comments received to date on the proposed fall protection standards (Subpart M) indicates there is some confusion with regard to the scope and application of Subpart M as it relates to workers engaged in skeleton steel erection activities, which are also covered by Subpart R of the construction standards.

OSHA intends that the proposed fall protection standards published on November 23, 1986, apply to all workers engaged in skeleton steel erection activities except for workers identified as *connectors* who are working on the derrick or erection floor making initial connections of steel framing members. The provisions of Subpart R would continue to cover fall protection for connectors and requirements related to the erection process. The Construction Advisory Committee agreed with OSHA at the March 31 through April 1, 1987, meeting that general fall protection requirements should be the same for

steel erection as for the rest of construction except for the making of initial connections of steel framing members. (Transcript p. 200). Draft proposed revisions of the fall protection provisions for connectors are currently under consideration by OSHA, as part of a separate and subsequent rulemaking effort for Subpart R alone.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act), (40 U.S.C. 333), Secretary of Labor's Order No. 9-83 (49 FR 35736), and 29 CFR Part 1911.

Signed at Washington, DC, this 28 day of May 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 87-12460 Filed 6-1-87, 8:45 am]

BILLING CODE 4510-26-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Payment of Loan Guaranty Claims

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) proposes to amend its regulations to implement certain provisions of Title V of Pub. L. 98-369, the Deficit Reduction Act of 1984. Additional provisions of the law such as changes in the amount and disposition of the funding fee for VA guaranteed loans are the subject of separate regulatory proposals.

Under the new law, the VA will continue to specify a minimum amount for credit to the veteran's indebtedness and accept conveyance of the security property only if, based on the net value of the property, it is in the Government's best interest to do so. These proposed amendments are designed to conform the regulations to the new law governing acquisition of properties and payment of claims upon termination of VA-guaranteed loans, to clarify policies for the establishment of a final date for claim computation when foreclosure is unduly delayed, and to add appropriate definitions of terms.

DATES: Comments must be received on or before June 30, 1987. Effective date of these amendments is proposed to be 30 days after publication of the final regulations.

ADDRESS: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until July 14, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, (202) 233-3668.

SUPPLEMENTARY INFORMATION: Under Section 1810 of title 38, United States Code, the VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominium, or manufactured home which is treated as real estate under State law, or to install certain energy conservation features or other home improvements. Currently the VA guarantees 60 percent of the loan amount up to a maximum amount of \$27,500. The guaranty is a promise by the Government to pay a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

When a VA-guaranteed loan goes into default, the holder has the primary servicing responsibility. VA supplements this servicing in an effort to avoid foreclosure of the loan and to help the veteran retain his or her home. Often VA intercedes with the holder to encourage the acceptance of a repayment plan giving the veteran the opportunity to reinstate the loan, or extension of additional forbearance to give the veteran an opportunity to sell the property and save the equity.

If the servicing efforts by the holder and VA fail and the holder proceeds with termination of the loan, 38 CFR 36.4320 governs the rights and duties of the holder and the VA in connection with disposition of the property. In most cases the VA establishes a maximum price which the holder may bid at the loan foreclosure sale. Establishment of such a price, known as the "specified amount," occurs when it is determined that the value of the real property to VA exceeds the unguaranteed portion of the indebtedness, and VA can reduce its maximum claim liability by acquiring

and reselling the security. If the property is sold to the holder at the foreclosure sale for a price no higher than the amount specified by the VA, the holder may convey the property to the VA in return for payment of the specified amount. VA also pays the holder a claim for the difference between the price paid for the property, which must be credited to the loan indebtedness by the holder, and any balance remaining on the loan, but not to exceed the maximum amount of loan guaranty. In this manner, the VA acquires the loan security (the home) and normally reduces its claim liability.

VA in turn resells the property for its market value and the sale proceeds are returned to the Loan Guaranty Revolving Fund to support future operations. In this way, the VA minimizes the Government's losses in connection with its liability under the loan guaranty program. Public Law 98-369 provides for reducing costs under the VA home loan program. Previously, the President's Private Sector Survey on Cost Control, Report on the Veterans Administration (the Grace Report), observed that in most cases the Government could save money by paying the holder a claim up to the maximum amount of the loan guaranty (\$27,500), in lieu of the current procedure of purchasing the property at the foreclosure sale, paying a claim based on the net loss to the holder and reselling the property to recoup the outlays. This report noted that the Government incurs considerable costs to acquire, repair, manage and resell any property. These costs could be eliminated if the VA paid the holder its claim under the guaranty and did not accept conveyance of the foreclosed property.

At Congressional hearings on this issue, testimony from housing industry participants, veterans, and others produced various suggestions for reducing costs under the VA home loan program. The suggestions were also designed to protect the interests of veteran home purchasers while keeping the program attractive to builders, brokers, lenders and other participants vital to the success of the program.

Testimony indicated that stopping or severely curtailing VA property acquisitions would force lenders to make major changes in their operations, the costs of which would be reflected in the form of higher interest rates for veteran home purchasers and possible nonavailability of GI financing in higher risk cases. It was believed that recently discharged veterans and lower-income first-time home purchasers would be the first to experience the adverse effects.

Congressional Budget Office testimony at these hearings indicated that there was some merit in the Grace Report's recommendations that in each case of a loan default the VA should decide more carefully whether or not it would be in the Government's best interest to acquire the security property for resale. However, they concluded that for the VA to cease acquiring properties would not be the best solution, as this would result in an increased cost to the Government over the long run.

The resulting legislation addresses the various concerns brought forth at the hearings. The amendments to 38 U.S.C. 1816 were designed to assure that the VA loan program would remain an attractive and cost efficient program for assisting veterans in becoming homeowners. The amendments continue the practice of VA property acquisitions for resale in order to minimize losses, but require that specific considerations account in deciding whether, in a particular case, acquisition of the property would be the best alternative. They also change what had been an optional procedure under VA regulations to a statutory requirement. Essentially, the legislation requires VA to examine the "net value" of the security property as a potential asset. The "net value" is determined by subtracting the estimated costs of acquiring, managing, repairing and reselling the property from its fair market value.

If "net value" exceeds the total loan indebtedness less the maximum amount which VA would have to pay on the guaranty, the Government is best served by VA acquiring the property for resale so as to recover the "net value" and thereby reduce the claim payable and the total loss to the Government in that particular case. This also benefits the veteran, because the net value determines the amount which VA specifies for credit against the loan indebtedness. This prevents a future deficiency judgment of other indebtedness being established against the veteran based on the prices which prevail at distress foreclosure sales.

If "net value" does not exceed the difference between total indebtedness and the amount payable under the guaranty, the Government is best served by VA paying the guaranty claim and allowing the holder to dispose of the property. Acquisition of the property in this type of case would increase rather than reduce the Government's loss, as the value of the property would not equal the cost of acquiring, managing, repairing, and reselling the property. The legislation should reduce the number of

properties conveyed to the VA and the expenses associated with management and resale.

The law prescribes formulas under which the VA is to determine the best method for payment of the claim, and whether or not to permit the holder of the loan an election to convey the property to the VA. These formulas are set forth in 38 U.S.C. 1816, as amended by Pub. L. 98-369.

The law also codifies existing VA procedures for limiting the loan indebtedness for purposes of accounting between the holder and the Administrator in cases in which loan termination is unduly delayed. It is proposed to amend 38 CFR 36.4320 to set forth the prescribed conditions under which VA will specify an amount for credit to the veteran's indebtedness and permit the holder an election to convey the property. An amount will be specified and accepted only if the "net value" of the property, as now defined by law, exceeds the "indebtedness," which is also defined, minus the amount guaranteed by the VA. VA's claim to liability in such cases is also prescribed. In cases where the VA specifies an amount and the holder bids in the property for a greater amount, the new law prescribes the VA from purchasing the property, unless the overbid is in an amount required by State law. Otherwise, the VA is limited to paying a claim for the difference between the proceeds of the sale and the indebtedness. The proposed regulations are amended accordingly. Matters relating to disposition of real property are covered in § 36.4320 (a), (b), and (c), as revised. Matters relating to the sale of personal property are consolidated in § 36.4320(d).

Technical amendments are proposed in §§ 36.4319(f) and 36.4321(a) to clarify procedures for limiting the indebtedness in cases where foreclosure is unduly delayed, and to amend the definition of "indebtedness" in § 36.4300. Section 36.4300 is also revised to include definitions for the terms "liquidation sale," "net value," "unguaranteed portion of the indebtedness," and "specified amount".

The Administrator hereby certifies that these proposed changes will not, if promulgated, have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. Pursuant to 5 U.S.C. 605(b) these proposed regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604. These regulations simply implement a new claims and conveyancing scheme

prescribed by Pub. L. 98-369 which sets forth the circumstances under which the Administrator will acquire properties which secured defaulted VA-guaranteed loans.

The proposed regulations have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulation changes. The proposed regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of \$100 million or more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.211.

List of Subjects in 38 CFR Part 36

Condominium, Handicapped, Housing loan programs-housing and community development, Manufactured homes, Veterans.

These amendments are proposed under authority granted the Administrator by sections 210(c), 1803(c)(1), 1816 and 1820 of Title 38, United States Code, and the enabling legislation.

Approved: May 21, 1987.

Thomas K. Turnage,
Administrator.

PART 36—[AMENDED]

38 CFR Part 36, *Loan Guaranty*, is proposed to be amended as follows:

1. Section 36.4300 and the Note preceding it are revised to read as follows:

Guaranty or Insurance of Loans to Veterans

Note.—These requirements, conditions, or limitations which are expressly set forth in 38 U.S.C. ch. 37 are not restated in these regulations and must be taken into consideration in conjunction with §§ 36.4300 to 36.4393, inclusive.

§ 36.4300 **Applicability of §§ 36.4300 to 36.4393, inclusive.**

(a) Sections 36.4300 to 36.4393, inclusive, shall be applicable to each loan entitled to an automatic guaranty, or otherwise guaranteed or insured, on or after the date of publication in the *Federal Register*, and shall be applicable

to such loans previously guaranteed or insured to the extent that no legal rights vested under the regulations are impaired.

(b) Title 38, United States Code, Chapter 37, is a continuation and restatement of the provisions of Title III of the Servicemen's Readjustment Act of 1944, and may be considered an amendment to such Title III. References to the sections or chapters of Title 38, United States Code, shall, where applicable, be deemed to refer to the prior corresponding provisions of the law.

(38 U.S.C. 210(c), 1803(c), 1819(g))

2. In § 36.4301, the following paragraphs are revised: The introductory text, the paragraph entitled "Dwelling," paragraph (5)(i) of the paragraph entitled "Full disbursement," the paragraph entitled "Indebtedness," and the paragraph entitled "Purchase price." Also, four new paragraphs are added so the added and revised material reads as follows:

§ 36.4301 Definitions.

Whenever used in 38 U.S.C. Chapter 37 or §§ 36.4300 to 36.4375, inclusive, and §§ 36.4390 through 36.4393, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

Dwelling. Any building designed primarily for use as a home consisting of not more than four family units plus an added unit for each veteran if more than one eligible veteran participates in the ownership, except that in the case of a condominium housing development or project within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360a the term is limited to a one single-family residential unit. Also, a manufactured home, permanently affixed to a lot owned by a veteran and classified as real property under the laws of the State where it is located.

(38 U.S.C. 1810(a)(9) and (f))

Full Disbursement. * * *

(5) * * *

(i) The amount is not in excess of 10 percent of the loan, or

Indebtedness. The unpaid principal and interest plus any other amounts allowable under the terms of a loan including those authorized by statute and consistent with §§ 36.4300 to 36.4393, inclusive, which have been paid and debited to the loan account as of the applicable date established pursuant to paragraph (f) of § 36.4319 or § 36.4321.

(38 U.S.C. 1816)

Liquidation sale. Any judicial, contractual or statutory disposition of real property, under the terms of the loan instruments and applicable law, to liquidate a defaulted loan that is secured by such property. This includes a voluntary conveyance made to avoid such disposition of the obligation or of the security.

(38 U.S.C. 1816)

Net value. The fair market value of real property, minus the total of the costs the Administrator estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, property improvement, administration, and resale. For purposes of determination of net value, "property improvement" is defined as any repair which must be completed to satisfy minimum property requirements for existing construction as described by the Administrator. Costs other than property improvement will be estimated as a percentage of the fair market value. Each year VA will review the average operating expenses incurred for properties acquired under § 36.4320 of this title which were sold during the preceding 3 fiscal years and the average administrative cost to the government associated with the property management activity. The cost items reviewed will be:

(1) *Property operating expenses.* All disbursements made for payment of taxes, assessments, liens, property maintenance and related repairs, management broker's fees and commissions, and any other charges to the property account excluding property improvements and selling expenses.

(2) *Selling expenses.* All disbursements for sales commissions plus any other costs incurred and paid in connection with the sale of the property.

(3) *Administrative costs.* An estimate of the total costs for VA of personnel compensation and overhead (including all travel, transportation, standard level user charges (SLUC), communication, utilities, printing, supplies, equipment, insurance claims and other services) associated with the acquisition, management and disposition of property acquired under § 36.4320 of this title. The average administrative costs will be determined by:

(i) Dividing the salary and benefits cost by the average number of properties on hand and adjusting this figure based on the average holding time

for properties sold during the preceding fiscal year; then

(ii) Dividing part (i) by the DVB ratio of personal services to total obligations.

The three cost averages will be added and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the 3 preceding fiscal years to derive the percentage to be used in estimating net value. (The Administrator may, when determining property management costs, group properties in incremental value brackets.) The calculation of net value will be based on the actual cost incurred over the last 3 years. Based on FY 1986 data, the percentage to be used when calculating net value will be 10.75%. The fiscal year and the percentage will be updated annually through a notice in the Federal Register.

(38 U.S.C. 1816)

Purchase price. The entire legal consideration paid or payable upon or on account of the sale of property, exclusive of acquisition costs, or for the cost of materials and labor to be applied to the property.

Specified amount. A sum, equal to the lesser of the net value of real property or the total indebtedness secured thereby, which the Administrator designates as the minimum amount to be credited to the indebtedness incident to a liquidation sale.

(38 U.S.C. 1816)

Unguaranteed portion of the indebtedness. The indebtedness computed as of the applicable date of under paragraph (f) of § 36.4319 or § 36.4321 minus the amount of the guaranty payable as of such date.

(38 U.S.C. 1816)

3. In § 36.4319, paragraphs (d), (e) and (f) are revised to read as follows:

§ 36.4319 Legal proceedings.

(d) In any legal or equitable proceeding (including probate and bankruptcy proceedings) to which the Administrator is a party, original process and any other process prior to appearance, proper to be served on the Administrator, shall be delivered to the loan guaranty officer of the regional office of the VA having jurisdiction of the area in which the court is situated. Within the time required by applicable law, or rule of court, the Administrator will cause appropriate special or general appearance to be entered in the case of an authorized attorney.

(38 U.S.C. 1816)

(e) After appearance of the Administrator by attorney, all process and notice otherwise proper to serve on the Administrator before or after judgment, if served on the attorney of record, shall have the same effect as if the Administrator were personally served within the jurisdiction of the court.

(38 U.S.C. 1818)

(f) If following a default, the holder does not bring appropriate action within 2 months after requested in writing by the Administrator to do so, or does not prosecute such action with reasonable diligence, the Administrator may at the Administrator's option fix a date beyond which no further charges may be included in the computation of the indebtedness for the purposes of accounting between the holder and the Administrator. The Administrator may also intervene in, or begin and prosecute to completion any action or proceeding, in the Administrator's name or in the name of the holder, which the Administrator deems necessary or appropriate. The Administrator shall pay, in advance if necessary, any court costs or other expenses incurred by the Administrator or property taxed against the Administrator in any such action to which the Administrator is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed or insured indebtedness, or the proceeds of the sale of the security to the same extent as the holder (see § 36.4313), or otherwise collect from the holder any such expenses incurred by the Administrator because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies, or defenses, in law or in equity, available to the Administrator.

(38 U.S.C. 1818)

4. In § 36.4320 paragraphs (a) through (d) (f), (h)(1), (h)(2), (h)(5) introductory text, (h)(5)(ii) introductory text, (h)(5)(ii)(a), (h)(5)(ii) concluding text, (h)(7), (h)(10); (i)(2) and (j) are revised to read as follows:

§ 36.4320 Sale of security.

(a) Upon receipt by the Administrator of notice of a liquidation sale of any security for a guaranteed or insured loan, the Administrator shall determine the net value of the security and shall notify the holder of the net value and of the regulatory provision which will govern the disposition of the security.

(1) If the net value of the real property securing a guaranteed or insured loan exceeds the unguaranteed portion of the

indebtedness, the Administrator shall specify in advance of the liquidation sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold, subject to the following:

(i) The specified amount in such cases shall be the lesser of the net value of the property or the total indebtedness,

(ii) If a minimum amount for credit to the indebtedness has been specified in relation to a liquidation sale of real property, and:

(a) The holder acquires the property, or the rights to the property, at the sale for an amount not in excess of such specified amount, the holder shall credit to the indebtedness the amount specified. The holder then may retain the property or, not later than 15 days after the date of sale, advise the Administrator of the holder's election to convey or transfer the property, or the rights to the property, to the Administrator;

(b) The holder acquires the property, or the rights to the property, at the liquidation sale for an amount in excess of the specified amount, the indebtedness shall be credited with the proceeds of the sale. The holder shall not have the option to convey the property to the Administrator unless a bid in excess of the specified amount was made pursuant to paragraph (a)(3) of this section;

(c) A third party acquires the property, or the rights to the property, at the liquidation sale for an amount equal to or in excess of that specified, the holder shall credit to the indebtedness the net proceeds of the sale;

(d) A third party acquires the property, or the rights to the property, at the liquidation sale for an amount less than that specified, the holder shall credit to the indebtedness the amount specified.

(iii) If a minimum amount has been specified by the Administrator, the Administrator's liability under loan guaranty shall be the total indebtedness less the amount credited to the indebtedness under paragraph (a)(1)(ii) of this section, not to exceed the Administrator's maximum liability as computed under § 36.4321.

(2) If the net value of the real property securing a guaranteed or insured loan does not exceed the unguaranteed portion of the indebtedness:

(i) The Administrator shall notify the holder that no minimum amount will be specified for credit to the indebtedness on account of the value of the security to be sold;

(ii) The Administrator may not accept conveyance or transfer of the property;

(iii) The holder shall credit against the indebtedness the net proceeds of the sale, and the Administrator's liability under loan guaranty shall be limited to the total indebtedness less the amount credited to the indebtedness not to exceed the Administrator's maximum liability as computed under § 36.4321 of this title; and

(iv) The liability of the Administrator shall not be subject to adjustment by reason of any subsequent disposition of the property by the holder.

(3) If a minimum bid is required under applicable State law, or degree of foreclosure or order of sale, or other lawful order or degree, and:

(i) Such minimum bid exceeds an amount which has been specified by the Administrator under paragraph (a)(1) of this section; and

(ii) The holder acquires the property at the liquidation sale for an amount not exceeding the amount legally required, the holder may elect to convey the property to the Administrator pursuant to paragraph (a)(1)(ii)(A) of this section. The amount bid at the sale or the total indebtedness, whichever is less, shall govern instead of the specified amount and for the purpose of determining the Administrator's liability under loan guaranty.

(38 U.S.C. 1818)

(b) The holder should not carry out a liquidation sale until the Administrator has furnished the notice required under paragraph (a) of this section. In the event the holder carries out a liquidation sale prior to receiving such notice, the holder shall credit against the indebtedness the greater of:

(1) The net proceeds of the sale; or
(2) The amount of the indebtedness or the net value of the property, whichever is less.

The provisions of paragraph (a)(1)(ii)(A) of this section, which extends to the holder the option of conveying or transferring the property to the Administrator, shall not be applicable, and the Administrator's liability under the loan guaranty shall be the total indebtedness less the amount credited to the indebtedness under paragraph (b)(1) or (2) of this section, not to exceed the Administrator's maximum liability as computed under § 36.4321.

(38 U.S.C. 1818)

(c) When a debtor proposes to convey or transfer any real property to a holder to avoid foreclosure or other judicial, contractual, or statutory disposition of the obligation or of the security, the consent of the Administrator to the terms of such proposal shall be obtained

in advance of such conveyance or transfer. In consenting to the terms of the debtor's proposal the Administrator shall furnish the notice required under paragraph (a) of this section.

(38 U.S.C. 1816)

(d) Upon receipt by the Administrator of notice of a judicial or statutory sale, or other public sale under power of sale contained in the loan instruments, to liquidate any personal property which is security for a guaranteed or insured loan, the Administrator may specify in advance of such sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold.

(1) If a minimum amount has been specified by the Administrator, and

(i) The holder is the successful bidder at the sale for an amount not in excess of such minimum amount, the holder shall sell the property pursuant to paragraph (d)(3) of this section and the amount realized from the resale of the property shall govern, instead of the specified minimum amount, in the final accounting for determining the rights and liabilities of the holder and the Administrator,

(ii) A third party is the successful bidder at the sale for an amount equal to or in excess of that specified, the holder shall credit to the indebtedness the net proceeds of the sale,

(iii) A third party is the successful bidder at the sale for an amount less than that specified, the holder shall credit to the indebtedness the amount specified,

(iv) The holder is the successful bidder at the sale for an amount in excess of the specified amount, the indebtedness shall be credited with the proceeds of the sale or the amount realized from the resale of the property pursuant to paragraph (d)(3) of this section, whichever is the greater, unless the bid in excess of the specified amount was made pursuant to paragraph (d)(4) of this section.

(2) If a minimum amount has not been specified by the Administration under paragraph (d)(1) of this section, the holder shall credit against the indebtedness the net proceeds of the sale except as provided in paragraph (d)(4) of this section.

(3) If personal property has been repossessed or otherwise acquired by a holder and no public sale is proposed or required to be held to entitle the holder to effect a further disposition of such property, or if the holder is the successful bidder at the sale of personal property as provided in paragraph (d)(1) of this section, the holder shall sell the

property within a reasonable time. The holder shall submit to the Administrator a written advice setting forth the price, terms, conditions and the expenses of the proposed sale at least 10 days in advance, and the Administrator shall either assent to such sale in which event the holder shall credit against the indebtedness the net proceeds of the sale or, upon agreement to indemnify the holder to the extent of any increased or resultant loss, the Administrator may specify the minimum net price for which the security may be sold. If such amount has been specified, the holder shall sell the personal property within a reasonable time in the open market for the best price obtainable: *Provided, that* the prior approval of the Administrator shall be obtained if the property is to be sold for a net amount less than the specified amount, or if the property is to be sold on terms other than all cash. The ultimate net amount realized by the holder from such sale shall be reported by the holder to the Administrator in an accounting which will determine their respective rights and liabilities.

(4) If a minimum bid is required under applicable State law, or degree of foreclosure or order of sale, or other lawful order or degree, the holder may bid an amount not exceeding such amount legally required. If an amount has been specified by the Administrator and the holder is the successful bidder for an amount not exceeding the amount legally required, such specified amount shall govern for the purposes of this paragraph and for the purposes of computing the ultimate loss under the guaranty or insurance. In the event no amount is specified and the holder is the successful bidder for an amount not exceeding the amount legally required, the amount paid or payable by the Administrator under the guaranty shall not be subject to any adjustment by reasons of such bid.

(38 U.S.C. 1816)

* * * * *

(f) The holder in accounting to the Administrator in connection with the disposition of any property in accordance with paragraph (a), (b), or (d) of this section, may include as a part of the indebtedness all actual expenses or costs of the proceedings, paid by the holder, within the limits defined in § 36.4313 of this title. Interest may be included at a rate not to exceed that specified in § 36.4311(c) on the unpaid principal balance of the indebtedness to the date of the liquidation sale or real property referred to in paragraph (a) or (b) of this section or to the date of the private sale of personal property referred to in paragraph (d) of this

section, as the case may be. In connection with the conveyance or transfer of property to the Administrator the holder may include in accounting to the Administrator, in addition to the consideration payable for the property under paragraph (g) of this section

(38 U.S.C. 1816)

(1) State and documentary stamp taxes as may be required.

(2) The customary cost of obtaining evidence of title in favor of the Administrator as specified in paragraph (h)(5) of this section but not including title evidence obtained incident to the making of the loan or any expenses incurred to clear title defects.

(3) Amount expended for taxes, special assessments, including such payments which are specified in paragraph (h)(4) of this section.

(4) Recording fees.

(5) Any other expenditures in connection with the property which are approved by the Administrator.

(h) * * *

(1) If the holder's notice to the Administrator electing to convey or transfer the property precedes the acquisition of the property by the holder and the holder then acquires the property, the holder shall promptly after such acquisition advise the Administrator of the acquisition. Such advice, or the notice of election if given subsequent to acquisition, shall state the amount of the successful bid (if the property was acquired by the holder at public sale) and shall state the insurance coverage then in force, specifying for each policy, the name of the insurance company, the hazard covered, the amount, and the expiration date.

(2) The holder shall not cancel any insurance in force when the holder acquires the property. Coincident with the notice of election to convey or transfer the property to the Administrator or with the acquisition of the property by the holder, following such notice, whichever is later, the holder shall obtain endorsements on all such insurance policies naming the Administrator as an assured, as his/her interest may appear. Such insurance policies shall be forwarded to the Administrator at the time of the conveyance or transfer of the property to the Administrator or as soon after that time as feasible.

* * * * *

(5) Each conveyance or transfer of real property to the Administrator pursuant to this section shall be acceptable if thereby covenants or warrants against the acts of the holder

and those claiming under the holder (e.g., by special warranty deed) and if it vests in the Administrator or will entitle the Administrator to such title as is or would be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated. Any title so acceptable will not be unacceptable to the Administrator by reason of any of the limitations on the quantum or quality of the property or title stated in § 36.4350(b); *Provided, That,*

(ii) With respect to any such limitations which came into existence subsequent to the making of the loan, full compliance was had with the requirements of § 36.4324 of this title. The acceptability of a conveyance or transfer pursuant to the requirements of this paragraph will be established by delivery to the Administrator of any of the following evidence of title issued by an institution or person satisfactory to the Administrator, in form satisfactory to him/her showing that title to the property of the quality specified in this paragraph is or will be vested in the Administrator:

(a) A title policy insuring the Administrator in an amount approximately equal to the consideration for the property, or a commitment for such title policy; or

In lieu of such title evidence, the Administrator will accept a conveyance or transfer with general warranty with respect to the title from a holder described in 38 U.S.C. 1802(d) or from a holder of financial responsibility satisfactory to the Administrator. In any case where the holder does not deliver evidence of title of the character specified in this paragraph, the holder to aid the Administrator in determination of acceptability of title shall without expense to the Administrator furnish such evidence of title, including survey, if any, as may have been obtained by the holder incident to the making of the loan or attendant to the foreclosure.

(7) As between the holder and the Administrator, the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall be governed by the provisions of this paragraph and paragraph (h)(10) of this section. Ordinary wear and tear excepted, the holder shall bear such risk of loss from the date of acquisition by the holder to the date such risk of loss is assumed by the Administrator. Such risk of loss is assumed by the Administrator

from the date of receipt of the holder's election to convey or transfer the property to the Administrator or, in the event of receipt of notice of such election prior to acquisition, from the date of the Administrator's receipt of notice of acquisition by the holder: *Provided, That* if custody over the property has not been delivered by the holder to the Administrator on the date when the Administrator otherwise would have assumed the risk of loss, the Administrator's assumption of the risk of loss will be deferred until such custody over the property is delivered, or until the property has been conveyed or transferred to the Administrator. The amount of any loss chargeable to the holder may be deducted from the amount payable by the Administrator at the time the property is transferred. In any case where pursuant to the VA regulations rejection of the title is legally proper, the Administrator may surrender custody of the property as of the date specified in the Administrator's notice to the holder. The Administrator's assumption of such risk shall terminate upon such surrender.

(10) In respect to a property which was the security for a condominium loan guaranteed or insured under 38 U.S.C. 1810(a)(6) the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall in no event pass to the Administrator until the Administrator expressly assumes such responsibility or until conveyance of the property to the Administrator, whichever first occurs. The holder shall have the right to convey such property to the Administrator only if the property (including elements of the development or project owned in common with other unit owners) is undamaged by fire, earthquake, windstorm, flooding or boiler explosion. The absence of a right in the holder to convey such property which is so damaged shall not preclude a conveyance, if the Administrator agrees in a given case to such a conveyance upon completion of repairs within a specified period of time and such repairs are so completed and the conveyance is otherwise in order.

(i) *Definitions.* * * *

(2) The term "property" or "real property" as used in this section shall include

(i) A leasehold estate which at the time of closing the loan was not less duration than prescribed by § 36.4350(a)(2), and

(ii) The rights derived by the holder through a foreclosure sale of real estate

whether or not such rights constitute an estate in real property under local law.

(j) Except as provided in paragraph (h)(6) of this section, the provisions of this section shall not be in derogation of any rights which the Administrator may have under § 36.4325 of this title. The Chief Benefits Director, or the Director, Loan Guaranty Service, may authorize any deviation from the provisions of this section, within the limitations prescribed in 38 U.S.C. Chapter 37, which may be necessary or desirable to accomplish the objectives of this section if such deviation is made necessary by reason of any laws or practice in any State or Territory of the District of Columbia: *Provided, That* no such deviation shall impair the rights of any holder not consenting to the deviation with respect to loans made or approved prior to the date the holder is notified of such action.

5. § 36.4321, paragraph (a) and (c) are revised to read as follows:

§ 36.4321 Computation of guaranty claims; subsequent accountings.

(a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the date of claim but not later than

(1) The date of judgment or of degree of foreclosure, or

(2) In nonjudicial foreclosures the date of publication of the first notice of sale, or

(3) In cases in which the security is repossessed without a judgment, degree or foreclosure the date the holder repossesses the security, or

(4) If no security is available, the date of claim but not more than 6 months after the first uncured default or

(5) Any date fixed under the provisions of paragraph (f) of § 36.4319 of this title.

Deposits or other credits or set-offs legally applicable to the indebtedness on the date of computation shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

(38 U.S.C. 1816)

(c) The claimant shall be deemed to have received as trustee for the benefit of the United States any amounts received on account of the indebtedness after the date of the claim, from the proceeds of a sale of the security or

otherwise, to the extent such credits exceed the balance of the indebtedness unsatisfied by the payment of the guaranty. The claimant shall immediately pay such amounts to the Administrator to the extent of the debtor's liability to the Administrator as guarantor.

(38 U.S.C. 210(c))

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BERC-428-P]

Medicare Program; Payment for Facility Services Related to Ambulatory Surgical Procedures Performed in Hospitals on an Outpatient Basis

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

ACTION: Proposed rule.

SUMMARY: These proposed regulations set forth the methodology that would be used to determine payment for hospital outpatient services furnished to Medicare beneficiaries in connection with ambulatory surgical procedures. The proposed methodology would implement section 9343(a) of the Omnibus Budget Reconciliation Act of 1986.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on August 3, 1987.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration,
Department of Health and Human
Services, Attention: BERC-428-P, P.O.
Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey
Building, 200 Independence Ave., SW.,
Washington, D.C., or

Room 132, East High Rise Building, 6325
Security Boulevard, Baltimore,
Maryland.

In commenting, please refer to file code BERC-428-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document,

in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Janet Wellham, (301) 597-1939.

SUPPLEMENTARY INFORMATION:

I. Background

Section 934 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) amended sections 1832(a)(2), 1833, 1863 and 1864 of the Social Security Act (the Act) to permit broader coverage of ambulatory surgery under Medicare. Section 934 of Pub. L. 96-499 authorized Medicare payment for facility services furnished in connection with ambulatory surgical procedures performed in an ambulatory surgical center (ASC).

Section 1833(i)(1)(A) of the Act, as enacted by section 934 of Pub. L. 96-499, requires that the Secretary, after consultation with appropriate medical organizations, shall specify those surgical procedures (hereinafter referred to as covered ASC surgical procedures) that are appropriately performed on an inpatient basis in a hospital (when considered in terms of proper utilization of hospital inpatient facilities) but that can also be performed safely on an ambulatory basis in an ambulatory surgical center or hospital outpatient department. To comply with section 1833(i)(1)(A) of the Act, on August 5, 1982, we issued a final rule (47 FR 34082) setting forth regulations governing ASCs and a final notice (47 FR 34099) specifying the list of covered ASC surgical procedures. (Section 9343(b)(2) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), enacted on October 21, 1986, amended section 1833(i)(1) of the Act to require that the approved list of covered ASC surgical procedures be reviewed by the Secretary and updated at least every two years.)

As described in the August 5, 1982 final rule concerning covered ASC surgical procedures, payments to ASCs are made on the basis of prospectively set rates known as the standard overhead amount, as provided in regulations at 42 CFR 416.125. The ASC facility services covered by the standard overhead amount are generally described in § 416.61. All non-physician medical and other health services furnished by an ASC that do not meet the definition of facility services contained in § 416.61 are paid for in accordance with section 1933(a)(1) of the Act, which provides for payment based on reasonable charges.

Payment for non-physician medical and other health services furnished in a

hospital on an outpatient basis are paid for in accordance with section 1833(a)(2)(B) of the Act. That section of the Act provides that payment for non-physician medical and other health services is based on the lesser of: (1) The reasonable cost incurred in providing the service; or (2) the provider's customary charge for the service. This amount is reduced by deductibles and coinsurance and cannot exceed eighty percent of the reasonable cost.

In this rule, we are proposing changes to the regulations as the result of the passage of section 9343(a) of Pub. L. 99-509. As discussed in greater detail below, that section of the law changes the payment methodology used to determine payments for facility services related to covered ASC surgical procedures performed in a hospital outpatient setting. Documents to implement certain other provisions of section 9343 of Pub. L. 99-509 are being developed and will be published separately.

II. New Legislation

Section 9343(a) of Pub. L. 99-509 revises the methodology used to determine Medicare payment for facility services furnished in a hospital on an outpatient basis in connection with covered ASC surgical procedures that have been approved by the Secretary in accordance with section 1833(i)(1)(A) of the Act and § 416.65. (For ease of reference, we refer below to these services as outpatient "facility services".) Section 9343(a) of Pub. L. 99-509 amended section 1833(a)(4) of the Act and added a new section 1833(i)(3) to the Act to provide that for hospital cost reporting periods beginning on or after October 1, 1987, payment for these outpatient facility services in the aggregate is to be based on a comparison between two amounts. The payment is to be the lesser of the following:

- The amount for the services that would be paid to the hospital under section 1833(a)(2)(B) of the Act (that is, the lower of the hospital's reasonable costs or customary charges for the services, reduced by deductibles and coinsurance); or
- An amount based on a blend of—
 - The amount that would be paid to the hospital for the services under section 1833(a)(2)(B) of the Act (referred to below as the hospital-specific amount); and
 - The amount that would be paid to a free-standing ASC for the same procedure in the same geographic area, in accordance with section 1833(i)(2)(A) of the Act, which is equal

to 80 percent of the standard overhead amount net of deductibles (referred to below as the ASC payment amount).

The new section 1833(i)(3)(B) of the Act provides that for cost reporting periods beginning on or after October 1, 1987 but before October 1, 1988, the blended amount is to be determined by using 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount attributable to the procedure. For cost reporting periods beginning on or after October 1, 1988, the blended payment amount is to be based on 50 percent of hospital-specific amount and 50 percent of the ASC payment amount. In addition, section 9343(a) of Pub. L. 99-509 added section 1833(i)(3)(A) of the Act to require that all covered ASC surgical procedures performed in a hospital on an outpatient basis during a cost reporting period be aggregated for purposes of determining the proper payment amount.

III. Proposed Regulations

In order to implement section 9343(a) of Pub. L. 99-509, we are proposing the following changes to Subparts A and F of 42 CFR Part 413.

In Subpart A, we are proposing to revise § 413.13(c), which provides for the aggregation of charges for purposes of determining the amount of payments to a provider if customary charges for services furnished are less than reasonable costs. As it currently reads, § 413.13(c) specifies that in comparing charges and costs, customary charges for items and services, and the reasonable cost of those items and services are to be aggregated without regard to whether the related services are payable under Part A (Hospital Insurance) or Part B (Supplementary Medical Insurance) of Medicare.

We note that section 2308(a) of the Deficit Reduction Act of 1984 (Pub. L. 98-369), enacted on July 18, 1984, directs the Secretary to issue regulations, applicable to cost reporting periods beginning on or after October 1, 1984, to eliminate the aggregation method of calculating the lower of cost or charges (LCC) and to require that LCC be calculated and reported separately for services furnished under Part A or Part B of the Medicare program.

This change was the subject of a proposed rule we published on September 18, 1986 in the *Federal Register* (51 FR 33074), and we are in the process of developing a final rule. We expect to publish that rule shortly. However, in order to implement section 9343(a) of Pub. L. 99-509, we find it necessary to propose further refinement to the methodology mandated by section

2308(a) of Pub. L. 98-369 that would require a further disaggregation of customary charges. Effective for cost reporting periods beginning on or after October 1, 1987, we would require that all reasonable costs and customary charges for covered ASC surgical procedures performed in a hospital on an outpatient basis during a cost reporting period be aggregated and treated separately from the reasonable costs and customary charges for all other services furnished in the cost reporting period. By separating facility charges attributable to approved ASC surgical procedures from other customary charges separate apportionment of the reasonable costs attributable to Medicare for these facility services will also be possible. This would ensure that payments for facility services related to covered ASC surgical procedures performed in a hospital on an outpatient basis do not exceed the amounts allowed in accordance with section 9343(a) of Pub. L. 99-509.

In a proposed new § 413.118 (in 42 CFR Part 413, Subpart F), we would describe the payment methodology required by the new section 1833(i)(3) of the Act (as enacted by section 9343(a) of Pub. L. 99-509) to be used to determine payment for facility services related to covered ASC surgical procedures performed in a hospital on an outpatient basis. We would also define the terms "facility services", "blended payment amount" and "standard overhead amount." We would define outpatient "facility services" the same as facility services are defined for ambulatory surgical centers (as described in § 416.61) because we believe that Congress intended that we use that definition. (See H.R. Rep. No. 99-1012 (Conf. Rep.), 99th Cong., 2d Sess. 354-355 (1986).) The definition of "blended payment amount" would be based on the payment methodology required by section 1833(i)(3)(B) of the Act, as added by section 9343(a) of Pub. L. 99-509, and the definition of "standard overhead amount" would be based on section 1833(i)(2)(A) of the Act, which requires payments to ASCs to be equal to 80 percent of the standard overhead amount (net of the Part B deductible) per procedure (as described in § 416.125).

As described earlier, payment for outpatient facility services would be equal to the lesser of: (1) The hospital's reasonable costs or customary charges, as described in § 413.13, reduced by deductibles and coinsurance; or (2) a blended amount based on the lower of a hospital's reasonable cost or customary charges reduced by deductibles and coinsurance and 80 percent of the

standard overhead amount (net of deductibles) paid to free-standing ASCs for the same procedure in the same geographic area. For cost reporting periods beginning on or after October 1, 1987 the blend would be 75 percent hospital-specific (based on the lower of reasonable costs or customary charges reduced by deductibles and coinsurance) and 25 percent of the amount paid to a free-standing ASC for the same procedure in the same geographic area. We note again that the portion of the blend attributable to the ASC payment amount is to be determined based on the standard overhead amount (net of deductibles) multiplied by 80 percent. The 80 percent adjustment is in accordance with section 1833(i)(2)(A) of the Act, which requires payments to ASCs to be 80 percent of the standard overhead amount per procedure. For cost reporting periods beginning on or after October 1, 1988, the 75 percent/25 percent blend, discussed above, would change to a 50/50 blend.

As discussed earlier, we would also require in the new § 413.118 that all reasonable cost and customary charges attributable to facility services associated with covered ASC surgical procedures performed in a hospital on an outpatient basis during a cost reporting period be aggregated and treated separately from the reasonable cost and customary charges attributable to all other services. We believe this is necessary in order to determine the correct payment amount in accordance with the new section 1833(i)(3) of the Act.

Consistent with payment for free-standing ASC services, if more than one covered ASC surgical procedure is performed at one time, payment would be based on the procedure with the highest standard overhead payment amount and payment for the other procedures would be based on fifty percent of the applicable standard overhead amounts, as provided in § 416.120. We believe it is important to note that ASCs operated by hospitals that have an agreement with HCFA to be paid in accordance with § 416.30(f) would be unaffected by this rule. That is, these ASCs will continue to be paid in accordance with § 416.30.

In addition, we note that covered surgical procedures furnished by a hospital on an outpatient basis that are not included on the covered ASC surgical procedure listing will be reimbursed under existing regulations without regard to the blended payment amount described in this rule. If any of these covered surgical procedures are

subsequently included on the covered ASC surgical procedure listing, then the payment methodology described in this rule would be applied.

The payment methodology described in the proposed new § 416.118 can be illustrated by the following example:

In a hospital with a cost reporting period beginning on October 1, 1987, 100 covered ASC surgical procedures are performed on an outpatient basis during the cost reporting period. The facts relating to these procedures are as follows (all figures are hypothetical):

Medicare Customary Charges \$30,000 (Total Medicare customary charges for 100 procedures) ¹
Reasonable Cost \$35,000 (Cost of 100 procedures based on Medicare cost finding and apportionment principles)
Standard Overhead Amounts \$25,000 (100 procedures × \$250, the ASC standard overhead amount per procedure) ²
Deductibles \$7,500 (100 procedures × \$75, the Part B deductible) ³
Coinsurance \$4,500 (30,000 - \$7,500 (total deductibles) = \$22,500 × 20 percent coinsurance)

The payment for outpatient facility services relating to covered ASC surgical procedures would be the blended payment amount of \$17,000 calculated as follows:

<i>Lower of Cost/Charge:</i>	
Customary Charges.....	¹ \$30,000
Deductibles & Coinsurance.....	² -\$12,000
Customary Charges Net of Deductibles and Coinsurance.....	\$18,000
<i>Blended Payment Amount:</i>	
Standard Overhead Amounts.....	\$25,000
Deductibles.....	-\$7,500
Net Standard Overhead Amounts.....	\$17,500
	× 80%
ASC Payment Rates.....	\$14,000
ASC Percentage of Blend.....	× 25%
ASC Portion of Blend.....	\$3,500
Customary Charges Net of Deductibles and Coinsurance.....	\$18,000
Hospital-Specific Percentage of Blend.....	× 75%
Hospital-Specific Portion of Blend.....	\$13,500
Hospital-Specific Portion.....	\$13,500
ASC Portion.....	+ 3,500

¹ The customary charges reflect the accumulation of various hospital departmental charges such as operating room, anesthesia, recovery room, sterile supplies, etc.

² Example only—There are four different payment rates depending upon the procedures furnished.

³ The deductible would be charged only if it had not already been met.

Blend Payment Amount.....	\$17,000
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¹ (Charges less than cost—\$35,000)
² (\$7,500 + \$4,500)

In this example, the blended payment amount of \$17,000 is less than the \$18,000 amount determined as being the lower of reasonable cost or customary charges, reduced by deductibles and coinsurance. Therefore, the Medicare payment would be \$17,000.

IV. Regulatory Impact Statement

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed notice such as this that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to 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 significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities.

ASC surgical procedures performed in hospitals on an outpatient basis constitute a majority of total Part B expenditures for ASC surgical procedures. These procedures also are performed sometimes in ASCs and doctors' offices. We note that no regulations have been issued regarding ASC surgical procedures performed in physicians' offices. While we support the objective of moving surgery from the inpatient to outpatient setting (when safe and appropriate), we have not been able to overcome the administrative problems (including the role of Peer Review Organizations) involved in covering and determining appropriate payment for ASC surgical procedures performed in physicians' offices. Available data show that calendar year 1985 Medicare payments for services related to surgical procedures performed in hospital outpatient departments were approximately \$1.18 billion. In that year approximately \$5.45 billion were spent

in Medicare benefit payments to outpatient hospital departments (HCFA Bureau of Data Management and Strategy, 1985 User Tapes, Outpatient File).

For the reasons discussed below we have determined that a regulatory impact analysis is not required. However, because of the amount of money spent for outpatient services and for surgical outpatient services, we have determined, and the Secretary certifies that this proposed rule would be likely to have a significant economic impact on a substantial number of small entities. Section 9343(a) of Pub. L. 99-509 provides the basic framework for payment for facility services related to ASC surgical procedures performed in hospitals on an outpatient basis. We could attribute the economic impact of implementing these payment changes to the statute. Nonetheless, this proposed rule would establish the precise mechanisms for the payment methodology called for in section 9343(a), and we consider this rulemaking to be necessary for the implementation of the required payment changes. Therefore, we have prepared the following regulatory flexibility analysis.

B. Program Payments

The purpose of section 9343(a) of Pub. L. 99-509 is to start the process of bringing Medicare payments for covered ASC surgical procedures performed in a hospital on an outpatient basis in line with payments made to free-standing ASCs. Through implementing the various provisions of section 9343 of Pub. L. 99-509, we hope to place the sources of ASC surgical services on a more equal, competitive footing, and to introduce incentives for hospital economy and efficiency for outpatient services just as the prospective payment system did for inpatient hospital services.

Anecdotal evidence indicates that it is reasonable to assume that nearly all of the \$1.18 billion expended in 1985 for surgical procedures performed in hospital outpatient departments were for services related to the procedures listed on the soon-to-be published expanded list of covered ASC surgical procedures (based on comments received on our February 16, 1984 notice for public comment, (49 FR 6023)). The expanded list has been designed to exclude as much as possible those procedures that are not commonly performed on an inpatient basis or that are doctors' office procedures.

We believe that the initial aggregate effect of this proposed rule upon hospitals would be a decrease in their

Medicare program payments. We are, however, not able to quantify this reduction precisely. Since hospital outpatient costs and charges for certain covered ASC surgical services will be compared to a blended amount based, in part, on ASC facility rates for the same services, as precise estimate would require an ability to identify existing differences between those rates and hospital costs or charges. However, ASC facility rates are paid only for certain services identified by the Physicians Current Procedural Terminology, Fourth Edition (CPT-4), which is incorporated into the HCFA Common Procedure Coding System code (HCPCS). Hospital outpatient costs and charges have not yet been reported or analyzed under this procedure coding system. Therefore, we cannot determine definitely either the portion of Medicare payments for outpatient hospital services attributable to covered ASC surgical procedures on either the existing or planned lists, or, more importantly, the difference in level of payment for given services based on site of service.

The expected decrease in Medicare program payments would become more pronounced after October 1, 1988 when the increase in the ASC payment amount component in the blended payment amount, mandated by Pub. L. 99-509, takes effect. This change would result in intensified incentives for hospitals to contain costs, and, to the extent that hospitals reduce their charges (and costs) to greater parity with those of ASCs, the change should control the rate at which Medicare expenditures for these services are growing.

The reduction in Medicare payments to hospitals for outpatient surgical procedures would be somewhat lessened by the proposed increase in ASC national base payment rates, which is required by section 9343(b)(1) of the Act. (Those rates will be set forth in a separate *Federal Register* document.) The law requires ASC national base payment rate updates to be effective on July 1, 1988 and annually thereafter.

C. Administrative Costs

In order for this proposed rule to be fully implemented, it is first necessary to have section 9343(g) of Pub. L. 99-509 implemented. That section requires hospitals that report claims for payment for hospital outpatient services to use of HCFA common procedure coding system (HCPCS), which is the coding system in use by ASCs. In fulfilling the requirements set forth in section 9343(g) of Pub. L. 99-509, we will be concurrently fulfilling the requirement

set forth in section 9343(a) of Pub. L. 99-509 that all covered ASC surgical procedures performed in a hospital on an outpatient basis during a cost reporting period be aggregated and treated separately from other services. Hospitals will incur substantial administrative costs in implementing HCPCS for reporting outpatient services.

When this proposed rule is issued as final and goes into effect, additional administrative expenses will be incurred by the 6,710 hospital (as January 1, 1986) in the United States with outpatient departments that perform surgical procedures, and the fifty-four fiscal intermediaries that reimburse those hospital (See HCFA Statistics, September 1986.) These administrative expenses will be largely the result of the requirement set forth in section 9343(a) of Pub. L. 99-509, as described above.

So as to conform to this requirement, hospitals will need to change certain elements of their accounting systems. The effect upon an individual hospital will vary depending upon its staff's ability to incorporate these changes into their accounting system and outpatient department, the overall adaptability of the hospital's accounting staff and outpatient personnel, and hospital size.

It can be reasonably assumed that the larger hospitals will experience a smaller overall administrative expense increase on a per case basis than will their smaller counterparts, because of economies of scale, relative resources, and sophistication of their accounting systems. Accordingly, the effect should be more pronounced among smaller hospitals, because the cost of these administrative changes will be allocated to a smaller number of cases.

The effect upon an individual intermediary will vary depending on its staff's ability to instruct expeditiously the hospitals within its coverage area about these changes and to integrate these changes effectively and efficiently into their own operating environment.

D. Impact on Beneficiaries

Currently, beneficiaries are not liable for Medicare Part B deductible and coinsurance amounts for ASC facility services, but they are liable for deductible and coinsurance amounts for hospital outpatient services. However, section 9343(e) of Pub. L. 99-509 provides that, effective July 1, 1987, coinsurance and deductibles are to apply to ASC facility services, too. Thus, for services furnished in either an ASC or a hospital on an outpatient basis, on or after July 1, 1987, a beneficiary could be liable for up to \$75 of any unmet deductible obligation, plus 20 percent of

either the applicable ASC facility rate or the hospital's customary charge. (If a hospital meets the collection effort requirements of our regulations at § 413.80, we will reimburse the hospital for the uncollectible Medicare bad debts it incurs related to provision of covered ASC surgical services.)

To the extent that this payment method gives hospitals the incentive to decrease their charges or increase or improve their services to compete effectively with ASCs (see discussion below), beneficiaries should benefit by reduced coinsurance liability and improved service. If, however, a hospital were to determine that it could not compete effectively, possibly causing it to discontinue its ambulatory surgical services, beneficiaries could experience reduced access to services in the affected locality.

E. Shifted Incentives and Market Effects

Ambulatory surgery is a dynamic and growing market that has grown because often it is more economical to furnish surgical services in settings other than hospital inpatient departments. The main participants in this market are ASCs, doctors' offices where these services are furnished, and hospitals that furnish these services on an outpatient basis. Increasingly, ASCs have been receiving a larger share of this overall market. They have shown explosive growth, beginning in September 1982 with 20 ASCs and growing to 690 ASCs by December 1986. This is a 3,310 percent increase in a four-year period.

Although we do not have systematic program data on comparative costs we believe that ASCs typically would have lower fixed costs than do hospitals. The growth of ASCs appears to be partially attributable to this factor. If hospitals' fixed costs continue to rise relative to ASCs, they will be at a greater competitive disadvantage. However, it is difficult to determine whether this will occur and, if so, to what extent.

In order to increase their ASC surgery market share in the short run, hospitals can market their outpatient services effectively, partially competing on a price basis, but also marketing their patient-staff relationship, reputation, and convenience of access, rather than focusing on cost as the sole criterion. Obviously, those hospitals in areas with few or no ASCs will not be subject to the same pressures as hospitals in other areas.

F. Conclusion

Although this proposed rule could

adversely affect most hospitals in their immediate expectations of revenues, it could generally benefit the development of a healthy market for the delivery of ASC surgical services. Medicare beneficiaries should benefit as the result of an initial lowering of prices for covered ASC surgical procedures performed in a hospital on an outpatient basis. The Medicare program itself would benefit as a result of program savings and viability of the Medicare trust fund. In sum, we expect the advantages achievable under this proposal to outweigh any resulting costs or disadvantages.

We also note that section 9321(d) of the Pub. L. 99-509 prohibits the Secretary from issuing in final form any regulation, instruction, or other policy that relates to hospitals or physicians before September 15, 1987, which is estimated by the Secretary to achieve Medicare savings in fiscal year 1987 of more than 50 million dollars, except as required to implement specific provisions required under statute. Since this proposed rule is necessary to implement section 9343(a) of Pub. L. 99-509, it is exempt from section 9321(d) of Pub. L. 99-509.

V. Other Required Information

A. Paperwork Burden

This rule would not impose information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3511).

B. Public Comment

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments contained in correspondence that we receive by the date specified in the "Dates" section of this preamble, and we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 413 would be amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881 and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a-1, 1395f (b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

Subpart A—Introduction and General Rules

B. In § 413.13, paragraph (c) is redesignated as paragraph (c)(1) and a new paragraph (c)(2) is added to read as follows:

§ 413.13 Amount of payments if customary charges for services furnished are less than reasonable costs.

* * * * *

(c) *Aggregation of charges.*

(2) *Hospital Cost reporting periods beginning on or after October 1, 1987.* Effective for hospitals with cost reporting periods beginning on or after October 1, 1987, reasonable costs and customary charges for ambulatory surgical procedures determined under § 413.118 are aggregated and treated separately from all other hospital costs and charges incurred during the cost reporting period.

C. Subpart F is amended as follows:

Subpart F—Specific Categories of Costs

1. The table of contents for Subpart F is amended by adding a title for a new § 413.118 to read as follows:

Subpart F—Specific Categories of Costs
Sec.

* * * * *

§ 413.118 Payment for facility services related to covered ASC surgical procedures performed in hospitals on an outpatient basis.

2. A new § 413.118 is added to read as follows:

§ 413.118 Payment for facility services related to covered ASC surgical procedures performed in hospitals on an outpatient basis.

(a) *Basis and scope.* This section implements section 1833(i)(3) of the Act and establishes the method for determining Medicare payments for services related to covered ambulatory surgical center (ASC) procedures performed in a hospital on an outpatient basis. It does not apply to services furnished by an ASC operated by a hospital that has an agreement with

HCFA to be paid in accordance with § 416.30 of this chapter. (For regulations governing ASCs see Part 416 of this chapter.)

(b) *Definitions.*

For purposes of this section—
"Facility services" are those items and services, as specified in § 416.61 of this chapter, that are furnished by a hospital on an outpatient basis in connection with covered ASC surgical procedures, as described in § 416.65 of this chapter.

"Standard overhead amount" means an amount equal to the prospectively determined payment rate that would be paid for the procedure if it had been furnished by an ASC in the same geographic area.

(c) *Payment principal.* The aggregate amount of payments for facility services, furnished in a hospital on an outpatient basis, that are related to covered ASC surgical procedures (covered under § 416.65 of this chapter) is equal to the lesser of—

(1) The hospital's reasonable cost or customary charges, as determined in accordance with § 413.13, reduced by deductibles and coinsurance; or

(2) The blended payment amount as described in paragraph (d) of this section, which is based on hospital-specific cost and charge data and rates paid to free-standing ASCs.

(d) *Blended payment amount.* (1) For cost reporting periods beginning on or after October 1, 1987 but before October 1, 1988, the blended payment amount is equal to the sum of—

(i) 75 percent of the hospital-specific amount (the lesser of the hospital's reasonable cost or customary charges, reduced by deductibles and coinsurance); and

(ii) 25 percent of the ASC payment amount (that is, 80 percent of the result obtained by subtracting the deductibles from the sum of the standard overhead amounts.)

(2) For cost reporting periods beginning on or after October 1, 1988, the blended payment amount is equal to 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount.

(e) *Aggregation of cost, charges, and the blended amount.* For purposes of determining the correct payment amount under paragraphs (c) and (d) of this section, all reasonable costs and customary charges attributable to facility services furnished during a cost reporting period are aggregated and treated separately from the reasonable costs and customary charges attributable to all other services furnished in the hospital.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare Supplementary Medical Insurance)

Dated: April 10, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: April 22, 1987.

Don M. Newman,

Acting Secretary.

[FR Doc. 87-12466 Filed 6-1-87; 8:45 am]

BILLING CODE 4120-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1179

Claims Collection; Salary Offset

AGENCY: National Endowment for the Humanities.

ACTION: Proposed regulation.

SUMMARY: These regulations implement the collection procedures of the Debt Collection Act of 1982, Pub. L. 97-365, codified in 5 U.S.C. 5514, which authorize the Federal government to collect debts owed by a Federal employee to the United States through salary offset.

DATE: Comments must be submitted no later than July 2, 1987.

ADDRESSES: Send written comments to Tracy J. Joselson, Attorney/Advisor, 1100 Pennsylvania Avenue, NW., Room 530, Washington, DC 20506. Comments will be available for inspection at this address between 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Tracy J. Joselson, Attorney/Advisor, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786-0322.

SUPPLEMENTARY INFORMATION: Under the Debt Collection Act of 1982, when the head of a Federal agency determines that an employee of an agency is indebted to the United States or is notified by a head of another Federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his or her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin.

As is required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management on July 3, 1984, 49 FR 27470, codified in 5 CFR 550 Subpart K.

Paperwork Reduction Act

Under section 3518 of the Paperwork Reduction Act of 1980, 5 CFR 1320.3(c) the information collection provisions contained in this regulation are not subject to review and approval by the Office of Management and Budget.

Executive Order 12291

This rule has been reviewed and determined not to be a "major rule" as defined in Executive Order 12291 dated February 17, 1981 because it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule applies only to individual Federal employees. It will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 5 U.S.C. 605(b). Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 45 CFR Part 1179

Administrative offset, Administrative practice and procedures, Claims, Debt collection, Government employees, Wages.

For the reasons set out in the preamble, Part 1179 of Title 45 of the Code of Federal Regulations is added to read as follows:

PART 1179—SALARY OFFSET

- Sec.
- 1179.1 Purpose and scope.
 - 1179.2 Definitions.
 - 1179.3 Applicability.
 - 1179.4 Notice requirements.
 - 1179.5 Hearing.
 - 1179.6 Written decision.
 - 1179.7 Coordinating offset with another Federal agency.
 - 1179.8 Procedures for salary offset.
 - 1179.9 Refunds.
 - 1179.10 Statute of limitations.

Authority: 5 U.S.C. 5514, E.O. 11809, (redesignated E.O. 12107), and 5 CFR Part 550 Subpart K.

§ 1179.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his/her

consent to satisfy certain debts owed to the Federal government. These regulations apply to all federal employees who owe debts to the National Endowment for the Humanities (NEH) and to current employees of the National Endowment for the Humanities who owe debts to other Federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.*;

(2) The Social Security Act, 42 U.S.C. 301 *et seq.*;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 *et seq.*, 4 CFR Parts 101 through 105, 45 CFR 1177.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount of validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq.*

§ 1179.2 Definitions.

For the purposes of this part the following definitions will apply:

"Agency" means: an executive agency as is defined at 5 U.S.C. 105, including the U.S. Postal Service, the U.S. Postal Commission; a military department as defined at 5 U.S.C. 102; an agency or court in the judicial branch; an agency of the legislative branch, including the U.S. Senate and House of Representatives; and other independent

establishments that are entities of the Federal government.

"Chairperson" means the Chairperson of the National Endowment for the Humanities or the Chairperson's designee.

"Creditor agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures, (except those arising under the Uniform Code of Military Justice) and all other similar sources.

"Disposable pay" means the amount that remains from an employee's federal pay after required deductions for social security, Federal, State or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

"Hearing official" means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Chairperson of the National Endowment for the Humanities.

"Paying Agency" means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

"Salary offset" means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account or an employee without his/her consent.

§ 1179.3 Applicability.

(a) These regulations are to be followed when:

(1) The National Endowment for the Humanities is owed a debt by an individual currently employed by another Federal agency;

(2) The National Endowment for the Humanities is owed a debt by an individual who is a current employee of the National Endowment for the Humanities; or

(3) The National Endowment for the Humanities employs an individual who owes a debt to another Federal agency.

§ 1179.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice signed by the Chairperson

of the debt at least 30 days before salary offset commences.

(b) The written shall contain:

(1) A statement that the debt is owed and an explanation of its nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards at 4 CFR 101.1 *et seq.*;

(5) The employee's right to inspect, request, or receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(8) The methods and time period for petitioning for hearings;

(9) A statement that a timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 1179.5 Hearing.

(a) *Request for hearing.* (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the agency's notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the Chairperson of the National Endowment for the Humanities stating why the employee disputes the existence or

amount of the debt. The petition for a hearing must be received by the Chairperson not later than fifteen (15) calendar days after the date of the notice to offset.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards, 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 1179.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include: A statement of the facts presented to demonstrate the nature and origin of the alleged debt, the hearing official's analysis, findings, and conclusions; the amount and validity of the debt, and the repayment schedule.

§ 1179.7 Coordinating offset with another Federal agency.

(a) *The Endowment as the creditor agency.* (1) When the Chairperson determines that an employee of a federal agency owes a delinquent debt to the National Endowment for the Humanities, the Chairperson shall, as appropriate:

(i) Arrange for a hearing upon the proper petitioning by the employee;

(ii) Certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that Endowment regulations for salary offset have been approved by the Office of Personnel Management;

(iii) If collection must be made in installments, the Chairperson must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment;

(iv) Advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgement must be sent to the paying agency;

(v) If the employee is in the process of separating, the Endowment must submit its debt claim to the paying agency as provided in this part. The paying agency must certify the total amount collected,

notify the employee, and send a copy of the certification and notice of the employee's separation to the creditor agency. If the paying agency is aware that the employee is entitled to Civil Service Retirement Fund and Disability Fund of similar payments, it must certify to the agency responsible for making such payments the amount of the debt and that the provisions of this part has been followed; and

(vi) If the employee has already separated and all payments due from the paying agency have been paid, the Chairperson may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement Fund and Disability Fund or other similar funds be collected by administrative offset;

(b) *The Endowment as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next establishment pay interval. The employee must receive written notice that the National Endowment for the Humanities has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The National Endowment for the Humanities shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim;

(2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the National Endowment for the Humanities and before the debt is collected completely, the National Endowment for the Humanities must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished the creditor agency with notice of the employee's transfer.

§ 1179.8 Procedures for salary offset.

(a) Debts will be collected in one lump where possible. If the employee is financially unable to pay in one lump sum collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period must not exceed 15% of

disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

§ 1179.9 Refunds.

(a) The National Endowment for the Humanities will refund promptly any amounts deducted to satisfy debts owed to the NEH when the debt is waived, found not owed to the NEH, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by NEH to satisfy debts owned to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this paragraph shall not bear interest.

§ 1179.10 Statute of limitations.

(a) If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

Dated: May 14, 1987.

Lynne V. Cheney,
Chairman, National Endowment for the Humanities.

[FR. Doc. 87-11782 Filed 6-1-87; 8:45 am]

BILLING CODE 7536-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 80-57; FCC 87-180]

Public Mobile Service; Revision and Update

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: It has come to our attention that some Applicants have been using this rule to create mutually exclusive situations even though other frequencies are available.

The Commission has determined § 22.23(g)(2) of the Public Mobile Service Rules, Part 22, needs to be revised. The proposed rule states that an applicant who files a mutually exclusive application on or after a public notice listing the initial application has

appeared, will not be entitled to § 22.23(g)(2) treatment.

DATES: Comments must be filed by July 9, 1987, and reply comments must be filed by July 24, 1987.

FOR FURTHER INFORMATION CONTACT: Carmen Borkowski, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's further notice of proposed rulemaking, adopted May 8, 1987 and released May 20, 1987.

The full text of this commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Further Notice of Proposed Rulemaking

1. This Notice of Proposed Rulemaking (NPRM) proposes to amend § 22.23(g)(2). This rule currently provides that an amendment which resolves frequency conflicts with other pending applications will not be treated as newly filed. This rule was adopted to give applicants an incentive to amend out of mutually exclusive (MX) situations in order to remove conflicts which would otherwise require resolution in a hearing.

2. It has come to our attention that some applicants have been using this rule to create an MX situation even though other frequencies are available. Typically these applicants will intentionally file a competing application, wait until the applications have been on public notice for sixty days, and then amend to another frequency, even though it could have filed for that frequency in the first place. The applicant then requests § 22.23(g)(2) treatment so as not to be treated as a newly filed application. As a result, other applicants cannot file competing applications.

3. In order to remedy this situation, we are proposing that an applicant who files an MX application after a public notice listing the initial application has appeared, will not be entitled to § 22.23(g)(2) treatment. While this rulemaking is pending, we will carefully scrutinize applications and deny § 22.23(g)(2) treatment where warranted.

4. This is nonrestricted notice and comment rulemaking proceeding. See § 1.1231 of the Commission's rules, 47

CFR 1.1231 for rules governing permissible *ex parte* contracts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, have negative economic consequences on small entities. As a matter of fact the rule allows applicants an opportunity to remove themselves from a mutually exclusive situation under limited conditions, which in turn, can expedite application processing.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.149 of the Commission rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 9, 1987, and reply comments on or before July 24, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in the proceeding.

Ordering Clauses

8. *Legal Basis.* The authority for this proposed rulemaking is contained in sections 1, 4(i), 301 of this Commission Act of 1934, as amended.

Federal Communications Commission.
William J. Tricarico,
Secretary.

List of Subjects in 47 CFR Part 22

Mobile services.

Proposed Rules

Part 22 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303).

2. Section 22.23 is amended by revising paragraph (g)(2) to read as follows:

§ 22.23 Amendment of applications (See also § 22.918).

(g) * * *

(2) The amendment resolves frequency conflicts with other pending applications but does not create new or increased frequency conflicts and the amendment was filed prior to any public

notice listing the initial mutually exclusive application.

* * * * *

[FR Doc. 87-12336 Filed 6-1-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, and 179

[Docket No. HM-181]

Performance-Oriented Packaging Standards; RSPA Participation in an Industry Sponsored Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice is to advise interested persons that RSPA will participate in a meeting sponsored by the Hazardous Materials Advisory Council (HMAC). The purpose of RSPA's participation in the meeting is to discuss the notice of proposed rulemaking (NPRM) published in the *Federal Register* (Notice 87-4; 52 FR 16482) on May 5, 1987 under Docket No. HM-181.

DATES: June 17-18, 1987; Wednesday, June 17, from 10:00 a.m. to 5:30 p.m. and Thursday, June 18, from 8:30 a.m. to 3:30 p.m.

ADDRESS: Hyatt Oak Brook, 1909 Spring Road, Oak Brook, Illinois.

FOR FURTHER INFORMATION CONTACT: Hazardous Materials Advisory Council, 1012 14th Street, NW., Washington, DC, (202), 783-7460; or, Ann Boylan, Standards Division, Office of Hazardous Materials Transportation, RSPA, U.S. Department of Transportation, Washington, DC 20590, (202) 366-4488.

SUPPLEMENTARY INFORMATION: On May 5, 1987, RSPA published an NPRM (Notice 87-4) in the *Federal Register* entitled "Performance-Oriented Packaging Standards; Miscellaneous Proposals". Proposals contained in the NPRM entail a comprehensive revision of the Hazardous Materials Regulations (HMR; Subchapter C of 49 CFR). The major changes embodied in these proposals are alignment of the HMR with classification procedures and description requirements contained in the United Nations Recommendations on the Transportation of Dangerous Goods (U.N. Recommendations) and adoption of performance-oriented packaging standards for non-bulk packagings based on the U.N.

Recommendations. The changes are intended to: (1) Simplify the HMR; (2) reduce the volume of regulations; (3) promote flexibility and technological advances in the packaging of hazardous materials; (4) enhance safety through better packaging; (5) reduce the need for exemptions; and, (6) facilitate international commerce.

HMAC is a non-profit organization whose international membership is concerned with safety in the transportation and handling of hazardous materials. RSPA wishes to advise the interested public that on June 17 and 18, 1987, HMAC will conduct an industry review and public briefing in Oak Brook, Illinois for the purpose of discussing the NPRM. RSPA has agreed to participate in the briefing to discuss various aspects of the NPRM and to answer questions. As is usual and customary, HMAC will charge a fee to attendees to cover its costs for conference materials, coffee breaks and luncheons. However, for those portions of the briefings in which RSPA will participate (i.e., Wednesday, June 17, 10:00 a.m. to 12:00 p.m. and 1:00 p.m. to 2:00 p.m., and Thursday, June 18, 1:00 p.m. to 3:30 p.m.), interested persons may attend and participate without charge and without registering with HMAC. Persons who do so are asked not to avail themselves of HMAC services, such as conference materials or food and beverage services. Registration information, including costs and registration times, may be obtained by contacting HMAC.

Persons wishing to submit comments to Docket No. HM-181 at the meeting are requested to submit them in writing.

As previously announced in Notice 87-4, RSPA will conduct a public hearing on September 15 and 16, 1987, from 9:30 a.m. to 5:00 p.m. daily at the Federal Aviation Administration, Third Floor Auditorium, 800 Independence Avenue, SW., Washington, DC. This hearing may be extended through September 17 if there is sufficient demand. Any person wishing to present an oral statement at this hearing should notify the Dockets Branch, by telephone or in writing, (Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590; (202) 366-5046), at least two days in advance of the hearing date. Each request must identify the speaker; organization represented, if any; daytime telephone number, and the anticipated length of presentation, not to exceed 10 minutes. The written test (if any) of an oral statement should be presented to the hearing officer prior to its presentation.

Issued in Washington, DC, on May 27, 1987.
 Alan I. Roberts,
 Director, Office of Hazardous Materials
 Transportation.
 [FR Doc. 87-12496 Filed 6-1-87; 8:45 am]
 BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1150

[Ex Parte No. 392 (Sub-No. 3)]

Class Exemption for Rail Construction

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking and proposed class exemption.

SUMMARY: The Commission is requesting comment on whether 49 CFR Part 1150, Subpart D—*Exempt Transportation*, should be expanded to include a class exemption for all construction under 49 U.S.C. 10901. The substantial regulatory requirements of these applications may discourage investment initiatives that would otherwise be undertaken. We wish to facilitate new investment initiatives to provide the potential for increased competition where existing competition is inadequate.

DATES: Comments must be submitted by July 2, 1987.

ADDRESSES: Send an original and, if possible, 10 copies of any comments referring to Ex Parte No. 392 (Sub-No. 3) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Secretary's Office, Room 2215, Interstate

Commerce Commission, Washington, DC 20423, or call (202) 275-7428.

Regulatory Flexibility Impact

The Commission certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Establishment of this class exemption may have a positive impact upon small carriers by reducing regulatory barriers to construction.

This action will not significantly affect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1150

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

Decided: May 20, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Simmons concurred with a separate expression.

Noreta R. McGee,
 Secretary.

We are considering possible amendment of Title 49, Subtitle B, Chapter X, Part 1150 of the Code of Federal Regulations. Alternative proposals are also solicited.

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

1. The authority citation for 49 CFR Part 1150 would continue to read as follows:

Authority: 49 U.S.C. 10321, 10901, and 10505; 5 U.S.C. 553.

2. A new § 1150.35 would be added to read as follows:

§ 1150.35 Exempt construction and operation.

(a) A proposed construction and operation of a new line of railroad is exempt from the provisions of 49 U.S.C. 10901 if the procedures designated in this section are satisfied.

(b) The Commission has found: (1) That its prior review of these proposals for construction and operation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a; and (2) that continued regulation is unnecessary to protect shippers from abuse of market power (49 U.S.C. 10505). A notice must be filed to use this class exemption. The procedures are set out in § 1150.35(c).

(c) *Notice of exemption:* At least 90 days prior to the planned commencement of construction, the railroad seeking to use the exemption must file a written notice with the Commission. The notice would be served at the same time.

(1) On the appropriate regulatory agency in the state (or states) affected;

(2) On the designated environmental agency in that state (or states);

(3) On the state's coastal zone management authority;

(4) On any railroads already providing service to the shipper or shippers on the line; and

(5) On the United States Department of Defense (Military Traffic Management Command).

The Commission will publish a notice in the *Federal Register* within 20 days. Protestants will then have 30 days to file evidence and argument in opposition. Applicants will file a reply, if any, within 7 days. The Commission will issue an administratively final decision as to whether the exemption shall be revoked in whole or in part, or delayed to allow further analysis as necessary, before the 90th day and before construction is permitted to begin. The notice shall name the railroad, describe the construction and operation proposed, indicate that the exemption procedure is being used, and include the proposed date to begin construction. The railroad should also provide a certificate that it has complied with the procedures of 49 CFR 1101.11 pertaining to environmental notice and reporting.

[FR Doc. 87-12451 Filed 6-1-87; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register

Vol. 52, No. 105

Tuesday, June 2, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Environmental Impact Statement; Beans Creek Watershed, Tennessee

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, give notice that an environmental impact statement is not being prepared for the Beans Creek Watershed, Franklin and Lincoln Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Jerry S. Lee, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, Nashville, TN 37203, telephone 615/736-4571.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional or national impacts on the environment. As a result of these findings, Jerry S. Lee, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for accelerated land treatment or erosion control and water quality maintenance. The planned works of improvement include conservation tillage systems, crop rotation, stripcropping, grassed waterways and outlets, tree planting, critical area treatment and accelerated technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental

Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jerry S. Lee.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials)

Dated: May 20, 1987.

Jerry S. Lee,

State Conservationist.

[FR Doc. 87-12441 Filed 6-1-87; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammals; Receipt of Application for Permit

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals.

Applicant

Name: International Wildlife Foundation
File no. PRT-717368 5151 E.

Broadway, Suite 1680 Tucson, AZ

Type of Permit: Public Display

Name of Animals: One pair northern sea otters (*Enhydra lutris lutris*) One pair harbor seals (*Phoca vitulina*)

Summary of Activity to be

Authorized: The specimens identified in the permit application were taken by an Alaskan native for subsistence. The applicant requests a permit to transport

these four animals to the Natural History Museum, Tucson, Arizona, currently under construction, for purposes of public display. The museum is owned and operated by the applicant. The prohibition for transportation of marine mammals is found within section 102(a) of the Marine Mammal Protection Act, which pertains to taking of marine mammals.

Period of Activity: Duration of the permit will be for three months following issuance of a permit.

The Service shares jurisdiction under the Marine Mammal Protection Act with the National Marine Fisheries Service (NMFS). The Fish and Wildlife Service has jurisdiction over sea otters and NMFS has jurisdiction over seals. Therefore, this application will be reviewed by both agencies and any subsequent action on the application will be a joint action.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: May 11, 1987.

R.K. Robinson,

Chief, Federal Wildlife Permit Office.

Dated: May 27, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-12471 Filed 6-1-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 5-87]

Proposed Foreign-Trade Zone; San Diego, CA; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of San Diego, California, requesting authority to establish a general-purpose foreign-trade zone in San Diego, within the San Diego Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a through 81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 12, 1987. The City is authorized to make the proposal under Chapter 4, Section 6302, of the California Government Code.

The proposal will involve 4 sites totalling 1,104 acres within the City's Otay Mesa Planning Area, adjacent to the U.S.-Mexico border. Site 1 will consist of 900 acres of city property at Brown Field, Otay Mesa and Heritage Roads. Site 2 covers 73.5 acres at Airway Road and State Route 125, and is owned by San Diego Business Park Associates, Ltd. Site 3 comprises 60 acres at the Gateway Park, off Harvest Road and Custom House Plaza Road. It is owned as a joint venture project by Trammel Crow Co. and Westkin Properties. Site 4 consists of 70.6 acres at the Britannia Commerce Center, Siempre Viva Road and Britannia Boulevard. It is owned by Hall Properties.

The application contains evidence of the need for zone services in the San Diego area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of electronic products, chemicals, furniture and toys. Specific manufacturing approvals are not being sought at this time. Requests will be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Alan J. Rappoport, District Director, U.S. Customs Service, Pacific Region, 880 Front Street, Room 5-S-9, San Diego, CA 92188; and Colonel Dennis F. Butler, District Engineer, U.S. Army Engineer District Los Angeles, P.O. Box 2711, Los Angeles, CA 90053-2325.

As part of its investigation, the examiners committee will hold a public hearing on July 1, 1987, beginning at 9:00 a.m., at the City of San Diego Community Concourse (Glass Room), 202 C Street., San Diego, CA.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by June 23. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through August 17, 1987.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 6363 Greenwich Drive, San Diego, CA 92122

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: May 27, 1987.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 87-12492 Filed 6-1-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration**Endangered Species; Proposed Permit Modification No. 3; Mr. Harold M. Brundage, III (P298)**

Notice is hereby given that Mr. Harold M. Brundage, III, Ichthyological Associates, Inc., 100 South Cass Street, Middletown, Delaware 19709, has requested a modification to Permit No. 374 (File No. P298) issued on March 24, 1982 (47 FR 13399) under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), and the regulations governing endangered species permits (50 CFR Part 217 and 222), as modified on February 11, 1983 (48 FR 6381), and September 18, 1986 (50 FR 39753).

Permit No. 374 authorizes five hundred (500) shortnose sturgeon (*Acipenser brevirostrum*) to be taken, tagged, and released each year in the Delaware River. Of these fifty (50) adults may be radio tagged each year.

The Permit Holder is requesting that Permit No. 374 be modified to allow the sampling for shortnose sturgeon in the upper tidal Potomac River during 1987.

Sampling will be conducted with bottom-set multi-panelled gill nets during summer and fall. The annual take authorized under the Permit will not be increased.

Written data reviews, or requests for public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documentation pertaining to the above modification request is available for

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC 20235;

Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Dated: May 27, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-12472 Filed 6-1-87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Marine Animal Productions, Inc. (108)

On June 19, 1986, notice was published in the *Federal Register* (51 FR 22324) that an application had been filed by Marine Animal Productions, Inc., P.O. Box 4078, Gulfport, Mississippi 39502-4078, to take Atlantic bottlenose dolphins (*Tursiops truncatus*) and California sea lions (*Zalophus californianus*).

Notice is hereby given that on May 27, 1987, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following office(s):

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida, 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: May 27, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-12473 Filed 6-1-87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Proposed Modification of Permit; Sea World, Inc.

Notice is hereby given that Sea World, Inc., 1720 South Shores Road, San Diego, California 92109-9980 has requested a modification of Permit No. 504, issued on June 6, 1985 (50 FR 25113), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

Permit No. 504 authorizes the importation of six false killer whales (*Pseudorca crassidens*) for public display.

The Permit Holder is requesting to take an additional false killer whale as replacement for an animal that died during importation from Japan. The animal will be taken by the means, in the area, and for the purposes set forth in the original permit application.

Concurrent with the publication of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data, views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this notice are summaries of those of the Permit Holder and do not

necessarily reflect the views of the National Marine Fisheries Service.

Documentation pertaining to the above modification request is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: May 27, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-12474 Filed 6-1-87; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Statement of Organization, Practices and Procedures

Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), each Regional Fishery Management Council is responsible for carrying out its functions under the Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce. Further, each Council must publish and make available to the public a statement of its organization, practices and procedures (SOPPs).

The Western Pacific Fishery Management Council's SOPPs were published originally in the *Federal Register* on March 22, 1977 (42 FR 55), and were revised by the Council on August 8, 1986. Interested parties may obtain a copy of the Council's revised SOPPs by contacting Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368 or (808) 546-8923.

Dated: May 28, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-12517 Filed 6-1-87; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection system concerning Cost Accounting Standards.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green, Defense Acquisition Regulatory Council (202) 697-7266 or Mr. Frank Van Lierde, Office of Federal Acquisition and Regulatory Policy (202) 523-3781.

SUPPLEMENTARY INFORMATION:

a. Purpose

FAR Part 30 incorporates the Cost Accounting Standards (CAS) and the pertinent rules and regulations of the CAS Board with the administrative policies and procedures presently contained there. Public Law 97-379 (50 U.S.C. App. 2168) requires certain contractors and subcontractors to comply with Cost Accounting Standards and to disclose in writing and follow consistently those cost accounting practices. In addition, those contractors are required to compute Capital Cost of Money under Cost Accounting Standard 414. This is a new requirement and is a breakout from OMB Control number 9000-0063. The information is used by contracting officers to ensure that the contractor does follow consistently the accounting practices that the contractor discloses and the contractor computes the Capital Cost of Money using the latest indirect rates published by the Secretary of the Treasury.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, 2,540; responses per respondent, 2.97;

total annual responses, 7,540; hours per response, 2.2; and total burden hours, 16,600.

Obtaining Copies of Proposals

Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0063, Cost Accounting Standards.

Dated: May 27, 1987.

Margaret A. Willis,
FAR Secretariat.

[FR Doc. 87-12433 Filed 6-1-87; 8:45 am]
BILLING CODE 6820-61-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Agency Information Collection Activities Under OMB Review; Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of information collection and form number, if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Key Assets Protection Program (KAPP) Survey, 0704-0133, DIS Form 1632.

Key Assets Protection Program develops and promotes protection of Key Assets within the U.S. and its possessions by providing management of selected critical assets, voluntarily participating in the program, with advice and guidance concerning the application of physical security and emergency preparedness measures designed to reduce the vulnerability to, and increase the protection of, its facilities against sabotage, espionage, and other hostile or destructive acts to include minimization of attack damage. A basic tenet of KAPP

is that the responsibility for the protection of property is inherent in ownership. Accordingly, the Department of Defense does not assume primary responsibility for the physical security or privately-owned facilities of federally-owned facilities under the control of any other Federal department of agency, or of facilities owned by any State or political subdivision of any State.

Businesses

Current responses 250. This is a reduction of 1989 responses from 2239.

Current burden hours 950. This is a reduction of 8273 hours from 9223 hours.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Dale L. Hartig, DIS, Chief, Information and Public Affairs, 1900 Half Street, SW., Washington, DC 20324-1700, telephone (202) 475-1062.

Patricia H. Means,

OSD Federal Register Liaison Officer,
Department of Defense.

May 28, 1987.

[FR Doc. 87-12504 Filed 6-1-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 28, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Airships will meet on June 16th and 17th, 1987, at Scott AFB, Illinois from 8:00 am to 5:00 pm each day. The purpose of the meeting is to review, discuss and evaluate the suitability of airships to perform certain Air Force roles and missions.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-12560 Filed 6-1-87; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Availability of Draft Environmental Impact Statement (DEIS), and Public Hearing on the DEIS and Associated Federal Land Withdrawal; Uranium Mill Tailings Remedial Action Project (UMTRA Project) at Rifle, CO

AGENCY: Department of Energy.

ACTION: Notice of availability of DEIS and public hearing on the DEIS and associated Federal land withdrawal.

SUMMARY: The Department of Energy (DOE) has published a DEIS, DOE/EIS-0132-D, Remedial Actions at the Former Union Carbide Corporation Uranium Mill Sites, Rifle, Garfield County, Colorado, for a proposed DOE action to perform remedial actions on residual radioactive materials at the inactive uranium mills and associated vicinity properties at Rifle, Colorado. This DEIS is also intended to aid the Bureau of Land Management (BLM) in amending its management framework plans and final resource management plan as well as assist in complying with the land withdrawal application as appropriate. The DEIS has been distributed to Federal, State and local agencies and organizations and to individuals known to be interested in the Rifle remedial action project. The DEIS was filed with the Environmental Protection Agency during the week of May 18.

The impacts associated with near-term remedial actions at the vicinity properties have been addressed in a separate environmental report entitled "Programmatic Environmental Report for Remedial Actions at UMTRA Project Vicinity Properties" (UMTRA-DOE/AL-150327.0000) which was prepared by the DOE in 1985.

DATES: Written comments on the DEIS should be received by the DOE by July 13, 1987, in order to ensure consideration in preparation of final environmental impact statement (FEIS). The public hearing is scheduled on July 9, 1987, in City Hall, 202 Railroad Avenue, Rifle, Colorado at 2:00 pm and resuming at 7:00 pm. Requests to speak and preferred times should be received by the DOE by June 26, 1987.

Written comments on the withdrawal of Federal land for this project should be

received by the BLM by August 31, 1987, in order to be considered in the determination of whether or not the land will be withdrawn and reserved as requested by the DOE. Comments should reference Case File Number Colorado-44536.

ADDRESSES: Written comments on the DEIS and requests to speak at the public hearings should be addressed to: Mr. James Anderson, Project Manager, Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, 5301 Central Avenue, NE., Suite 1720, Albuquerque, New Mexico 87108.

Written comments on the withdrawal of Federal land for this project should be addressed to: Mr. Neil Mork, State Director, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; or Mr. Bruce Conrad, District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501

FOR FURTHER INFORMATION YOU MAY

CONTACT: 1. Mr. James Anderson, Project Manager, Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, 5301 Central Avenue, NE., Suite 1720, Albuquerque, New Mexico 87108. Phone (505) 844-3941.

2. Dr. Carolyn Osborne, Office of NEPA Project Assistance, Office of the Assistant Secretary for Environment, Safety and Health, U.S. Department of Energy, Washington, DC 20585. Phone (202) 586-4600.

3. Mr. Henry Garson, Esq., Assistant General Council for Environment, U.S. Department of Energy, Washington, DC 20585. Phone (202) 586-6947.

4. Mr. Neil Mork, State Director, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215. Phone (303) 236-2100.

5. Mr. Bruce Conrad, District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501. Phone (303) 243-6552.

SUPPLEMENTARY INFORMATION:

I. Previous Notice of Intent

The DOE published on January 21, 1983, a Notice of Intent to prepare an environmental impact statement (EIS) for the remedial actions at the Rifle inactive uranium mill sites (48 FR 2819).

The BLM published a notice of the proposed land withdrawal regarding the lands associated with the Rifle UMTRA Project sites in the *Federal Register* on October 22, 1986 (51 FR 37496).

II. Background for the Proposed Project

In 1978, the U.S. Congress passed the Uranium Mill Tailings Radiation Control Act, Pub. L. 95-604. In this Act, the U.S. Congress found that uranium mill tailings may pose a potential health hazard. It authorized the DOE to carry out remedial actions at each site in cooperation with other Federal agencies and with the state or Indian tribe affected by the action. It gave to the U.S. Nuclear Regulatory Commission (NRC) responsibility for consulting with the DOE over a range of subjects concerning the conduct of remedial action, for concurring with the selected remedial action and with any cooperative agreement with a state or Indian tribe, and for licensing the long-term surveillance and maintenance of each tailings disposal site after the remedial action is completed. In addition, the U.S. Environmental Protection Agency (EPA) was given the responsibility to set standards to protect public health, safety, and the environment at the tailings disposal sites. The BLM is a cooperating agency for the preparation of this EIS and is responsible for determining whether the Federal land will be withdrawn and reserved as requested by the DOE.

In accordance with Pub. L. 95-604, the DOE designated 24 sites for remedial actions. Two of these sites are the former Union Carbide Corporation Old and New Rifle processing sites adjacent to Rifle, Colorado. From 1924 to 1973, the mills processed uranium ore for sale to the U.S. Atomic Energy Commission and private sources. The tailings remaining from these operations and associated adjacent contaminated areas cover approximately 280 acres. There are an estimated 102 vicinity properties (residences, businesses, and open lands) contaminated with tailings from the sites that may also require remedial actions.

The State of Colorado investigated several locations where the tailings might safely be disposed and recommended two for further analysis. Of these locations, the Lucas Mesa site was selected for further analysis because of its apparent environmental and geotechnical superiority. The DOE conducted another site selection process to identify one or more sites that would be both suitable for tailings disposal and closer to the Rifle processing sites. Three potential sites were identified and evaluated, and the Estes Gulch site was determined to be the optimum disposal site.

III. Scope of the DEIS

The DEIS evaluates no-action (alternative 1) as well as three alternatives for minimizing the potential public health hazards associated with the Rifle sites: stabilization of the contaminated materials at the New Rifle site and decontamination of the Old Rifle site (alternative 2); relocation using truck transport and stabilization of the materials at the Estes Gulch site approximately six miles north of Rifle and decontamination of the Rifle sites (alternative 3); and relocation using truck transport and stabilization of the materials at the Lucas Mesa site approximately 35 miles southwest of Rifle and decontamination of the Rifle sites (alternative 4). Each of the alternatives, except no action, includes remedial actions at an estimated 102 vicinity properties.

An assessment of the impacts of these alternatives was made in terms of effects on radiation levels, air quality, soils, mineral resources, surface- and ground-water resources, ecosystems, land use, sound levels, cultural resources, population and employment, economic structures, and transportation networks.

Remedial action would include the removal of contaminated soils and vegetation from the floodplain and wetlands area along the Colorado River. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), the DOE has prepared a floodplain and wetlands assessment (Appendix F of the DEIS). Maps and further information are available from the Project Manager at the address shown below.

Remedial action would also require the withdrawal of Federal land that is presently administered by the BLM. This land would be permanently withdrawn for exclusive use for the construction and disposal of residual radioactive wastes from the Rifle UMTRA Project sites. The BLM is accepting comments on withdrawal of this land pursuant to the Federal Land Policy and Management Act of 1976.

IV. Comment Procedures

A. Availability of DEIS

Copies of the DEIS may be obtained from the Project Manager, Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, 5301 Central Avenue, NE., Suite 1720, Albuquerque, New Mexico 87108. Phone (505) 844-3941.

Copies of the DEIS are available for public inspection at the following locations:

- UNC Technical Services, Inc., 2597 B 3/4 Road, Grand Junction, CO 81503
 Energy/Environment Center, Denver Public Library, 1357 Broadway, Denver, CO 80210
 Mesa County Library, 5301 Grand Avenue, Grand Junction, CO 81502
 National Wildlife Federation Library, Fleming Law Building, Boulder, CO 80309
 Environmental Center, University of Colorado, Boulder, CO 80309
 Learning Resource Center, Mesa College, Box 2647, Grand Junction, CO
 Library, Chicago Operations Office, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60639
 Library, Idaho Operations Office, U.S. Department of Energy, 550 Second Street, Idaho Falls, ID 83401
 Rifle Branch Library, 357 East Avenue, Rifle, CO 81650
 The Libraries, Documents Department, Colorado State University, Fort Collins, CO 80523
 Albuquerque Operations Office, U.S. Department of Energy, National Atomic Museum, Kirtland Air Force Base East, Albuquerque, NM 87115
 Freedom of Information Reading Room, U.S. Department of Energy, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585
 Library, Nevada Operations Office, U.S. Department of Energy, 2753 South Highland Drive, Las Vegas, NV 89114
 Library, Oak Ridge Operations Office, U.S. Department of Energy, Federal Building, Oak Ridge, TN 37830
 Library, Richland Operations Office, U.S. Department of Energy, Federal Building, Richland, WA 99352
 Library, Savannah River Operations Office, U.S. Department of Energy, Aiken, SC 29801

B. Written Comments

Interested parties are invited to provide written comments on the DEIS to the Project Manager in Albuquerque, New Mexico, at the address given above. All comments and related information should be received by the DOE by July 13, 1987, in order to ensure consideration in preparing the FEIS. Written and oral comments will be given equal consideration.

Any material not accompanied by a statement of confidentiality will be considered to be non-confidential. The DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Interested parties are also invited to provide written comments on the DOE's

application to the BLM to withdraw the land associated with the Rifle UMTRA Project sites. Written comments should be received by the BLM at the addresses given above by August 31, 1987, in order to be considered in the determination of whether or not the land will be withdrawn and reserved as requested by the DOE.

C. Public Hearing

1. Participation Procedures

A public hearing on the draft statement will be held at City Hall, 202 Railroad Ave., Rifle, Colorado, on July 9, 1987, at 2:00 pm and 7:00 pm to provide an opportunity for oral presentations by interested persons. Written and oral comments will be given equal consideration.

A DOE official will designate a presiding officer to chair the hearing. This will not be a judicial or evidentiary-type hearing.

Any person who desires to speak at the hearing should notify the Project Manager at the Albuquerque, New Mexico, address listed above by June 26, 1987, so that time can be scheduled. Although not required, persons who intend to speak are encouraged to provide a brief summary of the presentation.

Individuals who did not make an advance arrangement to speak may register to speak at the hearing. After all scheduled speakers, an opportunity will be provided to these individuals to speak. Time for each participant may be limited depending on the time available and the number of responses.

2. Conduct of Hearing

The DOE will arrange the schedule of presentations to be heard and will establish basic rules and procedures for conducting the hearing. The length of each presentation may be limited depending on the number of persons desiring to speak.

Questions may be asked only by those conducting the hearing and there will be no cross-examination of persons presenting statements.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer at the start of the hearing.

A transcript of the hearing will be made and the entire record of the hearing including the transcript will be retained by the DOE and made available for inspection at the same locations as listed above for review of the DEIS. Any person may purchase a copy of the transcript from the reporter.

Issued in Washington, DC, May 18, 1987.

William R. Voight, Jr.,
 Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy.
 [FR Doc. 87-12493 Filed 6-1-87; 8:45 am]
 BILLING CODE 6450-01-M

Extension of Public Comment Period on the Environmental Impact Statement; Safety Enhancement Program; N Reactor, Hanford Site Near Richland, WA

AGENCY: Department of Energy (DOE).

ACTION: Announcement of extension of public comment period.

SUMMARY: The DOE announces its intent to extend the public scoping comment period on the Environmental Impact Statement (EIS) on the proposed Safety Enhancement Program (SEP) (Ref.: DOE/RL 87-05, N Reactor Safety Enhancement Program Summary Description, April 1987) for the N Reactor at the Hanford Site near Richland, Washington. The DOE previously announced public scoping comment period would end on May 27, 1987 (52 FR 16432, May 5, 1987).

The purpose of this notice is to amend the previous announcement referenced above, and the Notice of Intent (NOI) to prepare an EIS (52 FR 12453), by announcing that the public scoping comment period is extended to June 12, 1987.

All Federal, State and local agencies, interested organizations and individuals desiring to submit written comments or suggestions for consideration in the preparation of this EIS are invited to do so. Upon completion of the Draft EIS (DEIS), its availability will be announced in the *Federal Register*, at which time comments from the public will again be solicited. Comments received during the DEIS public review period will be used in preparing the Final EIS.

DATE: Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS are requested by June 12, 1987. Written comments received after that date will be considered to the degree practicable.

ADDRESSES: Written comments or suggestions should be submitted to: Mr. Tom Bauman, Office of Communications, U.S. Department of Energy, P.O. Box, 550, Richland, Washington 99352 (509) 376-2516.

Those not desiring to submit comments or suggestions at this time but who would like to receive a copy of the Draft EIS for review and comment when

it is issued should notify Mr. Tom Bauman at the address listed above. When the Draft EIS is complete, its availability will be announced in the **Federal Register** and in local news media, and comments will again be solicited.

Related NEPA documentation.

Documents, pursuant to the National Environmental Policy Act (NEPA), have been or are being prepared for other activities at Hanford that are related to but not within the scope of the proposed SEP. These EIS's are:

1. U.S. Department of Energy, Draft Environmental Impact Statement, Disposal of Hanford Defense High-Level, Transuranic and Tank Wastes, DOE/EIS-0113, Vol. 1, 2, and 3, March 1986. U.S. Department of Energy, Washington, DC.

2. U.S. Department of Energy, 1982 Final Environmental Impact Statement—Operation of PUREX and Uranium Oxide Plant Facilities, DOE/EIS-0089, 1982. U.S. Department of Energy, Washington, DC.

3. U.S. Energy Research and Development Administration, 1975 Final Environmental Statement, Waste Management Operations, Hanford Reservation, Richland, Washington, Vol. 1 and 2, ERDA-1538. U.S. Energy and Research Development Administration, Washington, DC.

Other documentation. Copies of the Safety Enhancement Program (Ref.: DOE/RL 87-05, N Reactor Safety Enhancement Program Summary Description, April 1987) and other DOE documents references in this notice that are planned to be used in preparing this EIS and other related background information are available for inspection at the following locations:

1. U.S. Department of Energy, Forrestal Building, Freedom of Information Reading Room IE-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020.

2. Richland Public Library, Swift and Northgate, Richland, WA 99352, (509) 943-9117.

3. Spokane Public Library, Comstock Building Library, W. 906 Main Avenue, Spokane, WA 99201, (509) 838-4226.

4. Timberland Regional Library, 415 Airindustrial Way SW., Olympia, WA 98501, (206) 943-5001.

5. Multnomah County Library, 801 S.W. 10th Avenue, Portland, OR 97205, (503) 233-7201.

6. U.S. Department of Energy, Public Reading Room, P.O. Box, 900, Federal Building, Room 157, Richland, WA 99352, (509) 376-8583.

7. Walla Walla Public Library, 238 E. Alder, Walla Walla, WA 99362, (509) 527-4550.

8. Seattle Public Library, 1000 4th Avenue, Seattle, WA 98104, (206) 625-2665.

9. Lewis and Clark College Library, 8th Avenue and 6th Street, Lewiston, ID 83501, (208) 799-2236.

Signed in Washington, DC, this 28th day of May, 1987, for the United States Department of Energy.

Mary L. Walker,

Assistant Secretary for Environment, Safety and Health.

[FR Doc. 87-12627 Filed 6-1-87; 8:45 am]

BILLING CODE 6450-01-M

Office of General Counsel

Intent To Grant Partially Exclusive Patent License; Dr. Thomas G. McRae

Notice is hereby given of an intent to grant the Dr. Thomas G. McRae, of Livermore, California, a partially exclusive license to practice in the United States the invention described in U.S. Patent No. 4,555,627, entitled "Backscatter Absorption Gas Imaging System." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be partially exclusive, i.e., limited to the field of use of applications other than surveillance of marine vehicles, will be subject to a license and other rights retained by the U.S. Government, and will be subject to a negotiated royalty provision. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously in the field of use of applications other than surveillance of marine vehicles.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC on May 26, 1987.

J. Machael Farrell,

General Counsel.

[FR Doc. 87-12463 Filed 6-1-87; 8:45 am]

BILLING CODE 6450-01-M

International Energy Agency Industry Working Party et al.; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of the Industry Working Party (IWP) of the International Energy Agency (IEA) will be held on June 9, 1987, at the offices of the IEA, 2 rue Andre Pascal, Paris, France, beginning at 9:30 a.m. The agenda for the meeting is as follows:

1. Evaluation of Crude Oil Register.
2. Review of IEA Secretariat Paper on Trends in Trading and Pricing.
3. Review of Future Meetings.

II. A meeting of the Industry Advisory Board (IAB) to the IEA will be held on June 9, 1987, at the offices of the IEA at the aforesaid location, beginning at 2:30 p.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. Approval of Record Note of IAB Meeting of April 7, 1987.
3. Correspondence and Communications with IEA and Reporting Companies.
4. U.S. Plan of Action.
5. IEA Emergency Preparedness Tests.
6. Emergency Stocks:
 - a. Quality of Oil Stocks.
 - b. Emergency Minimum Operating Requirements—Establishment of a Study Group.
7. Consultations on Coordinated Emergency Response Measures:
 - a. Explanatory Note to Operations Manual.
 - b. Draft Operations Manual.
8. 1988 Program of Work.
9. Other Topics:
 - a. End-May Oil Market Report.
 - b. Base Period Final Consumption (BPFC) (2Q86-1Q87).
10. IAB Organization, Leadership and Succession.
11. Date of Next Meeting and Future Business.

III. A meeting of the IAB will be held on June 10, 1987, at the offices of the IEA at the aforesaid address beginning at 9:30 a.m. This meeting is being held in order to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to

be held at the aforesaid location on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agency will be followed:

1. Adoption of the Agenda.
2. Summary Record of the 56th Meeting.
3. Governing Board Meeting at Ministerial Level—Implications for Future Work of the SEQ.
4. IEA Test Issues:
 - a. IEA Emergency Preparedness Tests.
 - b. Test of Coordinated Emergency Response Measures.
5. Emergency Stocks:
 - a. Quality of Stocks.
 - b. Emergency Minimum Operating Requirements—Establishment of a Study Group.
6. Other Emergency Preparedness Issues:
 - a. Consultations on Coordinated Emergency Response Measures.
 - b. Explanatory Note to Operations Manual.
 - c. Draft Operations Manual.
 - d. Next Cycle of Emergency Response Program Reviews—Emergency Response Programs Questionnaire—Final Proposal.
 - e. Workshop on Practical Aspects of Oil Consumption Reduction Measures—Results, Conclusions, and Recommendations.
7. 1988 Program of Work.
8. Other Topics:
 - a. End-May Oil Market Report.
 - b. BPFC (2Q86-1Q87).
9. Any Other Business.
10. Date of Next Meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the IWP and IAB meetings are open to representatives of members of the IWP and IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IWP, IAB or the IEA. The SEQ meeting is open only to the aforesaid persons, representatives of members of the SEQ, and invitees of the SEQ.

Issued in Washington, DC, May 27, 1987.

J. Michael Farrell,
General Counsel.

[FR Doc. 87-12462 Filed 6-1-87; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 82-122; CC Docket No. 78-97, Phase II; FCC 87-161]

Interconnection Arrangements Between and Among the Domestic and International Record Carriers

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order on reconsideration.

SUMMARY: The Commission denied reconsideration of its earlier decision to require interconnected carriers to reimburse Western Union for prior discounts taken with respect to interconnection service for telex and TWX traffic. The FCC also concluded that the reimbursement required in its previous order should be reduced. The Commission had received five petitions for reconsideration of its earlier decision. This order will allow Western Union to proceed with its claim for reimbursement.

EFFECTIVE DATE: June 3, 1987.

FOR FURTHER INFORMATION CONTACT: Linda M. Goodman, 202-632-6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration in CC Docket Nos. 78-97 and 82-122, adopted April 30, 1987. The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street NW., Washington, DC. The complete texts may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC, 20037.

Summary of Memorandum Opinion and Order on Reconsideration

On May 2, 1986, the FCC released a *Reimbursement Order* in this proceeding which ordered a retroactive adjustment of an interim telex/TWX rate prescription established by the Commission in 1982 (51 FR 17095, May 8, 1986). By this Memorandum Opinion and Order on Reconsideration, the Commission rejects petitions for reconsideration of the *Reimbursement Order*.

The interim rate prescription at issue here had required Western Union to provide telex/TWX service to interconnected carriers at rates discounted 15 percent from the rates charged the general public for the same service. The retroactive adjustment eliminated the discount and required the

interconnected carriers to reimburse Western Union for the amount of the discounts taken on interconnected domestic telex/TWX traffic and on the domestic haul of inbound international traffic between June 1982 and August 1984.

The Commission determines in this Order that the reasoning that initially prompted adoption of the *Reimbursement Order* is still valid. However, the Commission concludes that the reimbursement required in its previous order should be reduced to reflect higher tariffed rates already paid by interconnected carriers. Thus, the Commission calculates that the required reimbursement should be only 51 percent of the amount originally ordered.

Ordering Clauses

Accordingly, the Commission orders that the petitions for reconsideration are denied and all unauthorized pleadings are dismissed. Further, Western Union is ordered to file a formal complaint with the Enforcement Division of the Common Carrier Bureau seeking payment of the reimbursements, as adjusted in this Order.

Federal Communications Commission.

William J. Tricarico,
Secretary.

[FR Doc. 87-12233 Filed 6-1-87; 8:45 am]

BILLING CODE 6712-01-M

[FCC No. 87-126]

Application for Review of Monetary Forfeiture Assessed Against Sansui Electronics Corp.

AGENCY: Federal Communications Commission.

ACTION: Order regarding review of monetary forfeiture.

SUMMARY: This action affirms the Field Operations Bureau's decision to uphold a monetary forfeiture assessed against Sansui Electronics Corporation (Sansui). The forfeiture was imposed for Sansui's willful violation of 47 CFR 2.1205(a) by omitting required FCC forms from papers submitted to U.S. Customs Service with certain RF devices that it was importing. Sansui's application to mitigate the forfeiture is based upon a suggested policy change (assess lower forfeiture for second violations) that the Commission recently refused to adopt. The Commission has found that such a policy could lead to a breach of its enforcement duties.

FOR FURTHER INFORMATION CONTACT:
Damon Martin, Field Operations Bureau,
Washington, DC 20554, (202) 632-7240.
Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-12236 Filed 6-1-87; 8:45 am]
BILLING CODE 6712-01-M

Interpretation of Rules Concerning Form 740; Filing Requirements for Certain Very Low Power Radio Frequency Devices

May 13, 1987.

In the past few years, the Commission has observed a substantial increase in the quantity of imported restricted radiation devices. Of particular interest is a group of devices identified as musical greeting cards, quartz watches and clocks, modules of quartz watches and clocks, and battery powered hand-held calculators and electronic games not requiring connection to AC power. These devices are powered from very low level power sources and pose no risk of causing harmful interference. However, like other radio frequency (RF) devices, they have been required to submit an FCC Form 740 to permit their entry into the United States.

Part 2, Subpart K, of the Commission's Rules, describes the conditions under which RF devices, capable of causing harmful interference to radio communications may be imported into the U.S.A. In fact the above-described devices are virtually incapable of causing harmful interference. Accordingly, the Chief Engineer and the Chief of the Field Operations Bureau have determined that the requirements of Subpart K do not apply to these devices and, as of the date of the Public Notice, the filing of an FCC Form 740 will no longer be required for their importation.

For additional information contact Paul Harris at (202) 632-6345.
Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-12337 Filed 6-1-87; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Senior Executive Service Performance Review; Updated Membership

In accordance with Title IV of the Civil Service Reform Act of 1978, the Federal Home Loan Bank Board hereby gives notice of new memberships on the SES Performance Review Board. Current

members are S.G. Frank Haas, III (Chairman), Jean C. Chabot, Richard L. Petrocci, Richard C. Pickering, Harry Quillian, and Julie L. Williams.

FOR FURTHER INFORMATION CONTACT:
William R. Casey, Director of Personnel,
Federal Home Loan Bank Board, (202)
377-6050.

Jeff Sconyers,
Secretary, Federal Home Loan Bank Board.
[FR. Doc. 87-12503 Filed 6-1-87; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

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.: 202-009968-019.
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
Empresa Lineas Maritimas Argentinas
Sociedad Anonima (Elma S/A)
Empresa De Navegacao Allianca S.A.
Frota Amazonica S.A.
Paxicon, Inc.
Suriname Line
Transportacion Maritima Mexicana,
S.A.

Synopsis: The proposed amendment would provide for independent action on freight forwarder compensation payable to licensed customs brokers in connection with export shipments.

Agreement No.: 202-010122-016.
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 provide for independent action on freight forwarder compensation payable to licensed customs brokers in connection with export shipments.

Agreement No.: 203-011117.

Title: North America/Australasia
Interconference and Carrier Discussion
Agreement.

Parties:

Pacific Coast/Australia-New Zealand
Tariff Bureau
U.S. Atlantic & Gulf/Australia-New
Zealand Conference
Shipping Corporation of New Zealand
Limited
Blue Star Line, Ltd.
Pacific Australia Direct Line
Columbus Line
Associated Container Transportation
(Australia) Ltd. (Pace Line)

Synopsis: The proposed agreement would permit the parties to exchange information and discuss matters of mutual interest in the agreement trade; to agree on rates, rules, terms and conditions of service in the trade and to discuss and finalize cooperative service arrangements. Adherence to any agreement reached would be voluntary.

By Order of the Federal Maritime
Commission.

Joseph C. Polking,
Secretary.

Dated: May 28, 1987.

[FR Doc. 87-12445 Filed 6-1-87; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Fluoridation Strategies; Meeting

Action: Notice of meeting—
Fluoridation Strategies Meeting. Federal,
State, and local public health officials as
well as representatives from the private
sector who are involved in community
water fluoridation will participate.

Time and Date: The program is
scheduled for 8:00 a.m.-4:30 p.m., June
24-25, 1987, and 8:30 a.m.-11:00 a.m. on
June 26, 1987.

Place: Viscount Hotel, Atlanta, Georgia, (404) 321-4174.

Status: Open to public for observation, limited only by the space available.

Matters to be Discussed: The Dental Disease Prevention Activity, Center for Prevention Services, Centers for Disease Control, will convene this meeting of invited consultants to discuss specific strategies for the promotion of community water fluoridation in the United States.

Contact person for more information: Thomas G. Reeves, P.E., Fluoridation Engineer, Dental Disease Prevention Activity, Freeway Park, Room 424, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, Telephones: FTS: 236-1833, Commercial: (404) 329-1833.

Dated: May 26, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-12436 Filed 6-1-87; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Eight in One Pet Products, Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Eight In One Pet Products, Inc. The NADA provides for use of nitrodan as a canine wormer. The firm requested the withdrawal of approval.

EFFECTIVE DATE: June 12, 1987.

FOR FURTHER INFORMATION CONTACT:

Patricia E. Hasemann, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Eight In One Pet Products, Inc., 100 Emjay Blvd., Brentwood, NY 11717, is sponsor of NADA 39-769, which provides for oral canine use of Everfree Nidanthel (a dog food supplement containing 3 percent nitrodan). The NADA was originally approved November 28, 1970. In the *Federal Register* of November 2, 1976 (41 FR 48100), the sponsor was changed from Cooper Laboratories, Inc., to Eight In One Pet Products, Inc.

By letter dated November 17, 1986, the sponsor requested the withdrawal of approval because the product was not being manufactured or marketed, and

the firm had not intent to market the product.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 39-769 and all supplements thereto is hereby withdrawn, effective June 12, 1987.

In a final rule published elsewhere in this issue of the *Federal Register*, FDA is removing 21 CFR 520.1540, which reflects this approval and is amending 21 CFR 510.600 by removing the firm from the list of sponsors of approved NADA's.

Dated: May 28, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR. Doc. 87-12436 Filed 6-1-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Services, Health Care Financing Administration (HCFA, *Federal Register*, Vol. 46, No. 223, pg. 56913, dated Thursday, November 19, 1981; *Federal Register*, Vol. 48, No. 198, pg. 46434, dated Wednesday, October 12, 1983; and *Federal Register*, Vol. 51, No. 122, pg. 23156, dated Wednesday, June 25, 1986) is amended to reflect a reorganization for the Office of the Associate Administrator for External Affairs (AAEA). AAEA is reorganized to streamline the substructure to two offices instead of four. Three current offices within AAEA, and Office of Beneficiary Services, the Office of Professional and Scientific Affairs, and the Office of Intergovernmental Affairs become divisions in the new Office of Public Liaison (OPL). OPL consolidates all public liaison activities in a single organization. The Office of Public Affairs (OPA), AAEA, is virtually unchanged. OPA consists of the Public Appearance Staff and three divisions, the Division of Media Relations, the Division of Public Information, and the Freedom of Information Division. Although the functional responsibilities of AAEA are not changing, the office is being renamed the Office of the

Associate Administrator for Communications in order to more accurately reflect the responsibilities of the office.

The specific amendments to Part F. are described below:

- Section F.10.E., Health Care Financing Administrator (Organization), is amended to reflect the new title for the Office of the Associate Administrator for External Affairs (FG). Section F.10.E., now reads: E. Office of the Associate Administrator for Communications (FG)

- Section FG.10., Office of the Associate Administrator for External Affairs (FG) (Organization) and Section FG.20., Office of the Associate Administrator for External Affairs (FG) are deleted in their entirety and are replaced by the new Sections FG.10. and FG.20. as follows:

Section FG.10., Office of the Associate Administrator for Communications (FG) (Organization)

The Office of the Associate Administrator for Communications, under the leadership of the Associate Administrator for Communications, includes:

A. The Office of Public Affairs (FGC).

B. The Office of Public Liaison (FGF).

Section FG.20., Office of the Associate Administrator for Communication (FG) (Functions).

The Associate Administrator for Communications is responsible for the effective direction and implementation of HCFA policies, rules, and procedures in the areas of: liaison with external medical, dental, and allied health practitioners, institutional providers of health services, and academic institutions responsible for the education of health care professionals; advising the Administrator, HCFA, and HCFA components concerning the services, requirements, and initiatives relating to HCFA beneficiaries and recipients; directing the public affairs activities of HCFA; and providing direction for HCFA in the area of intergovernmental affairs, including advising the Administrator on all policy and program matters which affect other HCFA units and levels of government.

A. Office of Public Affairs (FGC)

Plans, directs, and coordinates the public affairs activities of HCFA including media relations, the production of radio, television, and film products, and the preparation of general purposes publications. Provides advice and counsel, from a public affairs perspective, to the Associate Administrator for Communications and all HCFA components. Reviews and

clears all print, audio-visual, and exhibit plans and material intended for external dissemination and serves as clearance liaison with the Office of the Secretary, Office of the Assistant Secretary for Public Affairs, Administers the Freedom of Information Act responsibilities for HCFA.

1. Public Appearance Staff (FGC-1)

Responsible for the efficient handling of speaking requests received by top HCFA management. Logs requests, recommends acceptance or denial of invitations and coordinates correspondence for all invitations. Arranges the scheduling of speaking appearances, compiles briefing information, ensures that talking points or speeches are prepared as necessary, and conducts follow-up activities such as arranging for transcripts, courtesy correspondence, reprint permissions, photographs, and biographies. Recommends speaking opportunities and forums consistent with Agency goals and objectives and overall public affairs plans. Advises the Division of Media Relations on potential news opportunities stemming from public appearances and speaking engagements.

2. Division of Media Relations (FGC2)

Maintains relations for HCFA with the nation's news media including nationwide press, radio, television, wire services, and individual reporters, writers, editors, and individual publications and broadcasters. Provides writing and editing services necessary in conducting the public affairs activities of the Agency. Develops and carries out a general plan for providing information to the public through the news media and develops and carries out plans for promoting and disseminating information on specific HCFA-related topics, issues, and activities. Responds to inquiries from the news media through correspondence, telephone, and direct interviews and arranges for interviews and similar response for the media with senior Agency staff. Prepares drafts and obtains clearances for press releases and statements for the news media. Drafts publications, fact sheets, reports, leaflets, pamphlets, white papers, scripts, articles, and other background materials for distribution to the general public on HCFA programs and related topics. Prepares and edits articles for submission to external periodicals and publications on HCFA programs and prepares materials as needed for internal employee communications such as the HCFA Newsletter.

3. Division of Public Information (FGC3)

Produces publications, graphics, audiovisual materials, photography, and exhibits regarding HCFA programs intended for use with the general public through public affairs activities. Provides design and graphics support to the Office of Public Affairs (OPA) and to HCFA components requiring publications and other materials for external audiences. Obtains Department of Health and Human Services' (HHS) clearances for HCFA publications intended for public distribution. Ensures that expenditures for public affairs materials are in accord with HHS ceilings and guidelines. Working through an Agency publications advisory group, prepares an annual publications agenda for HCFA. Develops OPA's procurement schedule for editorial services, graphics, printing, audiovisual production, and distribution for public affairs materials supporting HCFA programs. Writes and edits beneficiary material such as *Your Medicare Handbook*. Responds to routine inquiries for HCFA publications and routine information about HCFA programs. Provides technical expertise to HCFA components regarding the development of publications, audiovisual materials, graphics services, and exhibits. Arranges for the use of HCFA exhibits at meetings and conventions of major organizations. Manages the second surgical opinion program.

4. Freedom of Information Division (FGC4)

Conducts activities necessary to the receipt, management, response, and reporting requirements of the Department under the Freedom of Information Act (FOIA) regarding all correspondence received by HCFA. Maintains an orderly log of all FOIA requests received by the Agency, refers requests to the proper components within headquarters, the regions, or among carriers and intermediaries for the collection of the documents requested, prepares replies to requesters including denials of information as permitted under FOIA, and drafts briefing materials and responses in connection with appeals of denial decisions. Consults with the Office of the General Counsel and the Department of Health and Human Services' Freedom of Information Officer regarding denials, releases, and appeals. Provides guidance for FOIA coordinators in HCFA central and regional office components and maintains up-to-date knowledge of Federal Court decisions interpreting FOIA. Prepares guidelines and Medicare

and Medicaid manual changes regarding FOIA program, keeps track of any charges levied for FOIA research activities, and assures prompt payment.

B. Office of Public Liaison (FGF)

Responsible for the effective direction and implementation of HCFA policies, rules, and procedures in the areas of liaison with external medical, dental, and allied health practitioners, institutional providers of health services, and business and academic institutions responsible for the education of health care professionals. Advises the Associate Administrator for Communications (AAC) and HCFA components concerning the services, requirements, and initiatives relating to HCFA beneficiaries and recipients. Provides direction for HCFA in the area of intergovernmental affairs including advising AAC on all policy and program matters which affect other HCFA units and levels of government and advising AAC and HCFA components on the implications of initiatives in the provider, business, and insurance communities and on the impact of programmatic changes on business.

1. Division of Professional and Business Affairs (FGFI)

Maintains liaison with external medical, dental, and allied health practitioners, institutional providers of health services, representatives of the business and insurance community, and academic institutions responsible for the education of health care professionals. Provides professional knowledge and makes recommendations to the Director, Office of Public Liaison (OPL) and manages the development of policies, regulations, procedures, and legislative proposals which affect the health care field. Serves as the focal point in HCFA for external health care groups to gain an understanding of HCFA objectives. Evaluates and transmits suggestions and criticisms from the health care field to the Director, OPL. Promotes an exchange of viewpoints between the health care field and HCFA components.

2. Division of Beneficiary Services (FGF2)

Provides advisory services to the Director, Office of Public Liaison and HCFA components concerning the services for, needs of, and initiatives relating to HCFA beneficiaries and recipients. Promotes an awareness of the concerns of the elderly and needy among the HCFA components responsible for developing program policies, regulations, and legislative proposals. Analyzes the impact of

proposed HCFA policies, regulations, and instructions on beneficiaries. Maintains close working relationships with HCFA central and regional components, the Social Security Administration District Offices, other Federal agencies, State agencies, and beneficiary consumer groups to identify and assess the need for information, benefits and services, the impact of proposed HCFA actions, and the effects that operating systems and programs have on health care recipients. Presents the overall HCFA mission and promotes its acceptance by beneficiaries and representatives of their constituent organizations. Participates with other HCFA components in the development and implementation of program objectives and strategies pertaining to beneficiary services. Through direct contact with the elderly and needs, and/or their representative groups,

determines their health care requirements and provides this information to HCFA components. Responds to beneficiary and recipient referrals concerning unique or health-related problems.

e. Division of Intergovernmental Affairs (FGF3)

Provides leadership for HCFA in the area of intergovernmental affairs. Advises the Director, Office of Public Liaison on all policy and program matters which affect other units and levels of government. In coordination with the Deputy Under Secretary for Intergovernmental Affairs, the Principal Regional Officials, and other HCFA offices, meets with key State and local officials in order to strengthen HCFA's relationships with other governmental jurisdictions and to resolve sensitive intergovernmental problems and issues.

Reviews and consults with State and local officials regarding proposed HCFA policy and operational issuances. Assesses the impact on State and localities of HCFA actions involving penalties, disallowances, compliance actions, or new performance standards. Assists States and localities in requesting and obtaining technical materials, assistance, and support from appropriate HCFA components. Upon State requests, arranges for the exchange of HCFA staff with State and local agencies. Develops and provides briefings on intergovernmental affairs issues for HCFA staff. Briefs State and local agencies on HCFA's mission, organization, and functions.

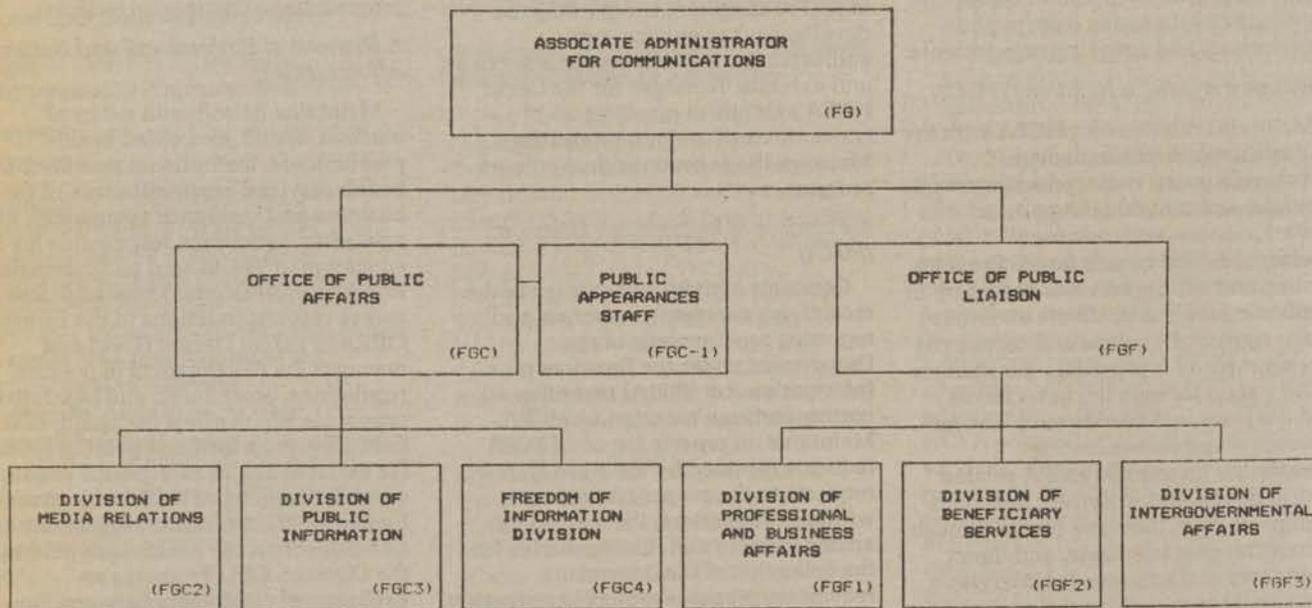
Dated: May 11, 1987.

Don M. Newman,
Acting Secretary, Department of Health and Human Services.

BILLING CODE 4120-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION
ASSOCIATE ADMINISTRATOR FOR COMMUNICATIONS

APPROVAL
DATE:



[FR Doc. 87-12468 Filed 6-1-87; 8:45 am]

BILLING CODE 4120-03-MC

Office of Human Development Services

Advisory Board on Child Abuse and Neglect; Meeting

Agency holding the meeting:
Administration for Children, Youth and Families.

Times and dates: 9:00 a.m. June 22, 1987 to 5:00 p.m. June 23, 1987.

Place: Park Terrace Hotel, 1515 Rhode Island Avenue NW., Washington, DC

Status: Advisory Board Meetings are open for public observation.

Matter to be considered: At this meeting, the Advisory Board will discuss: Coordination efforts among Federal agencies; plans for the 8th National Conference on Child Abuse and Neglect; and, other matters of importance.

Contact person for more information: Carole A. Thompson, National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, DC 20013; 202/245-2856.

Dated: May 27, 1987.

Carolyn Garnett,

HDS Committee Management Officer.

[FR Doc. 87-12464 Filed 6-1-87; 8:45 am]

BILLING CODE 4130-01-M

Child Abuse and Neglect Prevention and Treatment; Proposed Research Priorities for Fiscal Year 1988

AGENCY: Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Notice of Proposed Fiscal Year 1988 Child Abuse and Neglect Research Priorities for the Office of Human Development Services (OHDS).

SUMMARY: The National Center on Child Abuse and Neglect (NCCAN) in the Children's Bureau, Administration for Children, Youth and Families, Office of Human Development Services (OHDS) is proposing six major areas of research and four topics for research symposia in the field of child abuse and neglect prevention and treatment for public comment. Comments on these research priorities or suggestions for other research priorities are invited. No proposals, concept papers or other forms of application should be submitted at this time.

DATE: In order to be considered, comments must be received no later than August 3, 1987.

ADDRESS: Comments should be sent to: Commissioner, Administration for Children, Youth and Families, Attn: National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Josephine Reifsnnyder, (202) 245-2856.

SUPPLEMENTARY INFORMATION: The National Center on Child Abuse and Neglect (NCCAN) conducts activities designed to assist and enhance national, State and community efforts to prevent, identify and treat child abuse and neglect. These activities include: Conducting research and demonstrations; supporting service improvement projects; gathering, analyzing and disseminating information through a national clearinghouse; providing grants to eligible States for strengthening and improving child protective service programs; and coordinating Federal activities related to child abuse and neglect through an Advisory Board on Child Abuse and Neglect.

In Fiscal Year 1988, NCCAN intends to continue the Information Clearinghouse on Child Abuse and Neglect, the Baby Doe Clearinghouse and to support a system for aggregating data from official reports of child abuse and neglect collected by the States.

There are two types of research priorities proposed in this announcement. These present an expanded approach to previous research efforts supported by the National Center. The first type is to establish priorities for specific research projects, including support for one longitudinal study, funding of four specific research areas, and financial assistance for field initiated research. The second type proposes four national symposia to address critical topical issues of major concern to academicians, practitioners and policy makers.

As required by Pub. L. 95-266 of April 24, 1978, and as has been done since that time, OHDS solicits specific comments and suggestions concerning the subject areas proposed. Suggestions also may also be made on research topics not covered in this announcement, but which are timely and relate to specific needs in the field of child abuse and neglect. Suggestions for Fiscal Year 1988 research priorities are intended to build on the current base of knowledge in child abuse and neglect and its prevention, identification and treatment. These studies are to benefit the field and lead to improved services for children and their families.

OHDS has funded numerous projects on a wide range of subjects as a result of these public comments. The actual solicitation of applications will be published at a later date. No proposals, concept papers or other forms of application should be submitted at this time. Any such submission will be discarded. Applications for funding will be accepted only in response to the OHDS Coordinated Discretionary Funds Program Announcement to be published in the *Federal Register*.

No acknowledgments will be made of the comments in response to this notice, but all comments will be considered in preparing the priorities for child abuse and neglect research activities to be included in the Fiscal Year 1988 OHDS Coordinated Discretionary Funds Program Announcement. A copy of this OHDS program announcement will be sent to all persons who comment on this Notice. OHDS anticipates that the program announcement for the Coordinated Discretionary Funds Program will be published in late summer of 1987.

Proposed Child Abuse and Neglect Research Program for Fiscal Year 1988

1. Research Priorities for Soliciting Discrete Projects

a. Longitudinal Study

The National Center proposes to support a developmental grant to design a longitudinal life-course study of families at risk of or involved with child maltreatment. It is anticipated that the study will help contribute to our knowledge of the etiological, casual and ecological understandings of child maltreatment. By focusing on child and family development and examining systems theories, the study will derive new insights into intervention, prevention, amelioration or treatment as experienced by the study sample. The development grant will be used to prepare a scientifically valid, comprehensive and feasible longitudinal study design including the following: A critical review of the pertinent literature; identification of specific study issues; design of a sampling framework, including sample attrition and retention; identification of instrumentation available or to be developed; and outline of a problem identification and resolution methodology.

The Center may involve other Federal agencies and private foundations in the support of this effort.

b. Child Fatalities

One study has estimated that, in 1986, at least 1,200 children died as the result of abuse and neglect. Another study suggests the number may be closer to 5,000. Half the children died of battering, single violent incidents or the cumulative result of repeated episodes. The other half died because of neglect.

Some studies indicate that it is difficult or impossible to predict a child abuse or neglect fatality. Consequently, in order to make advances in the prevention of child fatalities, it is necessary to examine the issue of prediction more closely.

Some studies indicate that in most cases the perpetrator of the child fatality is male. Statistics also indicate that the child is most often two years old or younger. However, while these factors have been recognized, precise indicators of the factors potentially leading to a child fatality have not been forthcoming.

Research is needed to determine if there are clear causes (e.g., personality attributes of the parent, specific child traits or conditions, precise environmental factors) of each of the following:

- Approximately fifty percent of child fatalities result from child neglect, and
- Approximately fifty percent of child fatalities result from one incident of child abuse, or the cumulative impact of repeated incidents of child abuse.

Additionally, if clear cause is indicated for any of the above groups of fatalities, such indicators will assist protective services decisionmaking in the field.

c. Impact of Investigations

The number of reports of suspected child abuse and neglect received by Child Protective Services agencies has escalated at a rate often beyond the agencies' capacity to respond fully to each report. In an effort to more effectively channel available resources, many States have implemented risk assessment systems to identify and investigate the most serious cases. These systems are utilized by intake workers to determine probable cause for further investigation of the report.

As a result of this process, increasing numbers of families are being "screened out". As a corollary to current study efforts on various risk assessment systems, we need to examine if these families come into the protective services system at a later date and with more serious implications. We need also to examine what at an early intervention or warning stage could have been effective in reducing the

potential for subsequent family dysfunction.

Research is needed to answer some critical questions:

- What services, if any, are provided to these families?
- What is the impact on families screened out at intake?
- What is the return rate of these families?
- What is the degree of family dysfunction?
- What is the nature of the abuse and/or neglect at the later date?
- Do any of the above vary by the level of training of the intake worker?

d. Relationship Between Child Abuse and Teen Pregnancy

In past years, the provision of parent support and educational services to teenage parents has been a primary focus on child maltreatment prevention efforts. The rationale for this focus has been the assumption that parents in this age group represent a high risk population as potential child abusers. While anecdotal evidence from numerous demonstration programs seems to bear out this assumption, contradictory findings have emerged from other research studies.

Further research is needed in this area for two purposes. First, to test the validity of the assumption that child maltreatment among teenage mothers is more prevalent than maltreatment among parents in other age groups; secondly, to explore the unique causal factors for maltreatment that may exist among these parents, including those that identify high risk sub-populations. Such factors may include situational stresses, level of emotional and psychological maturity, economic dependency, parental victimization as a child, and lack of parenting skills.

e. Child Victim/Witness in Criminal Proceedings

Children victimized by the crime of abuse, particularly child sexual abuse, are traumatized by the experience, suffering both physically and emotionally from their abuse. Further trauma results from their encounters with the administrative and justice systems which should be primary agents for protecting the child and delivering needed treatment services and care. Child victims undergo numerous pre-trial interviews and questioning, in lengthy sessions, by a variety of officials in the child protective service system and the justice system. These young victims are expected to recall repeatedly a myriad of facts and later serve as competent witnesses in an imposing courtroom setting.

To alleviate this recognized trauma, an increasing number of States have developed alternatives to the traditional series of interviews and interrogations prior to the court hearing. One promising alternative has been the video taping of a child's account of the offense(s) committed against him/her. This alternative has been used to reduce the number of lengthy interview sessions which need to be conducted with the child victim/witness.

With increasing acceptance and use by a number of jurisdictions, an examination of the following research questions needs to be pursued:

- How does the video taping of interviews meet the needs of all the difference agencies responsible for the investigation and prosecution of the abuse and the diagnosis and treatment for the child victim and family?
- In order for the video taped interview to be established as valid and useful, what factors need to be considered?
- In addition to using the video taped interview for obtaining information that could lead to the discovery of relevant admissible evidence, what other uses can be made of the interview?
- What are the necessary educational, training, and experiential requirements for the interviewer of the child? For which professional discipline, e.g., social work, law enforcement?
- What trauma, if any, is associated with the video taped interview, and how can this be minimized?

f. Field Initiated Research

OHDS is interested in supporting research initiated by researchers in the child abuse and neglect field, to carry out the legislative responsibilities established for the National Center on Child Abuse and Neglect as follows:

- ... Conduct research on the causes, prevention, identification, and treatment of child abuse and neglect, and on appropriate and effective investigative, administrative and judicial procedures in case of child abuse.

Basic research in the behavioral and social sciences which contributes to theory development is not within the purview of this announcement.

OHDS is soliciting specific comments on the appropriateness of field initiated research as a category, and/or what specific substantive guidance or direction should be included in the final announcement.

2. Research Symposia

In addition to soliciting applications for the above described studies, during Fiscal Year 1988 the National Center

will convene four research symposia with knowledgeable groups of selected experts on subject areas of critical concern to the field. The criteria for selecting the topics are those issues on which some research and demonstration efforts have occurred by for which there is no clear direction for further development.

The purpose of these symposia is to review what is known and needs implementation, and what is unknown and needs examination. The symposium may also provide advice on multi-year strategies to implement the needed research. This will be accomplished by bringing together small groups of selected experts who will assess the major issues, identify trends and problems in the field, and prepare substantive symposia reports of publishable quality.

The four proposed subject areas are:

- a. Child Neglect
- b. Child Sexual Abuse
- c. Intervention Approaches for Child Maltreatment
- d. Child Abuse and Neglect: Systems Issues at the Community Level

a. Child Neglect

A monograph based on a Child Neglect Symposium held at the 1985 Seventh National Conference on Child Abuse and Neglect will be available in the near future. NCCAN is currently proposing a follow-up symposium to provide a closer examination of research issues in assessment and management of child neglect. Research issues to be addressed would include the following:

- The validity of the practice of assigning child neglect a lower priority than child abuse, as a way of responding to an increased level of reporting;
- Appropriate time periods for treatment of various types of neglecting families;
- Need to evaluate and treat children's developmental lags as well as behaviors of parents;
- Alternative treatment strategies for families whose neglect is primarily influenced by poverty;
- Use of long term support such as foster placement of the whole family or use of long term community aides, for parents functioning at a borderline level (retardation, mental illness).

b. Child Sexual Abuse

More than any other single form of child maltreatment, child sexual abuse has been the object of public attention and research efforts. As a result, there has been a rapid accumulation of research and demonstration findings in

the past few years. Despite this fact, child sexual abuse is most often hidden; as evidenced by discrepancies in studies of incidence and prevalence, and is still frequently misunderstood by both the public and professionals.

An urgent need exists to sort through newly emerging data on child sexual abuse and uncover those facts which can be used to enlighten the public, inform treatment approaches and lessen the risk of abuse among our nation's children.

Some of the issues which need to be addressed include:

- How widespread is the problem and are the numbers growing?
- What factors lead individuals to commit sexual offenses against children?
- How serious a risk factor is sexual abuse for long term mental health?
- What treatment approaches for the victim and perpetrator exist and how effective are they?
- What is the usefulness and advisability of various prevention approaches?

c. Intervention Approaches for Child Maltreatment

The past decade has seen the proliferation of programs designed to treat the victims of abuse and neglect. These treatment modalities include psychiatric counseling, medical and legal services, support groups, self-help efforts, and multidisciplinary approaches. One disturbing result of this growth of intervention strategies has been confusion among professionals regarding the most appropriate treatment intervention to apply when abuse cases arise. There is no general consensus among responsible professionals regarding the effectiveness of treatment modalities for discrete abuse and neglect cases. Further, many authorities agree that the emotional damage resulting from inappropriate treatment interventions of "helping agents" may equal, or even exceed, the harm caused by the abusive incident.

Clearly, there is a pressing need to review what is known about the relative effectiveness of different treatment approaches under various conditions and to provide professionals in the field with better information with which to guide their selection of an appropriate intervention strategy.

A comprehensive review of this topical areas would require that the following questions be addressed:

- Are certain treatment modalities more effective with some forms of abuse than others?

- Should some forms of maltreatment receive priority over others in the need for intervention?

- Should treatment approaches vary in relation to characteristics of the abuse, such as its duration and intensity?

- Should treatment approaches vary according to the child victim's characteristics such as sex, age and developmental maturity?

- How should treatment for and/or punitive actions against the perpetrators be selected on the basis of factors such as the nature of the relationship between the victim and the perpetrator and existing legal requirements?

- What consideration should be given to certain situational factors such as parental attitudes toward the child and the incident(s), and the existence of community, peer and family support mechanisms?

- To be effective what are the requirements in terms of length and intensity of treatment and staffing for identified intervention strategies?

d. Child Abuse and Neglect: Systems Issues at the Community Level

Child maltreatment represents a complex problem that requires the involvement of a broad range of professional disciplines, community agencies and resources. Depending on the form and severity of maltreatment, and the intervention of some combination of community social services, law enforcement and the courts, medical and mental health services as well as the educational systems may be required.

In recent years, the complexity of cases, along with escalating caseloads due to increased reporting, has created the risk for greater fragmentation and lack of coordination in responding to reports of child abuse and neglect. As a result, successful intervention in these cases has become more difficult to achieve.

A growing body of literature emphasizes the need to go beyond individual agency efforts in order to establish on-going coordinating mechanisms among community agencies at the administration as well as the service delivery levels.

Little research now exists to guide communities in developing coordinated, multidisciplinary approaches capable of providing coherent, cost effective, multidisciplinary and minimally disruptive intervention strategies for children and their families. Research may be needed to suggest possible coordinated response systems within differing communities. Such exploration

should cover the areas of system design, structure, membership, functions and resources.

This seminar proposes to examine the local community systems affecting the response to child maltreatment. Studies that examine the organizational context, information network, system design, administration, staffing, resource allocation, decision process, and operations of child maltreatment systems or system components will be utilized to increase our knowledge of what is known and needs implementation and what is unknown and needs examination.

Issues to be addressed should include, but not be limited to, the following:

- The critical decision path, authority, responsibility and accountability, from the reporting of the child maltreatment to implementation of protective services;
- The information flow within and among agencies that facilitates investigation, assessment, case plan, court hearings and efforts at treatment;
- Review and control procedures to minimize decisions that result in failure to respond appropriately, further harm to the child or excessive involvement of false-positive cases; and
- Organizational and legal barriers for interagency coordination in dealing with child maltreatment.

(Catalog of Federal Domestic Assistance Program Number: 13.870, Administration for Children, Youth and Families—Child Abuse and Neglect Discretionary Activities)

Dated: May 27, 1987.

Dodie Livingston,

Commissioner, Administration for Children, Youth and Families.

Approved: May 27, 1987.

Jean K. Elder,

Assistant Secretary for Human Development Services-Designate.

[FR Doc. 87-12361 Filed 6-1-87; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-970-07-4910-10-2410; ES 31684]

Proposed Reinstatement of Federal Oil and Gas Lease, Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed reinstatement of a terminated oil and gas lease.

SUMMARY: Federal oil and gas lease ES 31684 terminated automatically by

operation of law on December 1, 1986 (30 U.S.C. 188).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Johnson at (703-274-0160).

SUPPLEMENTARY INFORMATION: 1. A petition for reinstatement of ES 31684 was filed by Stephanie A. Adams (Lessee) under section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

2. The lessee has met all the following requirements of reinstatement:

- (a) \$500—Reimbursement of Department Administrative Cost.
- (b) \$9,404—Back Rental Payments.
- (c) \$128—Estimated Publication Cost.

3. The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to \$5.00 per acre per year, and royalty increased to 16% percent beginning December 1, 1986.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 87-12209 Filed 6-1-87; 8:45 am]

BILLING CODE 4310-GJ-M

Fish and Wildlife Service

[FES 87-21]

Availability of Final Environmental Impact Statement; Comprehensive Conservation Plan (CCP) and Wilderness Review; Kodiak National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of Final Environmental Impact Statement (EIS) for the Comprehensive Conservation Plan (CCP) and Wilderness Review for the Kodiak National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service has prepared a final Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (CCP/EIS/WR) for the Kodiak National Wildlife Refuge, Alaska, pursuant to section 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The final CCP/EIS/WR describes four alternatives for managing the refuge; and the environmental consequences of implementing each alternative. The document also reviews the suitability of all federal lands in the refuge for

possible wilderness designation and inclusion in the National Wilderness Preservation System.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION: A summary of the Final CCP/EIS/WR has been prepared and will be sent to all persons and organizations who participated in any part of the planning process, such as scoping meetings, workshops, or in other types of communications with the planning team. In addition, copies of the summary will be sent to all persons who have requested them. Copies of the complete final CCP/EIS/WR will be sent to Federal and State agencies, Native regional and village corporations, local governments, and other organizations and individuals who have already requested copies. Limited copies of the documents are available upon request from Mr. Knauer. Copies of the Final CCP/EIS/WR are available at the office of the Regional Director, at the above address; at the Kodiak National Wildlife Refuge Office, Kodiak, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, Department of the Interior, 18th & C Street, NW., Washington, DC 20240

U.S. Fish and Wildlife Service, Refuges and Wildlife, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW., Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225.

Dated: May 22, 1987

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 87-12442 Filed 6-1-87; 8:45 am]

BILLING CODE 4310-55-M

National Park Service**National Register of Historic Places;
Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 23, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 17, 1987.

Carol D. Shull,
Chief of Registration, National Register.

ALABAMA**Lee County**

Opelika, *Geneva Street Historic District*, Roughly bounded by S. Seventh, Glenn, Stowe, Geneva, and S. Tenth Sts., and Ave. C

ARKANSAS**Marion County**

Yellville, *Carter—Jones House*, 30 Carter St.

Pulaski County

Little Rock, *Turner, Ledbetter House*, 1700 S. Louisiana St.

CALIFORNIA**Los Angeles County**

Pasadena, *Home Laundry*, 432 S. Arroyo Parkway

CONNECTICUT**Litchfield County**

Goshen, *West Goshen Historic District*, Roughly bounded by CT 4, Beach, Mill and Milton Sts., and Thompson Rd.

FLORIDA**Dade County**

Opa-Locka, *Opa-Locka Railroad Station* (*Opa-Locka TR*), 490 Ali Baba Ave.

INDIANA**Monroe County**

Bloomington, *Princess Theatre Building* (*Boundary Increase*), 208 N. Walnut St.

KANSAS**Brown County (also in Doniphan Cty.)**

Rulo vicinity (*Site No. RH00-062 (Nebraska—Kansas Public Land Survey TR)*), 6½ mi. SE of Rulo; 200 ft. W of rd. between Rulo, NE and White Cloud, KS (also in Nebraska)

Dickenson County

Chapman vicinity, *St. Patrick's Mission Church and School*, NE of Chapman

Republic County (also in Washington Cty.)

Mahaska vicinity, *Site No. JF00-072 (Nebraska—Kansas Public Land Survey*

TR), Jct. of Thayer, Jefferson, Washington, and Republic County lines (also in Nebraska)

NEBRASKA**Jefferson County (also in Thayer Cty.)**

Mahaska vicinity, *Site No. JF00-072 (Nebraska—Kansas Land Survey TR)*, Jct. of Thayer, Jefferson, Washington, and Republic County lines (also in Kansas)

Richardson County

Rulo vicinity, *Site No. RH00-062 (Nebraska—Kansas Public Land Survey TR)*, 6½ mi. SE of Rulo; 200 ft. W of rd. between Rulo, NE and White Cloud, KS (also in Kansas)

OHIO**Franklin County**

Columbus, *North High School*, 100 Arcadia Ave.

Hamilton County

Cincinnati, *Coca-Cola Bottling Corporation*, 1507 Dana Ave.

Miami County

Troy vicinity, *Weddle, Callahill and Prissilla, House*, 5710 LeFevre Rd.

Portage County

Ravenna, *Griffin, Alexander B., House*, 417 S. Walnut St.

Washington County

Marietta, *Becker Lumber and Manufacturing Company*, 121 Pike St.

PUERTO RICO**Ponce County**

Ponce, *Banco Credito y Ahorro Ponceno*, Marina and Amor Sts.

Ponce, *Banco de Ponce*, Amor and Comercio Sts.

RHODE ISLAND**Kent County**

Coventry, *Briggs, Joseph, House—Coventry Town Farm*, Town Farm Rd.
Warwick, *Cowesett Pound*, Cowesett Rd.

Providence County

Providence, *America Street School*, 22 America St.

Smithfield, *Saint Thomas Episcopal Church and Rectory*, Putnam Pike

TEXAS**Tarrant County**

Westworth, *Buck Oaks Farm*, 6312 White Settlement Rd.

UTAH**Utah County**

Fairfield, *Fairfield District School*, 59 N. Church St.

WISCONSIN**Outagamie County**

Black Creek, *Peters, George, House*, 305 N. Maple St.

Rock County

Janesville, *Payne—Craig House*, 2200 W. Memorial Dr.

St. Croix County

Hudson, *Phipps, William H., House*, 1005 Third St.

[FR Doc. 87-12489 Filed 6-1-87; 8:45 am]

BILLING CODE 4310-70-M

**Alaska Region Subsistence Resource
Commission Meeting; Correction**

This document deletes in two places the words, "Cape Krusenstern National Monument and", in the Federal Register Notice on the above subject, which was published on May 20, 1987, Vol. 52, No. 97 on page 18965.

The first place for deletion is under the heading, **SUMMARY**, 3rd and 4th lines, remove Cape Krusenstern National Monument and"

The second place for deletion is under the heading, **SUPPLEMENTARY INFORMATION**, 2nd and 3rd lines, remove "Cape Krusenstern National Monument and"

Russell K. Olsen,

Chief, Administrative Services Division.

[FR Doc. 87-12363 Filed 6-1-87; 8:45 am]

BILLING CODE 4310-70-M

**National Capital Memorial Advisory
Commission; Meeting**

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, June 16, 1987, at 1:30 p.m., in the Conference Room at the National Park Service, National Capital Regional Headquarters Building, 1100 Ohio Drive SW., Room 234, Washington, DC 20242.

The Commission was established by Pub. L. 99-652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator

with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

- William Penn Mott, Chairman, Director, National Park Service, Washington, DC
- George M. White, Architect of the Capitol, Washington, DC
- Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC
- J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC
- Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC
- Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC
- William Sullivan, Commissioner, Public Buildings Service, Washington, DC
- Caspar W. Weinberger, Secretary, Department of Defense, Washington, DC

The purpose of the meeting will be to review and take action on the following:

- I. Preliminary Design Review of Authorized Memorials.
 - a. American Armored Forces Memorial—Pub. L. 99-620.
 - II. Site Selection of authorized memorials.
 - a. National Law Enforcement Officers Memorial—Pub. L. 98-534.
 - b. Black Revolutionary War Patriots Memorial—Pub. L. 99-558.
- III. Discussion of Regulations Pursuant to Pub. L. 99-652.
- IV. General Business.

The meeting will be open to the public. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Mr. John G. Parsons, Associate Regional Director, Land Use Coordination, National Capital Region, at 202-426-7750. A transcript of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Land Use Coordination, National Capital Region, Room 201, 1100 Ohio Drive SW., Washington, DC 20242.

Dated: May 22, 1987.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 87-12490 Filed 6-1-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 190)]

CSX Transportation, Inc.; Abandonment; In Harnett County, NC; Findings

The Commission has found that the public convenience and necessity permit CSX Transportation, Inc., to abandon its 5.488-miles (measured distance) line of railroad between milepost SDS 53.00 and SDS 56.66 and mileposts SDE 0.00 and SDE 2.02, in Harnett County, NC.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to continue; and (2) the assistance likely would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The offeror shall type the following notation in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Lamboley dissented with a separate expression.

Noreta R. McGee,
Secretary.

[FR Doc. 87-12452 Filed 6-1-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances; Establishment of the 1987 Aggregate Production Quota for Methylphenidate

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of an established 1987 aggregate production quota.

SUMMARY: This notice establishes the 1987 aggregate production quota for methylphenidate.

DATE: This order is effective June 2, 1987.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 Eye Street, NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires that the Attorney General establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On March 26, 1987, a notice proposing the aggregate production quota for methylphenidate was published in the *Federal Register* (52 FR 9716). All interested parties were invited to comment on or object to the proposal on or before April 27, 1987. MD Pharmaceutical, through counsel, filed comments on the 1987 proposed aggregate production quota for methylphenidate.

The comments did not request a hearing on the 1987 proposed aggregate production quota for methylphenidate. The comments also made reference to evidence presented at hearings conducted before an Administrative Law Judge on the 1986 individual manufacturing quotas and aggregate production quota for methylphenidate, and stated that MD Pharmaceutical was "encouraged" by the willingness of DEA to increase the aggregate production quota of this drug. Ciba-Geigy, the other methylphenidate manufacturer, filed no comments on the proposed aggregate production quota for methylphenidate. Inasmuch as the proceedings on the 1986 methylphenidate quotas are ongoing, the Administrator did not consider the comments of MD Pharmaceutical on evidence introduced in those proceedings.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such

quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. Code 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the 1987 aggregate production quota for methylphenidate, expressed in grams of anhydrous base, be established as follows:

Basic class	1987 aggregate production quota
Schedule II Methylphenidate	2,682,000

Dated: May 26, 1987.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 87-12475 Filed 6-1-87; 8:45 am]

BILLING CODE 4410-09-M

Johnson Matthey, Inc.; Registration as Manufacturer of Controlled Substances

By Notice dated March 13, 1987, and published in the **Federal Register** on March 20, 1987; (52 FR 8987), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Pethidine (meperidine) (9230)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 27, 1987.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-12476 Filed 6-1-87; 8:45 am]

BILLING CODE 4410-09-M

Johnson Matthey, Inc., Application To Register as Manufacturer of Controlled Substances; Correction

On November 18, 1986, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to register with the Drug Enforcement Administration (DEA) as a bulk manufacturer of Pethidine (meperidine) (9230), Sufentanil (9740) and Fentanyl (9801). Notice of application was published in the **Federal Register** (52 FR 8987) on March 20, 1987; however, Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate (9233) was inadvertently omitted from the notice.

Any other such applicant and any person who is presently registered with DEA as a bulk manufacturer of Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate (9233) may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than July 2, 1987.

Dated: May 27, 1987.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-12477 Filed 6-1-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications; Addition to List

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The additions to the labor surplus area list are effective June 1, 1987.

SUMMARY: The purpose of this notice is to announce additions to the list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue NW., Room N4470, Attention: TEES, Washington, DC 20210. Telephone: 202-535-0185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981 (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10482 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on March 26, 1987 (52 FR 9727).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to

20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are added to the list of labor surplus areas, effective June 1, 1987.

The following additions to the list of labor surplus areas are published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC, on May 28, 1987.

Roger D. Semerad,
Assistant Secretary of Labor

Additions to the Annual List of Labor Surplus Areas

(June 1, 1987)

Labor surplus area	Civil jurisdiction included
New York:	
Oswego County.....	Oswego County.
Oklahoma:	
Carter County.....	Carter County.
Craig County.....	Craig County.
Creek County.....	Creek County.
Garvin County.....	Garvin County.
Jefferson County.....	Jefferson County.
Pawnee County.....	Pawnee County.
Rogers County.....	Rogers County.
Woodward County.....	Woodward County.

[FR Doc. 87-12495 Filed 6-1-87; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-125-C]

Consol Pennsylvania Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consol Pennsylvania Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Bailey Mine (I.D. No. 36-07230) located in Greene County, Pennsylvania. 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 equipment which is taken into or used in by the last open crosscut of any such mine be permissible and maintained in permissible condition.

2. The mine is developing Mains, Sub-Mains, and Longwall development panels as a continuing mining cycle. The Mains and Sub-Mains development blocks are normally 100 feet by 100 feet to maintain adequate roof support. The Longwall development panels have employed the 200 foot block to improve roof control and control abutment pressure during Longwall mining.

3. As an alternate method, petitioner proposes to use 800 feet of trailing cable supplying power to shuttle cars from 480 volt alternating current systems, except that the maximum length may be increased to 1,000 feet when necessary to mine around oil and gas wells. In further support of this request, petitioner states that:

(a) The shuttle car trailing cables shall not be smaller than number 4 AWG;

(b) The maximum instantaneous settings of the circuit breakers protecting the shuttle car trailing cables will be 500 amperes;

(c) Where circuit breakers with adjustable instantaneous trip units are used to protect the shuttle car trailing cables, each circuit breaker that protects a shuttle car trailing cable will have a warning label indicating the maximum allowable instantaneous setting(s). During each production shift, persons designated by the operator will verify that the instantaneous settings of the circuit breakers that protect the shuttle car trailing cables do not exceed the specified settings;

(d) The tolerance of replacement instantaneous trip units and of instantaneous trip units in replacement circuit breakers will not exceed plus or minus 15 percent;

(e) The shuttle car haulage roads, the locations of the primary trailing cable anchoring points, and the locations of the belt feeders will be arranged to prevent the shuttle cars from running over their trailing cables, minimize or eliminate the need for secondary (temporary) trailing cable anchoring points, and minimize back-spooling;

(f) Where it is not possible to eliminate the need for secondary (temporary) anchoring points for the shuttle car trailing cables, miners will be required to wear dry work gloves in good condition while handling energized shuttle car trailing cables and attaching and removing the cables from the secondary (temporary) anchors;

(g) Trailing cable anchors that minimize tensile forces on the shuttle car trailing cables will be used;

(h) Mining methods and operating procedures will be such that the shuttle car trailing cables are protected against mechanical and thermal damage;

(i) Persons designated by the operator will visually examine the shuttle car trailing cables on a daily basis to ensure that the cables are in safe operating condition. Any cable that is not in safe condition will be removed, repaired or replaced; and

(j) All persons that will be affected by this petition will receive training.

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 July 2, 1987. Copies of the petition are available for inspection at that address.

Dated: May 20, 1987.

Patricia W. Silvey,
Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-12447 Filed 6-1-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-13-M]

The Morie Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

The Morie Company, Inc., 1201 N. High Street, Millville, New Jersey 08332 has filed a petition to modify the application of 30 CFR 56.9087 (audible warning devices and back-up alarms) to its Upper Township Division (I.D. No. 28-00819) located in Cape May County, New Jersey. 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 heavy duty mobile equipment be provided with audible warning devices. When the operator of such equipment has an obstructed view to the rear, the equipment shall have have either an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it is safe to back up.

2. At a recent township meeting, residents expressed their concern about the noise levels from the nearby mining operation, which operates from 6:00 a.m. to 11:00 p.m.

3. As an alternate method, petitioner proposes to install strobe light back-up devices to front-end loaders for the entire period that the plant is in operation.

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 July 2, 1987. Copies of the petition are available for inspection at that address.

Dated: May 21, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-12448 Filed 6-1-87; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration**Advisory Council on Employee Welfare and Pension Benefit Plans; Work Group Meeting**

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Employee Benefit Research of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 1:30 p.m., Monday, June 29, 1987, at the American Association of Retired Persons, 1909 K Street NW., Room 830, Washington, DC 20049.

This seven-member work group was formed by the Advisory Council to study issues relating to employee benefit programs for employee welfare plans covered by ERISA.

The purpose of the June 29 meeting is to receive reports on past research undertaken by the government, research now underway, and research plans for the future. The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups on what research is needed on health, pension, and other employee benefit issues. This could include data collection, regulatory analysis, policy research, other.

Individuals, or representatives or organizations, wishing to address the work group should submit written requests on or before June 22, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses

may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 22, 1987.

Signed at Washington, DC this 28th day of May, 1987.

David M. Walker,

Deputy Assistant Secretary for Pension and Welfare, Benefits Administration.

[FR Doc. 87-12480 Filed 6-1-87; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Dockets Nos. 50-325 and 50-324]

Carolina Power & Light Co.; Issuance of Amendments to Facility Operation Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 109 and 136 to Facility Operating Licenses Nos. DPR-71 and DPR-62 issued to the Carolina Power & Light Company (the licensee), which revised the Technical Specifications for operation of the Brunswick Steam Electric Plant, Units 1 and 2 (the facility), located in Brunswick County, North Carolina. The amendments are effective as of the date of issuance and shall be implemented within 60 days.

The amendments change the Technical Specification Surveillance Requirement to define the acceptable loading of the B division battery bus to allow operation with a new uninterruptible power supply system.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the *Federal Register* on December 8, 1986 (51 FR 44158). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding

of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because there will be no significant environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facilities.

For further details with respect to the action, see: (1) The application for amendments dated November 7, 1986, (2) Amendment Nos. 109 and 136 to Facility Operating Licenses Nos. DPR-71 and DPR-62, (3) the Commission's related Safety Evaluation, and (4) the Environmental Assessment dated May 22, 1987 (52 FR 19787). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Bethesda, Maryland, this 27th day of May 1987.

For the Nuclear Regulatory Commission,
Elinor G. Adensam,
Project Directorate II-1, Division of Reactor Projects—I/II.

[FR Doc. 87-12518 Filed 6-1-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271-OLA; (ASLBP No. 87-547-02-LA)]

Vermont Yankee Nuclear Power Corp., Vermont Yankee Nuclear Power Station; Hearing

May 26, 1987.

Before Administrative Judges: Charles Bechhoefer, Chairman Glenn O. Bright, Dr. James H. Carpenter.

On December 31, 1986, the Nuclear Regulatory Commission published in the *Federal Register* an amended notice of opportunity for hearing with respect to a proposed operating-license amendment which would permit an expansion in the storage capacity of the spent fuel pool of the Vermont Yankee Nuclear Power Station, located in Vernon, Vermont, approximately five miles south of Brattleboro, Vermont (51 FR 47324). Three requests for a hearing and petitions for leave to intervene were received. On February 13, 1987, an Atomic Safety and Licensing Board was

established to rule upon these requests/petitions and to preside over the proceeding in the event that a hearing were ordered.

After holding a prehearing conference, the Atomic Safety and Licensing Board issued a Prehearing Conference Order (LBP-87-17) on May 26, 1987, granting the requests for a hearing and petitions for leave to intervene filed by the New England Coalition on Nuclear Pollution (NECNP) and by James M. Shannon, Attorney General of the Commonwealth of Massachusetts (Massachusetts). The Order denied the request of the State of Vermont but permitted Vermont to participate as an interested State pursuant to 10 CFR 2.715(c) if it wishes to do so.

Please take notice that a hearing will be conducted in this proceeding. Consistent with the notice of opportunity for hearing referenced above, this hearing will be conducted under the hybrid hearing procedures set forth in 10 CFR Part 2, Subpart K (§ 2.1101 *et seq.*). The Atomic Safety and Licensing Board designated to preside over the proceeding consists of Glenn O. Bright, Dr. James H. Carpenter, and Charles Bechhoefer, who will serve as Chairman of the Board.

During the course of the proceeding, the Board will conduct an oral argument, as provided by 10 CFR 2.109 and 2.1113, and may hold one or more prehearing conferences pursuant to 10 CFR 2.752. The public is invited to attend the oral argument, all prehearing conferences, and any evidentiary hearing which may be held pursuant to 10 CFR 2.1115. The Board will establish the schedules for any such sessions at a later date, through notices to be published in the *Federal Register* and/or made available to the public at the Public Document Rooms.

Supplementing the opportunity afforded at the first prehearing conference, during some or all of these sessions, and in accordance with 10 CFR 2.715(a), any person, not a party to the proceeding, will be permitted to make a limited appearance statement either orally or in writing, setting forth his or her position on the issues. These statements do not constitute testimony or evidence but may assist the Board and/or parties in the definition of issues being considered. The number of persons making oral statements and the time allotted for each statement may be limited depending upon the time available at various sessions. Written statements may be submitted at any time. Persons desiring to make a limited appearance are requested to inform the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory

Commission 1717 H Street, NW., Washington, DC 20555. A copy of any statement or request should also be served on the Chairman of the Atomic Safety and Licensing Board.

Documents relating to this proceeding are on file at the Local Public Document Room, located at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301, as well as at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland, this 26th day of May, 1987.

For the Atomic Safety and Licensing Board,
Charles Bechhoefer, Chairman,
Administrative Judge.

[FR Doc. 87-12515 Filed 6-1-87; 8:45 am]
BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

- (1) Collection title: Request for Review of Part B Medicare Claim
- (2) Form(s) submitted: G-790, G-791
- (3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
- (4) Frequency of use: On occasion
- (5) Respondents: Individuals or households
- (6) Annual responses: 4,100
- (7) Annual reporting hours: 1,025
- (8) Collection description: The Board administers the Medicare program for persons covered by the railroad retirement system. The requests provide the means for obtaining reviews of the determinations made by Travelers on claims for Part B medicare benefits.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer Elaina

Norden (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR. Doc. 87-12444 Filed 6-1-87; 8:45 am]
BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24500; File No. SR-MSRB-87-3]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Uniform Practices and Customer Confirmations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 8, 1987, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("the Board") is filing amendments to rules G-12(f) and G-15(d), on book-entry deliveries, (hereafter referred to as "the proposed rule change"), as follows:¹

Rule G-12 Uniform Practice
(a)-(e) No change.
(f) Use of Automated Comparison, Clearance, and Settlement
(i) No change.

(ii) Notwithstanding the provisions of section (e) of this rule, if a transaction submitted to one or more registered clearing agencies for comparison in accordance with paragraph (i) above has been compared successfully, and if such transaction involves municipal securities which are eligible for deposit at one or more securities depositories registered with the Securities and Exchange Commission in which both parties to the transaction are members, the parties to such transaction shall settle the transaction by book-entry

¹ Italics indicate new language; [brackets] indicate deletions.

through the facilities of the depository or through the interface or link, if any, between the depositories. The provisions of this paragraph (ii) shall not apply to transactions effected on or [after February 1, 1985.] prior to June 30, 1988, in municipal securities which are eligible only for settlement in same-day funds in a securities depository registered with the Securities and Exchange Commission.

- (iii) No change.
- (g)-(l) No change.

Rule G-15 Confirmation, Clearance and Settlement of Transactions with Customers

(a)-(c) No change.

(d) Delivery-Receipt vs. Payment Transactions

(i)-(ii) No change.
 (ii) No broker, dealer, or municipal securities dealer who is, or whose clearing agent with respect to such transaction is, a participant in a clearing agency registered with the Securities and Exchange Commission shall effect a transaction in any municipal security which is eligible for book-entry settlement through the facilities of such clearing agency on a delivery vs. payment or receipt vs. payment basis for the account of a customer who is, or whose agent with respect to such transaction is, a participant in such clearing agency (or in a clearing agency interfaced or otherwise linked with such clearing agency) unless the facilities of such clearing agency (or the facilities of a clearing agency interfaced or otherwise linked with such clearing agency, as necessary) are used for the book-entry settlement of such transaction. The provisions of this paragraph (iii) shall not apply to transactions effected on or [after February 1, 1985.] prior to June 30, 1988, in municipal securities which are eligible only for settlement in same-day funds in a securities depository registered with the Securities and Exchange Commission.

(e) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G-12(f)(ii) requires book-entry delivery of inter-dealer municipal securities transactions if both dealers (or their clearing agents for the transaction) are members of a depository making the securities eligible

and the transaction is compared through a registered securities clearing agency. Rule G-15(d)(iii) prohibits dealers from granting delivery versus payment or receipt versus payment privileges on a customer transaction in which both the dealer and the customer (or their clearing agents for the transaction) are members of a depository making the securities eligible, unless book-entry delivery is used.

No depository currently makes eligible municipal securities that settle in same-day funds. The Depository Trust Company ("DTC") has informed the Board that it plans to commence on July 10, 1987, a pilot program that will provide depository services for some same-day funds securities. DTC plans to begin the pilot program with certain municipal note issues less than one year in maturity, followed by municipal securities issues with short-term put features. Any DTC participant will be allowed to participate in the pilot program, subject to the rules of the program.

The proposed rule change exempts from the application of rules G-12(f)(ii) and G-15(d)(iii) transactions in depository-eligible, same-day fund municipal securities through June 30, 1988. Without the proposed rule change, members of DTC would be required to use the same-day fund settlement system for all transactions in eligible securities which fall under the rules. DTC has requested the Board to provide a temporary exemption from the rules during the pilot phase of the program to allow dealers to become familiar with program operations prior to being required to submit all such transactions to the system. In light of the complexity of the system and the possibility that dealers may need to make adjustments in their operations during their initial use of the system, the Board concluded that a flexible approach in the application of rules G-12(f)(ii) and G-15(d)(iii) is warranted during the pilot phase of the program. (b) The proposed rule change is adopted pursuant to section 15(b)(2)(C) of the Securities Exchange Act ("the Act") which authorizes the Board to adopt rules:

designed to . . . foster cooperation and coordination with persons engaged in . . . clearing, settling, processing information with respect to, and facilitating transactions in municipal securities . . .

The proposed rule change also is consistent with section 17A of the Act, which mandates the creation of a national clearing system for securities transactions.

The proposed rule change would

promote the efficient clearance and settlement of same-day funds municipal securities by providing flexibility in dealer use of the DTC same-day funds settlement system during its pilot phase and therefore is consistent with the purposes of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change would apply uniformly to all brokers, dealers and municipal securities dealers the Board believes that it would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has neither asked for nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at

the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 23, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 22, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12455 Filed 6-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24512; File No. SR-NASD-87-3]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted copies of a proposed rule change on February 12, 1987, and an amendment thereto on March 19, 1987, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. The proposal amends Schedule D to the NASD's By-Laws to require that transactions in NASDAQ National Market System securities executed between 4:00 p.m. and 5:00 p.m. Eastern Time be reported through the NASD's Transaction Reporting System by 5:00 p.m. Eastern Time.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 24294, April 2, 1987) and by publication in the Federal Register (52 FR 11581, April 9, 1987). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved. In accordance with the letter amendment filed by the NASD on May 21, 1987, the proposed rule change will become effective on October 1, 1987, in order to allow vendors to make required changes to their systems.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: May 26, 1987.

[FR Doc. 87-12456 Filed 6-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24513; File No. SR-NSCC-87-7]

Proposed Rule Change by National Securities Clearing Corporation Relating to and Amendment to ("NSCC") Rules Concerning the Mutual Fund Settlement, Entry and Registration Verification Service ("Fund/SERV"); Notice of Filing and Immediate Effectiveness

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 19, 1987, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Note: *Italics* indicates addition; [Brackets] indicate deletions.

Mutual Fund Settlement, Entry and Registration Verification Service

Rule 52. * * *

Sec. 2. A Settling Member who desires to submit a mutual fund order (e.g. purchase, [and/or] redemption, exchange) to another Settling Member (referred to as a Mutual Fund Processor) or a Fund/SERV Member may do so by submitting order data to the Corporation on the day the order is intended to take place ("Trade Date") or, *to the extent permitted by the Corporation*, any day thereafter (hereinafter referred to as "As-Of" Orders) in such form and by such time as established by the Corporation from time to time; provided, however, that the Corporation will not accept an As-Of order for any transaction that has occurred more than six months prior to the date it is submitted.

* * * * *

Sec. 14. * * * If the registration data appears to contain the information required by the Corporation, the Corporation will transmit the data to the Mutual Fund Processor or Fund/SERV

Member in such form and by such time as established by the Corporation from time to time. *The Mutual Fund Processor or Fund/SERV Member must accept or reject the registration data in such form and by such time as established by the Corporation.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since its inception in March, 1986, NSCC's Mutual Fund Settlement, Entry and Registration Verification Service ("Fund/SERV") has resulted in nationwide participation by more than 25 broker-dealers and mutual funds. Fund/SERV currently processes over 5,000 trades a day, which translates into an average daily settlement of over \$45 million. As part of the further development of Fund/SERV, NSCC proposes to enhance the service in a number of respects to provide for additional transactions to be included in Fund/SERV and to provide for increased industry standardization.

First, NSCC proposed to process exchange transactions (i.e., the exchange of shares within a Fund group) within Fund/SERV, allowing for an automated and centralized environment for processing such transactions. NSCC, however, will only permit exchange transactions to be input on the day the order takes place. Second, NSCC proposes to require mutual funds to acknowledge that registration instructions submitted by broker-dealers either have been processed or rejected, which will provide broker-dealers with greater certainty as to the status of shares being registered by a fund.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments on the proposed rule change have been solicited or received. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the 1934 Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the 1934 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR-NSCC-87-07 and should be submitted by June 23, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: May 26, 1987.

[FR Doc. 87-12454 Filed 6-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24510; File No. SR-NYSE-87-14]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Opening and Reopening Indications

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 30, 1987, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises the Exchange's policy on reopenings. The revised policy:

- Retains the requirement of waiting at least 15 minutes from the first indication before reopening.
- Reduces the minimum delay for reopening when more than one indication is necessary from 15 minutes from the last indication to:

- 5 minutes when the last indication overlaps the prior indication
- 10 minutes when the last indication does not overlap the prior indication.

The following examples illustrate how the policy will work:

<i>Example 1:</i>			
1st indication	10:05	90-100	
2nd indication	10:08	95-105	
Earliest opening time	10:20		
<i>Example 2:</i>			
1st indication	10:05	90-100	
2nd indication	10:16	100-110	
Earliest opening time	10:26		
<i>Example 3:</i>			
1st indication	10:05	90-100	
2nd indication	10:08	101-109	
Earliest opening time	10:20		
<i>Example 4:</i>			
1st indication	10:05	90-100	
2nd indication	10:18	95-105	
Earliest opening time	10:23		

The Exchange has also identified other circumstances in which opening indications are appropriate and has determined to permit indications in those circumstances subject, in most cases, to the waiting periods described above. Thus, the revised policy:

- Permits the dissemination of an "initial indication" with the approval of a Floor Official before 9:30 for a security which is a spinoff or for which a trading halt had existed at the close of the prior trading session.
- In the case of an initial public offering, retains the current procedure which permits indications before opening the security with the approval of a Floor Director or Floor Governor.
- In any other situation, permits pre-9:30 indications with the approval of a Floor Director or Floor Governor and authorizes them to tailor the waiting periods to the circumstances of the situation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose.* The Exchange and the other CTA Plan Participants amended the plan's "Regulatory Halt" provision last year by eliminating the requirement that 15 minutes elapse after news has been fully disclosed ("T time") before the Exchange can disseminate indications of interest. (Eighth Substantive Amendment to the Restated CTA Plan; see 1/22/86 Letter to John P. Wheeler, Secretary, SEC, from John F. Cipriano, Director, NYSE and Release Nos. 34-22850 (January 31, 1986) and 34-22981 (March 7, 1986.) The Exchange recognized at that time that the change created an incongruity between the CTA Plan and the Exchange's policy on reopenings. That policy prohibits the specialist from reopening his market for 15 minutes after he has disseminated an indication in order to allow investors and other off-Floor participants time to react to the indications. The incongruity is as follows: although other markets are free to resume trading after 15 minutes as measured from *T time* (so long as the Exchange has disseminated indications of interest during that 15 minute period), the Exchange itself cannot resume trading until after 15 minutes as measured from the *time the last*

indication prints. Thus, except when the Exchange is able to disseminate an indication immediately after T time and does not disseminate a subsequent indication, the Exchange can never reopen its market as quickly as its competitors. Moreover, the restarting of the 15 minute clock with each succeeding indication means that the Exchange's time disadvantage can be quite lengthy, depending on the number of succeeding indications and the time between them.

The Exchange carefully weighed these competitive considerations against the need to provide investors and other off-Floor participants an adequate reaction time to indications. The proposed rule change reflects the Exchange's determination that, when one or more indications followed an initial indication, it could reduce the waiting period following the final indication.

The policy mandates or permits the use of indications in a variety of specified circumstances and includes authority for their use in other, unspecified circumstances. The shift of some of the futures and options contracts on stock indices to opening price settlement makes the last-noted authority take on special significance. While the precise mechanics of the Exchange's opening procedures for the June 19 "Triple Witch" expiration are not yet set, the use of pre-opening indications will be key. The Exchange can use this authority, which is designed to permit use of indications in non-routine situations, to serve as the basis for the "Triple Witch" procedures.

(b) *Statutory Basis.* The basis under the 1934 Act for the proposed rule change is section 6(b)(5), which provides in pertinent part that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act. In fact, the proposed rule change will enhance competition by permitting the Exchange to reopen a stock that has been the subject of a Regulatory Halt closer to the time that other markets can do so in those instances when reduction of the waiting period after an indication is appropriate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

An "Ad Hoc Committee on Trading Halts, Indications and Reopenings" developed the proposed rule change. The Exchange's Market Performance Committee then approved the proposal.

The Exchange has not otherwise solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-NYSE-87-14 and should be submitted by June 23, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 26, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12457 Filed 6-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24508; File No. SR-PHLX-87-01]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On March 23, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to allow the Phlx to offer European-style option contracts on the Value Line index by imposing a restriction on early exercise, and to define the term "European option" as an option contract that can be exercised only on the last trading day prior to the day it expires.

The proposed rule change was noticed in Securities Exchange Act release No. 24352 (April 16, 1987), 52 FR 13783 (April 24, 1987). No comments were received on the proposed rule change.

The rule change is designed to facilitate transactions in options. The purpose of the proposed rule change is to allow the Phlx to offer European-style contracts on the Value Line index. The Phlx described the Value Line index as a broad-based index composed of approximately 1,700 exchange-listed and over-the-counter securities. The index value consists of an equally weighted geometric average of the prices of the 1,700 securities. The Phlx presently trades American-style options of the Value Line index which are identified by the symbol XVL. The Phlx would continue to trade the American-style Value Line index options, and would differentiate the proposed European-style Value Line index options by using the symbol VLE. The Phlx states that a European exercise feature will appeal to potential Value Line index options sellers and spread traders since it restricts exercise until the trading day prior to expiration.³ Spread traders will

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240-19b-4 (1985).

³ A European option may be exercised only during a specified period (which may be as short as

Continued

thus be able to hold positions in the Value Line index without concern that one leg of their short positions may be exercised prior to the option's expiration. Sellers will benefit from the European exercise feature because the seller cannot be exercised against until expiration and, accordingly, can engage in long-range planning and strategies. Except for the European exercise feature, trading in European-style Value Line index options would be conducted in accordance with existing Phlx equity option and index option rules. The Phlx contends that the statutory basis for the proposed rule change is section 6(b)(5) of the Act in that it will facilitate transactions in securities and protect investors and the public interest.

The Commission previously has approved European-style option contracts.⁴ In approving the CBOE's proposal to convert the S&P 500 index option to a European-style option, the Commission recognized that there are advantages to both American and European-style options, with purchasers generally benefiting from American-style options and sellers from European-style. With the latter type of option, the purchaser is disadvantaged to some extent because he must rely on the continued existence of a liquid secondary market in the options in order to close out an option position before expiration. In contrast, the writer of the contract benefits from the contract's European-style feature, because the writer cannot be exercised against until expiration, and accordingly can engage in long-range planning and strategies. While the Commission recognizes that the European-style of the Value Line index may limit the flexibility of options purchasers, we also believe that the exercise feature of the contract may facilitate certain trading strategies and prove useful to investors. These

a single day), just before the option expires. This is in contrast to an American option which may be exercised by the holder at any time after it is purchased until it expires. The writer of a European option is subject to the assignment of an exercise only during the exercise period.

⁴ See Securities Exchange Act Release Nos. 22471 (September 26, 1985), 40 FR 40636, approving a proposal by the Chicago Board Options Exchange, Inc. ("CBOE") to trade European-style foreign currency options; 22309 (August 9, 1985), 50 FR 32934, approving a CBOE proposal to convert the option on the Standard & Poor's 500 Index ("S&P 500") from an American to a European-style option; 22999 (March 12, 1986), 51 FR 9733, approving a proposal by the American Stock Exchange, Inc. ("Amex") to trade European-style 13-week Treasury bill options; 23311 (June 16, 1986), 51 FR 21815, approving an Amex proposal to trade European-style options on the Institutional Index ("XII"); and 23795 (November 12, 1986), 51 FR 41684, approving a proposal by the Pacific Stock Exchange, Inc. ("PSE") to trade European-style options on the Financial News Composite Index ("FNCI").

potential risks are fully described in the Options Disclosure Document issued pursuant to Rule 9b-1 under the Act. In light of this disclosure and the absence of other regulatory concerns, the Commission is not inclined to substitute its judgment for the business judgment of the Phlx in designing the Value Line index Contract.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6⁵ and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Dated: May 22, 1987.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-12458 Filed 6-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24516; File No. SR-PSE-87-06]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

On March 27, 1987, pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act");¹ and Rule 19b-4 thereunder,² the Pacific Stock Exchange Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission a proposed rule change that would enable the PSE to issue rights to purchase special memberships.³

The proposed rule change was published for comment in Securities Exchange Act Release No. 24354 (April 16, 1987), 52 FR 13369. No comments were received on the proposed rule change.

As discussed in detail in the release soliciting comment, the PSE's proposal would permit the issuance to current seat owners of rights to purchase special memberships.⁴ These special

¹ 15 U.S.C. 78f. (1982).

² 15 U.S.C. 78e (1982).

³ 17 CFR 200.30-3 (a)(12) (1985).

⁴ 15 U.S.C. 78s(b)(1) (1984).

⁵ 17 CFR 240.19b-4 (1986).

⁶ On May 11, 1987, the Exchange filed Amendment No. 1 to its rule filing.

⁷ The PSE proposal was made subject to approval by a majority of the current 516 Exchange members. The PSE has informed Commission staff that a majority of the PSE members approved the

memberships would permit the holder to trade only the Financial News Composite Index, the PSE High Technology Index, and such other new products as may be determined by the Exchange's Board of Governors. The PSE proposes to add a new section to its Rule IX to outline the privileges, duties, obligations and limitations for holders of special options memberships.

In particular, the Exchange proposes to issue one right to each membership owner of record as of April 24, 1987. Members would be able to sell and buy rights through the Exchange's facilities and the rights would expire if not exercised by December 31, 1987. Twenty rights would be required for the purchase of a special membership, and the exercise price for the purchase of a special membership would be \$500. There currently are 516 PSE members; therefore, a maximum of 25 special memberships would be created.

The special memberships would expire on December 29, 1989, unless extended by the PSE Board of Governors, and would be able to be transferred or leased through the Exchange's facilities for a \$100 fee. Holders of special memberships would be subject to regular Exchange trading rules and fees, but would have no right to vote in any election or amendment to the PSE Constitution.⁵

In support of its proposal, the PSE argues that the creation of special memberships would allow it to improve liquidity and facilitate transactions in index options. The Exchange believes that it would be able to attract additional capital for index options trading, which it feels is sufficiently distinct from equity options trading to justify special memberships.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6⁶ and the rules and regulations thereunder. The PSE proposal is designed to increase market maker participation in index options and other new products, which should help to foster better depth and liquidity in these products. At the same time, the proposal does not pose any special regulatory concerns in that it

proposed rights offering in a proxy vote concluded on April 23, 1987.

⁵ Amendment No. 1 to the PSE's rule filing would make it explicit that holders of special memberships would not be entitled to participate in any liquidation of the Exchange.

⁶ 15 U.S.C. 78f (1984).

does not contain incentive for inappropriate trading by market makers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: May 27, 1987.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-12509 Filed 6-1-87; 8:45 am]

BILLING CODE 8010-01-M

[File Nos. 7-0141 et al.]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 27, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Duff & Phelps Selected Utilities

Common Stock, \$0.001 Par Value (File No. 7-0141)

Erbamont N.V.

Common Stock, \$4.00 Par Value (File No. 7-0142)

Fleet Financial Group, Inc.

Common Stock, \$1.00 Par Value (File No. 7-0143)

Harcourt Brace Jovanovich, Inc.

Common Stock, \$1.00 Par Value (File No. 7-0144)

Kansas Gas & Electric Co.

Common Stock, No Par Value (File No. 7-0145)

Public Service Co. of New Mexico

Common Stock, \$5.00 Par Value (File No. 7-0146)

Service Corp. International

Common Stock, \$1.00 Par Value (File No. 7-0147)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 17, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission,

Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-12507 Filed 6-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Fil. Nos. 7-9939 et al]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 28, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

First Australia Prime Income Fund, Inc.

Common Stock, \$0.01 Par Value (File No. 7-9939)

Foothill Group, Inc.

Class A Common Stock, No Par Value (File No. 7-9940)

Fur Vault, Inc.

Common Stock, \$0.01 Par Value (File No. 7-9941)

Great-Lakes Chemical Corp.

Common Stock, \$1.00 Par Value (File No. 7-9942)

Heritage Entertainment, Inc.

Common Stock, \$0.01 Par Value (File No. 7-9943)

Hudson Foods, Inc.

Class A Common Stock, No Par Value (File No. 7-9944)

I.C.H. Corp.

Common Stock, \$1.00 Par Value (File No. 7-9945)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 18, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the

Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-12508 Filed 6-1-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-4371]

Application To Withdraw From Listing and Registration; Tech-Sym Corp. (Common Stock, \$0.10 Par Value)

May 27, 1987.

Tech-Sym Corporation ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex"). The Company's common stock recently began trading on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration on the Amex include the following:

The Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before June 17, 1987 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

⁷ 15 U.S.C. 78a(b)(2) (1984).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-12506 Filed 6-1-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Agency Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made such a submission.

DATE: Comments should be submitted by July 2, 1987. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83s), supporting statements, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Small Business Development Center Counseling Evaluation Form
Form No.: SBA 1419

Frequency: Annually

Description of Respondents: This information is provided from the client and used by the SBA and the Small Business Development Center to monitor the quality of the counseling that small businesses receive from the SBDC's.

Annual Responses: 50,000

Annual Burden Hours: 12,500

Type of Request: Extension

Title Loan Verification Request

Form No.: SBA 1547

Frequency: On occasion

Description of Respondents: This information is provided by the entity that has provided credit to a company. The information will provide verification and status of existing debts.

Annual Responses: 76,500

Annual Burden Hours: 38,250

Type of Request: New

Title: Procurement—Related Paperwork: Barriers to Small Business Participation Survey

Frequency: One time, non-recurring
Description of Respondents: Information is provided from businesses that have had Federal contracts. This data will be used to analyze the burdens that specific paperwork requirements impose on Federal contractors; analyze other aspects of the procurement process that impose burdens on contractors; and identify and assess successful tactics used by businesses to overcome these burdens.

Annual Responses: 400

Annual Burden Hours: 200

Type of Request: New

Title: Governor's Request for Disaster Declaration

Frequency: On occasion

Description of Respondents: The Governor of the affected states makes a written request stating the incident that occurred, the time and place and certify that SBA criteria have been met.

Annual Responses: 110

Annual Burden Hours: 2,200

Type of Request: Extension

Cleo Verbillis,

Acting Chief, Administrative Information Branch, Small Business Administration, May 28, 1987.

[FR Doc. 87-12488 Filed 6-1-87; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VII Advisory Council, located in the geographical area of Kansas City, will hold a public meeting at 8:30 a.m., Wednesday, June 10, 1987, at the United Missouri Bank of Kansas City, n.a., at 10th and Grand, Kansas City, Missouri 64106 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Glenn Davis, District Director, U.S. Small Business Administration, Professional Building, 1103 Grand

Avenue, Kansas City, Missouri 64106, (816) 374-5557.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 12, 1987.

[FR Doc. 87-12487 Filed 6-1-87; 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 During the Week Ending May 22, 1987; Air Atlantic Ltd. and American Airlines, Inc.

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44896

Date Filed: May 22, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 19, 1987.

Description: Application of Air Atlantic Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to engage in foreign scheduled air transportation of persons, property and mail between Boston, Massachusetts and St. John, New Brunswick.

Docket No. 44054

Date Filed: May 21, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 18, 1987.

Description: Amendment No. 1 to the Renewal Application of American Airlines, Inc. of its certificate of public convenience and necessity for Route 316 filed on May 23, 1986, so as (1) to seek a certificate of public convenience and necessity authorizing service between the coterminal points Dallas/Ft. Worth, Texas, and San Juan, Puerto Rico and the coterminal points Rio de Janeiro and San Paulo, Brazil, and (2) to request that the suspension imposed by Order 84-5-

115, June 6, 1984 be lifted upon issuance of the renewed and amended certificate.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-12498 Filed 6-1-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Polk County, FL

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Polk County, Florida.

FOR FURTHER INFORMATION CONTACT: Dennis Luhrs, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32302, Telephone: (904) 681-7239.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Florida Department of Transportation will prepare an environmental impact statement (EIS) for a proposal to construct a new highway facility, The Imperial Parkway in Polk County, Florida. The new facility would involve the proposed construction of The Imperial Parkway from U.S. 98 at the terminus of the previously approved western leg of the Imperial Parkway to Interstate 4 in the vicinity of Mt. Olive or Berkley Roads, a distance of approximately 15 miles. This new facility is necessary to provide for the projected high traffic demands.

Alternatives under consideration include (1) taking no action; (2) construction of a new multi-lane facility along one of several alternative alignments, partially on new location and partially along existing facilities.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. A series of public meetings will be held in Polk County. In addition a public hearing will also be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public and agency review and comment. A formal scoping meeting is planned at the project site during May 1987.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues

identified, comments or questions concerning this proposed action and the EIS are invited and should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 13, 1987.

Dennis B. Luhrs,

District Engineer, Tallahassee, FL.

[FR Doc. 87-12443 Filed 6-1-87; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket S-808]

United States Lines, Inc.; Application for Permission to Operate in the Domestic Trade Under the Merchant Marine Act

Notice is hereby given that United States Lines, Inc. by application dated May 22, 1987, has applied for written permission under section 506 of the Merchant Marine Act, 1936, as amended (Act), for continued operation of four vessels which USL currently deploys in its purely domestic West Coast-Hawaii-Guam service under authority of section 506 of the Act. Section 506 permits the temporary transfer for up to six months of construction-differential subsidy (CDS) built vessels "whenever the Secretary determines that such transfer is necessary or appropriate to carry out the purposes of the Act." Consent by MARAD would continue to be conditioned upon payment to MARAD, upon such terms as MARAD may prescribe, of "an amount which bears the same proportion to the CDS paid by the Secretary as such temporary period bears to the entire economic life of the vessel." Notice of the previous application of March 25, 1987, was published in the *Federal Register* (52 FR 10664) and various comments were filed in response thereto.

On April 13, 1987, MARAD ruled and granted USL permission to operate in domestic service "(i) up to a maximum of 8 weeks from April 13, 1987, or (ii) when the Bankruptcy Court handling the USL Chapter 11 bankruptcy proceeding approves the acquisition by another person of the vessels for which permission is granted, and the right to possession of the vessels is transferred to the acquirer, whichever occurs first * * *."

By letter dated May 22, 1987, USL has requested an extension of the time to

operate this service for either an additional 90 days to September 8, 1987, or until such time as USL is able to complete the sale of the vessels and other assets involved in this service, whichever occurs first.

The basic reason for this request is that USL, despite its best efforts, will not be able to consummate the sale to Sea-Land, or any other purchaser with a higher and better offer, on or before June 8th, the current deadline imposed by MARAD, because of the intricate complications involved in such a sale, which require the approval and involvement of both the Bankruptcy Court as well as Admiralty Court.

Although publication of a Notice with respect to USL's request for permission under section 506 is not required, the Maritime Administration believes that it is appropriate to provide an opportunity for interested parties to comment on USL's application.

Any person, firm, or corporation having any interest in the application for section 506 permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, by the close of business on June 4, 1987. The Maritime Administration, as a matter of discretion, will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidies (CDS))

By Order of the Maritime Administrator.

Dated: May 28, 1987.

James E. Saari,

Secretary.

[FR Doc. 87-12513 Filed 6-1-87; 8:45 am]

BILLING CODE 4910-81-M

Research and Special Programs Administration

Hazardous Materials Transportation; Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is

hereby given of the exemptions granted in March 1987. The modes of transportation involved are identified by a number in the "Nature of Exemption

Thereof' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
1862-X	DOT-E 1862	Greer Hydraulics, Inc., City of Commerce, CA	49 CFR 173.302(a)(1), 175.3	To authorize shipment of nitrogen in hydraulic accumulators. (Modes 1, 2, 3, and 4.)
3004-X	DOT-E 3004	National Welders, Charlotte, NC	49 CFR 173.302, 175.3	To authorize use of a non-DOT specification cylinder, for transportation of certain flammable, and nonflammable compressed gases. (Modes 1, 2, 4, and 5.)
3353-X	DOT-E 3353	Kerr-McGee Chemical Corp., Oklahoma City, OK	49 CFR 173.163(a)(7), 173.239(a)(2)	To authorize transport of ammonium perchlorate, potassium chlorate or sodium chlorate, in a non-DOT specification steel or aluminum portable tank. (Modes 1, 2.)
3630-X	DOT-E 3630	Mallinckrodt, Inc., Paris, KY	49 CFR 177.839(a), 177.839(b)	To authorize use of a DOT Specification 33A polystyrene case to contain four 5-pint glass bottles of nitric acid. (Mode 1.)
3768-X	DOT-E 3768	Essex Industrial Chemicals, Inc., Baltimore, MD	49 CFR 173.119, 173.245, 173.288	To authorize use of DOT Specification MC-304, MC-307 and MC-312 cargo tanks, for transportation of certain flammable and corrosive liquids. (Mode 1.)
4262-X	DOT-E 4262	Schlumberger Well Services, Houston, TX	49 CFR 172.101, 173.53(u), 173.80	To authorize shipment of charged oil well jet perforating guns with initiators attached. (Modes 1, 3.)
4262-X	DOT-E 4262	Schlumberger Offshore Services, Houston, TX	49 CFR 172.101, 173.53(u), 173.80	To authorize shipment of charged oil well jet perforating guns with initiators attached. (Modes 1, 3.)
4719-X	DOT-E 4719	Halocarbon Products Corp., North Augusta, GA	49 CFR 173.314(c), 173.315(a)(1), 179.102-11.	To authorize shipment of certain compressed gases most of which are not listed in 49 CFR 173.314 and 173.315, in DOT Specification MC-330 and MC-331 cargo tanks or 105A300W, 112A340W, 114A340W, 106A500, 106A500X and 110A500W tank car tanks. (Modes 1, 2.)
4719-X	DOT-E 4719	Dow Chemical U.S.A., Freeport, TX	49 CFR 173.314(c), 173.315(a)(1), 179.102-11.	To authorize shipment of certain compressed gases most of which are not listed in 49 CFR 173.314 and 173.315, in DOT Specification MC-330 and MC-331 cargo tanks or 105A300W, 112A340W, 114A340W, 106A500, 106A500X and 110A500W tank car tanks. (Modes 1, 2.)
4726-X	DOT-E 4726	U.S. Department of Energy, Washington, DC	49 CFR 173.245	To authorize transport of certain liquid metal fluorides, in non-DOT specification model cylinders, overpacked in a strong wooden box with cushioning material. (Mode 1.)
4884-X	DOT-E 4884	Airco, The BOC Group, Inc., Murray Hill, NJ	49 CFR 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To authorize shipment of certain liquefied and nonliquefied compressed gases and a flammable liquid in a stainless steel cylinder complying with all requirements of DOT Specification 4BW, except for being fabricated from Type 304 or Type 316 stainless steel. (Modes 1, 2, 3, 4, and 5.)
4884-X	DOT-E 4884	Solkatronic Chemicals, Inc., Fairfield, NJ	49 CFR 173.302(a)(1), 173.304, 173.3a, 175.3, 178.61.	To authorize shipment of certain liquefied and nonliquefied compressed gases and a flammable liquid in a stainless steel cylinder complying with all requirements of DOT Specification 4BW, except for being fabricated from Type 304 or Type 316 stainless steel. (Modes 1, 2, 3, 4, and 5.)
5022-X	DOT-E 5022	National Aeronautics and Space Administration, Washington, DC	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(l)(1).	To authorize shipment of certain Class A and Class B explosives in temperature controlled equipment. (Modes 1 and 2.)
5038-X	DOT-E 5038	National Welders, Charlotte, NC	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.247(a)(1), 173.346, 173.620, 173.630, 175.3.	To authorize shipment of dimethyldichlorosilane, trichlorosilane, other specifically identified flammable liquids and silicon tetrachloride in non-DOT specification type 304 stainless steel cylinders. (Modes 1, 2, 3, and 4.)
5206-X	DOT-E 5206	Mesabi Powder Co., Hibbing, MN	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5206-X	DOT-E 5206	Nelson Brothers, Inc., Parish, AL	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5600-X	DOT-E 5600	Solkatronic Chemicals, Inc., Fairfield, NJ	49 CFR 175.3, Part 173, Subparts D, F, and G.	To authorize transport of flammable or nonflammable compressed gases, flammable, corrosive liquids or oxidizers presently authorized to be shipped in a DOT Specification 3A cylinder, to be shipped in a non-DOT specification cylinder made to DOT-3A specification with certain exceptions. (Modes 1, 2, and 4.)
6232-X	DOT-E 6232	McDonnell Douglas Corp., Saint Louis, MO	49 CFR 172.101, 173.102, 173.108, 173.176, 173.87, 175.3.	To authorize shipment of nonflammable gas, Class C explosive, and a flammable solid to be packaged in the same outside package. (Modes 1, 3, and 4.)
6349-X	DOT-E 6349	National Welders, Charlotte, NC	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification insulated, containerized portable tanks, for shipment of certain flammable and nonflammable gases. (Modes 1, 2, and 3.)
6543-X	DOT-E 6543	National Welders, Charlotte, NC	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, and 4.)
6557-X	DOT-E 6557	General Fire Extinguisher Corp., Northbrook, IL	49 CFR 175.3, 178.36-4(c), 178.37-4(c), 178.50-4(c).	To authorize deviation from the requirements of the inspector's report for DOT Specification 3A, 3AA, and 4B cylinders, for shipment of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
6658-X	DOT-E 6658	U.S. Department of Defense, Falls Church, VA	49 CFR 173.85	To authorize use of a non-DOT specification open-head steel drum, for transportation of a certain Class A explosive. (Mode 1.)
6752-X	DOT-E 6752	3M Co., St. Paul, MN	49 CFR 173.301(d)(3), 173.304(a)(2)	To authorize use of DOT Specification 3A, 3AA, 3AX, 3AAX or 3T cylinders forming part of a tube trailer or tube bank, for transportation of a liquefied flammable compressed gas. (Modes 1, 2, and 3.)
6765-P	DOT-E 6765	Union Helium Co., Ltd., Minato-ku, Tokyo, Japan	49 CFR 173.318(a), 176.76(h)(4)	To become a party to Exemption 6765. (Modes 1, 3.)
6774-X	DOT-E 6774	HR Textron, Inc., Pacoima, CA	49 CFR 173.302(a)(2), 175.3	To authorize use of non-DOT specification cylinders complying with DOT Specification 3HT, with certain exceptions, for shipment of a nonflammable gas. (Modes 1, 4.)
7007-X	DOT-E 7007	Allied Universal Corp., Miami, FL	49 CFR 173.314(c), 179.3	To authorize shipment of chlorine in non-DOT specification multi-unit tank car tanks made in accordance with DOT Specification 110A500W. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7052-P	DOT-E 7052	Tractor Applied Sciences, Inc., Alexandria, VA.	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Maxwell Corp., of America, Mooachie, NJ.	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	TerraTek Geoscience Services, Salt Lake City, UT.	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Engineered Assemblies Corp., Clifton, NJ.	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Hughes Electronics Products Corp., Livonia, MI.	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	FABRIKA NI-Cd BATERIJA "TERPCA", Gnjilane, Yugoslavia.	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	American Meter Co., Philadelphia, PA.	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Priebe Electronics, Redmond, WA.	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
7053-X	DOT-E 7063	Twin Lake Chemical Co., Lockport, NY.	49 CFR 173.191(a)	To authorize use of a removable-head polyethylene container meeting all requirements of DOT Specification 35 (maximum gross weight 65 pounds). (Modes 1, 2, and 3.)
7252-X	DOT-E 7252	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.93	To authorize transport of Pourvex and Tovex Extra in DOT Specification 17H metal drums. (Modes 1, 3.)
7286-X	DOT-E 7286	Liquid Carbonic Corp., Chicago, IL.	49 CFR 173.34(e)(15)(i)	To authorize shipment of certain nonliquefied compressed gases in DOT Specification 3A or 3AA cylinders and cylinders marked ICC-3, 3A or 3AA. (Modes 1, 2, 3, 4, and 5.)
7451-X	DOT-E 7451	Union Carbide Corp., Danbury, CT.	49 CFR 173.304, 173.315	To authorize use of non-DOT specification pressure vessels, for transportation of a nonflammable gas. (Modes 1, 3.)
7476-X	DOT-E 7476	Thompson Tank & Manufacturing Co., Inc., Long Beach, CA.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.340-8(c), 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 with certain exceptions, for transportation of flammable, corrosive and poisonous waste materials. (Mode 1.)
7505-X	DOT-E 7505	Platte Chemical Co., Greeley, CO.	49 CFR 173.28(m), 173.346(a)(2), 173.358(a)(2), 173.359(b)(2).	To authorize use of reconditioned DOT Specification 17C drums, previously used for shipment of Class B poisons (decontaminated). (Mode 1.)
7607-P	DOT-E 7607	Sverdrup Corp., St. Louis, MO.	49 CFR 172.101, 175.3	To become a party to Exemption 7607. (Mode 5.)
7616-P	DOT-E 7616	Soo Line Railroad Co., Minneapolis, MN.	49 CFR 172.204(a), 172.204(d)	To become a party to Exemption 7616. (Mode 2.)
7735-X	DOT-E 7735	Rheem Manufacturing Co., Linden, NJ.	49 CFR 173.119, 173.264(a), 173.272(g), 173.346, 173.358, 173.359.	To authorize manufacture, marking and sale of DOT Specification 34 containers, for shipment of flammable liquids and corrosive materials. (Modes 1, 2, and 3.)
7835-X	DOT-E 7835	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 177.848, Part 107 Appendix B(1)	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and the tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835-X	DOT-E 7835	Liquid Carbonic Corp., Chicago, IL.	49 CFR 177.848, Part 107 Appendix B(1)	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and the tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835-X	DOT-E 7835	Union Carbide Corp., Danbury, CT.	49 CFR 177.848, Part 107 Appendix B(1)	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and the tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835-X	DOT-E 7835	National Welders, Charlotte, NC.	49 CFR 177.848, Part 107 Appendix B(1)	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and the tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835-X	DOT-E 7835	Airco, The Boc Group, Inc., Murray Hill, NJ.	49 CFR 177.848, Part 107 Appendix B(1)	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, the corrosive label and the tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835-X	DOT-E 7835	Liquid Air Corp., Walnut Creek, CA.	49 CFR 177.848, Part 107 Appendix B(1)	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and the tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835-X	DOT-E 7835	Matheson Gas Products, Inc. Secaucus, NJ.	49 CFR 177.848, Part 107 Appendix B(1)	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and the tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7835-X	DOT-E 7835	AGA Burdco, Inc. Cleveland, OH.	49 CFR 177.848, Part 107 Appendix B(1)	To authorize transport of cylinders bearing the flammable gas label, the oxidizer label, the flammable liquid label, the corrosive label or the poison gas label and the tank car tanks bearing the poison gas label on the same motor vehicle. (Mode 1.)
7886-X	DOT-E 7886	W.M. Barr and Co., Inc. Memphis, TN.	49 CFR 173.245, 178.210	To authorize shipment of a corrosive liquid, in non-DOT specification metal can/fiberboard box packaging. (Modes 1, 3.)
7943-X	DOT-E 7943	Alstar Co. Tracy, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one of two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7943-X	DOT-E 7943	All Pure Chemical Co., Inc., Tracy, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one of two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7948-X	DOT-E 7948	Erickson, Inc. Richmond, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize use of non-DOT Specification cargo tanks complying with DOT specification MC-307/312 except for bottom outlet valve variation, for shipment of liquid and semi-solid waste material. (Mode 1.)
8060-X	DOT-E 8060	Parlefer S.A.R.L., Paris, France.	49 CFR 173.315(a)	To authorize use of non-DOT specification IMO Type 5 portable tanks for transportation of certain nonflammable, liquefied gases. (Modes 1, 2, and 3.)
8099-X	DOT-E 8099	Union Carbide Agricultural Products Co., Inc., Danbury, CT.	49 CFR 173.365(a)(15)	To authorize use of non-DOT specification corrugated fiberboard boxes with an inner heat-sealed bag, for transportation of poisonous solids. (Modes 1, 2, and 3.)
8131-X	DOT-E 8131	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.301(d), 173.302(a), 173.34(d), 175.3.	To authorize use of a non-DOT specification container made of inconel 718 metal, for shipment of a nonflammable gas. (Modes 1, 2, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8152-X	DOT-E 8152	Allied-Signal Inc., Morristown, NJ.....	49 CFR 177.824(b), 178.343-2.....	To authorize shipment of hydrofluoroic acid, solution in an unlined DOT Specification MC-312 cargo tank. (Mode 1.)
8167-X	DOT-E 8167	Manostal Corp., New York, NY.....	49 CFR 173.287, 175.3.....	To authorize shipment of a chromic acid solution in composite packaging consisting of a non-DOT specification fiberboard outer box and expanded polystyrene/glass bottle inside packaging. (Modes 1, 2, 3, and 4.)
8178-X	DOT-E 8178	National Aeronautics and Space Administration, Washington, DC.....	49 CFR 173.302(a), 173.34(d), 175.3.....	To authorize use of non-DOT specification composite cylinder, for a compressed nonliquefied gas. (Modes 1, 4.)
8184-X	DOT-E 8184	Trojan Corp., Salt Lake City, UT.....	49 CFR 173.65.....	To authorize transport to flake trinitrotoluene in non-DOT specification composite bags. (Modes 1, 2, and 3.)
8208-X	DOT-E 8208	Jet Propulsion Laboratory, Pasadena, CA.....	49 CFR 173.145, 173.276, 173.336.....	To authorize shipment of liquid propellant samples, frozen, in non-DOT specification plywood boxes. (Mode 1.)
8220-X	DOT-E 8220	Applied Companies, San Fernando, CA.....	49 CFR 173.320(a), 175.3.....	To authorize use of non-DOT specification girth welded steel cylinders, for transportation of nonflammable compressed gases. (Modes 1, 2, and 4.)
8228-X	DOT-E 8228	Department of the Treasury, Washington, DC.....	49 CFR 173.100(bb), 173.113(a)(1), 173.86.....	To authorize transport of packages containing not in excess of 35 grams of one type of explosive material or one explosive device, not exceeding 35 grams, in a pasteboard carton packed in a DOT Specification 12H fiberboard box or a non-DOT specification corrugated fiberboard box. (Mode 1.)
8236-P	DOT-E 8236	Ford Motor Co., Dearborn, MI.....	49 CFR 173.153, 173.154, 175.3.....	To become a party to Exemption 8236. (Modes 1, 2, 3, and 4.)
8238-X	DOT-E 8238	ASARCO Inc., New York, NY.....	49 CFR 173.368.....	To authorize shipment of arsenical flue dust in non-DOT specification flexible intermediate bulk containers. (Modes 1, 2.)
8249-X	DOT-E 8249	LPS Industries Inc., Formerly Lawrence Packaging, Newark, NJ.....	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 173.3, 175.3.....	To authorize manufacture, marking and sale of specially designed packaging for shipment of liquid and solid poisons without labels and packages bearing <i>Dangerous When Wet</i> label without placarding motor vehicles. (Modes 1, 2, and 4.)
8388-X	DOT-E 8388	B. W. Norton Manufacturing Co., Inc., Oakland, CA.....	49 CFR 178.19, Part 173, Subparts D and F.....	To authorize an alternate cover design for polyethylene containers for shipment of certain corrosive and flammable liquids, n.o.s. (Modes 1, 2, and 3.)
8407-X	DOT-E 8407	Occidental Chemical Corp., Niagara Falls, NY.....	49 CFR 173.245, Part 172, Subpart C.....	To authorize transport within plant over public highway, various waste residues, classed as corrosives liquids, n.o.s., without shipping papers, in non-DOT specification portable tanks. (Mode 1.)
8451-P	DOT-E 8451	Morton Thiokol, Inc., Brigham City, UT.....	49 CFR 173.65, 173.86(e), 175.3.....	To become a party to exemption 8451. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Ethyl Corp., Baton Rouge, LA.....	49 CFR 173.65, 173.86(e), 175.3.....	To authorize transport of not more than 25 grams of high explosives and pyrotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8478-X	DOT-E 8478	West-Mark Ceres, CA.....	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.....	To authorize manufacture, marking and sale of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 with certain exceptions, for transportation of flammable and corrosive liquids. (Mode 1.)
8510-X	DOT-E 8510	Dow Chemical Co., Freeport, TX.....	49 CFR 173.178.....	To authorize shipment of salt-coated magnesium granules in a non-DOT specification wax-impregnated, intermediate bulk, fiberboard box with an inside polyethylene bag. (Modes 1, 2, and 3.)
8519-X	DOT-E 8519	Hoegh-Ugland Auto Liners A/S, Oslo, Norway.....	49 CFR 176.905(l).....	To authorize stowage of motor vehicles with their fuel tanks containing gasoline, classed as a flammable liquid, in the same cargo compartment with other hazardous materials on specially equipped roll-on/roll-off cargo vessels. (Mode 3.)
8540-X	DOT-E 8540	U.S. Department of the Army, Falls Church, VA.....	49 CFR 176.83(b) Table II.....	To authorize shipment of oxygen candles in non-DOT specification triple wall corrugated fiberboard boxes. (Mode 3.)
8551-X	DOT-E 8551	Streamline Manufacturing, Inc., vice Huber Mfg., Gulfport, MS.....	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.....	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for bottom outlet valve variations and certain other features, for transportation of flammable, corrosive, or poisonous waste liquids or semi-solids. (Mode 1.)
8552-X	DOT-E 8552	Brenner Tank, Inc., Fond du Lac, WI.....	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.....	To authorize manufacture, marking and sale of non-DOT specification cargo tank complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8554-P	DOT-E 8554	ECONEXPRESS Inc., Wheaton, IL.....	49 CFR 173.114a, 173.154, 173.93.....	To become a party to Exemption 8554. (Mode 1.)
8554-P	DOT-E 8554	J. H. Van Amburgh Explosives, Inc., Dallas, TX.....	49 CFR 173.114a, 173.154, 173.93.....	To become a party to Exemption 8554. (Mode 1.)
8554-P	DOT-E 8554	Thermex Energy Corp., Dallas, TX.....	49 CFR 173.114a, 173.154, 173.93.....	To become a party to Exemption 8554. (Mode 1.)
8554-X	DOT-E 8554	Evenson Explosives, Inc., Morris, IL.....	49 CFR 173.114a, 173.154, 173.93.....	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tank. (Mode 1.)
8571-X	DOT-E 8571	EM Science, Cincinnati, OH.....	49 CFR 173.119(a)(28), (b).....	To authorize shipment of various flammable liquids packaged in a DOT Specification 12A corrugated fiberboard box, with two inside metal can not over 10 liters capacity each. (Mode 1.)
8620-X	DOT-E 8620	Polar Tank Trailer, Inc., Holdingford, MN.....	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.....	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8621-X	DOT-E 8621	Atlantic & Gulf Stevedores, Gulfport, MS.....	49 CFR 176.415(c)(2).....	To authorize loading or unloading of ammonium nitrate mixtures containing more than 60% ammonium nitrate with no organic coating at a non-isolated facility. (Mode 1.)
8751-X	DOT-E 8751	Delta Tech Service, Inc., Martinez, CA.....	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.263(a), 173.346(a), 178.340-7, 178.343-5.....	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-312 with certain exceptions, for shipment of certain hazardous materials. (Mode 1.)
8757-X	DOT-E 8757	Y-Z Industries, Inc., Snyder, TX.....	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3.....	To authorize manufacture, marking and sale of non-DOT specification stainless steel cylinders, for shipment of compressed gases. (Modes 1, 4.)
8815-X	DOT-E 8815	Nelson Brothers, Inc., Parrish, AL.....	49 CFR 173.114a(b).....	To authorize transport of certain blasting agents in a cement mixer motor vehicle. (Mode 1.)
8844-X	DOT-E 8844	Beall, Inc., Billings, MT.....	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.....	To authorize manufacture, marking and sale of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 with certain exceptions, for transportation of certain hazardous materials. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8901-X	DOT-E 8901	Soweco, Inc., Amarillo, TX	49 CFR 173.357	To authorize shipment of chloropicrin, in polyethylene bottles overpacked in non-DOT specification triple-wall, A-A-C flute, corrugated fiberboard boxes. (Mode 1.)
8901-X	DOT-E 8901	Great Lakes Chemical Corp., El Dorado, AK	49 CFR 173.357	To authorize shipment of chloropicrin, in polyethylene bottles overpacked in non-DOT specification triple-wall, A-A-C flute, corrugated fiberboard boxes. (Mode 1.)
8901-X	DOT-E 8901	Douglas Chemical Co., Liberty, MO	49 CFR 173.357	To authorize shipment of chloropicrin, in polyethylene bottles overpacked in non-DOT specification triple-wall, A-A-C flute, corrugated fiberboard boxes. (Mode 1.)
8901-X	DOT-E 8901	Hopkins Agricultural Chemical Co., Madison, WI	49 CFR 173.357	To authorize shipment of chloropicrin, in polyethylene bottles overpacked in non-DOT specification triple-wall, A-A-C flute, corrugated fiberboard boxes. (Mode 1.)
8904-X	DOT-E 8904	Keith Huber, Inc., Gulfport, MS	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for bottom outlet valve variations and certain other features, for transportation of flammable, corrosive or poisonous waste liquids or semi-solids. (Mode 1.)
8910-X	DOT-E 8910	Canbar Products, Limited Waterloo, Ontario, Canada	49 CFR 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, linear low density polyethylene portable tank enclosed in a steel cage, for shipment of corrosive liquids. (Modes 1, 2.)
8936-X	DOT-E 8936	Great Lakes Chemical Corp., El Dorado, AR	49 CFR 173.357(b)(2)	To authorize shipment of a mixture containing 57% chloropicrin and 43% 1,3-dichloropropane, 1,2-dichloropropane and related hydrocarbons, respectively, by weight, in non-authorized DOT Specification 58 metal drums. (Modes 1, 2, 3.)
8938-X	DOT-E 8938	Cryogenic Services, Inc., Canton, GA	49 CFR 173.304(a), 175.3	To authorize manufacture, marking and sale of DOT Specification 4L welded cylinders, for transportation of nonflammable gases. (Modes 1, 2, 3, and 4.)
8955-P	DOT-E 8955	Western Atlas International, Inc., Houston, TX	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To become a party to Exemption 8955. (Modes 1, 3.)
8965-X	DOT-E 8965	Pressed Steel Tank Co., Inc., Milwaukee, WI	49 CFR 173.302(a), 175.3	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinders, for shipment of certain compressed gases. (Modes 1, 2, 3, 4, and 5.)
8966-X	DOT-E 8966	All Pure Chemical Co., Inc., Tracy, CA	49 CFR 173.263(a)(15), 173.277(a)(1), 178.205.	To authorize shipment of sodium hypochlorite solution, and hydrochloric acid solutions in four one-gallon polyethylene bottles enclosed in a bag of polyethylene film, packed in a corrugated fiberboard box complying with DOT Specification 12B except for hand holes authorized in side panels of box. (Modes 1.)
8966-P	DOT-E 8966	GPS Industries, City of Industry, CA	49 CFR 173.263(a)(15), 173.277(a)(1), 178.205.	To become a party to Exemption 8966. (Modes 1.)
8969-X	DOT-E 8969	McDonnell Douglas Corp., Saint Louis, MO	49 CFR 173.79(b), 173.92(b)	To authorize shipment of certain rocket motors with igniter installed. (Modes 1, 3.)
8971-X	DOT-E 8971	NL McCullough/NL Industries, Inc., Houston, TX	49 CFR 172.101 Column 4, 173.248, 175.3.	To authorize use of non-DOT specification steel cylinders of equal or greater integrity than those currently authorized, for transportation of a liquid oxidizer. (Modes 1, 2, 3, and 4.)
8978-P	DOT-E 8978	Battery Engineering Inc., Hyde Park, MA	49 CFR 172.101, 175.3	To become a party to Exemption 8978. (Modes 1, 2, 3, 4.)
8986-P	DOT-E 8986	Cook Slurry Co., Salt Lake City, UT	49 CFR 173.114(b)(3)	To authorize transport of slurry blasting agent, in DOT specification MC-307 cargo tanks constructed of 304 stainless steel. (Modes 1.)
8988-P	DOT-E 8988	Western Atlas International, Inc., Houston, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to Exemption 8988. (Modes 1, 3, and 4.)
8990-X	DOT-E 8990	Pressure Pak, Inc., East Hampton, CT	49 CFR 173.302(a)(1), 175.3, 178.65-2, 178.65-5(a)(4).	To authorize manufacture marking and sale of non-DOT specification nonrefillable steel inside cylinders, for transportation of nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
8991-X	DOT-E 8991	Lea-Ronal, Inc., Freeport, NY	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.35(a), 175.3.	To authorize manufacture, marking and sale of specially designed packaging for shipment of liquid and solid poisons without labels and packages bearing DANGEROUS WHEN WET label without placarding motor vehicles. (Modes 1, 2, and 4.)
8999-X	DOT-E 8999	Scott Aviation Div. of Figgie International, Inc., Lancaster, NY	49 CFR 173.154, 175.3, 175.85, Part 172, Subpart C, Subpart D, E.	To authorize transport of emergency oxygen generators without marking, labeling, shipping papers or specification packaging. (Modes 1, 2, 3, 4, and 5.)
9011-X	DOT-E 9011	Van Leer Containers, Inc., Chicago, IL	49 CFR 175.3, 178.100, 178.115, 178.116, 178.117, 178.118, 178.80, 178.81, 178.82, 178.98, 178.99.	To authorize certain DOT Specification 5, 8 and 17 series drums constructed of stainless steel, nickel or monel and when so constructed to be exempt from certain steel drum test requirements, for shipment of those commodities presently authorized for each drum. (Modes 1, 2, 3, and 4.)
9014-X	DOT-E 9014	Hunter Drums, Limited, Bramalea Ontario, Canada	49 CFR 173.262, 173.266	To authorize manufacture, marking and sale of DOT Specification 34 blowmolded, polyethylene container of 55 gallon capacity for transportation of corrosive liquids and oxidizers. (Modes 1, 2, and 3.)
9017-X	DOT-E 9017	Mobay Corp., Pittsburgh, PA	49 CFR 173.264(b)	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of anhydrous hydrofluoric acid. (Modes 1, 2, and 3.)
9024-X	DOT-E 9024	SLEMI, Paris, France	49 CFR 173.315	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, and 3.)
9024-X	DOT-E 9024	Arbel-Fauvet-Girel, St. Laurent Blangy, France	49 CFR 173.315	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, and 3.)
9034-X	DOT-E 9034	Airco—The BOC Group, Inc., Murray Hill, NJ	49 CFR 173.302, 173.304, 173.328, 173.334, 175.3.	To authorize use of a previously not authorized DOT Specification 3AL aluminum cylinder, for transportation of certain gases and gas mixtures. (Modes 1, 2, 3, 4, and 5.)
9052-X	DOT-E 9052	Chemical Handling Equipment Co., Inc., Toledo, OH	49 CFR 173.119, 173.125, 178.19, 178.253, Part 173, Subpart F.	To authorize use of a non-DOT specification rotationally molded, cross-linked or linear polyethylene portable tank enclosed in a steel cage or hardwood overpack for the shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2 and 3.)
9108-X	DOT-E 9108	Trojan Corp., Salt Lake City, UT	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9108-X	DOT-E 9108	Atlas Powder Co., Dallas, TX.....	49 CFR 173.77.....	To authorize transport of pentaerythrite tetranitrate (PETN) wet with 25% water in a 4 mil polyethylene bag placed in a DOT specification 12H fiberboard box. (Mode 1.)
9120-P	DOT-E 9120	Western Atlas International, Inc., Houston, TX.....	49 CFR 173.304(a), 173.34(d), 175.3.....	To become a party to Exemption 9120. (Modes 1, 2, 3, and 4.)
9129-X	DOT-E 9129	Weldex Corp., Grafton, MA.....	49 CFR 173.34, Part 107, Appendix B.....	To authorize repairing, rebuilding, retesting, marking and sale of any DOT Specification 4B, 4BA and 4BW low pressure steel cylinders. (Modes 1, 2, 3, 4, and 5.)
9138-X	DOT-E 9138	National Aeronautics and Space Administration, Washington, DC.....	49 CFR 173.302(a), 173.34(d), 175.3.....	To authorize shipment of nitrogen in a fiber reinforced plastic full composite cylinder without a safety relief device. (Modes 1, 4.)
9275-X	DOT-E 9275	McCormick & Co., Inc., Hunt Valley, MD.....	49 CFR Parts 100 through 199.....	To broaden the exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol formulations. (Modes 1, 2, 3, 4, and 5.)
9275-X	DOT-E 9275	Hercules, Inc., Wilmington, DE.....	49 CFR Parts 100 through 199.....	To broaden the exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol formulations. (Modes 1, 2, 3, 4, and 5.)
9280-X	DOT-E 9280	General Electric Co., Waterford, NY.....	49 CFR 173.119(m).....	To authorize use of DOT Specification MC-330 and MC-331 cargo tank, for transportation of flammable liquids which are also corrosive materials. (Mode 1.)
9338-X	DOT-E 9338	Allied-Signal Inc., Morristown, NJ.....	49 CFR 179.302(a).....	To authorize use of DOT Specification 106A500X and 110A500W multi-unit tank car tanks without a gas tight valve protection housing, for transportation of a corrosive material. (Modes 1, 2.)
9387-X	DOT-E 9387	Technical Products Corp., Portsmouth, VA.....	49 CFR 173.334.....	To authorize transport of an organic phosphate compound pressurized, with a nonflammable compressed gas, in concentrations and quantities greater than now authorized in the regulations, in DOT Specification 3B cylinders. (Mode 1.)
9426-X	DOT-E 9426	Rheem Manufacturing Co., Linden, NJ.....	49 CFR 178.19, Part 173, Subpart D, F.....	To authorize manufacture, marking and sale of five-gallon and six-gallon capacity removable head molded polyethylene drums for transportation of corrosive liquids and flammable liquids. (Modes 1, 2, and 3.)
9443-X	DOT-E 9443	Hercules Inc., Wilmington, DE.....	49 CFR 173.92(b), 175.3.....	To authorize transport of Class B rocket motors with igniters installed. (Modes 1, 3, and 4.)
9488-X	DOT-E 9488	Conference of Radiation Control Program Directors, Frankfort, KY.....	49 CFR 173.415(a), 173.431.....	To authorize use of specially sealed DOT-2R containers in concrete filled steel drums (certified as DOT-7A) for one-time transport for disposal of not more than 500 millicuries of radium-226 in normal or special form without each shipper keeping a package test performance certification file. (Mode 1.)
9603-X	DOT-E 9603	Tennessee Eastman Co., Kingsport, TN.....	49 CFR 171.2, 173.119, 173.125, 179.201-1.....	To authorize use of a non-DOT specification tank car which conforms to DOT Specification 111A100W1 except for a thinner shell thickness in certain areas and for deviations in length of welds used in attaching bar pads. (Mode 2.)
9652-P	DOT-E 9652	Western Atlas International, Inc., Houston, TX.....	49 CFR 173.103, 173.66(e)(2), 175.3.....	To become a party of Exemption 9652. (Modes 1, 4, and 5.)
9681-X	DOT-E 9681	Space Ordnance Systems, Canyon Country, CA.....	49 CFR 173.65.....	To renew and to authorize cargo vessel as an additional mode of transportation. (Modes 1, 3.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9573-N	DOT-E 9573	Chevron Resources Co., Grants, NM.....	49 CFR 173.425(c).....	To authorize use of a surface binding material on uranium ore in open top rail cars as a means to prevent loss of particulates from the rail cars instead of the normally required use of closed transport vehicles. (Mode 2.)
9590-N	DOT-E 9590	Great Lakes Chemical Corp., West Lafayette, IN.....	49 CFR 173.357(b)(2), 173.3a.....	To authorize shipment of a liquid mixture containing 67.7 percent chloropicrin, Class B poison, in DOT Specification 5B steel drums, not exceeding 33-gallon capacity. (Mode 1.)
9644-N	DOT-E 9644	Atlas Powder Co., Dallas, TX.....	49 CFR 178.218-11(a).....	To authorize manufacture, marking and sale of a DOT Specification 23G cylindrical fiberboard box tested once a year instead of once every six months, for shipment of certain Class A explosives. (Mode 1.)
9658-N	DOT-E 9658	Fluoroware, Inc., Chaska, MN.....	49 CFR 173.119, 173.268, 173.299(b), 178.19, 178.253, Part 713, Subpart F.....	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, composite crosslinked or non-crosslinked polyethylene and Teflon PTA plastic portable tank, for shipment of corrosive liquids, flammable liquids or oxidizers. (Modes 1, 2.)
9663-N	DOT-E 9663	Siepe GmbH, Federal Republic Germany.....	49 CFR 178.134, 178.35a, Part 173.....	To authorize manufacture, marking and sale of cylindrical steel, overpacks similar to DOT-37M except wall thickness is 25 gage instead of 24 gage and inner polyethylene drum meets DOT-2SL except for marking, for shipment of those hazardous materials authorized in DOT-37M/2SL. (Modes 1, 2, 3.)
9664-N	DOT-E 9664	Hughes Aircraft Co., El Segundo, CA.....	49 CFR Parts 100 through 199.....	To authorize transport of a laser device containing a small quantity of methane in a passenger's carry-on or checked baggage. (Mode 5.)
9674-N	DOT-E 9674	General Battery Corp., Reading, PA.....	49 CFR 173.154.....	To authorize battery plates containing lead peroxide to be shipped when packaged in a pallet-shrink wrap configuration. (Mode 1.)
9676-N	DOT-E 9676	EM Science, Cincinnati, OH.....	49 CFR 173.119(b)(4), 178.205.....	To authorize shipment of certain flammable liquids contained in four inside glass bottles or PVC coated glass bottles of one gallon capacity each, overpacked in a corrugated fiberboard box conforming to DOT Specification 12B65 except for handholes in the side panels of the box. (Mode 1.)
9686-N	DOT-E 9686	Fluoroware, Inc., Chaska, MN.....	49 CFR 173.119, 173.268, 173.299, 178.19, 178.35, 178.35a, Part 173, Subpart F.....	To authorize manufacture, marking and sale of non-DOT rotationally molded Teflon PFA container of 20 liter capacity with filament-wound fiberglass reinforcement, for shipment of those flammable or corrosive liquids authorized in DOT-34 and DOT-6D/2S or 2SL composite packagings. (Modes 1, 2.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9696-N	DOT-E 9696	Fluoroware, Inc., Chaska, MN.....	49 CFR 173.119, 173.268, 173.299, 178.19, 173.35, 173.35a, 49 CFR Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT rotationally molded Teflon PFA container or 100 liter capacity with filament-wound fiberglass reinforcement and a high density polyethylene overpack, for shipment of those liquids authorized in DOT-34 and DOT-6D/2S or 2SL composite packagings. (Modes 1, 2.)
9707-N	DOT-E 9707	Pepsi-Cola Co., Purchase, NY.....	49 CFR 172.400.....	To authorize transport of certain flammable liquids in DOT Specification packaging without labeling. (Mode 1.)
9719-N	DOT-E 9719	Great Southern Airways, Orlando, FL.....	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or in quantities greater than those prescribed for shipment by air. (Mode 4.)
9725-N	DOT-E 9725	Union Tank Car Co., Chicago, IL.....	49 CFR 173.124, 173.314, 179.102.....	To authorize one-time shipment of DOT Specification 105A300W tank cars to the nearest cleaning or retrofit facility. (Mode 2.)
EE 3109-P	DOT-E 3109	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.301(e), 173.302(a)(1), 175.3...	To become a party to Exemption 3109. (Modes 1, 2, 3, 4, 5.)
EE 9759-N	DOT-E 9759	West Salem Fireworks Manufacturing Co., Inc., West Salem, OH.	49 CFR 173.108(a), 178.205.....	To authorize a one-time shipment of common fireworks, Class C explosive, in non-DOT specification fiberboard boxes with inner flaps which do not meet and with no fiberboard flap fill-up pieces. (Mode 1.)
EE 9760-N	DOT-E 9760	Olin Corp., East Alton, IL.....	49 CFR 172.101 Column 6, 173.93(g)(1), 175.30.	To authorize transport of eight (8) DOT Specification 21c fiberboard drums, each containing a net weight of 75 pounds of propellant explosives, solid, Class B, aboard cargo aircraft. (Mode 4.)

Denials

8983-X Request by Universal Propulsion Company, Inc., Phoenix, AZ to authorize transport of aircraft rocket engines, commercial, which do not comply with the requirements of 49 CFR 173.238, Note 1, as engines contain a small amount of Class B explosives denied April 16, 1987.

9411-N Request by Proco, Inc., Corpus Christi, TX to manufacture, mark and sell non-DOT specification cargo tanks similar to DOT Specification MC-307/312 except for bottom outlet valve variations, for shipment of various flammable, corrosive, or poison waste liquids or semisolids denied April 21, 1987.

Issued in Washington, DC, on May 11, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-12497 Filed 6-1-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on June 16 & 17, 1987. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:00 a.m. on Tuesday, June 16, and 8:00 a.m. on Wednesday, June 17. The agenda will include the following topics:

Tuesday, June 16, 1987

Tax Reform

Attitude Towards the Taxpayer

Allocation of Resources

Informing Taxpayers of Errors and Adjustments and Other Information Responsibilities

Wednesday, June 17, 1987

Handling Controversies With Taxpayers
Taxpayer Advocacy

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people. If you would like to have the Committee consider a written statement, please call or write Robert F. Hilgen, Acting Executive Secretary, 1111 Constitution Ave., NW., Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Robert F. Hilgen, Acting Executive Secretary, (202) 566-4143 (Not toll-free).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 87-12502 Filed 6-1-87; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register

Vol. 52, No. 105

Tuesday, June 2, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"Federal Register" CITATION OF PREVIOUS ANNOUNCEMENT: To be published June 1, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 pm (Eastern Time) Monday, June 9, 1987.

CORRECTION: 2:00 pm (Eastern Time) Tuesday, June 9, 1987.

CONTACT PERSON FOR MORE

INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: May 29, 1987.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued May 29, 1987.

[FR Doc. 87-12601 Filed 5-29-87; 2:36 pm]

BILLING CODE 6750-06-M

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for June 2, 1987.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 2, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: William A. Sanders, Jr., Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

1. Approval of Minutes.
2. Loan Documentation Related to Borrower Financial Statements.
3. Review of Financial Condition of Farm

Credit System Institutions and Consideration of Certifying to the Treasury That the System is Need of Financial Assistance.

¹ 4. Examination and Enforcement Matters.

Dated: May 28, 1987.

William A. Sanders, Jr.,

Secretary Farm Credit Administration.

¹ Session closed to the public-exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9). [FR Doc. 87-12514 Filed 5-28-87; 4:47 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Tuesday, May 26, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of certain insured banks: Names and locations of banks authorized to be exempt from disclosure pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

At that same meeting, the Board also considered the application of Torrey Pines Bank, Solana Beach, California, an insured State nonmember bank, for consent to purchase assets of and assume liability to pay deposits made in the Rancho Santa Fe Branch of Glendale Federal Savings and Loan Association, Glendale, California, a non-FDIC-insured institution, and for consent to relocate its existing Rancho Santa Fe Branch from 6024 Paseo Delicias, Rancho Santa Fe, California, to 6009 Paseo Delicias, Rancho Santa Fe, California, the current location of the Rancho Santa Fe Branch of Glendale Federal Savings and Loan Association.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of

the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 28, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-12589 Filed 5-29-87; 1:04 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Thursday, May 28, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of Barnett Bank of Pinellas County, a proposed new bank to be located at 1901 Central Avenue, St. Petersburg, Florida, for Federal deposit insurance, for consent to merge, under its charter and title, with Barnett Bank of Pinellas County, National Association, Clearwater, Florida, and for consent to establish twenty-one existing and one approved, but unopened, offices of Barnett Bank of Pinellas County, National Association as branches of Barnett Bank of Pinellas County.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: May 28, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-12590 Filed 5-29-87; 1:04 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION**Notice of Change in Subject Matter of Agency Meeting**

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 10:30 a.m. on Thursday, May 28, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director, C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum regarding the Corporation's purchase of microcomputers.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsection (c)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2)).

Dated: May 28, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 87-12591 Filed 5-29-87; 1:04 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 28, 1987.

TIME AND PLACE: 10:00 a.m., June 4, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Quinland Coal Company*, Docket No. WEVA 85-169. (Issues include whether the judge's findings of violation are supported by

substantial evidence whether the judge properly admitted certain evidence, and whether the judge erred in failing to address the issued of unwarrantable failure.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 87-12593 Filed 5-29-87; 1:18 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 8, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 29, 1987.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 87-12625 Filed 5-29-87; 3:34 pm]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, June 3, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. 731-TA-377 (P) (Internal combustion engine fork-lift trucks from Japan)—briefing and vote.
6. Inv. 731-TA-347, (F) (Certain malleable cast-iron pipe fittings from Japan)—briefing and vote.
7. Any item left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason,
Secretary, (202) 523-0161.

Kenneth R. Mason,
Secretary.

May 22, 1987.

[FR Doc. 87-12624 Filed 5-29-87; 3:34 pm]

BILLING CODE 7020-02-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, June 9, 1987.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first three items will be open to the public. The last three items will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Pipeline Accident Report: Williams Pipe Line Company's Liquid Pipeline Rupture and Fire, Mounds View, Minnesota, July 8, 1986.
2. Briefs of Accidents/Incidents with Probable Air Traffic Control Involvement.
3. Recommendation to FAA re Defective Carburetor Float and Automotive Gasoline.
4. Order: Administrator v. Chirino, Docket SE-7883; disposition of respondent's petition for reconsideration.
5. Opinion and Order: Administrator v. Brasher, Docket SE-7485; disposition of the Administrator's appeal.
6. Administrator v. Larson and Gelineau, Dockets SE-7491 and SE-7492.

FOR MORE INFORMATION, CONTACT:

Bea Hardesty, Staff Assistant, (202) 382-6525.

May 29, 1987.

[FR Doc. 87-12626 Filed 5-29-87; 3:58 pm]

BILLING CODE 7533-01-M

Federal Register

Tuesday
June 2, 1987

Part II

Environmental Protection Agency

40 CFR Parts 141, 142, and 144
Water Pollution Control; National Primary
Drinking Water Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141, 142, and 144

[FRL 3138-3]

Water Pollution Control; National Primary Drinking Water Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On June 19, 1986, the President signed into law the Safe Drinking Water Act Amendments of 1986. These amendments make changes to EPA's drinking water program. The purpose of this rule is to amend EPA's drinking water regulations so they are consistent with the statutory amendments and to incorporate those statutory provisions that have immediate or near-term effects on the regulated community.

EFFECTIVE DATE: This rule is effective June 2, 1987.

ADDRESSES: Additional information may be obtained at the EPA Headquarters, Office of Drinking Water, 401 M St. SW., Washington, DC 20460 and at the Drinking Water Supply Branches in EPA's Regional Offices. ("See **SUPPLEMENTARY INFORMATION** below.")

FOR FURTHER INFORMATION CONTACT: Susan MacMullin, Office of Drinking Water (WH-550D), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Phone: (202) 475-8049.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Authority
- II. Background
- III. Safe Drinking Water Act Amendments of 1986
- IV. Purpose of Today's Rule
- V. Codification of the Regulations
- VI. Rulemaking Requirements

EPA Regional Offices

- I. JFK Federal Bldg., Room 2203, Boston, MA 02203, Phone: (617) 565-3715, Jerome Healey
- II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212) 264-1800, Walter Andrews
- III. 841 Chestnut St. Philadelphia, PA 19107, Phone: (215) 597-9873, John Capacausa
- IV. 345 Courtland Street, Atlanta, GA 30365, Phone: (404) 257-4450, Robert Jourdan
- V. 230 S. Dearborn St., Chicago, IL 60604, Phone: (312) 353-2650, Joseph Harrison

- VI. 1201 Elm St., Dallas, TX 75270, Phone: (214) 729-2656, James Graham
- VII. 726 Minnesota Ave., Kansas City, KS 66101, Phone: (913) 236-2815, Gerald R. Foree
- VIII. One Denver Place, 999 18th St., Suite 3000 Denver, CO 80202-2413, Phone: (303) 293-1424, Marc Alston
- IX. 215 Fremont St., San Francisco, CA 94105, Phone: (415) 974-8076, William Thurston
- X. 1200 Sixth Ave., Seattle, WA 98101, Phone: (206) 442-1225, Jerry Opatz

I. Authority

These regulations are issued under the authority of sections 1401, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1421, 1422, 1423, 1431, and 1450 of the Safe Drinking Water Act, 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300h, 300h-1, 300h-2, 300i, and 300j-9 as amended by the Safe Drinking Water Act Amendments of 1986 (Pub. L. 99-339, 100 Stat. 642 (1986)).

II. Background

The Safe Drinking Water Act ("SDWA") or "Act" (42 U.S.C. 300f, *et seq.*), enacted in 1974, requires EPA to establish primary drinking water regulations for public water systems. The SDWA includes provisions for interim and revised regulations with monitoring, reporting, and public notification requirements. The SDWA also has provisions for state primary enforcement responsibility, and variances and exemptions.

The Act also provides for an underground injection control (UIC) program designed to protect underground sources of drinking water from endangerment by the subsurface emplacement of fluids. EPA is to establish regulations that define effective State UIC programs. States may apply to assume primacy enforcement responsibility for such programs. If a State does not assume primacy, EPA must promulgate and administer the program in that State. The Act provides an alternative mechanism whereby States may assume primacy for the oil and gas portion of their UIC programs, and sets certain limitations on the requirements imposed on injection of fluid brought to the surface in connection with oil and natural gas production or natural gas storage operations.

III. Safe Drinking Water Act Amendments of 1986

The SDWA Amendments ("Amendments") were enacted on June 19, 1986. The Amendments change the procedures for establishing primary

drinking water standards and set forth a schedule for EPA to follow in setting these standards for specified contaminants. In addition, the Amendments require EPA to establish criteria to determine which surface water supplies must install filtration and to promulgate a treatment technique regulation for disinfection. The Amendments also provide for monitoring of unregulated contaminants and modify the requirements for public notification of violations and the procedures for issuance of variances and exemptions.

Other significant features of the Amendments relate to enforcement; for example, the Administrator may issue an administrative order to require compliance with a regulation (only civil lawsuits were available before). The Amendments also prohibit the use of lead pipes, solder, and flux in public water systems and plumbing, which provide for human consumption, unless the pipes, solder, and flux are "lead free" as defined in the Act.

IV. Purpose of Today's Rule

Because of the Amendments, some of the current drinking water regulations no longer conform to the law. The purpose of this rule is to amend the regulations so that they are consistent with the statute and to incorporate certain requirements that are effective immediately or in the near term. By modifying the current EPA regulations to reflect the new statutory amendments, this notice serves to clarify the effect of the amendments on the responsibilities of the regulated community and indicates which parts of the existing regulations have been superseded by new requirements. This effort to bring EPA's regulations into line with the new statutory provisions also benefits the Agency's enforcement efforts. An important aspect of any effective enforcement program is to inform the regulated community of its responsibilities under the law. EPA is making these modifications to the existing rules through an interpretive rule. Interpretive rules are issued by an agency to advise the public of the agency's administration of the statutes for which it has authority. As an interpretive rule, this rule is not required to undergo notice and comment. Therefore, EPA is making these changes effective immediately. See the Administrative Procedures Act, 5 U.S.C. 553(b)(3)(A); *Citizens to Save Spencer County V. EPA*, 600 F.2d 844, 875 (D.C. Cir. 1979).

V. Codification of the Regulations

The following is a brief explanation of each of the sections which are codified in the regulations.

A. Public Water System Supervision Program

Part 141—National Primary Drinking Water Regulations

Section 141.2 Definitions. Section 1412(a)(2) of the Act, as amended, states that each "recommended maximum contaminant level" ("RMCL") published before June 19, 1986, shall be treated as a "maximum contaminant level goal" ("MCLG"). This notice substitutes the new term for the old term in the definitions section, and throughout 40 CFR Part 141.

Section 141.43 Prohibition on use of lead pipes, solder, and flux and public notice. This is a new section which sets out the ban on the use of lead pipes, solder, and flux found in section 1417 of the Act. This notice codifies the general prohibition, including the deadline for state enforcement, penalties available against a State for failure to enforce the requirements of section 1417, and the Act's definition of "lead free." "Lead-free" materials are solders and flux containing not more than 0.2 percent lead, and pipes and pipe fittings containing not more than 8.0 percent lead. The public notification requirements for lead are not included in this notice. EPA proposed these requirements (to be codified in 40 CFR 141.34) as part of the amendments to the general public notification requirements (40 CFR 141.32) (52 FR 10972, April 6, 1987).

Part 142—National Interim Primary Drinking Water Regulations Implementation

The title of Part 142 is being revised to delete the word "Interim".

Section 142.10. Requirements for a determination of primary enforcement responsibility. The SDWA Amendments revised sections 1412 (a) and (b) to change the terminology for primary drinking water regulations (from "interim" and "revised" to "national") and set schedules for promulgating those regulations. Section 1413(a) of the Act, which sets out the requirements for a State to obtain primary enforcement responsibility for public water systems (i.e., "primacy"), was also amended to reflect the changes in terminology. This notice revises § 142.10(a) to reflect this change.

Section 142.30 Failure by State to assure enforcement. Paragraphs (c), (d), and (e) which describe certain steps the Administrator must take before bringing

an enforcement action have been removed because they are no longer required by the Act. EPA intends to propose and promulgate new regulations regarding enforcement of the Act, which implement the new enforcement provisions of the Amendments, at a later date.

Section 142.31 Federal action. This section explains when EPA may bring a civil enforcement action against a public water system. Many of the restrictions in this section no longer apply under the amended Act. Therefore, EPA is removing this section and reserving it until it promulgated new enforcement regulations.

Section 142.41 Variance request. The only change to this section is the insertion of the word "additional" before "interim control measures" to reflect this same change in section 1415(a)(1)(A)(ii) of the Act.

Section 142.42 Consideration of a variance request. Section 1415(a)(1)(A) of the SDWA has been amended to state that "[a] variance may only be issued to a system after the system's application of the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration)." This notice amends § 142.42 to reflect this change.

Section 142.43 Disposition of a variance request. This notice corrects an incorrect citation in § 142.43(b)(1); in the last sentence "§ 141.44" has been changed to "§ 142.44". This rule inserts the word "additional" before "control measures" in paragraph (c)(2) and before "interim control measures" in paragraph (f) to reflect the same change in section 1415(a)(1)(A)(ii). In addition, this rule revises paragraph (g). Section 1415(a)(1) of the Act previously required that the primacy agent issue a schedule for compliance and implementation of interim control measures within one year after issuing a variance. This section was amended to require that the primacy agent issue the variance and schedule at the same time. Paragraph (g), as revised, incorporates this change.

Section 142.44 Public hearings on variances and schedules. The only change to this section is the substitution of "and" between "variance" and "schedule" instead of "or." This notice amends § 142.44 to reflect the requirement that EPA must prescribe the schedule of compliance at the same time it grants a variance as specified in section 1415(a)(2), as amended.

Section 142.45 Action after hearing. Same as § 142.44, above.

Section 142.53 Disposition of an exemption request. This notice revises § 142.53 to reflect the requirement in

section 1416(b)(1) of the Act, as amended, that a schedule for compliance and implementation of control measures be issued at the same time that an exemption is granted.

Section 142.54 Public hearings on exemption schedules. Section 142.54(d) has been changed to correct an error. In the last sentence of the paragraph, 5 days has been changed to 15 days.

Section 142.55 Final schedule. As noted above Congress amended section 1416(b) of the Act to require that issuance of an exemption from a maximum contaminant level (MCL) or treatment technique requirement be accompanied by a schedule for compliance with the MCL or treatment technique requirement. In the case of an exemption granted with respect to an MCL or treatment technique requirement promulgated under section 1412(a) (i.e., national interim and revised primary drinking water regulations), the schedule must require compliance by June 19, 1987. In the case of an exemption granted with respect to an MCL or treatment technique requirement prescribed by any other national primary drinking water regulation, the schedule must require compliance within 12 months after date of issuance of the exemption. This notice revises § 142.55 to reflect these deadlines.

Section 142.56 Extension of compliance date. Under section 1416(b)(2)(B) of the Act, the final date for compliance may be extended provided that the public water system makes certain showings. In the case of a system which does not serve more than 500 service connections and which needs financial assistance to make the necessary improvements, section 1416(b)(2)(C) allows the compliance deadline to be extended for one or more additional two-year periods provided that the system establishes that it is taking all practicable steps to meet the requirements listed in section 1416(b)(2)(B). This notice adds a new section, § 142.56, to reflect this change.

B. Underground Injection Control Program

Part 144 Underground Injection Control Program

Section 144.1 Purpose and scope of Part 144. This notice amends paragraph (d)(4) to clarify that emergency action may be taken to prevent contamination of underground sources of drinking water. This reflects the amendments to section 1431 of the Act.

Section 144.3. The definition of the SDWA has been amended.

Section 144.6 Classification of wells. This notice amends paragraph (b)(1) to reflect the amendments to section 1421(b)(2)(A) which clarify that wells which inject fluids which are brought to the surface in connection with natural gas storage operations are Class II wells.

Section 144.12 Prohibition of movement of fluid into underground sources of water. This notice adds a sentence to the end of paragraphs (b) and (c)(2) to clarify that orders issued under this section are only authorized under the appropriate provisions of the SDWA. In addition, paragraph (e), the emergency action provision, has been revised for compatibility with the new language in section 1431 of the SDWA by adding the phrase "or underground source of drinking water," and has also been revised to explain the conditions under which EPA may take emergency action.

VI. Rulemaking Requirements

A. Executive Order 12291: Regulatory Impact Analysis

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the Order, and, "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. This action is not a "major" regulatory action as defined by the executive order. Therefore, EPA has not prepared an RIA. This rule was submitted to OMB for review. EPA received no written comments.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires EPA to explicitly consider the effect of proposed regulations on small entities. If there is a significant impact on a substantial number of small systems, the RFA states that means should be sought to minimize the effects.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act is intended to minimize the reporting burden on the regulated community as well as minimize the cost of Federal information collection and dissemination. There are no information collection requirements in this rule.

List of Subjects

40 CFR Part 141

Chemicals, Intergovernmental relations, Radiation protection,

Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Administrative practices and procedure, Chemicals, Radiation protection, Reporting and recordkeeping requirements, Intergovernmental relations, Water supply.

40 CFR Part 144

Classification of wells, Order authority, Emergency provision.

Dated: May 21, 1987.

Lee M. Thomas,
Administrator.

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

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

(Authority: 42 U.S.C. 300g-1, 300g-3, 300g-8, 300j-4, and 300j-9.)

2. Section 141.2 is amended by revising paragraph (u) to read as follows:

§141.2 Definitions.

* * * * *

(u) "Maximum contaminant level goal" or "MCLG" means the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health or persons would occur, and which allows an adequate margin of safety. Maximum contaminant level goals are nonenforceable health goals.

* * * * *

3. Subpart E is amended by revising the title and adding §141.43 to read as follows:

Subpart E—Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use.

* * * * *

§ 141.43 Prohibition on use of lead pipes, solder, and flux.

(a) *In general*—(1) *Prohibition.* Any pipe, solder, or flux, which is used after June 19, 1986, in the installation or repair of—

(i) Any public water system, or
(ii) Any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system shall be lead free as defined by paragraph (d) of this section. This paragraph (a)(1) shall not apply to leaded joints necessary for the repair of cast iron pipes.

(2) Each public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water

where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system,

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

Notice shall be provided notwithstanding the absence of a violation of any national drinking water standard. The manner and form of notice are specified in § 141.34 of this part.

(b) *State enforcement*—(1) *Enforcement of prohibition.* The requirements of paragraph (a)(1) of this section shall be enforced in all States effective June 19, 1988. States shall enforce such requirements through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

(2) *Enforcement of public notice requirements.* The requirements of paragraph (a)(2) of this section, shall apply in all States effective June 19, 1988.

(c) *Penalties.* If the Administrator determines that a State is not enforcing the requirements of paragraph (a) of this section, as required pursuant to paragraph (b) of this section, the Administrator may withhold up to 5 percent of Federal funds available to that State for State program grants under section 1443(a) of the Act.

(d) *Definition of lead free.* For purposes of this section, the term "lead free"

(1) When used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

(2) When used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

4. In addition to the amendments set forth above, in 40 CFR Part 141 remove the words "recommended maximum contaminant level(s)" and add, in their place, the words "maximum contaminant level goal(s)", and remove the term "RMCL" and add, in its place, the term "MCLG".

PART 142—NATIONAL INTERIM PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for Part 142 is revised to read as follows:

Authority: 42 U.S.C. 300g-2, 300g-3, 300g-4, 300g-5, 300j-4, and 300j-9.

2. The title of Part 142 is revised to read "National Primary Drinking Water Regulations Implementation".

3. Section 142.10 is amended to revise paragraph (a) to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility.

(a) Has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations in effect under sections 1412(a) and 1412(b) of the Safe Drinking Water Act;

§ 142.30 [Amended]

4. Section 142.30 is amended by removing paragraphs (c), (d) and (e).

§ 142.31 [Removed and Reserved]

5. Section 142.31 is removed and reserved.

6. Section 142.41 is amended by revising paragraph (c)(6) to read as follows:

§ 142.41 Variance request.

(c) * * *
(6) A plan for additional interim control measures during the effective period of variance.

7. In § 142.42, paragraph (c) is redesignated (d) and a new paragraph (c) is added to read as follows:

(c) A variance may only be issued to a system after the system's application of the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration).

8. Section 142.43 is amended by revising paragraphs (b)(1), (c)(2), (f), and (g) to read as follows:

§ 142.43 Disposition of a variance request.

(b) * * *
(1) For the type of variance specified in § 142.40(a) such notice shall provide that the variance will be terminated when the system comes into compliance with the applicable regulation, and may be terminated upon a finding by the Administrator that the system has failed to comply with any requirements of a final schedule issued pursuant to § 142.44.

(c) * * *
(2) Implementation by the public water system of such additional control measures as the Administrator may require for each contaminant covered by the variance.

(f) The proposed schedule for implementation of additional interim control measures during the period of

variance shall specify interim treatment techniques, methods and equipment, and dates by which steps toward meeting the additional interim control measures are to be met.

(g) The schedule shall be prescribed by the Administrator at the time of granting of the variance, subsequent to provision of opportunity for hearing pursuant to § 142.44.

9. Section 142.44 is amended by revising paragraphs (a), (b) introductory text, (b)(3), (c)(2), and (f) to read as follows:

§ 142.44 Public hearings on variances and schedules.

(a) Before a variance and schedule proposed by the Administrator pursuant to § 142.43 may take effect, the Administrator shall provide notice and opportunity for public hearing on the variance and schedule. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice.

(b) Public notice of an opportunity for hearing on a variance and schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed variance and schedule, and shall include at least the following:

(3) Such notice shall include a summary of the proposed variance and schedule and shall inform interested persons that they may request a public hearing on the proposed variance and schedule.

(c) * * *
(2) A brief statement of the interest of the person making the request in the proposed variance and schedule, and of information that the requester intends to submit at such hearing;

(f) The variance and schedule shall become effective 30 days after notice of opportunity for hearing is given pursuant to paragraph (b) of this section if no timely request for hearing is submitted and the Administrator does not determine to hold a public hearing on his own motion.

10. Section 142.45 is revised to read as follows:

§ 142.45 Action after hearing.

Within 30 days after the termination of the public hearing held pursuant to § 142.44, the Administrator shall, taking into consideration information obtained during such hearing and relevant information, confirm, revise or rescind the proposed variance and schedule.

11. Section 142.53 is amended by revising paragraph (d) to read as follows:

§ 142.53 Disposition of an exemption request.

(d) The schedule shall be prescribed by the Administrator at the time the exemption is granted, subsequent to provision of opportunity for hearing pursuant to § 142.54.

12. Section 142.54 is amended by revising paragraph (d) to read as follows:

§ 142.54 Public hearings on exemption schedules.

(d) The Administrator shall give notice in the manner set forth in paragraph (b) of this section of any hearing to be held pursuant to a request submitted by an interested person or on his own motion. Notice of the hearing shall also be sent to the person requesting the hearing, if any. Notice of the hearing shall include a statement of the purpose of the hearing, information regarding the time and location of the hearing, and the address and telephone number of an office at which interested persons may obtain further information concerning the hearing. At least one hearing location specified in the public notice shall be within the involved State. Notice of the hearing shall be given not less than 15 days prior to the time scheduled for the hearing.

13. Section 142.55 is amended by revising paragraph (b) to read as follows:

§ 142.55 Final schedule.

(b) Such schedule must require compliance as follows:

(1) In the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the national primary drinking water regulations promulgated under section 1421(a) of the Safe Drinking Water Act, not later than June 19, 1987, and

(2) In the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by national primary drinking water regulations, other than a regulation referred to in section 1412(a), 12 months after the issuance of the exemption.

14. Section 142.56 is added to read as follows:

§ 142.56 Extension of date for compliance.

(a) The final date for compliance provided in any schedule in the case of any exemption may be extended by the State (in the case of a State which has primary enforcement responsibility) or by the Administrator (in any other case) for a period not to exceed 3 years after the date of the issuance of the exemption if the public water system establishes that:

(1) The system cannot meet the standard without capital improvements which cannot be completed within the period of such exemption;

(2) In the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance; or

(3) The system has entered into an enforceable agreement to become a part of a regional public water system; and the system is taking all practicable steps to meet the standard.

(b) In the case of a system which does not serve more than 500 service connections and which needs financial assistance for the necessary improvements, an exemption granted under paragraph (a) (1) or (2) may be renewed for one or more additional 2-year periods if the system establishes that it is taking all practicable steps to meet the requirements of paragraph (a) of this section.

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for Part 144 is revised to read as follows:

Authority: Pub. L. 93-523, as amended by Pub. L. 95-190, Pub. L. 96-63, Pub. L. 96-502, and Pub. L. 99-339, 42 U.S.C. 300f et seq.

2. Section 144.1 is amended by revising paragraphs (a) and (d)(4) to read as follows:

§ 144.1 Purpose and scope of Part 144.

(a) Contents of Part 144. The regulations in this part set forth requirements for the Underground Injection Control (UIC) program promulgated under Part C of the Safe

Drinking Water Act (SDWA) (Pub. L. 93-523, as amended; 42 U.S.C. 300f et seq.) and, to the extent that they deal with hazardous waste, the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580 as amended; 42 U.S.C. 6901 et seq.).

* * * * *

(d) * * *

(4) Section 1431 authorizes the Administrator to take action to protect the health of persons when a contaminant which is present in or may enter a public water system or underground source of drinking water may present an imminent and substantial endangerment to the health of persons.

* * * * *

3. Section 144.3 is amended by revising the definition of SDWA to read as follows:

§ 144.3 Definitions.

* * * * *

SDWA means the Safe Drinking Water Act (Pub. L. 93-523, as amended; 42 U.S.C. 300f et seq.).

* * * * *

4. Section 144.6 is amended by revising paragraph (b)(1) to read as follows:

§ 144.6 Classification of wells.

* * * * *

(b) * * *

(1) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

* * * * *

5. Section 144.12 is amended by revising paragraphs (b), (c)(2) and (e) to read as follows:

§ 144.12 Prohibition of movement of fluid into underground sources of drinking water.

* * * * *

(b) For Class I, II and III wells, if any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, except as authorized under Part 146, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with § 144.39, or the permit may be terminated under § 144.40 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of wells authorized by rule, see §§ 144.21 through 144.24. For EPA administered programs, such enforcement action shall be taken in accordance with appropriate sections of the SDWA.

(c) * * *

(2) Order the injector to take such actions (including, where required, closure of the injection well) as may be necessary to prevent the violation. For EPA administered programs, such orders shall be issued in accordance with the appropriate provisions of the SDWA; or

* * * * *

(e) Notwithstanding any other provision of this section, the Director may take emergency action upon receipt of information that a contaminant which is present in or likely to enter a public water system or underground source of drinking water may present an imminent and substantial endangerment to the health of persons. If the Director is an EPA official, he must first determine that the appropriate State and local authorities have not taken appropriate action to protect the health of such persons, before taking emergency action.

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Part III

Department of Justice

Bureau of Prisons

**28 CFR Part 541
Control, Custody, Care, Treatment, and
Instruction of Inmates; Final Rule**

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing final amendments to its rule on Inmate Discipline and Special Housing Units. These amendments are intended to clarify the existing Bureau policy or to address concerns that have arisen since the 1982 publication of the final rule.

EFFECTIVE DATE: July 6, 1987.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its final rule on Inmate Discipline and Special Housing Units. Proposed amendments to this rule were published in the *Federal Register* June 20, 1985 (at 50 FR 25664 et seq.).

Interested persons were invited to submit comments on the proposed rule. Members of the public may submit comments concerning the present rule by writing the previously cited address. These comments will be considered but will receive no response in the *Federal Register*.

In addition to the previously published proposed amendments, other changes are also being made to the final rule. These changes are meant to clarify the scope or intent of the existing rule, or reflect management decisions. Based on the nature of these changes, the Bureau finds good cause under 5 U.S.C. 553 to include these changes within the final rule without a notice of proposed rulemaking, or an opportunity for public comment. In recognition of these revisions, and for ease of reading, the Bureau is republishing its entire rule on Inmate Discipline.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact

on a substantial number of small entities.

Summary of Changes/Comments

1. *Section 541.10*—To clearly indicate the scope of the Bureau's rule on Inmate Discipline, § 541.10(a) states that this rule applies to all persons committed to the care, custody, and control (direct or constructive) of the Bureau of Prisons. This includes, but is not limited to, inmates in pretrial status, inmates on writ, inmates on escorted trip or furlough, and inmates who are returned to Bureau custody from contract facilities. Section 541.10(b)(6)(a) is amended to reflect the current standard as set forth in the Comprehensive Crime Control Act of 1984.

2. *Section 541.11*—In Table 1, paragraph 1—Dispositions, the wording, "Except for prohibited acts in the greatest or high severity categories" is added to specify those categories that may not be informally resolved by the writer of the report. With respect to prohibited acts in the greatest severity category, existing § 541.14(a) states that only the IDC may make a final disposition on such prohibited acts. The requirement as to prohibited acts in the high severity category is added because the consequences of these offenses can pose a serious threat to the security or orderly running of the institution and warrant further review by a higher institutional authority (e.g., a Lieutenant), before such charges are informally resolved or dropped. Also in this paragraph, and for purposes of clarity, the phrase "writer of the report" replaces "observing staff", because it is only the person initiating the disciplinary action who can informally resolve a moderate or low moderate prohibited act.

In Table 1, paragraph 2—Dispositions, the wording, "Except for prohibited acts in the greatest severity category" is again added to emphasize the language in § 541.14(a). In paragraph 5, the proposed wording, "but may not increase any valid disciplinary action taken" is replaced with, "but may not increase the sanctions imposed in any valid disciplinary action taken". This paragraph also recognizes that the Warden, Regional Director, or General Counsel may direct that the inmate be given a rehearing. Although the wording has changed, the intent remains the same.

Table 2, Time Limits in Disciplinary Process, is revised. The word "ordinarily" is added to "[ordinarily] maximum of 24 hours" to recognize that there may be occasions where it is not feasible to give the inmate a copy of the charges within 24 hours of the time staff

become aware of the inmate's involvement in the incident (e.g., where the inmate is out of the institution). The final rule is further revised to read that the inmate receives an initial hearing a "maximum ordinarily of 2 work days from the time staff became aware of the inmate's involvement in the incident." This excludes the day staff become aware of the inmate's involvement, weekends, and holidays. This language is consistent with the intent of § 541.15(b). The "Note" paragraph of Table 2, which previously stated that staff may suspend disciplinary proceedings for a period not to exceed "2 weeks", is revised to read "2 calendar weeks". It is the Bureau's intent to provide inmates this time period to informally resolve a situation before disciplinary proceedings are re-instituted.

3. *Section 541.12*—In § 541.12, item number 11 inserts the right of inmates to use their funds for commissary and other purchases, consistent with institution security and good order, for opening bank or savings accounts, and for assisting their families. Accordingly, in the responsibilities column, item number 11 states that inmates have the responsibility to show financial responsibility (see Part 545, Subpart B) including, but not limited to, meeting court-imposed assessments, fines, and restitution.

4. *Section 541.13*—Following an assessment of the Bureau's prohibited acts, several further revisions are being made to the listing of prohibited acts in Table 3 of § 541.13. These provisions are intended as statements of management policy, and are made to clarify the scope of the prohibited act, to provide greater specificity, and to help ensure institution security and good order. A summary is given below.

a. *Code 101*—The phrase, "(a charge for assaulting any person is to be used only when serious physical injury has been attempted or carried out by an inmate)", is added to limit the use of Code 101 to only those acts which are of a serious nature. Other prohibited acts, albeit physically threatening or offensive, must now be appropriately placed in a lesser severity category where a standard of serious physical injury cannot be demonstrated.

b. *Code 109*—To recognize the seriousness of the unauthorized use of narcotics, existing prohibited act 210 becomes new prohibited act 109. The unauthorized possession, introduction or use of narcotics, marijuana, drugs, or related paraphernalia can have an adverse, and, in many cases, highly dangerous effect on the security, good

order and discipline of the institution. This change places no additional requirements on the inmates, as such usage is prohibited in current policy. Rather, it is intended to recognize the serious nature of this prohibited act. By raising the prohibited act severity level, the Bureau is allowing the IDC greater flexibility in its efforts to deter drug abuse in the institution.

c. *Code 110*—Because it is necessary to parallel an inmate's refusal to provide a urine sample or to take part in other drug-abuse testing with the use of drugs, existing prohibited act 214 becomes new prohibited act 110. If the refusing to provide a urine specimen or to take part in other drug-testing were to remain in the 200 series offense code, inmates who knew or suspected they would test positive for drugs could refuse to provide a urine sample, thereby avoiding disciplinary sanctions in the greatest severity category. This could seriously hinder the Bureau's effort to detect, and eliminate drug usage within its institutions.

d. *Code 218*—The phrase, "or destroying, altering, or damaging life-safety devices (e.g., fire alarm) regardless of financial value" is added to Code 218 because such actions, and the potential consequences of the actions, are clearly considered within the scope of this prohibited act. In the past, staff had available Code 299 when violations of this nature occurred.

e. *Code 221*—Proposed new prohibited act 221 is reworded, but the intent remains the same.

f. *Code 223*—Existing prohibited act 323 becomes new prohibited act 223. In the Bureau's proposed rule, Code 322 was moved to the high severity category, Code 222 (Making, possessing, or using intoxicants). In reviewing the proposed rule, the Bureau realized that refusing to breathe into a breathalyzer must be of a parallel severity category to "using intoxicants" to eliminate having inmates simply refuse participate in testing to avoid the potential of more severe disciplinary sanctions.

g. *Code 303*—The phrase, "or in excess of the amount authorized" is added to keep consistent the intent and language of 28 CFR 553.13(d) which states that staff may not allow an inmate to possess funds in excess of established institutional limits.

h. *Code 331*—This code is revised to include both non-hazardous tools and other non-hazardous contraband. While non-hazardous contraband could have fallen under Code 399, the Bureau has decided to specifically include it within Code 331, to recognize the scope of the prohibited act.

i. *Code 401*—This code is reworded to indicate that it applies to inmates who possess clothing in excess of the amounts authorized for retention. Although the wording has changed, the intent remains the same.

j. *Code 406*—This code is revised by adding the phrase, "May be categorized and charged in terms of greater severity, according to the nature of the unauthorized use; e.g., the telephone is used for planning, facilitating, committing an armed assault on the institution's secure perimeter, would be charged as Code 101, Assault. As with final prohibited act 314, this language is intended to provide direction to staff in the appropriate application of codes for violations of prohibited acts of a greater severity in nature. Although staff are currently authorized to use the "99" series of violations which constitute a higher severity scale, the Bureau believes specific guidance for code 406 is warranted.

A commenter suggests that the addition of codes 198, 298, 398, and 498, and the revision of codes 199, 299, 399, and 499 makes the Bureau's rule even more "open-ended" and . . . "even more arbitrary". We do not agree. The revised "99" code is intended to clearly recognize that the discipline rule applies to inmates who are committed to the care, custody and control of the Bureau of Prisons. This includes inmates both in and out of the institution (e.g., on escorted trip, furlough). The revised language also recognizes that the discipline rules are those set by the Bureau, not by the institution.

In addition of the "98" codes, involving interference with staff in their official work, provides institution staff with offense codes which can be used when a more specific code may not be clearly applicable. The commenter seems to be suggesting that the Bureau provide in the rule a "specific code offense" that will clearly address any misconduct for which a prisoner may be charged. This is what has been done in the past. While the Bureau favors specificity where possible, as shown by several of the current modifications, it is not possible to specifically encompass every possible violation. For example, chewing gum in our society is ordinarily thought of as a harmless item. However, in a prison, gum can cause serious problems in the security and orderly operation of an institution, and therefore it is not authorized for retention by inmates. Mere possession of gum by an inmate, with no extenuating circumstances, would ordinarily be considered a moderate severity violation of code 305, "possession of anything not authorized for retention or

receipt by an inmate . . ." However, if the inmate puts the gum inside a security lock, the offense severity would be classified in a high category for "tampering with or blocking any lock device", code 208. Perhaps because most security locks are of a value greater than \$100.00, damage to government property in excess of \$100.00 (code 218) would be an appropriate charge. To carry this example one step further, suppose an inmate used gum to jam a cell lock during an assault, particularly where staff were unable to open the cell door. Putting gum in a lock which prevents staff from stopping an assault or from giving aid to an injured person is considerably more serious misconduct than possessing contraband, tampering with locking devices, or damage to government property, and would be classified as 100 series conduct of the greatest severity. Because there is no "specific code" in the 100 series, staff could charge the inmate with a violation of code 198, "interfering with a staff member in the performance of duties", or code 199, "conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons", as most comparable to prohibited act code 101, assaulting any person. We believe using 198 & 199 series offense codes in these situations is the most appropriate way to charge an inmate, especially where all of the variables of an incident cannot be predicted. There is enough specificity to these charges to put inmates on notice that disruptive or interfering actions are unacceptable conduct. Institution staff are thoroughly trained and tested in the discipline process and in the application of code offenses prior to being authorized to act on the Institution Discipline Committee. An inmate who is determined by the discipline committee to have violated a code offense is provided, in writing, the specific evidence relied on to support the findings, and the reason for the sanction imposed. If, at the conclusion of the proceedings, the inmate believes the code offense inappropriate, or any part of the committee findings in error, that inmate can appeal the finding through the Administrative Remedy Procedure.

k. *Section 541.13, Table 4, Sanctions*—In Table 4, paragraph 1, D., the word "acts" replaces the word "episodes". The wording is changed but the intent remains the same. The final rule is further revised by deleting from the rule the examples previously cited. A discussion of what can warrant consecutive disciplinary segregation sanctions is now included in the internal implementing language to the rule.

1. Table 6 of § 541.13 is revised to recognize that an inmate who commits a second or third offense in the low moderate category is subject to placement in disciplinary segregation as set forth in Table 5. The statement that an inmate is to apply for a restoration of statutory good time is deleted from the note following Table 6. It is not necessary for the inmate to apply to receive consideration for restoration of good time. Also deleted from the language following Table 6 is the previous final rule requirement that the Regional Office approve a Community Treatment Center placement for an inmate with forfeited good time.

5. Section 541.15—In § 541.15 the phrase, "or play any significant part in having the charges referred to the UDC" is added to further ensure impartiality on the part of those members selected to serve on the Unit Discipline Committee. While this phrase is new, the intent of this section remains the same.

In § 541.15(a) the word "ordinarily" has been added to the phrase, "within 24 hours of the time staff became aware of the inmate's involvement in the incident". It is, and has been, the Bureau's intent that only in unusual circumstances should the 24-hour rule not be observed. For clarity, § 541.15(b) is revised by substituting the sentence, "This two day work period excludes the day staff become aware of the inmate's involvement in the incident, weekends, and holidays", for "(excluding day of notice, weekends, and holidays)". The intent of this section remains the same.

The word "shall" replaces "may" in the fourth sentence of § 541.15(c) which now states that an inmate's refusal to appear at the hearing "shall be shown by a memorandum". (Note—Similar changes are made in §§ 541.17(d), 541.20(c) and 541.22(c) with respect to showing the refusal of an inmate to appear before the IDC and for the refusal of an inmate in Special Housing status to appear before the reviewing authority at a formal review.)

In §§ 541.15(f) and 541.17(f), a commenter requested the Bureau acknowledge their interpretation of the "some facts" standard with respect to the Supreme Court ruling in *Superintendent, MCI Walpole v Hill*, 86 L. Ed 2d 356 (1985). The *Hill* standard of "some facts" or "any facts", establishes the minimum standard of evidence needed to support findings of misconduct. To this, the Bureau has added a "greater weight of the evidence" standard to apply in those cases where there is conflicting evidence.

6. Section 541.17—In proposed § 541.17(c), the phrase, "who have

information directly relevant to the charge(s)" replaces, "when necessary for an appreciation of the circumstances surrounding the charge(s)". The general intent of the paragraph is unchanged.

A commenter to paragraph (c) believes it is understandable to allow for a separate, confidential report, not available to the inmate, provided that the reason for the confidentiality is premised on jeopardizing or threatening institutional or individual security. The Bureau's basis for employing a confidential requirement is indeed the potential threat non-confidentiality poses to security.

In § 541.17(d) the phrase, "may affirm the earlier action taken, . . . may modify the finding of the original IDC as to the offense which was committed" is added to the proposed rule to fully state the responsibility of the IDC upon rehearing sanctions imposed in absentia. Although the wording in this latter section is new, the intent remains the same because § 541.17(f)(1) directs in part that the IDC shall consider all evidence presented at the hearing and shall find that the inmate committed the prohibited act charged, or a "similar prohibited act" if reflected in the Incident Report. The rule does not permit an increase in sanctions. Other modifications to this paragraph are made for the purpose of clarity and do not change the intent of the paragraph.

A commenter to paragraph (d) commends the Bureau for imposing a time limit for rehearing the case of an absent or escaped prisoner returned to custody, but questions the constraints imposed on staff when the case is not reheard within the specified time period. The rule referenced by the commenter refers to the rehearing of a case "ordinarily within 60 days" of the inmate's arrival at the institution to which the inmate is designated after return to custody. Bureau staff are trained in the requirements of the discipline process and are responsible to adhere to these. Inmates who have not received a hearing within the specified time can raise this matter through the Administrative Remedy Procedure (Part 542, Subpart B). This review will allow alleged violations to be examined in light of the individual circumstances and, if indicated, for appropriate corrective action to be taken.

Section 541.17(e) is revised, and states that the IDC may, after considering the evidence, "refer the case back to the UDC for further information or disposition". The Bureau believes the IDC, upon determining the available evidence in a case does not warrant IDC involvement, may return the case to the

UDC for disposition at the UDC level, or, in the alternative, for the UDC to provide additional, sufficient evidence to warrant IDC action.

In 541.17(i) the phrase, "or if the IDC finds that the inmate has committed a prohibited act(s) other than the act(s) charged" is added. The new language is consistent with the language in § 541.17(f)(1). This same paragraph is further revised to state that the Incident Report must be changed to show "only the incident and code references to charges which were proved". Although the wording of this paragraph is changed, the intent remains the same.

7. Section 541.19—The first paragraph of new proposed § 541.19 adds the phrase, "including ordering a rehearing" as one option available through the appeal process. The term "15 days" is clarified to read "15 calendar days from the date that the inmate receives the written notice". Proposed paragraph § 541.19(b) is revised, but its intent is unchanged.

8. Section 541.21—The phrase, "per inmate" is added to paragraph (8) and the phrase, "including unit" is added to proposed paragraph (9). Unit staff are to arrange to visit inmates in special housing within a reasonable time after the inmate's request.

9. Section 541.22—In the first paragraph of § 541.22, the word "self" is substituted for "himself". Proposed § 541.22(a)(6)(i) is further revised to indicate that staff "ordinarily" within 90 days of an inmate's placement in post-disciplinary detention shall either return the inmate to general population or "request regional level assistance" to effect a transfer to a more suitable institution. These changes are made to recognize that the action ordinarily is to occur within 90 days and that transfers between institutions require regional assistance.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), Chapter V of 28 CFR is amended as follows: In Subchapter C, Part 541, Subpart B is revised.

Dated: May 19, 1987.

Norman A. Carlson,
Director, Bureau of Prisons.

In Subchapter C, Part 541, Subpart B is revised as follows:

**SUBCHAPTER C—INSTITUTIONAL
MANAGEMENT**

**PART 541—INMATE DISCIPLINE AND
SPECIAL HOUSING UNITS**

* * * * *

**Subpart B—Inmate Discipline and Special
Housing Units**

Sec.

- 541.10 Purpose and scope.
- 541.11 Notice to inmate of Bureau of Prisons rules.
- 541.12 Inmate rights and responsibilities.
- 541.13 Prohibited acts and disciplinary severity scale.
- 541.14 Incident report and investigation.
- 541.15 Initial hearing.
- 541.16 Establishment and functioning of Institution Discipline Committee.
- 541.17 Procedures in Institution Discipline Committee hearings.
- 541.18 Dispositions of the Institution Discipline Committee.
- 541.19 Appeals from Unit Discipline Committee or Institution Discipline Committee actions.
- 541.20 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.
- 541.21 Conditions of disciplinary segregation.
- 541.22 Administrative detention.
- 541.23 Protection cases.

**Subpart B—Inmate Discipline and
Special Housing Units**

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

§ 541.10 Purpose and scope.

(a) So that inmates may live in a safe and orderly environment, it is necessary for institution authorities to impose discipline on those inmates whose

behavior is not in compliance with Bureau of Prisons rules. The provisions of this rule apply to all persons committed to the care, custody, and control (direct or constructive) of the Bureau of Prisons.

(b) The following general principles apply in every disciplinary action taken:

- (1) Only institution staff may take disciplinary action.
- (2) Staff shall take disciplinary action at such times and to the degree necessary to regulate an inmate's behavior within Bureau rules and institution guidelines and to promote a safe and orderly institution environment.
- (3) Staff shall control inmate behavior in a completely impartial and consistent manner.
- (4) Disciplinary action may not be capricious or retaliatory.
- (5) Staff may not impose or allow imposition of corporal punishment of any kind.

(6) If it appears at any stage of the disciplinary process that an inmate is mentally ill, staff shall refer the inmate to a mental health professional for determination of whether the inmate is responsible for his conduct or is incompetent. Staff may take no disciplinary action against an inmate whom mental health staff determines to be incompetent or not responsible for his conduct.

(i) A person is not responsible for his conduct if, at the time of the conduct, the person, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. When a person is determined not responsible for his

conduct, the Incident Report is to show as a finding that the person did not commit the prohibited act because that person was found not to be mentally responsible for his conduct.

(ii) A person is incompetent if that person lacks the ability to understand the nature of the disciplinary proceedings, or to assist in his defense at the proceedings. When a person is determined incompetent, the disciplinary proceedings shall be postponed until such time as the inmate is able to understand the nature of the disciplinary proceedings and to assist in his defense at those proceedings. If competency is not restored within a reasonable period of time, the Incident Report is to show as a finding that the inmate is incompetent to assist in his or her defense at the disciplinary proceedings.

**§ 541.11 Notice to inmate of Bureau of
Prison rules.**

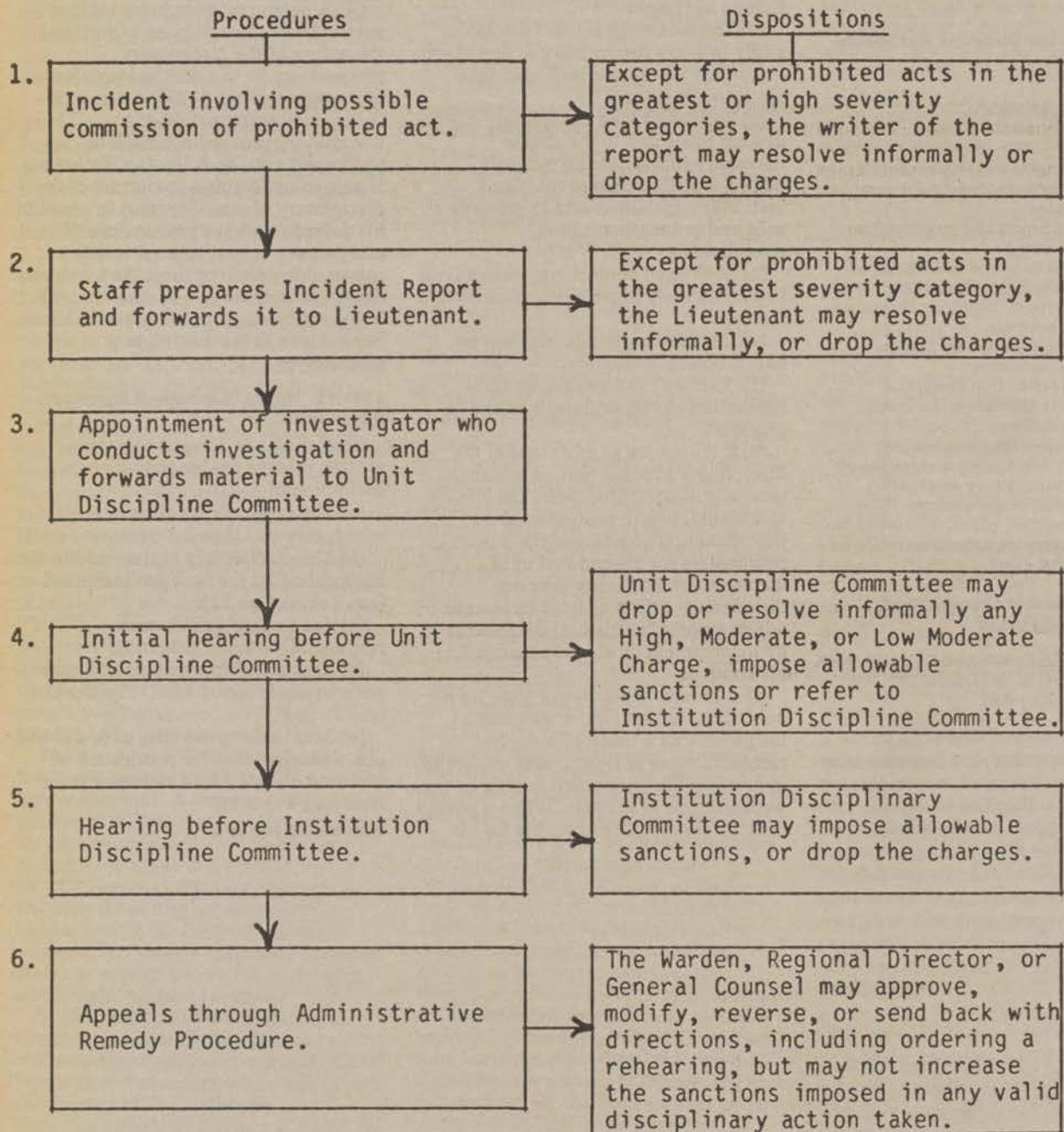
Staff shall advise each inmate in writing promptly after arrival at an institution of:

- (a) The types of disciplinary action which may be taken by institution staff;
- (b) The disciplinary system within the institution and the time limits thereof (see Tables 1 and 2);
- (c) The inmate's rights and responsibilities (see § 541.12);
- (d) Prohibited acts and disciplinary severity scale (see § 541.13, Tables 3, 4, and 5); and
- (e) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time (see Table 6).

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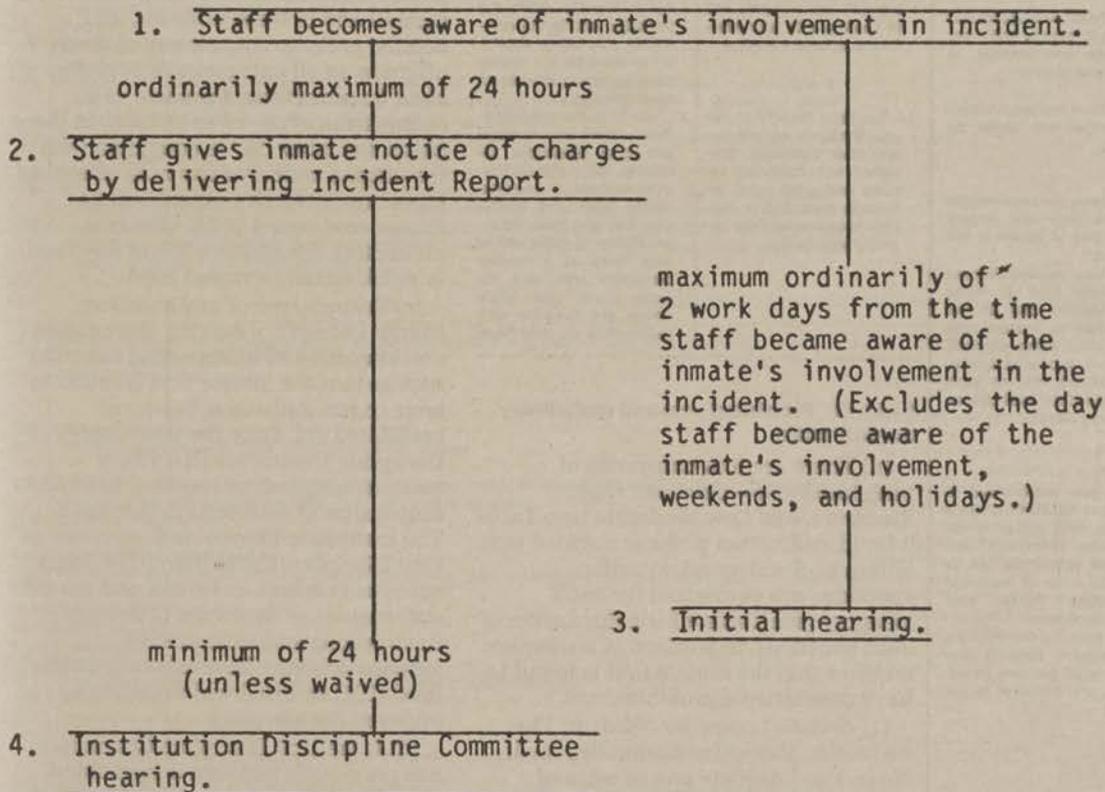
SUMMARY OF DISCIPLINARY SYSTEM

TABLE 1



TIME LIMITS IN DISCIPLINARY PROCESS

TABLE 2



NOTE: These time limits are subject to exceptions as provided in the rules.

Staff may suspend disciplinary proceedings for a period not to exceed two calendar weeks while informal resolution is attempted. If informal resolution is unsuccessful, staff may reinstitute disciplinary proceedings at the same stage at which suspended. The time requirements then begin running again, at the same point at which they were suspended.

§ 541.12 Inmate Rights and Responsibilities.

Rights	Responsibilities
1. You have the right to expect that as a human being you will be treated respectfully, impartially, and fairly by all personnel.	1. You have the responsibility to treat others, both employees and inmates, in the same manner.
2. You have the right to be informed of the rules, procedures, and schedules concerning the operation of the institution.	2. You have the responsibility to know and abide by them.
3. You have the right to freedom of religious affiliation, and voluntary religious worship.	3. You have the responsibility to recognize and respect the rights of others in this regard.
4. You have the right to health care, which includes nutritious meals, proper bedding and clothing, and a laundry schedule for cleanliness of the same, an opportunity to shower regularly, proper ventilation for warmth and fresh air, a regular exercise period, toilet articles and medical and dental treatment.	4. It is your responsibility not to waste food, to follow the laundry and shower schedule, to maintain neat and clean living quarters, to keep your area free of contraband, and to seek medical and dental care as you may need it.
5. You have the right to visit and correspond with family members, and friends, and correspond with members of the news media in keeping with Bureau rules and institution guidelines.	5. It is your responsibility to conduct yourself properly during visits, not to accept or pass contraband, and not to violate the law or Bureau rules or institution guidelines through your correspondence.
6. You have the right to unrestricted and confidential access to the courts by correspondence (on matters such as the legality of your conviction, civil matters, pending criminal cases, and conditions of your imprisonment).	6. You have the responsibility to present honestly and fairly your petitions, questions, and problems to the court.
7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence.	7. It is your responsibility to use the services of an attorney honestly and fairly.
8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems. You also have the right to receive help when it is available through a legal assistance program.	8. It is your responsibility to use these resources in keeping with the procedures and schedule prescribed and to respect the rights of other inmates to the use of the materials and assistance.
9. You have the right to a wide range of reading materials for educational purposes and for your own enjoyment. These materials may include magazines and newspapers sent from the community, with certain restrictions.	9. It is your responsibility to seek and utilize such materials for your personal benefit, without depriving others of their equal rights to the use of this material.

Rights	Responsibilities
10. You have the right to participate in education, vocational training and employment as far as resources are available, and in keeping with your interests, needs, and abilities.	10. You have the responsibility to take advantage of activities which may help you live a successful and law-abiding life within the institution and in the community. You will be expected to abide by the regulations governing the use of such activities.
11. You have the right to use your funds for commissary and other purchases, consistent with institution security and good order, for opening bank and/or savings accounts, and for assisting your family.	11. You have the responsibility to meet your financial and legal obligations, including, but not limited to, court-imposed assessments, fines, and restitution. You also have the responsibility to make use of your funds in a manner consistent with your release plans, your family needs, and for other obligations that you may have.

§ 541.13 Prohibited acts and disciplinary severity scale.

(a) There are four categories of prohibited acts—Greatest, High, Moderate, and Low Moderate (see Table 3 for identification of the prohibited acts within each category). Specific sanctions are authorized for each category (see Table 4 for a discussion of each sanction). Imposition of a sanction requires that the inmate first is found to have committed a prohibited act.

(1) *Greatest category offenses:* The Institution Discipline Committee shall impose and execute one or more of sanctions A through E. The Committee may also suspend one or more additional sanctions A through F. The Committee may impose and execute sanction F only in addition to execution of one or more of sanctions A through E.

(2) *High category offenses:* The appropriate committee shall impose and execute one or more of sanctions A through M. They may also suspend one or more additional sanctions A through M.

(3) *Moderate category offenses:* The appropriate committee shall impose at least one sanction A through N, but may suspend any sanction or sanctions imposed.

(4) *Low moderate category offenses:* The appropriate committee shall impose

at least one sanction E through P, but may suspend any sanction or sanctions imposed.

(b) Aiding another person to commit any of these offenses, *attempting* to commit any of these offenses, and *making plans* to commit any of these offenses, in all categories of severity, *shall be considered the same as a commission of the offense itself.* In these cases, the letter "A" is combined with the offense code. For example, planning an escape would be considered as Escape and coded 102A. Likewise, attempting the adulteration of any food or drink would be coded 209A.

(c) Suspensions of any sanction cannot exceed six months. Revocation and execution of a suspended sanction require that the inmate first is found to have committed any subsequent prohibited act. Only the Institution Discipline Committee (IDC) may execute, suspend, or revoke and execute suspension of sanctions A through F. The Institution Discipline Committee or Unit Discipline Committee (UDC) may execute, suspend, or revoke and execute suspensions of sanctions G through P. Revocations and execution of suspensions may be made only at the level (IDC or UDC) which originally imposed the sanction.

(d) If the Unit Discipline Committee has previously imposed a suspended sanction and subsequently refers a case to the Institution Discipline Committee, the referral shall include an advisement to the IDC of any intent to revoke that suspension if the IDC finds that the prohibited act was committed. If the Institution Discipline committee than finds that the prohibited act was committed, they shall so advise the Unit Discipline Committee who may then revoke the previous suspension.

(e) A discipline committee may impose increased sanctions for repeated, frequent offenses according to the guidelines presented in Table 5.

(f) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time are presented in Table 6.

TABLE 3. PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE

[The UDC shall refer all Greatest Severity Prohibited Acts to the IDC with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
Greatest Category		
100	Killing	A. Recommend parole date rescission or retardation.
101	Assaulting any person (includes sexual assault) or an armed assault on the institution's secure perimeter (a charge for assaulting any person is to be used only when serious physical injury has been attempted or carried out by an inmate)	B. Forfeit earned statutory good time (up to 100%) and/or terminate or disallow extra good time (an extra good time sanction may not be suspended).
102	Escape from escort; escape from a secure institution (Security Level 2 through 6); or escape from a Security Level 1 institution with violence	C. Disciplinary Transfer (recommend).
103	Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest Severity, e.g., in furtherance of a riot or escape; otherwise the charge is properly classified Code 218, or 329)	D. Disciplinary segregation (up to 60 days).
		E. Make monetary restitution.
		F. Withhold statutory good time (Note—can be in addition to A through E—cannot be the only sanction executed).

TABLE 3. PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

[The UDC shall refer all Greatest Severity Prohibited Acts to the IDC with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
104	Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive or any ammunition	Sanctions A-F.
105	Rioting	
106	Encouraging other to riot	
107	Taking hostage(s)	
108	Possession, manufacture, or introduction of a hazardous tool (Tools most likely to be used in an escape or escape attempt or to serve as weapons capable of doing serious bodily harm to others; or those hazardous to institutional security or personal safety; e.g., hack-saw blade)	
109	Possession, introduction, or use of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	
110	Refusing to provide a urine sample or to take part in other drug-abuse testing	
198	Interfering with a staff member in the performance of duties (<i>Conduct must be of the Greatest Severity nature.</i>) This charge is to be used only when another charge of greatest severity is not applicable	
199	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons (<i>Conduct must be of the Greatest Severity nature.</i>) This charge is to be used only when another charge of greatest severity is not applicable	
High Category		
200	Escape from unescorted Community Programs and activities and Open Institutions (Security Level 1) and from outside secure institutions—without violence	A. Recommend parole date rescission or retardation.
201	Fighting with another person	B. Forfeit earned statutory good time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended).
202	(Not to be used)	
203	Threatening another with bodily harm or any other offense	C. Disciplinary transfer (recommend).
204	Extortion, blackmail, protection: Demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing	D. Disciplinary segregation (up to 30 days).
205	Engaging in sexual acts	E. Make monetary restitution.
206	Making sexual proposals or threats to another	F. Withhold statutory good time.
207	Wearing a disguise or a mask	G. Loss of privileges: commissary, movies, recreation, etc.
208	Possession of any unauthorized locking device, or lock pick, or tampering with or blocking any lock device (includes keys)	H. Change housing (quarters).
209	Adulteration of any food or drink	I. Remove from program and/or group activity.
210	(Not to be used)	J. Loss of job.
211	Possessing any officer's or staff clothing	K. Impound inmate's personal property.
212	Engaging in, or encouraging a group demonstration	L. Confiscate contraband.
213	Encouraging others to refuse to work, or to participate in a work stoppage	M. Restrict to quarters.
214	(Not to be used)	
215	Introduction of alcohol into BOP facility	
216	Giving or offering an official or staff member a bribe, or anything of value	
217	Giving money to, or receiving money from, any person for purposes of introducing contraband or for any other illegal or prohibited purposes	
218	Destroying, altering, or damaging government property, or the property of another person, having a value in excess of \$100.00 or destroying, altering, or damaging life-safety devices (e.g., fire alarm) regardless of financial value	
219	Stealing (theft; this includes data obtained through the unauthorized use of a communications facility, or through the unauthorized access to disks, tapes, or computer printouts or other automated equipment on which data is stored.)	
220	Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill	
221	Being in an unauthorized area with a person of the opposite sex without staff permission	
222	Making, possessing, or using intoxicants	
223	Refusing to breathe into a breathalyzer or take part in other alcohol abuse testing	
298	Interfering with a staff member in the performance of duties (<i>Conduct must be of the High Severity nature.</i>) This charge is to be used only when another charge of high severity is not applicable	
299	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons (<i>Conduct must be of the High Severity nature.</i>) This charge is to be used only when another charge of high severity is not applicable	
Moderate Category		
300	Indecent exposure	A. Recommend parole date rescission or retardation.
301	(Not to be used)	
302	Misuse of authorized medication.	
303	Possession of money or currency, unless specifically authorized, or in excess of the amount authorized	B. Forfeit earned statutory good time up to 25% or up to 30 days, whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended)
304	Loaning of property or anything of value for profit or increased return	C. Disciplinary transfer (recommend).
305	Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels	D. Disciplinary segregation (up to 15 days).
306	Refusing to work, or to accept a program assignment	E. Make monetary restitution.
307	Refusing to obey an order of any staff member (May be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed; e.g., failure to obey an order which furthers a riot would be charged as 105, Rioting; refusing to obey an order which furthers a fight would be charged as 201, Fighting; refusing to provide a urine sample when ordered would be charged as Code 110)	F. Withhold statutory good time.
308	Violating a condition of a furlough	G. Loss of privileges: commissary, movies, recreation, etc.
309	Violating a condition of a community program	H. Change housing (quarters).
310	Unexcused absence from work or any assignment	I. Remove from program and/or group activity
311	Failing to perform work as instructed by the supervisor	J. Loss of job.
312	Insolence toward a staff member	K. Impound inmate's personal property.
313	Lying or providing false statement to a staff member	L. Confiscate contraband.
314	Counterfeiting, forging or unauthorized reproduction of any document, article of identification, money, security, or official paper. (May be categorized in terms of greater severity according to the nature of the item being reproduced; e.g., counterfeiting release papers to effect escape, Code 102 or Code 200)	M. Restrict to quarters.
315	Participating in an unauthorized meeting or gathering	N. Extra duty.
316	Being in an unauthorized area	

TABLE 3. PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

[The UDC shall refer all Greatest Severity Prohibited Acts to the IDC with recommendations as to an appropriate disposition]

Code	Prohibited acts	Sanctions
317	Failure to follow safety or sanitation regulations	Sanctions A-N.
318	Using any equipment or machinery which is not specifically authorized	
319	Using any equipment or machinery contrary to instructions or posted safety standards	
320	Failing to stand count	
321	Interfering with the taking of count	
322	(Not to be used)	
323	(Not to be used)	
324	Gambling	
325	Preparing or conducting a gambling pool	
326	Possession of gambling paraphernalia	
327	Unauthorized contacts with the public	
328	Giving money or anything of value to, or accepting money or anything of value from: another inmate, or any other person without staff authorization	
329	Destroying, altering, or damaging government property, or the property of another person, having a value of \$100.00 or less	
330	Being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards	
331	Possession, manufacture, or introduction of a non-hazardous tool or other non-hazardous contraband (Tool not likely to be used in an escape or escape attempt, or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to institutional security or personal safety; Other non-hazardous contraband includes such items as food or cosmetics)	
398	Interfering with a staff member in the performance of duties (Conduct must be of the Moderate Severity nature.) This charge is to be used only when another charge of moderate severity is not applicable	
399	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons (Conduct must be of the Moderate Severity nature.) This charge is to be used only when another charge of moderate severity is not applicable	
Low Moderate Category		
400	Possession of property belonging to another person	E. Make monetary restitution. F. Withhold statutory good time. G. Loss of privileges: commissary, movies, recreation, etc.
401	Possessing unauthorized amount of otherwise authorized clothing	H. Change housing (quarters). I. Remove from program and/or group activity. J. Loss of job. K. Impound inmate's personal property. L. Confiscate contraband. M. Restrict to quarters. N. Extra duty. O. Reprimand. P. Warning.
402	Malingering, feigning illness	
403	Smoking where prohibited	
404	Using abusive or obscene language	
405	Tattooing or self-mutilation	
406	Unauthorized use of mail or telephone (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G) (May be categorized and charged in terms of greater severity, according to the nature of the unauthorized use; e.g., the telephone is used for planning, facilitating, committing an armed assault on the institution's secure perimeter, would be charged as Code 101, Assault)	
407	Conduct with a visitor in violation of Bureau regulations (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G)	
408	Conducting a business	
409	Unauthorized physical contact (e.g., kissing, embracing)	
498	Interfering with a staff member in the performance of duties (Conduct must be of the Low Moderate Severity nature.) This charge is to be used only when another charge of low moderate severity is not applicable	
499	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons (Conduct must be of the Low Moderate Severity nature.) This charge is to be used only when another charge of low moderate severity is not applicable	Sanctions E-P.

Table 4.—Sanctions

1. Sanctions of the Institution Discipline Committee: (upon finding the inmate committed the prohibited act)

(a) *Recommend parole date rescission or retardation.* The IDC may make recommendation to the U.S. Parole Commission for retardation or rescission of parole grants. This may require holding fact-finding hearings upon request of or for the use of the Commission.

(b) *Forfeit earned statutory good time and/or terminate or disallow extra good time.* The statutory good time available for forfeiture is limited to an amount computed by multiplying the number of months served at the time of the offense for which forfeiture action is taken, by the applicable monthly rate specified in 18 U.S.C., section 4161 (less any previous forfeiture or withholding outstanding). Disallowance of extra good time is limited to the extra good time for the calendar month in which the violation occurs. It may not be withheld or restored. The sanction of termination or disallowance of extra good time may

not be suspended. Authority to restore forfeited statutory good time is delegated to *only* the Institution Discipline Committee of each institution. Limitations on this sanctions and eligibility for restoration are based on the severity scale. [See Table 6]

(c) *Recommend disciplinary transfer.* The IDC may recommend that an inmate be transferred to another institution for disciplinary reasons. Where a present or impending emergency requires immediate action, the Warden may recommend for approval of the receiving Regional Director the transfer of an inmate prior to either a UDC or IDC hearing. Transfers for disciplinary reasons prior to a hearing before the UDC or IDC may be used only in emergency situations and only with approval of the receiving Regional Director. When an inmate is transferred under these circumstances, the sending institution shall forward copies of incident reports and other relevant materials with completed investigation to the receiving Institution's Institution Discipline Committee. The inmate shall

receive a hearing at the receiving institution as soon as practicable under the circumstances to consider the factual basis of the charge of misconduct and the reasons for the emergency transfer. All procedural requirements applicable to UDC and IDC hearings contained in this rule are appropriate, except that written statements of unavailable witnesses are liberally accepted instead of live testimony.

(d) *Disciplinary segregation.* The IDC may direct that an inmate be placed or retained in disciplinary segregation pursuant to guidelines contained in this rule. Consecutive disciplinary segregation actions can be imposed and executed for inmates charged with and found to have committed offenses that are part of different acts only. Specific limits on time in disciplinary segregation are based on the severity scale. (See Table 6)

(e) *Make monetary restitution.* The IDC may direct that an inmate reimburse the U.S. Treasury for any damages to U.S. Government property that the individual

is determined to have caused or contributed to.

(f) *Withholding statutory good time.* The IDC may direct that an inmate's good time be withheld. Withholding of good time should not be applied as a universal punishment to all persons in disciplinary segregation status. Withholding is limited to the total amount of good time creditable for the single month during which the violation occurs.

Some offenses, such as refusal to work at an assignment, may be recurring, thereby permitting, when ordered by the Institution Discipline Committee, consecutive withholding actions. When this is the intent, the IDC shall specify at the time of the initial IDC hearing that good time may be withheld until the inmate elects to return to work. In addition, the Committee shall review, near the beginning of the month or at the 30-day review, the offense with the inmate. For an on-going offense, staff need not prepare a new Incident Report or conduct an investigation or initial hearing. The Committee shall provide the inmate an opportunity to appear in person and to present a statement orally or in writing. The IDC shall document its action on, or by an attachment to, the initial IDC

report. If further withholding is ordered, the Committee shall advise the inmate of the inmate's right to appeal through the Administrative Remedy Procedure (Part 542).

Only the Institution Discipline Committee may restore withheld statutory good time. Restoration eligibility is based on the severity scale. (See Table 6)

2. *Sanctions of the Institution Discipline Committee/Unit Discipline Committee:* (upon finding the inmate committed the prohibited act)

(g) *Loss of privileges: commissary, movies, recreation, etc.* The IDC or UDC may direct that an inmate forego specific privileges for a specified period of time. Ordinarily, loss of privileges is used as a sanction in response to an abuse of that privilege; e.g., loss of telephone privileges for a specified period of time for an abuse of the telephone privilege. However, loss of leisure privileges, such as movies, television, and recreation, may be appropriate sanctions for misconduct which is not related to the privilege.

(h) *Change housing (quarters).* The IDC or UDC may direct that an inmate be removed from current housing and placed in other housing.

(i) *Remove from program and/or group activity.* The IDC or UDC may direct that an inmate forego participating in any program or group activity for a specified period of time.

(j) *Loss of job.* The IDC or UDC may direct that an inmate be removed from present job and/or be assigned to another job.

(k) *Impound inmate's personal property.* The IDC or UDC may direct that an inmate's personal property be stored in the institution (when relevant to offense) for a specified period of time.

(l) *Confiscate contraband.* The IDC or UDC may direct that any contraband in the possession of an inmate be confiscated and disposed of appropriately.

(m) *Restrict quarters.* The IDC or UDC may direct that an inmate be confined to quarters or in its immediate area for a specified period of time.

(n) *Extra duty.* The IDC or UDC may direct that an inmate perform tasks other than those performed during regularly assigned institutional job.

(o) *Reprimand.* The IDC or UDC may reprimand an inmate either verbally or in writing.

(p) *Warning.* The IDC or UDC may verbally warn an inmate regarding committing prohibited act(s).

TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY

When the appropriate committee finds that an inmate has committed a prohibited act in the Low Moderate, Moderate, or High category, and when there has been a repetition of the same offense(s) within recent months (offenses for violation of the same code), the IDC may impose additional sanctions according to the following chart. (Note: An informal resolution may not be considered as a prior offense for purposes of this chart.)

Category	Prior offense (same code) within time period	Frequency of repeated offense	Sanction permitted
Low Moderate (400 Series)	6 months	2d offense	Low Moderate Sanctions, plus: 1. Disciplinary segregation, up to 7 days. 2. Forfeit earned SGT up to 10% or up to 15 days, whichever is less, and/or terminate or disallow extra good time (EGT) (and EGT sanction may not be suspended).
Moderate (300 Series)	12 months	3d offense, or more	Any sanctions available in Moderate (300) and Low Moderate (400) series. Moderate Sanctions (A,C,E-N), plus: 1. Disciplinary segregation, up to 21 days. 2. Forfeit earned SGT up to 37 1/2% or up to 45 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		2d offense	
High (200 Series)	18 months	3d offense, or more	Any sanctions available in Moderate (300) and High (200) series. High Sanctions (A, C, E-M), plus: 1. Disciplinary segregation, up to 45 days. 2. Forfeit earned SGT up to 75% or up to 90 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		2d offense	
		3d offense, or more	

TABLE 6.—SANCTIONS BY SEVERITY OF PROHIBITED ACT, WITH ELIGIBILITY FOR RESTORATION OF FORFEITED AND WITHHELD STATUTORY GOOD TIME

Severity of act	Sanctions	Max. amt. fort. SGT ¹	Max. amt. W/hd SGT	Elig. restoration forf. SGT	Elig. restoration W/hd SGT/	Max. dis seg ¹
Greatest	A-F	100%	Good time creditable for single month during which violation occurs. Applies to all categories.	24 mos.	18 mos.	60 days.
High	A-M	50% or 60 days, whichever is less.		18 mo.	12 mos.	30 days.
Moderate	A-N	25% or 30 days, whichever is less.		12 mos.	6 mos.	15 days.
Low Moderate	E-P	N/A		N/A (1st offense) 6 mos. (2nd or 3rd offense in same category within six months).	3 mos.	N/A (1st offense) 7 days (2nd offense) 15 days (3rd offense).

¹ Restoration will be approved at the time of initial eligibility only when the inmate has shown a period of time with improved good behavior. When the IDC denies restoration of forfeited or withheld statutory good time, the IDC shall notify the inmate of the reasons for denial. The IDC establish a new eligibility date, not to exceed six months from the date of denial.

An inmate with an approaching parole effective date, or an approaching mandatory release or expiration date who also has forfeited good time may be placed in a Community Treatment Center only if that inmate is otherwise eligible under Bureau policy, and if there exists a legitimate documented need for such placement. The length of stay at the Community Treatment Center is to be held to the time necessary to establish residence and employment.

§ 541.14 Incident report and investigation.

(a) *Incident report.* The Bureau of Prisons encourages informal resolution (requiring consent of both parties) of incidents involving violations of Bureau regulations. However, when staff witnesses or has a reasonable belief that a violation of Bureau regulations has been committed by an inmate, and when staff considers informal resolution of the incident inappropriate or unsuccessful, staff shall prepare an Incident Report and promptly forward it to the appropriate Lieutenant. Except for prohibited acts in the Greatest Severity Category, the Lieutenant may informally dispose of the Incident Report or forward the Incident Report for investigation consistent with the section. The Lieutenant shall expunge the inmate's file of the Incident Report if informal resolution is accomplished. Only the IDC may make a final disposition on a prohibited act in the Greatest Severity Category.

(b) *Investigation.* Staff shall conduct the investigation promptly unless circumstances beyond the control of the investigator intervene. The investigating officer should be an employee of supervisory level and may not be the employee reporting the incident, or one who was involved in the incident, in question.

(1) When it appears likely that the incident may be the subject of criminal prosecution, the investigating officer shall suspend the investigation, and staff may not question the inmate until the Federal Bureau of Investigation or other investigative agency interviews have been completed or until the agency responsible for the criminal investigation advises that staff questioning may occur.

(2) The inmate may receive a copy of the Incident Report prior to being seen by the investigating agency. The investigating officer (Bureau of Prisons) shall give the inmate a copy of the Incident Report at the beginning of the investigation, unless there is good cause for delivery at a later date, such as absence of the inmate from the institution or a medical condition which argues against delivery. If the investigation is delayed for any reason, any employee may deliver the charge(s) to the inmate. The staff member shall note the date and time the inmate received a copy of the Incident Report. The investigator shall also read the charge(s) to the inmate and ask for the inmate's statement concerning the incident unless it appears likely that the

incident may be the subject of criminal prosecution. The investigator shall advise the inmate of the right to remain silent at all stages of the disciplinary process but that the inmate's silence may be used to draw an adverse inference against the inmate at any stage of the institutional disciplinary process. The investigator shall also inform the inmate that the inmate's silence alone may not be used to support a finding that the inmate has committed a prohibited act. The investigator shall then thoroughly investigate the incident. The investigator shall record all steps and actions taken on the Incident Report and forward all relevant material to the staff holding the initial hearing. The inmate does not receive a copy of the investigation. However, if the case is ultimately forwarded to the Institution Discipline Committee, the Committee shall give a copy of the investigation and other relevant materials to the inmate's staff representative for use in presentation on the inmate's behalf.

§ 541.15 Initial hearing.

The Warden shall delegate to one or more institution staff members the authority and duty to hold an initial hearing upon completion of the investigation. The Warden shall authorize these staff members to impose minor sanctions (G through P) for violation of prohibited act(s). In order to ensure impartiality, the appropriate staff member(s) (hereinafter usually referred to as the Unit Discipline Committee (UDC)) may not be the reporting or investigating officer or a witness to the incident, or play any significant part in having the charges referred to the UDC. However, a staff member witnessing an incident may serve on the UDC where virtually every staff member in the institution witnesses the incident in whole or in part. If the UDC finds at the initial hearing that an inmate has committed a prohibited act, the UDC may impose minor dispositions and sanctions. When an alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions, the UDC shall refer the charges to the Institution Discipline Committee for further hearing. The UDC must refer all greatest category charges to the IDC. The following minimum standards apply to initial hearings in all institutions.

(a) Staff shall give each inmate charged with violating a Bureau rule a written copy of the charge(s) against the

inmate, ordinarily within 24 hours of the time staff became aware of the inmate's involvement in the incident.

(b) Each inmate so charged is entitled to an initial hearing before the UDC, ordinarily held within two work days from the time staff became aware of the inmate's involvement in the incident. This two work day period excludes the day staff become aware of the inmate's involvement in the incident, weekends, and holidays.

(c) The inmate is entitled to be present at the initial hearing except during deliberations of the decision maker(s) or when institutional security would be jeopardized by the inmate's presence. The UDC shall clearly document in the record of the hearing reasons for excluding an inmate from the hearing. An inmate may waive the right to be present at this hearing, provided that the waiver is documented by staff and reviewed by the UDC. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The UDC may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the UDC shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined.

(d) The inmate is entitled to make a statement and to present documentary evidence in the inmate's own behalf.

(e) The Unit Discipline Committee may informally resolve any High, Moderate, or Low Moderate charge. The UDC shall expunge the inmate's file of the Incident Report if informal resolution is accomplished.

(f) The Unit Discipline Committee shall consider all evidence presented at the hearing and shall make a decision based on at least some facts, and if there is conflicting evidence, it must be based on the greater weight of the evidence. The UDC shall take one of the following actions:

(1) Find that the inmate committed the prohibited act charged and/or a similar prohibited act if reflected in the Incident Report;

(2) Find that the inmate did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report; or

(3) Refer the case to the IDC for further hearing.

The UDC shall give the inmate a written copy of the decision and disposition by the close of business the next work day. Any action taken as a minor disposition is reviewable under the Administrative Remedy Procedure (see Part 542 of this Chapter).

(g) The UDC shall prepare a record of its proceedings which need not be verbatim. A record of the hearing and supporting documents are kept in the inmate's file.

(h) When an alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions (G through P), the UDC shall refer the charge(s) without indication of findings as to commission of the alleged violation to the Institution Discipline Committee (IDC) for hearing and disposition. The UDC shall forward copies of all relevant documents to the chairman of the IDC with a brief statement of reasons for the referral along with any recommendations for appropriate disposition if the IDC finds the inmate has committed the act charged and/or a similar prohibited act. The inmate whose charge is being referred to the Institution Discipline Committee may be retained in administrative detention or other restricted status, but the UDC may not impose a final disposition if the matter is being referred to the IDC.

(i) When charges are to be referred to the Institution Discipline Committee, the UDC shall advise the inmate of the rights afforded at a hearing before the IDC. The UDC shall ask the inmate to indicate a choice of staff representative, if any, and the names of any witnesses the inmate wishes to be called to testify at the hearing and what testimony they are expected to provide. The UDC shall advise the inmate that the inmate may waive the right to be present at the IDC hearing, but still elect to have witnesses any/or a staff representative appear in the inmate's behalf at this hearing.

(j) When the Unit Discipline Committee holds a full hearing and determines that the inmate did not commit a prohibited act of High, Moderate or Low Moderate Severity, the UDC shall expunge the inmate's file of the Incident Report and related documents. The UDC must refer to the Institution Discipline Committee all incidents involving prohibited acts of Greatest Severity.

(k) The UDC may extend time limits imposed in this section for a good cause shown by the inmate or staff and documented in the record of the hearing.

§ 541.16 Establishment and functioning of Institution Discipline Committee.

(a) The Warden shall establish a single Institution Discipline Committee. In the event of a serious disturbance or other emergency, or if an inmate commits an offense in the presence of the IDC, the Warden may establish more than one Institution Discipline Committee with approval of the appropriate Regional Director.

(b) The Warden may appoint as many members to the Institution Discipline Committee as are appropriate. At least three members, including the chairman, shall be present at any hearing to constitute a quorum. The chairman and at least one member present at the hearing must be of the department head level or higher. The third member and additional members of the Committee need not be of department head level. For the purpose of this section, "department head" includes acting department head. In order to insure impartiality, no member of the IDC may be the reporting officer, investigating officer, or UDC member or a witness to the incident or play any significant part in having the charge(s) referred to the IDC. However, a staff member witnessing an incident may sit as a member of the IDC where virtually every staff member in the institution witnessed the incident in whole or in part.

(c) The Institution Discipline Committee shall conduct hearings, make findings, and impose appropriate sanctions for incidents of inmate misconduct referred to it for disposition following the hearing required by § 541.15 before the UDC. The IDC may not hear any case or impose any sanctions in a case not heard and referred by the UDC. Only the Institution Discipline Committee shall have the authority to impose or suspend sanctions A through F. This Committee shall conduct reviews of inmates placed in disciplinary segregation in accordance with the requirements of § 541.20.

§ 541.17 Procedures in Institution Discipline Committee hearings.

The Institution Discipline Committee shall proceed as follows:

(a) The Warden shall give an inmate advance written notice of the charge(s) against the inmate no less than 24 hours before the inmate's appearance before the Institution Discipline Committee unless the inmate is to be released from custody within that time. An inmate may waive in writing the 24-hour notice requirement.

(b) The Warden shall provide an inmate the service of a full time staff

member to represent the inmate at the hearing before the Institution Discipline Committee should the inmate so desire. The Warden, the members of the IDC, the reporting officer, investigating officer, a witness to the incident, and UDC members involved in the case may not act as staff representative. The Warden may exclude other staff from acting as staff representative in a particular case when there is a potential conflict in roles. The staff representative shall be available to assist the inmate if the inmate desires by speaking to witnesses and by presenting favorable evidence to the IDC on the merits of the charge(s) or in extenuation or mitigation of the charge(s). The chairman shall arrange for the presence of the staff representative selected by the inmate. If the staff member selected declines or is unavailable because of absence from the institution, the inmate has the option of selecting another representative, or in the case of an absent staff member of waiting a reasonable period for the staff member's return, or of proceeding without a staff representative. When several staff members decline this role, the Warden shall promptly appoint a staff representative to assist the inmate. The IDC shall afford a staff representative adequate time to speak with the inmate and interview requested witnesses where appropriate. While it is expected that a staff member will have had ample time to prepare prior to the hearing, delays in the hearing to allow for adequate preparation may be ordered by the chairman of the Institution Discipline Committee.

When it appears that the inmate is not able to properly make a presentation on his own behalf (for example, an illiterate inmate), the Warden shall appoint a staff representative for that inmate, even if one is not requested.

(c) The inmate is entitled to make a statement and to present documentary evidence in the inmate's own behalf. An inmate has the right to submit names of requested witnesses and have them called to testify and to present documents in the inmate's behalf, provided the calling of witnesses or the disclosure of documentary evidence does not jeopardize or threaten institutional or an individual's security. The chairman shall call those witnesses who have information directly relevant to the charge(s) and who are reasonably available. This may include witnesses from outside of the institution. The inmate charged may be excluded during the appearance of the outside witness. The appearance of the outside witness should be in an area of the institution in which outside visitors are usually

allowed. The chairman need not call repetitive witnesses. The reporting officer and other adverse witnesses need not be called if their knowledge of the incident is adequately summarized in the Incident Report and other investigative materials supplied to the IDC. The chairman shall request submission of written statements from unavailable witnesses who have information directly relevant to the charge(s). The chairman shall document reasons for declining to call requested witnesses in the IDC report, or, if the reasons are confidential, in a separate report, not available to the inmate. The inmate's staff representative, or when the inmate waives staff representation members of the Committee, shall question witnesses requested by the inmate who are called before the IDC. The inmate who has waived staff representation may submit questions for requested witnesses in writing to the Committee. The inmate may not question any witness at the hearing.

(d) An inmate has the right to be present throughout the Institution Discipline Committee hearing except during deliberations of the Committee or when institutional security would be jeopardized. The chairman must document in the record the reason(s) for excluding an inmate from the hearing. An inmate may waive the right to be present at the hearing, provided that the waiver is documented by staff and reviewed by the IDC. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The Committee may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the Institution Discipline Committee shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined. When an inmate returns to custody following absence during which sanctions were imposed by the IDC, the Warden shall have the charges reheard before the Institution Discipline Committee ordinarily within 60 days after the inmate's arrival at the institution to which the inmate is designated after return to custody, and following appearance before the Unit Discipline Committee at that institution. The UDC shall ensure that the inmate has all rights required for appearance at the Institution Discipline Committee, including delivery of charge(s), advisement of the right to remain silent

and other rights to be exercised at the IDC. All the applicable procedural requirements of Institution Discipline Committee hearings apply to this rehearing, except that written statements of witnesses not readily available may be liberally used instead of in-person witnesses. The IDC upon rehearing may affirm the earlier action taken, may dismiss the charge(s), may modify the finding of the original IDC as to the offense which was committed, or may modify but may not increase the sanctions previously imposed in the inmate's absence.

(e) The IDC may refer the case back to the UDC for further information or disposition. The IDC may postpone or, at any time prior to making a decision as to whether or not a prohibited act was committed, may continue the hearing until a later date whenever further investigation or more evidence is needed. A postponement or continuance must be for good cause (determined by the IDC chairman) shown by the inmate or staff and should be documented in the record of the hearing.

(f) The IDC shall consider all evidence presented at the hearing and shall make a decision based on at least some facts, and if there is conflicting evidence, it must be based on the greater weight of the evidence. The Committee shall find that the inmate either:

(1) Committed the prohibited act charged and/or a similar prohibited act if reflected in the Incident Report; or

(2) Did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report.

When a disciplinary committee decision is based on confidential informant information, the UDC or IDC shall document, ordinarily in the committee report, its finding as to the reliability of each confidential informant relied on *and the factual basis for that finding*. When it appears that this documentation in the committee report would reveal the confidential informant's identity, the finding as to the reliability of each confidential informant relied on and the factual basis for that finding shall be made part of the hearing record in a separate report, prepared by the IDC chairman, not available to the inmate.

(g) The Institution Discipline Committee shall prepare a record of its proceedings which need not be verbatim. This record must be sufficient to document the advisement of inmate rights, the Committee's findings, the Committee's decision and the specific evidence relied on by the Committee, and must include a brief statement of the reasons for the sanctions imposed.

The evidence relied upon, the decision, and the reasons for the actions taken must be set out in specific terms unless doing so would jeopardize institutional security. The IDC shall give the inmate a written copy of the decision and disposition, ordinarily within 10 days of the IDC's decision.

(h) A record of the hearing and supporting documents are to be kept in the inmate central file.

(i) The Institution Discipline Committee shall expunge an inmate's file of the Incident Report and related documents whenever the Committee finds the inmate did not commit a prohibited act. The requirement for expunging the inmate's file does not preclude maintaining for research purposes copies of disciplinary actions resulting in "not guilty" findings in a master file separate from the inmate's institution file. However, institution staff may not use or allow the use of the contents of this master file in a manner which would adversely affect the inmate. Likewise, the expungement requirement does not require the destruction of medical reports or other reports relating to a particular inmate which must be maintained to document medical or other treatment given in a special housing unit. If an inmate's conduct during one continuous incident may constitute more than one prohibited act, and if the incident is reported in a single incident Report, and if the IDC finds the inmate has not committed every prohibited act charged, or if the IDC finds that the inmate has committed a prohibited act(s) other than the act(s) charged, then the IDC shall record its findings clearly and shall change the Incident Report to show only the incident and code references to charges which were proved. Institution staff may not use the existence of charged but unproved misconduct against the inmate.

§ 541.18 Dispositions of the Institution Discipline Committee.

The Institution Discipline Committee has available a broad range of sanctions and dispositions when it has completed a hearing. The Institution Discipline Committee may do any of the following:

(a) Dismiss any charge(s) before it upon a finding that the inmate did not commit the prohibited act(s). The IDC shall order the record of charge(s) expunged upon such finding.

(b) Impose sanctions A through P as provided in § 541.13.

(c) Suspend the execution of a sanction it imposes as provided in § 541.13.

§ 541.19 Appeals from Unit Discipline Committee or Institution Discipline Committee Actions.

At the time the Unit Discipline Committee or Institution Discipline Committee gives an inmate written notice of its decision, they shall also advise the inmate that the inmate may appeal the decision within 15 calendar days from the date that the inmate receives the written notice under Administrative Remedy Procedures (see Part 542 of this Chapter). On appeals, the Warden, Regional Director, or General Counsel may approve, modify, reverse, or send back with directions, including ordering a rehearing, any disciplinary action of the Unit Discipline Committee or Institution Discipline Committee but may not increase any valid sanction imposed. On appeals, the Warden, Regional Director, or General Counsel shall consider:

(a) Whether the Unit Discipline Committee or the Institution Discipline Committee substantially complied with the regulations on inmate discipline;

(b) Whether the Unit Discipline Committee or Institution Discipline Committee based its decision on some facts, and if there was conflicting evidence, whether the decision was based on the greater weight of the evidence; and

(c) Whether an appropriate sanction was imposed according to the severity level of the prohibited act.

§ 541.20 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.

(a) Except as provided in paragraph (b) of this section, an inmate may be placed in disciplinary segregation only by order of the Institution Discipline Committee following a hearing in which the inmate has been found to have committed a prohibited act in the Greatest, High, or Moderate Category, or a repeated offense in the Low Moderate Category. The IDC may order placement in disciplinary segregation only when other available dispositions are inadequate to achieve the purpose of punishment and deterrence necessary to regulate an inmate's behavior within acceptable limits.

(b) The Warden may temporarily (not exceeding five days) move an inmate to a more secure cell (which may be in an area ordinarily set aside for disciplinary segregation and which therefore requires the withdrawal or privileges ordinarily afforded in administrative detention status, until a hearing before the Institution Discipline Committee can be held) who (1) is causing a serious disruption (threatening life, serious bodily harm, or property) in

administrative detention, (2) cannot be controlled within the physical confines of administrative detention, and (3) upon advice of appropriate medical staff, does not require confinement in the institution hospital for mental or physical treatment, or who would ordinarily be housed in the institution hospital for mental or physical treatment, but who cannot safely be housed there because the hospital does not have a room or cell with adequate security provisions. The Warden may delegate this authority no further than to the official in charge of the institution at the time the move is necessary.

(c) The Institution Discipline Committee shall conduct a hearing and formally review the status of each inmate who spends seven continuous days in disciplinary segregation and thereafter shall review these cases on the record in the inmate's absence each week and shall conduct a hearing and formally review these cases at least once every 30 days. The inmate appears before the IDC at the 30-day hearings, unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when disciplinary segregation continues beyond 30 days. The assessment, submitted to the Committee in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals if segregation continues for this extended period.

(d) The Institution Discipline Committee may release an inmate from disciplinary segregation earlier than the sanction initially imposed when the Committee finds that continuation in disciplinary segregation is no longer necessary to regulate the inmate's behavior within acceptable limits or for fulfilling the purpose of punishment and deterrence which initially resulted in the inmate's placement in disciplinary segregation status. The Committee may not increase any previously imposed sanction.

§ 541.21 Conditions of disciplinary segregation.

(a) Disciplinary segregation is the status of confinement of an inmate housed in a special housing unit in a cell either alone or with other inmates,

separated from the general population. Inmates housed in disciplinary segregation have significantly fewer privileges than those housed in administrative detention.

(b) The Warden shall maintain for each segregated inmate basic living levels of decency and humane treatment, regardless of the purpose for which the inmate has been segregated. Living conditions may not be modified for the purpose of reinforcing acceptable behavior and different levels of living arrangements will not be established. Where it is determined necessary to deprive an inmate of a usually authorized item, staff shall prepare written documentation as to the basis for this action, and this document will be signed by the Warden, indicating the Warden's review and approval.

(c) The basic living standards for segregation are as follows:

(1) *Segregation conditions.* The quarters used for segregation must be well-ventilated, adequately lighted, appropriately heated and maintained in a sanitary condition at all times. All cells must be equipped with beds. Strip cells may not be a part of the segregation unit. Any strip cells which are utilized must be a part of the medical facility and under the supervision and control of the medical staff.

(2) *Cell occupancy.* Except in emergencies, the number of inmates confined to each cell or room may not exceed the number for which the space was designated. The Warden may approve temporary excess occupancy if the Warden finds there is an emergency requiring this action.

(3) *Clothing and bedding.* An inmate in segregation may wear normal institution clothing but may not have a belt. Staff shall furnish a mattress and bedding. Cloth or paper slippers may be substituted for shoes at the discretion of the Warden. An inmate may not be segregated without clothing, mattress, blankets and pillow, except when prescribed by the medical officer for medical or psychiatric reasons. Inmates in special housing status will be provided, as nearly as practicable, the same opportunity for the issue and exchange of clothing, bedding, and linen, and for laundry as inmates in the general population. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee. Any exception, and the reasons for this, must be recorded in the unit log.

(4) *Food.* Staff shall give a segregated inmate nutritionally adequate meals, ordinarily from the menu of the day for

the institution. Staff may dispense disposable utensils when necessary.

(5) *Personal hygiene.* Segregated inmates shall have the opportunity to maintain an acceptable level of personal hygiene. Staff shall provide toilet tissue, wash basin, tooth brush, eye glasses, shaving utensils, etc., as needed. Staff may issue a retrievable kit of toilet articles. Each segregated inmate shall have the opportunity to shower and shave at least three times a week, unless these procedures would present an undue security hazard. This security hazard will be documented and signed by the Warden, indicating the Warden's review and approval. Inmates in special housing will be provided, where practicable, barbering and hair care services. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee.

(6) *Exercise.* Staff will permit each segregated inmate no less than five hours exercise each week. Exercise should be provided in five one-hour periods, on five different days, but if circumstances require, one-half hour periods are acceptable if the five-hour minimum and different days schedule is maintained. These provisions must be carried out unless compelling security or safety reasons dictate otherwise. Institution staff shall document these reasons.

Exercise periods, not to exceed one week, may be withheld from an inmate by order of the Warden, upon recommendation of the Institution Discipline Committee. This recommendation may be made only following a hearing before the IDC, the hearing to be held in accordance with the provisions of § 541.17, following those provisions which are appropriate to these circumstances, and only upon a finding by the IDC that the actions of the segregated inmate pose a threat to the safety or health conditions of the unit.

(7) *Personal property.* Institution staff shall ordinarily impound personal property.

(8) *Reading material.* Staff shall provide a reasonable amount of nonlegal reading material, not to exceed five books per inmate at any one time, on a circulating basis. Staff shall provide the inmate opportunity to possess religious scriptures of the inmate's faith. As to legal materials, see Part 543, Subpart B.

(9) *Supervision.* In addition to the direct supervision afforded by the unit officer, a member of the medical department and one or more responsible officers designated by the Warden (ordinarily a Lieutenant) shall see each segregated inmate daily, including weekends and holidays. Members of the

program staff, including unit staff, shall arrange to visit inmates in special housing within a reasonable time after receiving the inmate's request.

(10) *Correspondence and visits.* As to correspondence privileges, see Part 540, Subpart B. Staff shall make reasonable effort to notify approved social visitors of any necessary restriction on ordinary visiting procedures so that they may be spared disappointment and unnecessary inconvenience. If ample time for correspondence exists, staff may place the burden of this notification to visitors on the inmate. As to general visiting and telephone privileges, see Part 540, Subpart D and Subpart I. In respect to legal, religious, and privileged outgoing mail, the relevant regulations must be followed by institution staff (see Parts 540, 543, and 548 of this Chapter).

§ 541.22 Administrative detention.

Administrative detention is the status of confinement of an inmate in a special housing unit in a cell either by self or with other inmates which serves to remove the inmate from the general population.

(a) *Placement in administrative detention.* The Warden may delegate authority to place an inmate in administrative detention to Lieutenants. Prior to the inmate's placement in administrative detention, the Lieutenant is to review the available information and determine whether the inmate's placement in administrative detention is warranted. The Warden may place an inmate in administrative detention when the inmate is in holdover status (i.e., en route to a designated institution) during transfer, or is a new commitment pending classification. The Warden may also place an inmate in administrative detention when the inmate's continued presence in the general population poses a serious threat to life, property, self, staff, other inmates or to the security or orderly running of the institution and when the inmate:

- (1) Is pending a hearing for a violation of Bureau regulations;
- (2) Is pending an investigation of a violation of Bureau regulations;
- (3) Is pending investigation or trial for a criminal act;
- (4) Is pending transfer;
- (5) Requests admission to administrative detention for the inmate's own protection, or staff determines that admission to or continuation in administrative detention is necessary for the inmate's own protection (see § 541.23); or

(6) Is terminating confinement in disciplinary segregation and placement in general population is not prudent. The Institution Discipline Committee is to

advise the inmate of this determination and the reasons for such action.

(i) In Security Level 1 through 5 and in Administrative type institutions, staff ordinarily within 90 days of an inmate's placement in post-disciplinary detention, shall, except for pretrial inmates, either return the inmate to the general inmate population or request regional level assistance to effect a transfer to a more suitable institution.

(ii) The Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate not transferred from post-disciplinary detention within the timeframe specified in paragraph (a)(6) (i) of this section.

(iii) In Security Level 6 institutions, staff will attempt to adhere to the 90-day limit for an inmate's placement in post-disciplinary detention. Because security needs required for an inmate in a Security Level 6 institution may not be available outside of post-disciplinary detention, the Warden may approve an extension of this placement upon determining in writing that it is not practicable to release the inmate to the general inmate population or to effect a transfer to a more suitable institution.

(iv) The appropriate Regional Director and the Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate in a Security Level 6 institution not transferred from post-disciplinary detention within the 90-day timeframe specified in paragraph (a)(6)(iii) of this section. A similar, subsequent review shall be conducted every 60-90 days if post-disciplinary detention continues for this extended period.

(b) *Memorandum detailing reasons for placement.* The Warden shall prepare a memorandum detailing the reasons for placing an inmate in administrative detention, with a copy given to the inmate, provided institutional security is not compromised thereby. Staff shall deliver this memorandum to the inmate within 24 hours of the inmate's placement in administrative detention, unless this delivery is precluded by exceptional circumstances. A memorandum is not necessary for an inmate placed in administrative detention when this placement is a direct result of the inmate's holdover status.

(c) *Review of inmates housed in administrative detention.* (1) Except as otherwise provided in paragraphs (c)(2) and (c)(3) of this section, the Warden shall designate appropriate staff to review the status of inmates housed in administrative detention. The reviewing

authority shall conduct a record review within three work days of the inmate's placement in administrative detention and shall hold a hearing and formally review the status of each inmate who spends seven continuous days in administrative detention, and thereafter shall review these cases on the record (in the inmate's absence) each week, and shall hold a hearing and review these cases formally at least every 30 days. The inmate appears before the reviewing authority at the hearing unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when administrative detention continues beyond 30 days. The assessment, submitted to the reviewing authority in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals should detention continue for this extended period. Administrative detention is to be used only for short periods of time except where an inmate needs long-term protection (see § 541.23), or where there are exceptional circumstances, ordinarily tied to security or complex investigative concerns. An inmate may be kept in administrative detention for longer term protection only if the need for such protection is documented by the reviewing authority. Provided institutional security is not compromised, the inmate shall receive at each formal review a written copy of staff's decision and the basis for this finding. The reviewing authority shall release an inmate from administrative detention when reasons for placement cease to exist.

(2) The Warden shall designate appropriate staff to meet weekly with an inmate in administrative detention when this placement is a direct result of the inmate's holdover status. Staff shall also

review this type of case on the record each week.

(3) When an inmate is placed in administrative detention for protection, but not at that inmate's request, the Warden or designee is to review the inmate's status within two work days of this placement to determine if continued protective custody is necessary. A formal hearing is to be held within seven days of the inmate's placement (see § 541.23, Protection Cases).

(d) *Conditions of administrative detention.* The basic level of conditions as described in § 541.21(c) for disciplinary segregation also apply to administrative detention. If consistent with available resources and the security needs of the unit, the Warden shall give an inmate housed in administrative detention the same general privileges given to inmates in the general population. This includes, but is not limited to, providing an inmate with the opportunity for participation in an education program, library services, social services, counseling, religious guidance and recreation. Unless there are compelling reasons to the contrary, institutions shall provide commissary privileges and reasonable amounts of personal property. An inmate in administrative detention shall be permitted to have a radio, provided that the radio is equipped with ear plugs. Exercise periods, at a minimum, will meet the level established for disciplinary segregation and will exceed this level where resources are available. The Warden shall give an inmate in administrative detention visiting, telephone, and correspondence privileges in accordance with Part 540 of this Chapter. The Warden may restrict for reasons of security, fire safety, or housekeeping the amount of personal property that an inmate may retain while in administrative detention.

§ 541.23 Protection cases.

(a) Staff may consider the following categories of inmates as protection cases:

- (1) Victims of inmate assaults;
- (2) Inmate informants;
- (3) Inmates who have received inmate pressure to participate in sexual activity;

(4) Inmates who seek protection through detention, claiming to be former law enforcement officers, informants, or others in sensitive law enforcement positions, whether or not there is official information to verify the claim;

(5) Inmates who have previously served as inmate gun guards, dog caretakers, or in similar positions in state or local correctional facilities;

(6) Inmates who refuse to enter the general population because of alleged pressures from other unidentified inmates;

(7) Inmates who will not provide, and as to whom staff cannot determine, the reason for refusal to return to the general population; and

(8) Inmates about whom staff has good reason to believe the inmate is in serious danger of bodily harm.

(b) Inmates who are placed in administrative detention for protection, but not at their own request or beyond the time when they feel they need to be detained for their own protection, are entitled to a hearing, no later than seven days from the time of their admission (or from the time of their detention beyond their own consent). This hearing is conducted in accordance with the procedural requirements of § 541.17, as to advance written notice, staff representation, right to make a statement and present documentary evidence, to request witnesses, to be present throughout the hearing, and advance advisement of inmate rights at the hearing, and as to making a record of the proceedings.

(c) Ordinarily, staff may place an inmate in administrative detention as provided in paragraph (a) of this section relating to protection cases, for a period not to exceed 90 days. Staff shall clearly document in the record the reasons for any extension beyond this 90-day period.

(d) Where appropriate, staff shall first attempt to place the inmate in the general population of their particular facility. Where inappropriate, staff shall clearly document the reason(s) and refer the case, with all relevant material, to their Regional Director, who, upon review of the material, may order the transfer of a protection case.

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