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

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: November 20, at 9 a.m.
WHERE: National Archives and Records Administration, Room 410, 8th and Pennsylvania Avenue NW., Washington, DC.
RESERVATIONS: Robert D. Fox, 202–523–5239.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872, 873, and 890

Federal Employees Group Life Insurance and Health Benefits Programs; Coverage After Retirement Under FERS

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comment.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement amendments to the Federal Employees Health Benefits (FEHB) law enacted by Pub. L. 99–335, as amended, which established the Federal Employees Retirement System (FERS). This regulation describes the conditions under which individuals entitled to immediate or survivor annuities and lump sum death benefits under FERS and former spouses entitled to annuity payments under FERS may receive FEHB coverage. The regulation also allows FERS annuitants to make direct payment of premiums for their FEHB and Federal Employees' Group Life Insurance (FEGLI) coverages when their annuity is too low to cover the insurance premiums.

DATES: Interim rule effective January 1, 1988. Comments must be received on or before December 21, 1987.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P. O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On June 6, 1986, Congress established the Federal Employees Retirement System by Pub. L. 99–335. Section 207(l) of the act provides that individuals entitled to immediate or survivor annuities under FERS may continue their health coverage, and former spouses entitled to annuity payments under FERS may obtain health benefits coverage, in the FEHB Program under the same conditions that apply to individuals under the Civil Service Retirement System (CSRS). Subsequently, the Federal Employees' Retirement System Technical Corrections Act of 1986, Pub. L. 99–556, was enacted on October 27, 1986. This law authorized widows or widowers entitled to receive basic employee death benefits under FERS to continue health benefits coverage under FEHB. FERS annuitants may also continue their life insurance coverage in retirement under the same conditions that apply to individuals under CSRS. The regulation describes the procedures for continuing health benefits coverage after retirement and for paying FEHB and FEGLI premiums directly to the retirement system.

Under FERS, widows or widowers entitled to receive lump sum death benefits under 5 U.S.C. 8442(b)(1)(A), that is, widows and widowers of FERS employees who at the time of death had completed at least 18 months' creditable civilian service, will be entitled to continue their FEHB coverage after the death of a spouse. This group is entitled to a lump sum death benefit but not an annuity because the employee on whose service the widow's or widower's benefits are based had less than ten years of creditable service at the time of death. Thus, there will be no annuity from which to withhold the health benefits premium.

Surviving children may also continue health benefits coverage upon death of an employee or annuitant. Under FERS, surviving children receive an annuity equal to the amount they would be eligible to receive under CSRS, less any Social Security benefit to which they may be entitled. In most cases, the annuity will not be sufficient to cover the health benefits premium.

Other individuals whose annuity may not cover health or, where applicable, life insurance premiums are (1) FERS disability retirees who qualify for Social Security disability benefits prior to age 62 (5 U.S.C. 8452(a)(2), and (2) certain FERS disability retirees whose disability annuities must be recomputed at age 62 (5 U.S.C. 8452(B)(4)). Those entitled to Social Security disability benefits before age 62 will have their annuity reduced by all or a portion of their monthly Social Security disability benefit. Those who are not entitled to Social Security disability benefits at age 62 will be treated as though they were entitled to them. Thus, their FERS disability annuity at age 62 will be reduced by the amount of Social Security disability benefits that would be payable if they had been entitled to such a benefit.

The regulation provides for direct payment of health benefits and, where applicable, life insurance premiums for these groups and for all FERS annuitants whose annuity is not sufficient to cover their share of the total premium.

Direct payment must be made for the annuitant's full share of the premium. Thus, the annuitant may not have a portion of the premium withheld from the annuity and make direct payment for the balance. Further, once an annuitant is in direct-pay status for health benefits or life insurance, or both, he or she must continue to pay premiums directly even if the annuity later exceeds the amount of the premiums.

* * * * *

We have made a technical change to the regulation [5 CFR 890.808(b)] to clarify that the information the former spouse must send to the retirement system for a determination as to whether a court order is qualifying for health benefits enrollment is the same information required in 5 CFR 831.1705 for determining his or her entitlement to a future survivor annuity or a portion of a retirement annuity.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because the entitlements conferred by Pub. L. 99–335 and Pub. L. 99–556 addressed in this regulation were effective beginning January 1, 1987.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they simply extend FEHB and FEGLI coverage to qualified annuitants.

List of Subjects

5 CFR Parts 870, 871, 872, and 873

Administrative practice and procedure, Government employees, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Parts 870, 871, 872, 873 and 890 as follows:

1. The authority citation for Part 870, 871, 872, and 873 continues to read as follows:

Authority: 5 U.S.C. 8716.

PART 870—BASIC LIFE INSURANCE

2. In § 870.401, a new paragraph (j) is added to read as follows:

§ 870.401 Withholdings and contributions.

* * * * *

(j) *Direct premium payments under 5 U.S.C. Chapter 84.* (1) If the annuity received under 5 U.S.C. Chapter 84 (Federal Employees' Retirement System), excluding Subchapter III of Chapter 84 (Thrift Savings Plan), is too low to cover the basic life insurance premium, the retirement system will notify the annuitant of the opportunity to pay the annuitant's share of the premium directly to the retirement system.

(2) The retirement system shall establish a method for accepting direct payment for basic life insurance premiums from annuitants retiring under 5 U.S.C. Chapter 84 whose annuities are too low to cover their premiums. The retirement system will provide the annuitant with a premium payment schedule and statement of the requirements for continued enrollment. The annuitant must continue to make direct payment of the premium even if the annuity increases to the extent that it covers the premium.

(3) The annuitant must remit to the retirement system his or her share of the premium for basic life insurance for every pay period during which the coverage continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 870.501. Payment must be made after the pay period in which the individual is covered in accordance with a schedule established by the retirement system. If the retirement system does not receive payment by the date due, the retirement system will notify the annuitant by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days after receipt of the notice. The basic insurance coverage of an annuitant who fails to remit payment within the specified time frame will be terminated. An individual whose coverage is terminated because of nonpayment of premium may not re-elect or reinstate coverage, except as provided in paragraph (j)(4).

(4) If the individual was prevented by circumstances beyond his or her control from making payment within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the retirement system. Such a request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the individual was prevented by circumstances beyond his or her control from paying within the time limit. The retirement system will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM.

(5) Termination of enrollment for failure to pay premiums within the time frame established in accordance with subparagraph (j)(3) of this section is retroactive to the end of the last pay period for which payment has been timely received.

(6) The retirement system will submit all direct premium payments along with its regular life insurance premiums to OPM in accordance with procedures established by that Office.

PART 871—STANDARD OPTIONAL LIFE INSURANCE

3. In § 871.401, a new paragraph (i) is added to read as follows:

§ 871.401 Withholdings.

* * * * *

(i) *Direct premium payments under 5 U.S.C. Chapter 84.* (1) If the annuity received under 5 U.S.C. Chapter 84 (Federal Employees' Retirement System), excluding Subchapter III of Chapter 84 (Thrift Savings Plan), is too low to cover the standard optional insurance premium, the retirement system will notify the annuitant of the opportunity to pay the premium directly to the retirement system.

(2) The retirement system shall establish a method for accepting direct payment for standard optional premiums from annuitants retiring under 5 U.S.C. Chapter 84 whose annuities are too low to cover their premiums. The retirement system will provide the annuitant with a premium payment schedule and statement of the requirements for continued enrollment. The annuitant must continue to make direct payment of the premium even if the annuity increases to the extent that it covers the premium.

(3) The annuitant must remit to the retirement system the premium for standard optional insurance for every pay period during which the coverage continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 871.501. Payment must be made after the pay period in which the individual is covered in accordance with a schedule established by the retirement system. If the retirement system does not receive payment by the date due, the retirement system will notify the annuitant by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days after receipt of the notice. The standard optional insurance coverage of an annuitant who fails to remit payment within the specified time frame will be terminated. An individual whose coverage is terminated because of nonpayment of premium may not re-elect or reinstate coverage, except as provided in paragraph (i)(4).

(4) If the individual was prevented by circumstances beyond his or her control from making payment within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the retirement system. Such a request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the individual was prevented by circumstances beyond his or her control from paying within the time limit. The retirement system will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM.

(5) Termination of enrollment for failure to pay premiums within the time frame established in accordance with subparagraph (i)(3) of this section is retroactive to the end of the last pay

period for which payment has been timely received.

(6) The retirement system will submit all direct premium payments along with its regular life insurance premiums to OPM in accordance with procedures established by that Office.

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

4. In § 872.401, a new paragraph (i) is added to read as follows:

§ 872.401 Withholdings.

* * * * *

(i) *Direct premium payments under 5 U.S.C. Chapter 84.*

(1) If the annuity received under 5 U.S.C. Chapter 84 (Federal Employees' Retirement System), excluding Subchapter III of Chapter 84 (Thrift Savings Plan), is too low to cover the additional optional insurance premium, the retirement system will notify the annuitant of the opportunity to pay the premium directly to the retirement system.

(2) The retirement system shall establish a method for accepting direct payment for additional optional insurance premiums from annuitants retiring under 5 U.S.C. Chapter 84 whose annuities are too low to cover their premiums. The retirement system will provide the annuitant with a premium payment schedule and statement of the requirements for continued enrollment. The annuitant must continue to make direct payment of the premium even if the annuity increases to the extent that it covers the premium.

(3) The annuitant must remit to the retirement system the premium for additional optional insurance for every pay period during which the coverage continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 872.501. Payment must be made after the pay period in which the individual is covered in accordance with a schedule established by the retirement system. If the retirement system does not receive payment by the date due, the retirement system will notify the annuitant by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days after receipt of the notice. The additional optional insurance coverage of an annuitant who fails to remit payment within the specified time frame will be terminated. An individual whose coverage is terminated because of nonpayment of premium may not re-elect or reinstate coverage, except as provided in paragraph (i)(4).

(4) If the individual was prevented by circumstances beyond his or her control from making payment within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the retirement system. Such a request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the individual was prevented by circumstances beyond his or her control from paying within the time limit. The retirement system will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM.

(5) Termination of enrollment for failure to pay premiums within the time frame established in accordance with subparagraph (i)(3) of this section is retroactive to the end of the last pay period for which payment has been timely received.

(6) The retirement system will submit all direct premium payments along with its regular life insurance premiums to OPM in accordance with procedures established by that Office.

PART 873—FAMILY OPTIONAL LIFE INSURANCE

5. In § 873.401, a new paragraph (g) is added to read as follows:

§ 873.401 Withholdings.

* * * * *

(g) *Direct premium payments under 5 U.S.C. Chapter 84.* (1) If the annuity received under 5 U.S.C. Chapter 84 (Federal Employees' Retirement System), excluding Subchapter III of Chapter 84 (Thrift Savings Plan), is too low to cover the family optional insurance premium, the retirement system will notify the annuitant of the opportunity to pay the premium directly to the retirement system.

(2) The retirement system shall establish a method for accepting direct payment for family optional insurance premiums from annuitants retiring under 5 U.S.C. Chapter 84 whose annuities are too low to cover their premiums. The retirement system will provide the annuitant with a premium payment schedule and statment of the requirements for continued enrollment. The annuitant must continue to make direct payment of the premium even if the annuity increases to the extent that it covers the premium.

(3) The annuitant must remit to the retirement system the premium for family optional insurance for every pay period during which the coverage continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 873.501. Payment must be made after the pay period in which the individual is covered in accodance with a schedule established by the retirement system. If the retirement system does not receive payment by the date due, the retirement system will notify the annuitant by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days after receipt of the notice. The family optional coverage of an annuitant who fails to remit payment within the specified time frame will be terminated. An individual whose coverage is terminated because of nonpayment of premium may not re-elect or reinstate coverage; except as provided in paragraph (g)(4).

(4) If the individual was prevented by circumstances beyond his or her control from making payment within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the retirement system. Such a request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the individual was prevented by circumstances beyond his or her control from paying within the time limit. The retirement system will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM.

(5) Termination of enrollment for failure to pay premiums within the time frame established in accordance with subparagaph (g)(3) of this section is retroactive to the end of the last pay period for which payment has been timely received.

(6) The retirement system will submit all direct premium payments along with its regular life insurance premiums to OPM in accordance with procedures established by that office.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

6. The authority citation for Part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

7. Section 890.101 is amended as follows:

a. By adding alphabetically the definition of "Basic employee death benefit" as set forth below.

b. In the definition of "Employing office," by redesignating paragraphs (i) through (iii) as (1) through (3), by revising paragraphs (1) and (2), and by adding paragraph (4) as set forth below.

c. By revising the definition of "Pay period" as set forth below.

§ 890.101 Definitions; time computations.

(a) * * *

"Basic employee death benefit" has the meaning set out at § 843.102. Survivors receiving this benefit are deemed to be "annuitants" for purposes of this Chapter.

* * * * *

"Employing office" * * *

(1) For an enrolled annuitant (including survivor annuitant, former spouse annuitant, and surviving spouses receiving a basic employee death benefit under 5 U.S.C. 8442(b)(1)(A)) who is not also an eligible employee, "employing office' is the office which has the authority to approve payment of annuity, basic employee death benefit, or workers' compensation for the annuitant concerned.

(2) For a former spouse of an annuitant whose marriage dissolved after the employee's retirement and who has entitlement to receive future annuity payments under section 8341(h), 8345(j), 8445, or 8467 of title 5, United States Code, "employing office" is the office which has the authority to approved payment of annuity for the annuitant or former spouse concerned.

* * * * *

(4) For a surviving spouse in receipt of a basic employee death benefit under 5 U.S.C. 8442(b)(1)(A) who is not also an eligible employee, the "employing office" is the retirement system which has authority to approve the basic employee death benefit.

* * * * *

"Pay period" means the biweekly pay period established pursuant to section 5504 of title 5, United States Code, for the employees to whom that section applies and the regular pay period for employees not covered by that section. "Pay period" as it relates to a former spouse or annuitant who is not actively receiving an annuity, including surviving spouses receiving a basic employee death benefit, means any regular pay period for employees of the agency to which jurisdiction and responsibility for health benefits actions for the former spouse or annuitant have been delegated as provided under the definition of "Employing office" in this section. "Pay period" for annuitants in active receipt of annuity means the period for which a single installment of annuity is customarily paid.

* * * * *

8. Section 890.104 is amended by revising paragraph (a) to read as follows:

§ 890.104 Initial decision and reconsideration.

(a) *Who may file.* An employee, annuitant, or former spouse may request OPM to reconsider a decision of an employing office that denies coverage or change of enrollment.

* * * * *

9. Section 890.301 is amended by revising paragraph (q) and adding paragraph (aa) to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(q) *Annuity insufficient to pay withholdings.* If the annuity of an annuitant under 5 U.S.C. Chapter 83 or of all annuitants in a family receiving benefits under 5 U.S.C. Chapter 83 is not sufficient to pay the withholdings for the plan in which the annuitants are enrolled, the employing office shall notify the annuitant of the plans available at a cost not in excess of the annuity. The annuitant may register to be enrolled in another plan whose cost is no greater than his or her annuity. For annuitants receiving benefits under 5 U.S.C. Chapter 84, see § 890.502(d).

* * * * *

(aa) *Termination of remarriage of "lump sum" survivors in receipt of basic employee death benefits.*

A surviving spouse who received a basic employee death benefit under 5 U.S.C. 8442(b)(1)(A) and who was covered by a health benefits enrollment under this part immediately before remarriage prior to age 55 may register to enroll in a health benefits plan under this part upon termination of the remarriage. The survivor must provide OPM with a certified copy of the notice of death or the court order terminating the marriage. Registration must be made within 60 days after OPM mails the registration form to the surviving spouse.

10. Section 890.303(c) is revised to read as follows:

§ 890.303 Continuation of enrollment.

* * * * *

(c) *On death.* The enrollment of a deceased employee or annuitant who is enrolled for self and family is transferred automatically to his or her eligible survivor annuitants. The enrollment is considered to be that of (1) the survivor annuitant from whose annuity all or the greatest portion of the withholding for health benefits is made, or (2) the surviving spouse entitled to a basic employee death benefit. The enrollment covers members of the family of the deceased employee or annuitant. A remarried spouse is not a member of the family of the deceased employee or annuitant unless annuity under section 8341 or 8442 of title 5, United States Code, continues after remarriage.

* * * * *

11. In § 890.304, paragraph (b)(1) is revised and (b)(2)(iv) is added to read as follows:

§ 890.304 Termination of enrollment.

* * * * *

(b) *Annuitants.* (1) If the annuity of an annuitant retiring under 5 U.S.C. Chapter 83 or of all survivor annuitants in a family of such an annuitant is not sufficient to pay the withholdings for the plan in which the annuitants are enrolled, and the annuitant does not, or cannot, elect a plan under § 890.301(q) at a cost to him or her not in excess of the annuity, the employing office shall terminate the annuitant's enrollment effective as of the end of the last period for which withholding was made. Each annuitant whose enrollment is so terminated is entitled to a 31-day extension of coverage for conversion.

(2) * * *

(iv) The last day of the month preceding the month in which a survivor annuitant in receipt of basic employee death benefits under 5 U.S.C. 8442(b)(1)(A) remarries before attaining age 55.

* * * * *

12. In § 890.306, paragraph (b) is revised, paragraph (g) is redesignated as paragraph (h), and a new paragraph (g) is added to read as follows:

§ 890.306 Effective dates.

* * * * *

(b) *Annuitant required to change enrollment.* The effective date of an annuitant's change to a lower cost enrollment under § 890.301(q) is immediately upon termination of his or her prior enrollment.

* * * * *

(g) *Restoration of health benefits for survivors in receipt of basic employee death benefits following termination of remarriage.* The effective date of an enrollment under § 890.301(aa) is the first day of the month after the date of receipt by OPM of the registration form and the notice of death or court order terminating the remarriage.

* * * * *

13. In § 890.502, paragraph (a) is redesignated as (a)(1) and new paragraph (a)(2) is added, the second sentence of paragraph (b)(1) is revised, and paragraph (f) is added to read as follows:

§ 890.502 Employee withholdings and contributions.

(a) * * *

(2) Surviving spouses in receipt of a basic employee death benefit under 5 U.S.C. 8442(b)(1)(A) and annuitants retiring under 5 U.S.C. Chapter 84 whose health benefits premiums exceed the amount of their annuities may pay their portion of the health benefits premium directly to the retirement system acting as their employing office in accordance with procedures set out in paragraph (d) of this section.

(b)(1) * * * In each pay period for which health benefits withholdings or direct premium payments are not made but during which the enrollment of an employee or annuitant continues, he/she will incur an indebtedness due the United States in the amount of the proper employee withholdings required for that pay period.

* * * * *

(f) *Direct premium payments under 5 U.S.C. Chapter 84.* (1) If the annuity received under 5 U.S.C. Chapter 84 (Federal Employees' Retirement System), excluding Subchapter III of Chapter 84 (Thrift Savings Plan), is too low to cover the health benefits premium or if a surviving spouse receives a basic employee death benefit, the retirement system will notify the annuitant of the opportunity to pay the annuitant's share of the premium directly to the retirement system.

(2) The retirement system shall establish a method for accepting direct payment for health benefits premiums from surviving spouses who have received or are currently receiving basic employee death benefits as well as from annuitants retiring under 5 U.S.C. Chapter 84 whose annuities are too low to cover their health premiums. The annuitant must continue to make direct payment of the health benefits premium even if the annuity increases to the extent that it covers the premium.

(3) The retirement system will use the deceased annuitant's case file as the health benefits file for surviving spouses who receive a basic employee death benefit.

(4) The annuitant must remit to the retirement system his or her share of the subscription charge for the enrollment for every pay period during which the enrollment continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 890.401. Payment must be made after the pay period in which the individual is covered in accordance with a schedule established by the retirement system. If the retirement system does not receive payment by the date due, the retirement system will notify the surviving spouse or annuitant by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days after receipt of the notice. The enrollment of an individual who fails to remit payment within the specified time frame will be terminated. An individual whose enrollment is terminated because of nonpayment of premium may not reenroll or reinstate coverage, except as provided in paragraph (d)(5).

(5) If the individual was prevented by circumstances beyond his or her control from making payment within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the retirement system. Such a request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the individual was prevented by circumstances beyond his or her control from paying within the time limit. The retirement system will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM.

(6) Termination of enrollment for failure to pay premiums within the time frame established in accordance with paragraph (d)(4) of this section is retroactive to the end of the last pay period for which payment has been timely received.

(7) The retirement system will submit all direct premium payments along with its regular health benefits premiums to OPM in accordance with procedures established by that office.

14. In § 890.803, paragraph (a)(3)(i) is revised to read as follows:

§ 890.803 Who may enroll.

(a) * * *

(3)(i) The former spouse currently receives, or has future title to receive (A) a portion of annuity payable to the employee upon retirement based on a qualifying court order for purposes of 5 U.S.C. 8345(j) or 5 U.S.C. 8467; (B) survivor annuity benefits based on a qualifying court order for purposes of 5 U.S.C. 8341(h) or 5 U.S.C. 8445; or (C) a survivor annuity elected by the employee under 5 U.S.C. 8339(j) (3) or 5 U.S.C. 8417(b) (or benefits similar to those under this paragraph under another retirement system for Government employees); *or*

* * * * *

15. In § 890.805, paragraph (b)(2) is revised to read as follows:

§ 890.805 Application time limitations.

* * * * *

(b) * * *

(2) if the marriage dissolved after retirement, within 60 days after the dissolution of the marriage, or within 60 days after the retired employee elects to provide a survivor annuity for the former spouse under 5 U.S.C. 8339(j) (3) or 5 U.S.C. 8417(b); or

* * * * *

16. In § 890.806, paragraph (b) is revised to read as follows:

§ 890.806 Effective dates of coverage.

* * * * *

(b) *Change required because of insufficient annuity.* When a former spouse receiving an annuity under 5 U.S.C. Chapter 83 changes to a lower cost enrollment as provided by § 890.301(q), the change is effective immediately upon loss of coverage under the prior enrollment.

§ 890.807 [Amended]

17. In § 890.807, the word "establishment" in paragraph (a)(3) is removed and the word "established" is inserted in its place.

18. In § 890.808, a new sentence is added at the end of paragraph (b)(1), and paragraph (d) is revised to read as follows:

§ 890.808 Employing office responsibilities.

* * * * *

(b)(1) * * * The request for the retirement system's determination whether the court order is a qualifying court order for health benefits enrollment under this Subpart must be accompanied by the documents specified in § 831.1705 (b) and (c).

* * * * *

(d) *Premium payments.* (1) The former spouse must remit to the employing office the full subscription charge for the enrollment for every pay period during which the enrollment continues, exclusive of the 31-day temporary extension of coverage for conversion provided in §§ 890.401 and 890.807(a)(2). Payment must be made after the pay period in which the former spouse is covered in accordance with a schedule established by the employing office [see definition of "pay period" under § 890.101(a)]. If the employing office does not receive payment by the due date, the employing office will notify the

former spouse by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days (45 days for former spouses residing overseas) after receipt of the notice. The enrollment of an individual who fails to remit payment within the specified time frame will be terminated. A former spouse whose enrollment is terminated because of nonpayment of premium may not reenroll or reinstate coverage, except as provided in paragraph (d)(2) of this section.

(2) If the individual was prevented by circumstances beyond his or her control from making payment within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the employing office. Such a request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the individual was prevented by circumstances beyond his or her control from paying within the time limit. The employing office will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM.

(3) The employing office will submit all premium payments collected from former spouses along with its regular health benefits payments to OPM in accordance with procedures established by that Office.

* * * * *

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1264

Implementation of the Program Fraud Civil Remedies Act of 1986

AGENCY: National Aeronautics and Space Administration.

ACTION: Interim rule with request for comments.

SUMMARY: The National Aeronautics and Space Administration (NASA) is implementing the Program Fraud Civil Remedies Act of 1986, Pub. L. 99-509, sections 6101-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812 (hereinafter referred to as the Act). This new regulation is in accordance with the Model Regulations of the President's Council on integrity and Efficiency, and establishes the NASA practices and procedures in compliance with the Act.

DATE: Effective October 22, 1987. Comments due by December 21, 1987.

ADDRESS: Comments may be mailed to the Office of General Counsel, Code GG, NASA Headquarters, Washington, DC 20546. Comments may be inspected in Room 7041 between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Sara Najjar, 202-453-2465.

SUPPLEMENTARY INFORMATION: This regulation does not constitute a major rule for the purpose of Executive Order 12291, and is not subject to the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980; 5 U.S.C. 601 et seq.).

List of Subjects in 14 CFR Part 1264

Administrative practice and procedure, Civil penalties and assessments, False claims or statements, Fraud, Remedies.

Part 1264 is added to Title 14, Chapter V, to read as follows:

PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL PENALTIES ACT OF 1986

Authority: 31 U.S.C. 3809, 42 U.S.C. 2473(c)(1).

§ 1264.100 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99-509, Sections 6101-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part does the following:

(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.

§ 1264.101 Definitions.

(a) ALJ means an Adiministrative 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. For purposes of this part, the ALJ shall be referred to as the presiding officer.

(b) Authority means the National Aeronautics and Space Administration (NASA).

(c) Authority head means the NASA Administrator or Deputy Administrator or designee. For purposes of this regulation, the NASA General Counsel or Deputy General Counsel is

designated legal counsel to the Authority head.

(d) Benefits means, except as the context otherwise requires, anything of value, including but not limtied 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

(iii) 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 § 1264.106.

(g) Consent hearing means that the authority and the defendant consent, as provided in § 1264.106(c), that the presiding officer be the Chairperson of the NASA Board of Contract Appeals (BCA). The Chairperson may designate another administrative judge of the NASA BCA as presiding officer in a consent hearing.

(h) Defendant means any person alleged in a complaint under § 1264.106 to be liable for a civil penalty or assessment under § 1264.102.

(i) Government means the United States Government.

(j) Individual means a natural person.

(k) Initial decision means the written decision of the ALJ or presiding officer required by § 1264.109 or § 1264.136, and includes a revised initial decision issued following a remand or a motion for reconsideration.

(l) Investigating official means the NASA Inspector General, or designee who is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(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 settlement.

(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) Presiding officer, except as provided for pursuant to consent trial notice, means (if the authority is not subject to the provisions of Subchapter II of Chapter 5, Title 5, U.S.C.) an officer or employee of the authority who—

(1) Is selected under Chapter 33 of Title 5 pursuant to the competitive examination process applicable to administrative law judges;

(2) Is appointed by the authority head to conduct hearings under this part;

(3) Is assigned to cases in rotation so far as practicable;

(4) May not perform duties inconsistent with the duties and responsibilities of a presiding officer;

(5) Is entitled to pay prescribed by the Office of Personnel Management independently of ratings and recommendations made by the authority and in accordance with Chapter 51 of such Title and Subchapter III of Chapter 53 of such Title;

(6) Is not subject to performance appraisal pursuant to Chapter 43 of such Title; and

(7) May be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by such Board.

(q) Representative means an attorney.

(r) Reviewing official means the NASA Associate Administrator for Management. For purposes of this regulation, the Associate General Counsel (General) or designee is designated legal counsel to the Reviewing official.

(s) 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 contract or 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.

§ 1264.102 Basis for civil penalties and assessments.

(a) *Claims.* (1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

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

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

(A) Omits a material fact;

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

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

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

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

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

(3) A claim shall be considered made to an 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 such 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. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Any person who makes a written statement that—

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

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

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

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

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

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

(3) A statement shall be considered made to an 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 such authority.

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

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

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

§ 1264.103 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) The subpoena may designate the person, to act on the investigating official's behalf, to receive the documents sought; and

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

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

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

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

§ 1264.104 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 1264.103(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 1264.102 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 § 1264.106.

(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 § 1264.102 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.

§ 1264.105 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 1264.106 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 § 1264.102(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 § 1264.102(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.

§ 1264.106 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 § 1264.107.

(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 defendant is served with the complaint, he or she shall also be served with a—

(1) Notice to Consent to the Chairperson of the NASA Board of Contract Appeals (BCA), or Designee, as presiding officer;

(2) Copy of this Part 1264 of 14 CFR.

§ 1264.107 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/her representative.

§ 1264.108 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.

§ 1264.109 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 1264.108(a), the reviewing official may refer the complaint to the presiding officer.

(b) Upon the referral of the complaint, the presiding officer shall promptly serve on defendant, in the manner prescribed in § 1264.107, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the presiding officer shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 1264.102, the presiding officer shall issue an initial decision imposing the maximum amount of penalities 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 presiding officer seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the presiding officer'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 presiding officer shall withdraw the initial decision under 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 presiding officer denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 1264.137.

(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 presiding officer 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 presiding officer 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 presiding officer.

(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 presiding officer 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 presiding officer, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 1264.110 Referral of complaint and answer to the presiding officer.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the presiding officer, and include the name and address of the attorney who will represent the authority before the presiding officer.

§ 1264.111 Notice of hearing.

(a) When the presiding officer receives the complaint and answer, the presiding officer shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 1264.107. At the same time, the presiding officer shall send a copy of such notice to the representative of the authority.

(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 asserted;

(4) A description of the precedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the authority and of the defendant;

(6) An opportunity for a settlement conference or proposals of adjustment through alternative dispute resolutions, if not already explored; and

(7) Such other matters as the presiding officer deems appropriate.

§ 1264.112 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, as amended, may participate in these proceedings to the extent authorized by the provisions of that Act. (See section 3 of the False Claims Amendments Act of 1986, Pub. L. 99–562, October 27, 1986.)

§ 1264.113 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 presiding officer;

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

representative in the administrative or judicial proceedings; or

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

(b) The presiding officer 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 must be a member of the legal staff of the authority. Nothing in this paragraph is intended to prevent assistance to the Government representative by attorneys in the NASA organization or other governmental entities.

§ 1264.114 Ex parte contacts.

No party or person (except employees of the presiding officer's office) shall communicate in any way with the presiding officer on any matter at issue in a case, unless on notice and opporatunity 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.

§ 1264.115 Disqualification or reviewing official or presiding officer.

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

(b) A party may file with the presiding officer a motion for disqualification of a reviewing official or a presiding officer. 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 for 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 presiding officer shall proceed no further in the case until the matter of disqualification is resolved in accordance with paragraph (f) of this section.

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

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

(3) If the presiding officer 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.

§ 1264.116 Rights of parties.

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

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

(b) Paticipate in any conference held by the presiding officer;

(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 presiding officer; and

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

§ 1264.117 Authority of the presiding officer.

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

(b) The presiding officer 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, including settlement conferences or other alternative dispute resolution, that may aid in the fair and 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, which the presiding officer considers relevant and material;

(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 genuine issue as to any 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 presiding officer under this part.

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

§ 1264.118 Prehearing conferences.

(a) The presiding officer may schedule prehearing conferences as appropriate.

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

(c) The presiding officer 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, 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 objections 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, including settlement, as may tend to expedite the fair and just disposition of the proceedings.

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

§ 1264.119 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

§ 1264.103(b) are based unless such documents are subject to a privilege under Federal law. Upon payment of a reasonable fee 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 § 1264.104 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 presiding officer following the filing of an answer pursuant to § 1264.108.

§ 1264.120 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 §§ 1264.121 and 1264.122, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the presiding officer considers relevant and material to the hearing. 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 presiding officer. The presiding officer shall regulate the timing of discovery.

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

(2) Within 10 days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 1264.123.

(3) The presiding officer may grant a motion for discovery only if he/she finds that the discovery sought—

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

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

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

(5) The presiding officer may grant discovery subject to a protective order under § 1264.123.

(e) Depositions. (1) If a motion for deposition is granted, the presiding officer 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 § 1264.107.

(3) The deponent may file with the presiding officer a motion to quash the subpoena or a motion for a protective order within 10 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.

§ 1264.121 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 presiding officer, 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 paragraph (b) of § 1264.132. 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 presiding officer, 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 presiding officer 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, in accordance with paragraph (a) of this section, unless the presiding officer finds goods 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 presiding officer, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 1264.122 Subpoena for attendance at hearing.

(a) A party wishing the appearance and testimony of any individual at the hearing may request that the presiding officer 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 presiding officer 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 § 1264.107. 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 presiding officer a motion to quash the subpoena within 10 days after service or on or before the time specified in the subpoena for compliance if it is less than 10 days after service.

§ 1264.123 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 presiding officer 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 presiding officer;

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

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

(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 presiding officer.

§ 1264.124 Fees.

The party requesting a supoena shall pay the cost of the fees and mileage of any witness supoenaed 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.

§ 1264.125 Form, filing, and service of papers.

(a) *Form.* (1) Documents filed with the presiding officer 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 presiding officer, 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 presiding officer 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.

(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.

§ 1264.126 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 7 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 5 days will be added to the time permitted for any response.

§ 1264.127 Motions.

(a) Any application to the presiding officer 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 presiding officer 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 presiding officer 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 presiding officer, any party may file a response to such motion.

(d) The presiding officer 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 presiding officer shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 1264.128 Sanctions.

(a) The presiding officer 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 presiding officer may—

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

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

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

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

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

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

§ 1264.129 The hearing and burden of proof.

(a) The presiding officer shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 1264.102 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 presiding officer for good cause shown.

§ 1264.130 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the presiding officer, 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 presiding officer 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 presiding officer 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.

§ 1264.131 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 presiding officer.

(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 presiding officer.

§ 1264.132 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 presiding officer, 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 § 1264.121(a).

(c) The presiding officer shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth, avoid needless consumption of time, and protect witnesses from harassment or undue embarrassment.

(d) The presiding officer 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 presiding officer, 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 presiding officer, 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 presiding officer 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.

§ 1264.133 Evidence.

(a) The presiding officer shall determine the admissibility of evidence.

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

(c) The presiding officer 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 presiding officer 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 presiding officer pursuant to § 1264.123.

§ 1264.134 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the presiding officer 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 presiding officer 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 presiding officer pursuant to § 1264.123.

§ 1264.135 Post-hearing briefs.

The presiding officer may require the parties to file post-hearing briefs. In any event, upon approval of the presiding officer, any party may file a post-hearing brief. The presiding officer 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 presiding officer may permit the parties to file reply briefs, and may grant an extension of the 60-day time period or other time for good cause shown.

§ 1264.136 Initial decision.

(a) The presiding officer shall issue an initial decision based solely 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 § 1264.102;

(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 found in the case, such as those described in § 1264.130.

(c) The presiding officer 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 or upon notification that the record is now closed. The presiding officer shall at the same time serve all defendants with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the presiding officer or a notice of appeal with the authority head. If the presiding officer 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 presiding officer is timely appealed to the authoirty head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall consititute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the presiding officer.

§ 1264.137 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 5 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 presiding officer.

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

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

(f) When a motion for reconsideration is made, the time periods for appeal to the authority head contained in § 1264.138, and for finality of the initial decision in paragraph (d) of § 1264.136, shall begin on the date the presiding officer issues the denial of the motion for reconsideration or a revised initial decision, as appropriate.

§ 1264.138 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) The time for appeal to the authority head is as follows:

(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 1264.137 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the presiding officer 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 presiding officer 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) It the defendant files a timely notice of appeal with the authority head, the presiding officer 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 presiding officer.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the presiding officer 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 presiding officer 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 presiding officer 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 seves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 1264.102 is final and is not subject to judicial review.

§ 1264.139 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. If the process is before the presiding officer, the authority head shall promptly transmit the finding to the presiding officer, who, in turn, must stay the proceeding and give notice to all parties and their representatives. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 1264.140 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.

§ 1264.141 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.

§ 1264.142 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.

§ 1264.143 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 1264.141 or § 1264.142, or any amount agreed upon in a compromise or settlement under § 1264.145, 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.

§ 1264.144 Deposit in Treasury of United States.

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

§ 1264.145 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time, including proposals for alternative dispute resolution.

(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 refer allegations of liability to a presiding officer and before the date on which the presiding officer 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 presiding officer issues an initial decision, except during the pendency of any judicial review under § 1264.141 or during the pendency of any civil action to collect penalties and assessments under § 1264.142.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any judicial review under 31 U.S.C. 3805 or of any civil 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.

§ 1264.146 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 1264.107 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 § 1264.109(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.

Appendix A—Notice to Consent to the Chairperson, NASA Board of Contract Appeals (BCA), or Designee, as Presiding Officer

In accordance with the provisions of 14 CFR 1264.106, you are hereby notified that the Chairperson, NASA Board of Contract Appeals (BCA), or designee, in addition to other duties, upon your consent, may conduct any or all proceedings as the presiding officer, pursuant to 14 CFR Part 1264 which implements the Program Fraud Civil Penalties Act of 1986.

You should be aware that your decision to consent, or not to consent, to the referral of this case to the NASA/BCA must be entirely voluntary. Only if you and the authority head consent to this reference will either the Chairperson or the designee to whom the case may be assigned be informed of your decision.

An appeal from a decision by the presiding officer under this consent procedure may be taken in the same manner as an appeal from a decision by any other presiding officer, as provided in 14 CFR 1264.136(d), 1264.137, 1264.138, and 1264.141.

If you consent, you must sign, date, and return this form within the 30-day period provided for your answer (see 14 CFR 1264.108, 1264.109).

I consent: _____

(Signature of person alleged to be liable)

_____

(Print name)

_____

(Date of signature)

James C. Fletcher,

Administrator.

October 13, 1987.

[FR Doc. 87-24323 Filed 10-21-87; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket Nos. RM87-34-001; Order No. 500-A]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

October 14, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule; order granting extension of time for responses to take-or-pay data request.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is granting in part requests by interstate natural gas pipelines for additional time in which to respond to the take-or-pay data requests sent them by the Commission to develop the record in this proceeding. The Commission is extending the date for responses to November 2, 1987.

DATE: The date for filing responses to the data request is extended to November 2, 1987.

ADDRESS: Federal Energy Regulatory Commission, Office of the Secretary, Room 3110, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Peter J. Roidakis, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8213.

Order Granting Extension of Time for Responses to Take-or-Pay Date Reguest

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

On August 7, 1987, the Commission issued Order No. 500 [1] which promulgated interim regulations in response to the decision of the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors* v. *FERC*.[2] On August 26, 1987, the Commission served 45 interstate natural gas pipelines with data requests regarding the take-or-pay obligations in their gas purchase contracts. The responses to these data requests are intended to provide an accurate and current data base for a studied response to the Court's decision in *Associated Gas Distributors*.

II. Discussion

Numerous pipelines and their trade associations have filed for extensions of time to respond to the take-or-pay data request.[3] Upon consideration, the Commission hereby grants in part the pipelines' requests for additional time in which to respond to the take-or-pay data requests, and extends the date responses are due to November 2, 1987.

The Commission is aware that the interim regulations also provide for certain operative dates integral to their implementation and operation. Specifically, the suspension of § 284.10 of the Commission's regulations was removed effective November 1, 1987; and, as of November 1, 1987, natural gas that was being transported by interstate pipelines would continue to be eligible for transportation by the interstate pipelines only if the pipeline and the shipper agree, or an affidavit offering certain take-or-pay credits has been submitted to the pipeline. While the Commission is not adjusting these operative dates at this time, the Commission may, upon further consideration, adjust those dates, if it finds such action necessary. Finally, the Commission notes the numerous substantive issues that have been raised in various rehearing requests, clarification motions, and comments received to date. These issues may also be treated in a subsequent order where necessary, or by other responsive means, as appropriate.

The purpose of this order is solely to extend the date by which responses to the take-or-pay date requests are due, and is not intended to constitute a final order on rehearing.

III. Administrative findings

The Commission is extending a data request response date integral to the implementation of Order No. 500. The Commission finds that the public interest would be served and that good cause exists to make this extension effective immediately pursuant to sections 553(b)(B) and 553(d)(3) of the Administrative Procedure Act.

IV. Order

The date for response to the Order No. 500 take-or-pay data request is extended to November 2, 1987.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–24494 Filed 10–21–87; 8:45 am]

BILLING CODE 6717–01–M

[1] 52 FR 30334 (Aug. 14 1987). The interim regulations became effective on September 15, 1987.

[2] 824 F.2d 981 (D.C. Cir. 1987).

[3] *See, e.g.*, petition of Interstate Natural Gas Association of America (INGAA) filed September 21, 1987, in Docket No. RM87–34–000 at 1 ("INGAA strongly urges that the Commission extend the time for responding to the data requests until December 15, 1987"); *see also* petitions of Valley Gas Transmission, Inc., Northwest Pipeline Corporation, Williams Natural Gas Company, Transcontinental Gas Pipe Line Corporation, Williston Basin Interstate Pipeline Company, Valero Interstate Transmission Company, Carnegie Natural Gas Company, Western Gas Interstate Company, Equitable Resources, Inc., United Gas Pipe Line Company, American Gas Association, Kentucky West Virginia Gas Company, Northern Natural Gas Company, Division of Enron Corp., ANR Pipeline Company and Colorado Interstate Gas Company.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 81G–0282]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Polyethylenimine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyethylenimine as a fixing agent for the immobilization of microbial enzyme preparations used as sources of glucose isomerase. This action is in response to a petition filed by UOP, Inc.

DATES: Effective October 22, 1987; objections by November 23, 1987. The Director of the Office of the Federal Register approves the incorporation by references of certain publications at 21 CFR 173.357, effective October 22, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James H. Maryanski, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–8950.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of November 17, 1981 (46 FR 56505), FDA announced that a GRAS affirmation petition (GRASP 1G0277) had been filed by a law firm on behalf of UOP, Inc., 20 UOP Plaza, Des Plaines, IL 60016, proposing affirmation that high fructose corn syrup prepared from corn syrup glucose by the action of a glucose isomerase enzyme preparation derived from *Streptomyces olivochromogenes (S. olivochromogenes)* and immobilized with polyethylenimine cross-linked with glutaraldehyde is generally recognized as safe (GRAS) as a direct human food ingredient.

In the **Federal Register** of February 8, 1983 (48 FR 5715), FDA listed high fructose corn syrup as GRAS (21 CFR 182.1866) for use in food as a nutritive carbohydrate sweetener when prepared from high dextrose equivalent corn starch hydrolysate by the action of insoluble glucose isomerase enzyme preparations as described in 21 CFR 184.1372. In that document, FDA recognized that the safety of the glucose isomerase enzyme preparations, and therefore of high fructose corn syrup, depends on several factors. Among these factors are the nature of the microorganism used as the source of the glucose isomerase enzyme preparation and the presence of residues of the enzyme, of additional cellular material, and of residues of processing materials in the final food ingredient (high fructose corn syrup).

II. The Petition

The petition submitted by UOP, Inc., describes the microbial enzyme preparation used to produce high fructose corn syrup as a partially purified extract derived from *S. olivochromogenes* that is free of viable cells and that is immobilized (fixed or rendered insoluble) with glutaraldehyde and polyethylenimine on a ceramic carrier. In evaluating the data in the petition, FDA considered whether each component of the fixed enzyme preparation is currently approved for the proposed use.

FDA has affirmed that enzyme preparations derived from *S. olivochromogenes* are GRAS (21 CFR 184.1372) for use as sources of glucose isomerase. Glutaraldehyde is listed in 21 CFR 173.357 as a fixing agent in the immobilization of glucose isomerase enzyme preparations for use in the manufacture of high fructose corn syrup. In the **Federal Register** document that listed high fructose corn syrup as GRAS (48 FR 5715), FDA stated that materials such as ceramics, glass, and stainless steel are GRAS for food-contact use based on a history of widespread use.

Therefore, FDA finds that the ingredients of UOP, Inc.'s, fixed enzyme preparation, except polyethylenimine, are either regulated food additives or GRAS food ingredients. This final rule addresses the proposed use of polyethylenimine as a fixing agent for microbial enzymes used as sources of glucose isomerase.

III. Requirements for GRAS Status

In accordance with 21 CFR 170.30, an ingredient may be GRAS either (1) on the basis of experience based on common use in food prior to January 1, 1958, or (2) of scientific procedures. Because the information that UOP, Inc., submitted in support of its petition did not establish that polyethylenimine was in common use in food before 1958, FDA considered whether the petition contained evidence from scientific procedures that established that this use of polyethylenimine is GRAS.

FDA reviewed the data on the safety of both polyethylenimine and the starting materials used to manufacture the ingredient. Although polyethylenimine has not been found to cause cancer, it may contain minute amounts of ethylenimine and 1,2-dichloroethane as impurities. These chemicals have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as these chemicals, are commonly found as contaminants in chemical products, including food additives.

Based on its evaluation, the agency finds that polyethylenimine is not GRAS based upon scientific procedures because the potential toxicity of ethylenimine and of 1,2-dichloroethane requires that consumer exposure to these impurities be limited. Therefore, the agency has concluded that polyethylenimine, when used to immobilize glucose isomerase enzyme preparations, is a food additive subject to section 409 of the Federal Food, Drug, and Cosmetic Act (the act), and that the additive, if found to be safe, should be listed with other enzyme fixing agents as a secondary direct food additive in Part 173. This conclusion is consistent with the agency's previous action (48 FR 5715) that listed fixing agents used in the immobilization of glucose isomerase enzyme preparations in § 173.357.

The agency has evaluated polyethylenimine as a food additive in accordance with 21 CFR 170.38(c) and 171.1.

IV. Determination of Safety

Under section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958). This concept of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment of 1958 (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6 published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic constituent, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

V. Safety of the Petitioned Use

FDA finds that the petitioned use of polyethylenimine will result in extremely low levels of exposure to this additive. Data submitted in support of the petition showed that polyethlylenimine has never been detected in the final commercial product (high fructose corn syrup). Based on the limit of detection (0.2 part per million (ppm)) of the analytical method used in analyzing the commercial product and on considerations such as migration of the additive under the most severe intended conditions of use and the probable concentration in the daily diet, the agency has calculated the estimated daily intake of polyethylenimine from the petitioned use to be 11 micrograms per day (4 parts per billion (ppb) in the diet) for a 60-kilogram person. FDA does not ordinarily consider chronic testing to be necessary to determine the safety of additives whose use will result in such low exposure levels (Refs. 1 and 2).

To establish that polyethylenimine is safe for use as a fixing agent for glucose isomerase enzyme preparations, the petitioner submitted mutagenicity studies, acute oral toxicity studies in the rat, acute dermal toxicity studies, skin and eye irritation studies in the rabbit,

and subchronic dietary feeding studies in rats and dogs. No adverse effects were reported in the mutagenicity, acute oral toxicity, or skin irritation studies that tested polyethylenimine of the average molecular weight range that is the subject of this regulation. Polyethylenimine was found to be irritating to the eyes of rabbits under the conditions examined. However, the agency concludes that the adverse effects observed in the eye irritation study do not provide cause for toxicological concern because the level of exposure to polyethylenimine from its intended use as a fixing agent for enzymes is orders of magnitude below the level of exposure in this test.

The petitioner also submitted two longer-term animal feeding studies conducted by the Dow Chemical Co. in support of the petition. These included an 8.5-month dietary feeding study of polyethylenimine in rats and a 9-month dietary feeding study in dogs at doses up to 1 gram per kilogram body weight in both species. The data from the study in rats did not show any adverse effects at doses up to 1,000 milligrams per kilogram body weight, although complete individual animal data were not available.

In the dog study, apparent treatment-related histopathological effects were noted in the kidney and liver when the animals were fed 250, 500, and 1,000 milligrams per kilogram per day (8,500, 17,000, and 34,000 ppm). These findings did not establish a no-adverse-effect level. However, the severity and incidence of the observed effects declined significantly with decreasing dose and were minimal for effects in both organs at the lowest dose (250 milligrams per kilogram body weight). Based on an extrapolation of the dose-response curve of incidence/severity of kidney lesions, FDA estimated that the no-adverse-effect level for polyethylenimine in the dog study would be 10 milligrams per kilogram body weight (340 ppm in the daily diet).

In determining whether the available data provide an adequate margin of safety for the proposed use of polyethylenimine, the agency considered the apparent no-adverse-effect level in dogs (340 ppm) and the estimated human exposure (4 ppb) to polyethylenimine from its use as a fixing agent for glucose isomerase enzyme preparations. The agency finds that there is a wide differential (85,000 fold) between these values.

Because polyethylenimine has not been shown to cause cancer, the anticancer clause does not apply to it. Polyethylenimine, however, may contain ethylenimine and 1,2-dichloroethane, substances that have been shown to cause cancer in test animals. These impurities may be present as a result of the manufacturing procedures used to produce polyethylenimine. Ethylenimine is the starting material used to manufacture polyethylenimine, and 1,2-dichloroethane is a chemical used as a cross-linking agent in the polymer.

FDA has evaluated the safety of this additive under the general safety clause, using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemicals that may be present as impurities in this additive. The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018, 13019; April 2, 1984). This risk evaluation of the carcinogenic impurities ethylenimine and 1,2-dichloroethane has two aspects: (1) Assessment of the worst case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Ethylenimine

Based on the fraction of the daily diet that may be in contact with polyethylenimine as a consequence of its use as a fixing agent for glucose isomerase enzyme preparations in the production of high fructose corn syrup as well as the level of ethylenimine that may be present in the additive (Refs. 3 and 4), FDA estimated the hypothetical worst case exposure to ethylenimine from this use of the additive to be 0.8 nanogram per person per day. The agency used data in a carcinogenesis bioassay on ethylenimine conducted for the National Cancer Institute (Ref. 5) to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of polyethylenimine as a fixing agent for glucose isomerase enzyme preparations. The results of the bioassay on ethylenimine demonstrated that the material was carcinogenic for male and female mice under the conditions of the study. The test material caused significantly increased incidence of lung and liver neoplasia in both male and female mice.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogencity were supported by this information on ethylenimine. The committee further concluded that an estimate of the upper bound limit of lifetime human cancer risk from potential exposure to ethylenimine stemming from the proposed use of polyethylenimine as a fixing agent for glucose isomerase enzyme preparations could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive. Based on the worst case exposure of 0.8 nanogram per person per day, FDA estimates the upper bound limit of individual lifetime risk from potential exposure to ethylenimine from the proposed use of polyehtylenimine is $3X10^{-7}$ or 3 in 10 million. Because of conservatisms in the exposure estimate, lifetime averaged individual exposure to ethylenimine is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to ethylenimine that results from the use of polyethylenimine.

B. 1,2-Dichloroethane

Based on the fraction of the daily diet that may be in contact with polyethylenimine as a consequence of its use as a fixing agent for glucose isomerase enzyme preparations in the production of high fructose corn syrup as well as the level of 1,2-dichloroethane that may be present in the additive (Ref. 6), FDA estimated the hypothetical worst case exposure to 1,2-dichloroethane from the use of the additive to be 0.8 nanogram per person per day. The agency used data in a carcinogenesis bioassay on 1,2-dichloroethane conducted for the National Cancer Institute (Ref. 7) to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of polyethylenimine as a fixing agent for glucose isomerase enzyme preparations. The results of the bioassay on 1,2-dichloroethane

demonstrated that the material was carcinogenic for male and female rats under the conditions of the study. The test material caused significantly increased incidences of subcutaneous fibromas, stomach carcinomas, and hemangiosarcomas of the circulatory system in male rats and mammary gland tumors and hemangiosarcomas in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,2-dichloroethane. The committee further concluded that an estimate of the upper bound limit of lifetime human cancer risk from potential exposure to 1,2-dichloroethane stemming from the proposed use of polyethylenimine as a fixing agent for glucose isomerase enzyme preparations could be calculated from the bioassay.

Based on the worst case exposure of 0.8 nanogram per person per day, FDA estimates, using a linear proportional model, that the upper bound limit of individual lifetime risk from potential exposure to 1,2-dichloroethane from the use of polyethylenimine is $1X10^{-10}$ or 1 in 10 billion. Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 1,2-dichloroethane is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to 1,2-dichloroethane that results from the use of polyethylenimine.

C. Need for Specifications

The agency also considered whether specifications are necessary to control the amount of ethylenimine and 1,2-dichloroethane impurities in polyethylenimine. The agency finds that the levels of the impurities are not self-limiting by the manufacturing process for the food additive. Therefore, specifications are necessary to ensure that the current and future exposure to these constituents in the daily diet remains within the limits used to conclude that polyethylenimine may be safely used as a fixing agent for glucose isomerase enzyme preparations.

D. Conclusions of Safety

FDA evaluated all of the data in the petition pertaining to the use of polyethylenimine as a fixing agent for glucose isomerase enzyme preparations and concludes that:

(1) Polyethylenimine was not commonly used in food production before January 1, 1958.

(2) The requested use of polyethylenimine as a fixing agent for glucose isomerase enzyme preparations is a secondary direct food additive subject to section 409 of the act.

(3) The requested use of the additive would be expected to result in residues of polyethylenimine of no more than 4 ppb of the total daily diet.

(4) There is a reasonable certainty of no harm from exposure to this level of the additive and its impurities.

(5) The data in the petition establish that the proposed use of the additive is safe when the additive is used in accordance with the limitations set forth in this document.

(6) The requested use is effective.

Therefore, FDA is amending the secondary direct food additive regulations to provide for the use of polyethylenimine by amending 21 CFR 173.357(a)(2) by alphabetically inserting a new entry in the table as set forth below.

VI. References

In accordance with § 170.38(b)(1) (21 CFR 170.38(b)(1)), the petition and the references that FDA considered and relied upon in reaching its decision to approve the use of this secondary direct food additive are on public display and available for inspection at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. The petition and documents may also be inspected at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. Among the documents that the agency has relied on are the following:

1. Carr, G.M., "Carcinogenicity Testing Programs" *in* "Food Safety: Where Are We?," Committee on Agriculture, Nutrition, and Forestry, United States Senate, p. 59, July 1979.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology" presented at the "Second International Conference on Safety Evaluation and Regulation of Chemicals," Cambridge, MA, October 24, 1983.

3. Memorandum dated June 6, 1984, Food Additive Chemistry Evaluation Branch to GRAS Review Branch, "Exposure Estimate for Ethylenimine from Food Additive Uses."

4. Memorandum dated April 19, 1985, from Food Additive Chemistry Evaluation Branch to GRAS Review Branch, "Cumulative Exposure Estimate for Ethyleneimine."

5. Innes, J.R.M., et al., "Bioassay of Pesticides and Industrial Chemicals for Tumorigenicity in Mice: A Preliminary Note," *Journal of the National Cancer Institute*, 42:1101, 1969.

6. Memorandum dated January 15, 1985, from Food Additive Chemistry Evaluation Branch to Direct Additives Branch, "Exposure Estimate for 1,2-Dichloroethane."

7. "Bioassay of 1,2-Dichloroethane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–55, 1978.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an enviromental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before October 22, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 173 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

2. Section 173.357 is amended in paragraph (a)(2) by alphabetically inserting a new entry in the table to read as follows:

§ 173.357 Materials used as fixing agents in the immobilization of enzyme preparations.

* * * * *

Substances	Limitations
Polyethylenimine (CAS Reg. No. 68130-97-2) is the reaction product of homopolymerization of ethylenimine in aqueous hydrochloric acid at 100 °C and of cross-linking with 1,2-dichloroethane. The finished polymer has an average molecular weight of 50,000 to 70,000 as determined by gel permeation chromatography. The analytical method is entitled "Methodology for Molecular Weight Detection of Polyethylenimine," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-334), 200 C St., SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.	May be used as a fixing material in the immobilization of glucose isomerase enzyme preparations for use in the manufacture of high frutose corn syrup, in accordance with § 184.1372 of this chapter. Residual ethylenimine in the finished polyethylenimine polymer will be less than 1 part per million as determined by gas chromatography-mass spectrometry. The residual ethylenimine is determined by an analytical method entitled "Methodology for Ethylenimine Detection in Polyethylenimine," which is incorporated by reference. Residual 1,2-dichloroethane in the finished polyethylenimine polymer will be less than 1 part per million as determined by gas chromatography. The residual 1,2-dichloroethane is determined by an analytical method entitled "Methodology for Ethylenedichloride Detection in Polyethylenimine," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-334), 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20408.

* * * * *

Dated: October 13, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-24475 Filed 10-21-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject To Certification; Dichlorophene and Toluene Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Richlyn Laboratories, Inc., providing for safe and effective use of dichlorophene/toluene capsules in treating dogs and cats for certain helminth infections.

EFFECTIVE DATE: October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Richlyn Laboratories, Inc., Castor and Kensington Avenues, Philadelphia, PA 19124, filed NADA 138-900 providing for the use of dichlorophene and toluene combination capsules for single dose administration to dogs and cats for removal of certain ascarids and hookworms and as an aid in the removal of certain tapeworms. The NADA is approved and 21 CFR 520.580(b)(1) is amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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 and 5.83.

2. Section 520.580 is amended by revising paragraph (b)(1) to read as follows:

§ 520.580 Dichlorophene and toluene capsules.

* * * * *

(b) *Sponsor.* (1) For single dose only, see 000010, 000115, 000842, 000856, 010888, 011519, 011536, 011614, 015563, 017135, 023851, 049968, and 050906 in § 510.600(c) of this chapter.

* * * * *

Dated: October 16, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-24474 Filed 10-21-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

31 CFR Part 5

Claims Collection; Debt Collection Act of 1982; Salary Offset

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury is issuing final regulations to govern the collection of debts owed to the United States by Federal employees. These regulations implement the debt collection procedures provided under section 5 of the Debt Collection Act of 1982 ("Act") (Pub. L. 97-365), codified in 5 U.S.C. 5514. The Act authorizes the Federal Government to collect debts by means of offset from the salaries of Federal employees without the employee's consent, provided that the employee is properly notified and given the opportunity to exercise certain administrative rights.

EFFECTIVE DATE: These regulations are effective October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Randy Sim, Office of the General Counsel, (Administrative and General Law), Department of the Treasury, Room 1404 Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220. Telephone (202) 566-2327.

SUPPLEMENTARY INFORMATION: Section 5 of the Debt Collection Act of 1982 ("Act") (Pub. L. 97–365), codified at 5 U.S.C. 5514, makes several changes in the way Executive and Legislative agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect monies owed it.

Under the Act, when the head of an agency determines that an employee of the agency is indebted to the United States, or is notified by the head of another agency that an agency employee is indebted to the United States, the employee's debt may be offset against his/her pay. The amount of the offset may not exceed 15 percent of the employee's disposable pay.

The employee must be afforded certain due process rights before salary offset deductions can begin. Under the Act, an employee-debtor must be provided with notice of a debt and the opportunity to review the record and enter into a written repayment agreement before the Government may collect the debt by offset. The employee must notify the agency of his or her intent to exercise these rights within the time period prescribed in the regulations

The Act requires agencies to issue regulations for salary offset consistent with the offset regulations issued by the Office of Personnel Management (OPM). OPM issued final rules on July 3, 1984, (49 FR 27470) codified in Subpart K of Part 550 of title 5 of the Code of Federal Regulations. This final rule has been approved by OPM and it establishes the procedures the Department will follow in making a salary offset.

Analysis and Comments

The Temporary Rule was published in the **Federal Register** on January 2, 1987 (52 FR 43). The comment period closed on February 2, 1987. Two labor organizations responded with comments during the comment period. The Department has fully considered all of these comments.

One comment expressed concern that the regulations conflict with the Debt Collection Act (the Act) because the Department assumes, upon receipt of a non-Treasury creditor agency's certification, that the creditor agency has promulgated regulations that afford the employee debtor his due process rights, as required by the Act. The Act and 5 CFR 550.1104 require that all Federal agencies (creditor agencies) promulgage debt collection regulations following procedural guidelines established by OPM and subject to OPM approval. Salary offset may not be effected until regulations are in place; therefore, receipt of a creditor agency's certification indicates that the agency has promulgated regulations that have been approved by OPM. Further, creditor agencies are aware that our regulations require proper certification (§ 5.13) and our regulations provide instructions for the coordination of salary offset with other agencies (§ 5.18(b)).

One comment questions the validity of the 10 year statute of limitations and recommends changing it to 6 years. We have followed OPM's regulations, which site 4 CFR 102.3(b)(3). That provision precludes agencies from initiating offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, with certain exceptions explained in that paragraph. *See also,* 31 U.S.C. 3716.

One comment requests an explanation for the expansion of the definition of "agency" beyond the definition contained in 5 CFR 550, Subpart K, § 550.1103. On May 6, 1986, OPM revised its regulations (51 CFR 16669) for the purpose of making the definition of "agency" reflect the full range of governmental entities authorized to use the provisions of 5 U.S.C. 5514. Our regulations reflect OPM's expanded definition.

One comment states that the definition of disposable pay should recognize child support and alimony as deductions required by law. Child support payments and alimony are deductions recognized in the regulations by use of the language, ". . . other authorized pay remaining after the deduction of any amount *required by law to be withheld.*"

One comment states that § 5.10 (Waiver request) should provide waiver upon good cause shown, hardship, etc. This language was not included because there is no reason to repeat the language of statutes that authorize waivers.

There were a number of comments regarding § 5.11, Notice requirements before offset. One expresses concern that 30 days, notice is insufficient and will encourage employees to file for a hearing simply to extend the period prior to offset. This timeframe is permitted by statute and seems adequate to OPM and the Department. This notice of offset is not the employee's initial notification that a debt is owed. It is, in fact, final notification before the last avenue of resort, salary offset, is implemented. Thirty days is clearly adequate since the employee has failed on all other occasions to acknowledge or deny a delinquent debt. Further, the agency believes that its employees generally will not file groundless petitions for hearings.

This comment continues by stating that, even after an employee has acknowledged the debt, 30 days is an insufficient amount of time to make arrangements with other creditors. This comment fails to recognize that the purpose of these regulations is to implement the Debt Collection Act of 1982. The Government, in order to do business in a more businesslike manner, owes a responsibility to the U.S. taxpayers to collect debts owed to it. It would be inconsistent with the central purpose of the Act for the Government to assume that its rights as a creditor are inferior to those of other creditors.

One comment questions the Department's authority to assess interest on debts owed to the Government. The commenter submits that the majority of the debts owed by employees result from good faith errors committed by the agencies which went unnoticed by the employee. The authority to assess interest can be found in 31 U.S.C. 3717. While some debts will result from agency error, the employee will be notified on numerous occasions prior to the implementation of salary offset that a debt is owed to the Government; and will continue to enjoy the use of the amount owed until it is repaid. At the time these procedures of last resort are used, the employee has been fully apprised of the existence of the debt.

One comment states that the regulations should contain specific information as to time and place where records should be copied. The comment further states that since the employee has a right to inspect and copy the information, the employee should not have to submit written notice of his/her intent to inspect and copy (§ 5.12(d)(3)). Since each bureau maintains its own personnel and payroll offices and maintains its own records, the records will be in different locations; therefore, a specific location cannot be stated. The applicable information with respect to inspection of records will be contained in the notice of intent to offset. The purpose of the requirement that a written request be submitted is twofold: (1) It permits the orderly operation of the debt collection process; and (2) the written documentation of the employee's request provides protection of his/her privacy rights. It is not intended to, nor does it in fact, impede the employee's ability to obtain the records.

One comment recommended several language changes in § 5.11, which the Department feels are unnecessary and add nothing to the meaning or clarity of the paragraphs:

(1) 5.11(a)—The section should be amended to read, in pertinent part, ". . . notice . . . shall be hand-delivered *to the employee* or sent by certified mail . . .."; and

(2) (a)(6)—The section should be amended to read, ". . . with respect to the existence and amount of the debt claimed, *or the terms of the* repayment schedule . . ."

In addition, the comment recommended that (a)(10) be amended by inserting at the end, "until final determination by the designated hearing official." Such language is omitted to prevent improperly frustrating debt collection when a hearing that was granted is withdrawn before it is held.

One comment requests that § 5.11(a)(14) be deleted in its entirety because the standard for disciplinary action exceeds the scope of the applicable statutes, and may have a chilling effect on employees who question the existence of the alleged debt. The Department and OPM believe this provision is within the scope of the applicable statutes. Further, it is merely a cautionary statement for the benefit of the employees and will not prevent them from questioning the existence of debts.

Two comments expressed the concern that the timeframe for filing a petition (§§ 5.11(a)(10) and 5.12(a)) for a hearing is too short and should be extended to 30 days. The 15 day timeframe is specified by the Debt Collection Act and has been adopted by OPM. We recognize, however, that our regulations inadvertently shortened the time by requiring the petition to be received by the fifteenth day following receipt of the notice. Sections 5.11(a)(10) and 5.12(a) now conform to the language of the statute and read, ". . . on or before the fifteenth calendar day following receipt of such notice of intent . . ."

One comment expresses concern that many employees do not possess writing skills necessary to fully present their position in a written hearing, and suggests that no explanation be required in connection with an employee's request for an oral hearing. Where an employee has limited writing skills, the hearing examiner will evaluate the necessity of an oral hearing. For the most part, the matter can be resolved by review of the documentary evidence alone. The agency must present documentary evidence to raise the issue of an outstanding debt and the employee will present documentary evidence (*i.e.*, a canceled check) to rebut the agency's position. Unless an issuing of credibility or veracity is involved, an oral hearing is generally unnecessary (§ 5.12(g)(2)).

One comment recommended that the language in § 5.12(b) be amended to read, ". . . the Department *should* accept the request if the employee can show . . ." We have adopted this change.

One comment expressed concern that the time limit for inspecting and copying agency records was arbitrary, and suggested that employees be permitted to request inspection and copying of records at any time prior to the commencement of the hearing (§5.12(d)(1)). The fifteen day timeframe is in accordance with § 5.11(a)(5). It is in no way onerous to require the employee to request inspection of agency records at the same time the employee requests a hearing. This requirement facilitates orderly conduct of the debt collection process.

One comment points out that the location of the hearing should be the employee's duty station or a mutually agreeable site. In situations where an oral hearing is necessary, the impartial hearing examiner has an obligation to consider the parties when choosing the location of the hearing.

Two comments objected to § 5.12(j), Failure to appear. We agree and have revised the language to read:

> If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled, and make his/her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

Several comments indicate a misunderstanding of § 5.14, Voluntary repayment agreements as alternatives to salary offset. This provision is consistent with agreements that labor organizations have with various Treasury Department bureaus. The bureaus will certainly remain free to bargain with the unions to establish voluntary repayment schedules. These established repayment schedules are mutually exclusive of salary offset, which is implemented only as a last resort when an employee has failed to acknowledge the agency's attempts to notify the employee or when the employee breaches an established voluntary repayment schedule.

One commentor stated that the 15 calendar day provision should be deleted from § 5.14 and the employee should be permitted to submit a proposed agreement at any time prior to the satisfaction of the outstanding debt. The submission of a repayment schedule is an acknowledgement that the debt is due and owing, and it is not onerous to require submission in the established timeframe. As with all creditor's, no reasonable request will be refused since the purpose is to ultimately collect the debt. Employees subject to salary offset or a voluntary repayment agreement may, at any time, request a review by the creditor agency of the amount of the salary offset or voluntary repayment, based upon materially changed circumstances (§ 5.15).

Several comments raise issues of granting administrative leave for preparation and participation in the hearing, for reviewing records, and preparing the petition for hearing, and for other employees to appear as witnesses. These and other issues normally handled in collective bargaining have been left for resolution by the appropriate representatives of the involved parties.

Administrative Procedure Act

Because the regulations require that no deductions under 5 U.S.C. 5514 shall be made unless the creditor agency provides the employees with written notice of intent to offset an employee's salary a minimum of 30 days before offset is initiated, the Department of the Treasury has, for good cause, determined, pursuant to 5 U.S.C. 553(d)(3) that a delayed effective date is unnecessary and impractical.

Executive Order 12291

Because this rule relates to agency management and personnel, the requirements of Executive Order 12291 do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for these regulations the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 5

Administrative offset, Administrative practice and procedure, Claims, Debt collection, Government employees, Pay administration, Salary offset, Wages.

For the reasons set out in the preamble, Part 5 of Title 31 of the Code of Federal Regulations is amended as set forth below.

PART 5—CLAIMS COLLECTION

Subpart B is revised to read as follows:

Subpart B—Salary Offset

Sec.

Subpart B—Salary Offset

Authority: 5 U.S.C. 5514; 5 CFR Part 550 Subpart K.

§ 5.5 Purpose.

The purpose of the Debt Collection Act of 1982, (Pub. L. 97–365), is to provide a comprehensive statutory approach to the collection of debts due the Federal Government. These regulations implement Section 5 of the Act which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offsets, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, 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. These regulations are consistent with the regulations on salary offset published by the Office of Personnel Management (OPM) on July 3, 1984, codified in Subpart K of Part 550 of Title 5 of the Code of Federal Regulations.

§ 5.6 Scope.

(a) These regulations provide Departmental procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed the Government.

(b) These regulations apply to collections by the Secretary of the Treasury from:

(1) Federal employees who owe debts to the Department; and

(2) Employees of the Department who owe debts to other agencies.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) These regulations do not apply to any adjustment to pay arising out of an employee's election 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.

(e) Nothing in these regulations precludes the compromise, suspension, or termination of collection actions where appropriate under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*, 4 CFR Parts 101–105, 38 CFR 1.1900 *et seq.*).

§ 5.7 Designation.

The heads of bureaus and offices and their delegates are designated as designees of the Secretary of the Treasury authorized to perform all the duties for which the Secretary is responsible under the foregoing act and Office of Personnel Management Regulations: *Provided, however,* that no compromise of a claim shall be effected or collection action terminated, except upon the recommendation of the General Counsel, the Chief Counsel of the bureau or office concerned, or the designee of either. Notwithstanding the foregoing provision, no such recommendation shall be required with respect to the termination of collection activity on any claim in which the unpaid amount of the debt is $300 or less.

§ 5.8 Definitions.

As used in this part (except where the context clearly indicates, or where the term is otherwise defined elsewhere in this part) the following definitions shall apply:

(a) "Agency" means:

(1) An Executive Agency as defined by section 105 of Title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined by section 102 of Title 5, United States Code;

(3) An agency or court of the judicial branch including a court as defined in Section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) "Bureau Salary Offset Coordination Officer" means an official designated by the head of each bureau who is responsible for coordinating debt collection activities for the bureau. The Secretary shall designate a bureau salary offset coordinator for the Departmental offices.

(c) "Certification" means a written debt claim form received from a creditor agency which requests the paying agency to offset the salary of an employee.

(d) "Creditor agency" means an agency of the Federal Government to which the debt is owed.

(e) "Debt" or "claim" means money owed by an employee of the Federal Government to an agency of the Federal Government from sources which include loans insured or guaranteed by the United States and all other amounts due the Government from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines and forfeitures (except those arising under the Uniform Code of Military Justice) and all other similar sources.

(f) "Department" or "Treasury Department" means the Departmental Offices of the Department of the Treasury and each bureau of the Department.

(g) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. The Department shall allow the following deductions in determining disposable pay subject to salary offset:

(1) Federal employment taxes;

(2) Amounts deducted for the U.S. Soldiers' and Airmen's Home;

(3) Fines and forfeiture ordered by a court martial or by a commanding officer;

(4) Federal, state or local income taxes no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(5) Health insurance premiums;

(6) Normal retirement contributions (*e.g.*, Civil Service Retirement deductions, Survivor Benefit Plan or Retired Serviceman's Family Protection Plan); and

(7) Normal life insurance premiums, exclusive of optional life insurance premiums (*e.g.*, Serviceman's Group Life Insurance and "basic" Federal

Employee's Group Life Insurance premiums).

(h) "Employee" means a current employee of the Treasury Department or other agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

(i) Federal Claims Collection Standards, "FCCS," jointly published by the Department of Justice and the General Accounting Office at 4 CFR 101.1 *et seq.*

(j) "Hearing official" means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and rendering a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Secretary of the Department of the Treasury when Treasury is the creditor agency.

(k) "Paying agency" means the agency of the Federal Government which employs the individual who owes a debt to an agency of the Federal Government. In some cases, the Department may be both the creditor and the paying agency.

(l) "Notice of intent to offset" or "notice of intent" means a written notice from a creditor agency to an employee which alleges that the employee owes a debt to the creditor agency and apprising the employee of certain administrative rights.

(m) "Notice of salary offset" means a written notice from the paying agency to an employee after a certification has been issued by a creditor agency, informing the employee that salary offset will begin at the next officially established pay interval.

(n) "Payroll office" means the payroll office in the paying agency which is primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee. Payroll office, with respect to the Department of the Treasury means the payroll offices of each bureau and the Office of the Assistant Secretary of the Treasury for Management for the Departmental Offices.

(o) "Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

(p) "Secretary" means the Secretary of the Treasury or his or her designee.

(q) "Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to the Department or another agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 5.9 Applicability of regulations.

These regulations are to be followed in instances where:

(a) The Department is owed a debt by an individual currently employed by another agency;

(b) Where the Department is owed a debt by an individual who is a current employee of the Department; or

(c) Where the Department currently employs an individual who owes a debt to another Federal Agency. Upon receipt of proper certification from the creditor agency, the Department will offset the debtor-employee's salary in accordance with these regulations.

§ 5.10 Waiver requests and claims to the General Accounting Office.

These regulations do not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office. These regulations also do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debts being collected.

§ 5.11 Notice requirements before offset.

(a) Deductions under the authority of 5 U.S.C. 5514 shall not be made unless the creditor agency provides the employee with written notice that he/she owes a debt to the Federal Government, a minimum of 30 calendar days before salary offset is initiated. When Treasury is the creditor agency this notice of intent to offset an employee's salary shall be hand-delivered or sent by certified mail to the most current address that is available to the Department and will state:

(1) That the Secretary has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(2) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full;

(3) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(4) An explanation of the Department's policy concerning interest, penalties and administrative costs including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards, 4 CFR 101.1 *et seq.*;

(5) The employee's right to inspect and copy all records of the Department pertaining to the debt claimed or to receive copies of such records if personal inspection is impractical;

(6) The right to a hearing conducted by an impartial hearing official (an administrative law judge, or alternatively, a hearing official not under the supervision or control of the Secretary) with respect to the existence and amount of the debt claimed, or the repayment schedule (*i.e.*, the percentage of disposable pay to be deducted each pay period), so long as a petition is filed by the employee as prescribed in § 5.12;

(7) If not previously provided, the opportunity (under terms agreeable to the Department) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the creditor agency (4 CFR 102.2(e));

(8) The name, address and phone number of an officer or employee of the Department who may be contacted concerning procedures for requesting a hearing;

(9) The method and time period for requesting a hearing;

(10) That the timely filing of a petition for a hearing on or before the fifteenth calendar day following receipt of such notice of intent will stay the commencement of collection proceedings;

(11) The name and address of the office to which the petition should be sent;

(12) That the Department will initiate certification procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than thirty (30) days from the date of receipt of the notice of debt, unless the employee files a timely petition for a hearing;

(13) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than sixty (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;

(14) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under Chapter 75 of Title 5,

United States Code, Part 752 of Title 5, Code of Federal Regulations, or any other applicable statute or regulations;

(ii) Penalties under the False Claims Act, sections 3729–3731 of Title 31, United States Code or any other applicable statutory authority; and

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States Code or any other applicable statutory authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, 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 (5 U.S.C. 5514); and

(17) Proceedings with respect to such debt are governed by section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514).

(b) The Department is not required to comply with paragraph (a) of this section for any adjustment to pay arising out of an employee's election 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.

§ 5.12 Hearing.

(a) *Request for hearing.* Except as provided in paragraph (b) of this section, an employee who desires a hearing concerning the existence or amount of the debt or the proposed offset schedule must send such a request to the office designated in the notice of intent. *See* § 5.11(a)(8). The request (or petition) for hearing must be received by the designated office on or before the fifteenth (15) calendar day following receipt of the notice. The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(b) *Failure to timely submit.* If the employee files a petition for a hearing after the expiration of the fifteen (15) calendar day period provided for in paragraph (a) of this section, the Department should accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or because of a failure to receive actual notice of the filing deadline (unless the employee had actual notice of the filing deadline).

(1) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the Department's offset schedule, if the employee:

(i) Fails to file a request for a hearing unless such failure is excused; or

(ii) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines failure to appear was due to circumstances beyond the employee's control (5 U.S.C. 5514).

(c) *Representation at the hearing.* The creditor agency may be represented by legal counsel. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her own expense.

(d) *Review of departmental records related to the debt.* (1) In accordance with 5.11(a)(5), an employee who intends to inspect or copy creditor agency records related to the debt must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be received within fifteen (15) calendar days after receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, arrangements shall be made to send copies of such records to the employee.

(e) *Hearing official.* Unless the Department appoints an administrative law judge to conduct the hearing, the Department must obtain a hearing official who is not under the supervision or control of the Secretary of the Treasury.

(f) *Obtaining the services of a hearing official when the Department is the creditor agency.*

(1) When the debtor is not a Department employee, and in the event that the Department cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the Department may contact an agent of the paying agency designated in Appendix A to Part 581 of Title 5, Code of Federal Regulations or as otherwise designated by the agency, and request a hearing official.

(2) When the debtor is a Department employee, the Department may contact any agent of another agency designated in Appendix A to Part 581 of Title 5, Code of Federal Regulations or otherwise designated by that agency, to request a hearing official.

(g) *Procedure.* (1) After the employee requests a hearing, the hearing official or administrative law judge shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official or administrative law judge by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official or administrative law judge determines that the matter cannot be resolved by review of documentary evidence alone (*e.g.*, when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official or administrative law judge, in which the employee and agency representative will be given full opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(3) *Paper hearing.* If the hearing official or administrative law judge determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record (5 U.S.C. 5514).

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this Subpart. *See* 4 CFR 102.3. Witnesses who testify in oral hearings will do so under oath or affirmation.

(h) *Date of decision.* The hearing official or administrative law judge shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than sixty (60) days after the date on which the petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In such case the sixty (60) day decision period shall be extended by the number of days by which the hearing was postponed.

(i) *Content of decision.* The written decision shall include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(j) *Failure to appear.* In the absence of good cause shown (*e.g.*, excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled, and make his/her determination based upon the oral testimony presented and the documentary documentation submitted by both parties. At the request of both parties, the hearing official shall schedule a new hearing date. Both parties shall be given reasonable notice of the time and place of this new hearing.

§ 5.13 Certification.

(a) The bureau salary offset coordination officer shall provide a certification to the paying agency in all cases where:

(1) The hearing official determines that a debt exists;

(2) The employee admits the existence and amount of the debt by failing to request a hearing; or

(3) The employee admits the existence of the debt by failing to appear at a hearing.

(b) The certification must be in writing and must state:

(1) The employee owes the debt;

(2) The amount and basis of the debt;

(3) The date the Government's right to collect the debt first accrued;

(4) The Department's regulations have been approved by OPM pursuant to 5 CFR Part 550, Subpart K;

(5) The amount and date of the lump sum payment;

(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period is required; and

(7) The dates the action(s) was taken and that it was taken pursuant to 5 U.S.C. 5514.

§ 5.14 Voluntary repayment agreements as alternative to salary offset.

(a) In response to a notice of intent to an employee may propose to repay the debt as an alternative to salary offset. Any employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall admit the existence of the debt and set forth a proposed repayment schedule. Any proposal under this subsection must be received by the official designated in that notice within fifteen (15) calendar days after receipt of the notice of intent.

(b) When the Department is the creditor agency and in response to a timely proposal by the debtor, the Secretary will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Secretary's discretion to accept a repayment agreement instead of proceeding by offset.

(c) If the Secretary decides that the proposed repayment agreement is unacceptable, the employee will have fifteen (15) days from the date he or she received notice of the decision to file a petition for a hearing.

(d) If the Secretary decides that the proposed repayment agreement is acceptable, the alternative arrangement must be in writing and signed by both the employee and the Secretary.

§ 5.15 Special review.

(a) An employee subject to salary offset or a voluntary repayment agreement, may, at any time, request a special review by the creditor agency of the amount of the salary offset or voluntary payment, based on materially changed circumstances such as, but not limited to catastrophic illness, divorce, death, or disability.

(b) In determining whether an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse and dependents indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(d) The Secretary shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an extreme financial hardship on the employee. The Secretary shall notify the employee in writing of such determination, including, if appropriate, a revised offset or payment schedule.

(e) If the special review results in a revised offset or repayment schedule, the bureau salary offset coordination officer shall provide a new certification to the paying agency.

§ 5.16 Notice of salary offset.

(a) Upon receipt of proper certification of the creditor agency, the bureau payroll office will send the employee a written notice of salary offset. Such notice shall, at a minimum:

(1) Contain a copy of the certification received from the creditor agency; and

(2) Advise the employee that salary offset will be initiated at the next officially established pay interval.

(b) The bureau payroll office shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 5.17 Procedures for salary offset.

(a) The Secretary shall coordinate salary deductions under this subpart.

(b) The appropriate bureau payroll office shall determine the amount of an employee's disposable pay and will implement the salary offset.

(c) Deductions shall begin within three official pay periods following receipt by the payroll office of certification.

(d) *Types of collection*—(1) *Lump-sum payment.* If the amount of the debt is equal to or less than 15 percent of disposable pay, such debt generally will be collected in one lump-sum payment.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount.

(3) *Lump-sum deductions from final check.* A lump-sum deduction exceeding the 15 percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Lump-sum deductions from other sources.* Whenever an employee subject to salary offset is separated from the Department, and the balance of the debt

cannot be liquidated by offset of the final salary check, the Department, pursuant to 31 U.S.C. 3716, may offset any later payments of any kind against the balance of the debt.

(e) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, the bureau payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(f) *Precedence of debts owed to Treasury.* For Treasury employees, debts owed to the Department generally take precedence over debts owed to other agencies. In the event that a debt to the Department is certified while an employee is subject to a salary offset to repay another agency, the bureau payroll office may decide whether to have that debt repaid in full before collecting its claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed the Department can be collected in one pay period, the bureau payroll office may suspend the salary offset to the other agency for that pay period in order to liquidate the Department's debt. When an employee owes two or more debts, the best interests of the Government shall be the primary consideration in the determination by the payroll office of the order of the debt collection.

§ 5.18 Coordinating salary offset with other agencies.

(a) *Responsibility of the Department as the creditor agency.* (1) The Secretary shall coordinate debt collections and shall, as appropriate:

(i) Arrange for a hearing upon proper petition by a Federal employee; and

(ii) Prescribe, upon consultation with the General Counsel, such practices and procedures as may be necessary to carry out the intent of this regulation.

(2) The head of each bureau shall designate a salary offset coordination officer who will be responsible for:

(i) Ensuring that each notice of intent to offset is consistent with the requirements of § 5.11;

(ii) Ensuring that each certification of debt sent to a paying agency is consistent with the requirements of § 5.13;

(iii) Obtaining hearing officials from other agencies pursuant to § 5.12(f); and

(iv) Ensuring that hearings are properly scheduled.

(3) *Requesting recovery from current paying agency.* Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, the Department must:

(i) Certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the Department's regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(ii) Advise the paying agency of the action (s) taken under 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken (unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency);

(iii) Except as otherwise provided in this paragraph, submit a debt claim containing the information specified in paragraphs (a)(3) (i) and (ii) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency;

(iv) If the employee is in the process of separating, the Department must submit its debt claim to the employee's paying agency for collection as provided in § 5.12. The paying agency must certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (b)(4) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of his section have been fully complied with. However, the Department must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(v) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Department may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund (5 CFR 831.1801 *et seq.*) or other similar funds, be administratively offset to collect the debt (*See* 31 U.S.C. 3716 and the FCCS).

(4) When an employee transfers to another paying agency, the Department shall not repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Department must review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the paying agency.

(b) *Responsibility of the Department as the paying agency.*—(1) *Complete claim.* When the Department receives a certified claim from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The employee must receive written notice that the Department has received a certified debt claim from the creditor agency (including the amount) and written notice of the date salary offset will begin and the amount of such deductions.

(2) *Incomplete claim.* When the Department receives an incomplete certification of debt from a creditor agency, the Department must return the debt claim with notice that procedures under 5 U.S.C. 551 and this subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The Department is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Department, the employee transfers to a different agency before the debt is collected in full, the Department must certify the total amount collected on the debt. One copy of the certification must be furnished to the employee and one copy to the creditor agency along with notice of the employee's transfer.

§ 5.10 Interest, penalties and administrative costs.

(a) The Department shall assess interest, penalties and administrative costs on debts owed pursuant to 31 U.S.C. 3717 and 4 CFR 101.1 *et seq.*

§ 5.20 Refunds.

(a) In instances where the Department is the creditor agency, it shall promptly refund any amount deducted under the authority of 5 U.S.C. 5514 when:

(1) The debt is waived or otherwise found not to be owing the United States; or

(2) An administrative or judicial order directs the Department to make a refund.

(b) Unless required or permitted by law or contract, refunds under this subsection shall not bear interest.

§ 5.21 Request for the services of a hearing official from the creditor agency

(a) The Department will provide a hearing official upon request of the creditor agency when the debtor is employed by the Department and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement.

(b) The Department will provide a hearing official upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(c) The bureau salary offset coordination officer will appoint qualified personnel to serve as hearing officials.

(d) Services rendered under this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, *as amended,* 31 U.S.C. 1535.

§ 5.22 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this Subpart must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provisions of a written contract or law unless there are statutory or contractual provisions to the contrary.

John F.W. Rogers,

Assistant Secretary of the Treasury for Management.

Dated: October 2, 1987.

[FR Doc. 87-24048 Filed 10-21-87 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD09 87-07]

Drawbridge Operation Regulations; Detroit River (Trenton Channel), MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Wayne County Engineer and Grosse Ile Toll Bridge Company, the Coast Guard is changing the operating regulations governing the Wayne County highway bridge, mile 5.6, and Grosse Ile Toll bridge, mile 8.8, across the Trenton Channel on the Detroit River at Grosse Ile, Michigan, by permitting the number of openings for pleasure craft to be limited during certain times. This change is being made because random bridge openings for the passage of pleasure craft cause land traffic tie-ups. This action will accommodate the needs of vehicular traffic while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on November 23, 1987.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522-3993.

SUPPLEMENTARY INFORMATION: On June 8, 1987, the Coast Guard published proposed rules, Vol. 52, No. 109, FR 21605 and FR 21606, concerning this amendment. The Commander, Ninth Coast Guard District, also published the proposal as a Public Notice, PN 09-05/87, dated 26 June 1987. In these notices, interested persons were given until July 23, 1987 and July 25, 1987, respectively, to submit comments.

Drafting Information

The drafters of these regulations are Fred H. Mieser, project officer, and LCDR C.V. Mosebach, project attorney.

Discussion of Comments

No comments were received from the **Federal Register.** One comment was received from the Public Notice. The one comment received was from the owners of the Wayne County bridge. The owner requested that the five-hour advance notice to have the bridge opened for the passage of a vessel when the bridge is unattended during the winter months, December 15 through March 15, be changed to a twelve-hour advance notice. Since this is a reasonable request that will allow the bridge owner to better accommodate marine interests during this period of time, and the twelve-hour advance notice is a more common period of time to give an advance notice during the winter months, the period of time required for giving an advance notice has been changed to twelve hours.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1986).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The periods of time when the bridges open for the passage of pleasure craft on a regulated schedule will relieve the problem of traffic tie-ups due to random bridge openings for these vessels and still provide for the reasonable needs of navigation. Since the impact of these regulations is expected to be so minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Part 117 is amended by revising § 117.631 to read as follows:

§ 117.631 Detroit River (Trenton Channel).

(a) The draw of the Grosse Ile Toll bridge (Grosse Ile Parkway), mile 8.8, at Grosse Ile, shall operate as follows:

(1) Between the hours of 7 a.m. and 11 p.m., seven days a week and holidays, the draw need open only from three minutes before to three minutes after the hour and half-hour for pleasure craft; for commercial vessels, during this period of time, the draw shall open on signal as soon as possible.

(2) Between the hours of 11 p.m. and 7 a.m., the draw shall open on signal for pleasure craft and commercial vessels.

(b) The draw of the Wayne County highway bridge (Bridge Road), mile 5.6, at Grosse Ile, shall operate as follows:

(1) From March 16 through December 14—

(i) Between the hours of 7 a.m. and 11 p.m., seven days a week and holidays, the draw need open only from three minutes before to three minutes after the quarter and three-quarter hour for pleasure craft, with no opening required at 7:45 a.m., 8:45 a.m., 4:15 p.m. and 5:15 p.m., Monday through Friday, except holidays; for commercial vessels, during these periods of time, the draw shall open on signal as soon as possible.

(ii) Between the hours of 11 p.m. and 7 a.m., the draw shall open on signal for pleasure craft and commercial vessels.

(2) From December 15 through March 15, no bridgetenders are required to be on duty at the bridge and the bridge shall open on signal if at least a twelve-hour advance notice is given .

(c) At all times, the bridges listed in this section shall open as soon as possible for public vessels of the United States, State or local government

vessels used for public safety and vessels in distress.

Dated: October 5, 1987.

A.M. Danielsen,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 87-24497 Filed 10-21-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals publishes final regulations promulgating procedures for adjudicatory proceedings to review decisions of the Office of Surface Mining Reclamation and Enforcement made under the permanent regulatory program established by the Surface Mining Control and Reclamation Act of 1977. These rules are necessary to inform parties who may request a hearing or appeal, where and when to file legal pleadings, what the contents of the pleadings should be, what party bears the burden of proof, and similar matters. These rules implement the provisions in the Act and in other regulations that authorize administrative review.

EFFECTIVE DATE: These rules are effective November 23, 1987.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Phone 703-235-3750.

SUPPLEMENTARY INFORMATION: On October 2, 1986, the Office of Hearings and Appeals (OHA) re-proposed rules providing procedures for administrative review of decisions of the Office of Surface Mining Reclamation and Enforcement (OSM) under the permanent regulatory program established by the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.* (1982). 51 FR 35248-35256 (Oct. 2, 1986). The rules were originally proposed on April 9, 1986, 51 FR 12168-12175 (Apr. 9, 1986), and January 14, 1981, 46 FR 3242 (Jan. 14, 1981). Comments on the re-proposed rules were received from the Joint National Coal Association/American Mining Congress Committee on Surface Mining Regulations, the Mining and Reclamation Council of America, Peabody Coal Company, Arch Mineral Corporation, and the Division of Surface Mining, Office of the Solicitor, U.S. Department of the Interior. These comments are summarized and OHA's responses are provided in the following discussion. The discussion is organized according to the kind of decision made by OSM and the corresponding procedural regulations (43 CFR 4.1350 *et seq.*, 4.1360 *et seq.* etc.), in numerical sequence.

Review of a Preliminary Finding Concerning a Demonstrated Pattern of Willful Violations, 43 CFR 4.1350 et seq.

1. A comment suggested that it be specifically stated in 43 CFR 4.1351 that the pendency of an OHA proceeding to review a preliminary finding by OSM of a demonstrated pattern of willful violations of the Act or the applicable state or Federal program may not serve as the basis for suspension, postponement, or other delay by OSM in reviewing the application for a permit in other respects. "OHA has an obligation to formally clarify that the OHA proceedings do not form the basis for OSM delay of review," the commenter argues. The suggestion is not accepted. OHA cannot instruct OSM whether or not the pendency of such proceedings is a proper basis for OSM to suspend its consideration of a permit application. It is possible that OSM would be sufficiently convinced of the soundness of its preliminary determination that it would regard it as a waste of resources to continue during administrative review to consider an application for a permit that by law may not be issued if there is a "finding, after opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations." 30 U.S.C. 1260(c).

2. A comment suggested that the time limit for filing a request for hearing under 43 CFR 4.1352(b) and the sanction for failure to do so under § 4.1352(c) be removed because they unnecessarily restrict the ability of an applicant or operator to enter into discussion with OSM to resolve whether there is a demonstrated pattern "without formal involvement of OHA." An applicant should have the option of requesting an OHA hearing or eliminating the alleged pattern if discussions with OSM do not resolve the question, it is argued. This suggestion is rejected. Such discussions could take place with OSM either as it was preparing to issue a preliminary notice or in the course of trying to settle the issue after a request for a hearing had been filed. In addition to the need for a clear date after which OHA's jurisdiction cannot be invoked, the filing deadline (together with the requirement of § 4.1354 that an administrative law judge issue a decision within 60 days of the filing) serves the policy of achieving a prompt decision on whether a permit must be denied under section 510(c), a policy that conserves the resources of both OSM and the applicant.

3. Another comment argues that the imposition on an applicant or operator in 43 CFR 4.1355 of the ultimate burden of persuasion on the basis that this is "the standard allocation of burdens of proof" (see 51 FR 35249) "fails to recognize the unique character of the section 510 provision [that] requires a finding after an opportunity for a hearing * * * The burden should be on [the regulatory] authority to support [its] findings and not shifted to the applicant to persuade OHA that the allegations of OSM are not correct," the commenter argues. This argument is accepted. Under these rules OSM makes a preliminary finding of a demonstrated pattern and OHA determines, after hearing, whether there is a finding under section 510(c). In this context the comment is correct that the burden must be on OSM both to present a prima facie case and to prove the existence of a pattern by a preponderance of the evidence. The regulation has been revised to allocate these burdens to OSM in this kind of proceeding.

4. A comment related to the previous one suggests that "OHA should modify the proposed § 4.1350 regulations to conform to the hearings rules established at 43 CFR 4.1190-4.1196." "Inasmuch as the finding required of a regulatory authority in the context of a permit application is virtually identical to this procedure, there is no reason why a substantially identical procedure should not be adopted which requires OSM to initiate and sustain its preliminary finding," the commenter argues. While there are some similarities between the determinations called for in sections 510(c) and 521(a)(4), 30 U.S.C. 1260(c) and 1271(a)(4), the differences between these provisions indicate that a "substantially identical" procedure to that provided for permit revocation proceedings in 43 CFR 4.1190 et seq. is not appropriate for the finding under section 510(c). The requirement in § 4.1351 that OSM's notice of a preliminary finding of a demonstrated pattern "shall state with specificity the violations upon which the preliminary finding is based," and the revision of the burden of proof

discussed above have resulted in a proceeding in which OSM is required "to initiate and sustain its preliminary finding."

Request for Review of Approval or Disapproval of Applications for New Permits (Federal Program; Federal Lands Program; Federal Program for Indian Lands), 43 CFR 4.1360 et seq.

1. One comment suggested that the existing regulation governing parties, 43 CFR 4.1105, should be amended to include references to an applicant under § 4.1360, in order to assure service of a request for review on the applicants under 43 CFR 4.1109. The suggestion is accepted. 43 CFR 4.1105(a)(2) is amended to include references to § 4.1360 et seq. as well as to other proceedings covered by these regulations. Correspondingly, 43 CFR 4.1109(a) is amended to provide for simultaneous service of initiating documents on the date of filing, to provide current addresses in the regulation, and to provide that any party or other person must simultaneously serve any document filed with OHA subsequent to the filing of a document that initiates a proceeding on all other parties and all other persons participating in the proceeding. *See* 51 FR 35249.

2. One comment suggested expanding the scope of decisions covered by § 4.1360 et seq. to include "review of the alleged failure of OSM to reach such decisions in a timely manner," referring specifically to the obligation imposed by section 514(b) of the Act, 30 U.S.C. 1264(b), that OSM notify an applicant whether the application has been approved or disapproved in whole or in part "within a reasonable time as determined by the regulatory authority and set forth in regulations," based on several specified factors. Although it is for OSM to promulgate the regulations called for by section 514(b), not OHA, it is not the intent of these OHA regulations to prescribe consideration of the issue of timeliness, and, indeed, the issue has been considered in the context of at least one appeal adjudicated by the Interior Board of Land Appeals (IBLA). *See Peabody Coal Co.* v. *The Hopi Tribe*, 91 IBLA 59 (1986). The suggestion is not accepted.

3. Another comment recommends that the record in a permit review proceeding under § 4.1360 et seq. be limited to information before OSM at the time of its decision or, alternatively, that any additional technical data must be filed by a specified date before the hearing. The hearing provides the applicant, OSM, and any other party the opportunity to present evidence on behalf of or against the decision granting or denying an application. This opportunity includes evidence generated after the decision appealed from. *See Benton C. Cavin*, 83 IBLA 107, 114–15 (1984). The administrative law judge has the authority specified in § 4.1121(a) as well as that under § 4.1121(b) to order a prehearing conference. This authority is adequate to ensure that all parties have a fair opportunity to present their evidence and arguments without taking advantage of other parties. The limitation on the record suggested is not consistent with the intent of Congress that there be a full public hearing on the application governed by 5 U.S.C. 554. S. Rep. No. 337, 95th Cong., 1st Sess. 107 (1977). The suggestion is not accepted.

4. Two commenters suggest that the right to request a hearing under § 4.1361 (as well as under §§ 4.1371, 4.1381, and 4.1391) be limited to persons who not only have an interest which is or may be adversely affected, as proposed, but also have participated in administrative proceedings before OSM. This would "conform to" section 514(a) of the Act, 30 U.S.C. 1264(a), and be "consistent with" section 514(f), with the Administrative Procedure Act, and with "the prevailing case law that one who challenges agency action is limited to those grounds raised initially before the agency" (citing *Portland Cement Association* v. *Ruckelshaus*, 486 F.2d 375 (D.C. Cir. 1973)), it is argued. Further, it is argued, the legislative history cited at 51 FR 34349 in support of rejecting this suggestion before "has no applicability."

Section 514(a) of the Act requires the regulatory authority to furnish the applicant for a permit and "persons who are parties to the administrative proceedings" with a written finding granting or denying a permit within 60 days if an informal conference has been held under section 513(b) of the Act, 30 U.S.C. 1263(b). Section 514(b) provides that if there has been no such informal conference the regulatory authority is to notify the applicant within a reasonable time. Section 514(c), which proposed rules §§ 4.1360–4.1369 are designed to implement, provides that the applicant "or any person with an interest which is or may be adversely affected" may request a hearing on the reasons for the final determination on an application within 30 days after the applicant is notified of it. Nothing in the language of section 514(c) nor in its legislative history indicates that only persons who have filed written objections or requested an informal conference under section 513(b) may request a hearing under section 514(c). Section 514(c) was added to the bill by the committee of conference on H.R. 2 with the following explanation: "The conferees further provided for a full public hearing after the decision on the application to be governed by 5 U.S.C. 554 if the Secretary is the regulatory authority." S. Rep. No. 337, 95th Cong., 1st Sess., 107 (1977). Adding a *full* public hearing *after* the decision on the application does not indicate an interest to limit the hearing to those who participated in the application proceedings. As section 514(b) makes clear, there may not have been either an informal conference or any written objections under section 513(b), so it is logical that section 514(c) provides that the applicant or *any* person with an interest which is or may be adversely affected may request a hearing, not only a person who has participated under section 513(b).

Section 514(f) provides a right of appeal to an applicant or "any person with and interest which is or may be adversely affected who has participated in the administrative proceedings as an objector, and who is aggrieved by the decision of the regulatory authority." The "administrative proceedings" referred to in section 514(f) are those provided for in section 514(c) and the right of appeal granted is a right to judicial review under section 526, 30 U.S.C. 1276. Section 514(f) provides no basis for limiting who may request that a hearing be held by the Department under section 514(c).

Thus, the language of section 514 (a) and (f), taken in context, does not support the suggestion in the comments that availability of administrative review before OHA should be limited to those who participated while an application was being considered by OSM.

Because Congress specified in section 514(c) who may request a hearing on a permit application determination, the Administrative Procedure Act (APA) does not control this question. The comparable language in 5 U.S.C. 702 provides a similar standard for right of review—"A person . . . adversely affected by . . . agency action"—and neither 5 U.S.C. 554 nor 557 contains any requirement of prior participation in adjudication proceedings. *Portland Cement*, cited in the comment, states that challenges made on judicial review to standards established in rulemakings "must be limited to points made by petitioners in agency proceedings," *id.*, 486 F.2d at 394, not to parties in adjudicatory proceedings. Thus, nothing analogous to section 514(c) in the APA indicates that one must have participated in a prior agency

proceeding in order to be able to request a hearing under section 514(c).

One of the purposes of the Act is to "assure that appropriate proceedings are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under the Act." 30 U.S.C. 1202(i). Both the House of Representatives and the Senate explained the reason for this purpose:

> The success or failure of a national coal surface mining regulation program will depend, to a significant extent, on the role played by citizens in the regulatory process. . . . While citizen participation is not, and cannot be, a substitute for governmental authority, citizen involvement in all phases of the regulatory scheme will help ensure that the decisions and actions of the regulatory authority are grounded upon complete and full information. In addition, providing citizen access to administrative appellate procedures and the courts is a practical and legitimate method of assuring the regulatory authority's compliance with the requirements of the Act.

H.R. Rep. No. 218, 95th Cong., 1st Sess. 88–89 (1977); S. Rep. No. 128, 95th Cong., 1st Sess. 59 (1977).

Section 514(c) provides for a right to a hearing to the applicant or "any person with an interest which is or may be adversely affected." This language occurs in several other provisions of the Act. *See, e.g.*, 30 U.S.C. 1263(b), 1270(a), 1275(a). Congress adopted this language concerning participation in the permit process over an alternative standard (any person "with a valid legal interest"). H.R. Rep. No. 493, 95th Cong., 1st Sess. 106–107 (1977). It had previously revised this language to establish "a test of standing consistent with other provisions of the bill." H.R. Rep. No. 218, 95th Cong., 1st Sess. 66 (1977). The Congress made its purpose in establishing these provisions clear: "[I]n imposing several provisions which contemplate active citizen involvement, the committee is carrying out its conviction that the participation of private citizens is a vital factor in the regulatory program as established by the Act." *Id.* at 89. It also made its intent about how this language was to be interpreted clear: "It is the intent of the Committee that the phrase 'any person having an interest which is or may be adversely affected' shall be construed to be coterminous with the broadest standing requirements enunciated by the United States Supreme Court." *Id.* at 90. "The Committee intends that this includes persons who meet the requirements for standing to sue set out by the Supreme Court in *Sierra Club* v. *Morton* (405 U.S. 727 1972))." S. Rep. No. 28, 94th Cong., 1st Sess. 217 (1975).

This statutory language—"person with an interest which is or may be adversely affected"—is defined in regulations adopted by the Secretary as including "any person a) who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the State regulatory authority or b) whose property is or may be adversely affected" by these same activities or actions. 30 CFR 700.5. In devising this definition the legislative history referred to above, as well as additional references, were relied on, as were various United States Supreme Court decisions. 44 FR 14912–14913 (Mar. 13, 1979). The statutory language is reflected in several other regulations adopted by the Secretary, including 30 CFR 775.11(a) authorizing administrative review of permit decisions. 30 CFR 775.11(a) applies not only to review of the approval or denial of applications for permits but to permit revisions and renewals, applications for the transfer, sale, or assignment of permit rights, and applications for coal exploration permits. See also 43 CFR 4.1105(a)(2), 4.1110(b).

Thus, both the legislative history and the regulatory history of the phrase "any person with an interest which is or may be adversely affected" contradict the suggested limitation on who may file a request for review under proposed 43 CFR 4.1361, 4.1371, 4.1381, and 4.1391 The suggestion is rejected.

5. Another comment suggested revising 4.1361 to provide that if a person (*e.g.*, an Indian tribe) that otherwise has sovereign immunity filed a request for a hearing, it should be deemed to have waived its sovereign immunity from suit by any other party for costs and expenses under section 525(e) of the Act or for administrative or judicial review of the outcome of the request for a hearing. The suggestion is not accepted. An Indian tribe does not waive its sovereign immunity against a counterclaim by initiating legal action. *Chemehuevi Indian Tribe* v. *California State Board of Equalization*, 757 F.2d 1047, 1053 (9th Cir. 1985), *rev'd on other grounds*, 106 S. Ct. 289 (1985); *United States* v. *U.S. Fidelity and Guaranty Co.*, 309 U.S. 506, 512 (1940). Without authority from the Congress, the Secretary may not waive tribal immunity. *Puyallup Tribe, Inc.* v. *Department of Game of Washington*, 433 U.S. 165, 170 n.9 (1977); *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 58 (1978).

6. One comment observed that requiring a request for review to be filed "within 30 days after the applicant is notified of OSM's written decision" under 4.1362(a) does not provide a clear deadline unless there is a record of when that notification takes place. Under "OSM's procedures * * * considerable question can arise as to what constitutes 'notification' of the applicant," the comment states. The regulation—as well as §§ 4.1372(a), 4.1382(a), and 4.1391(b)—is revised to provide that notification of the applicant or permittee occurs on the date of publication in a local newspaper of notice of OSM's decision. This form of notification is required only for purposes of being able to establish clearly whether a request for review was timely filed with OHA; it does not preclude other forms of notification (*e.g.*, oral, personal service) for other purposes.

7. A comment suggested deleting § 4.1363 (c) and (d) on the grounds that statutory time limits imposed by section 514(c) should not be able to be avoided by inartful drafting of requests for hearings. These paragraphs have been revised to require filing of amendments and responses within 15 and 10 days of filing of requests for review and amendments, respectively, so that there can be no violation of the requirement that a hearing be commenced within 30 days of a filing of a request for hearing, and a provision has been added to § 4.1363(c) proscribing the granting of a motion for leave to amend unless all parties agree to an extension of the date of the commencement of the hearing under § 4.1364.

8. A comment suggested revising § 4.1364(a) to delete the reference to an amended request for review and the requirement for simultaneous notification of "all interested parties" on the grounds that it might be interpreted to require notice by publication for which there would not be time given the time limits imposed by section 514(c). The suggestion to delete the reference to an amended request for review is not accepted, in view of the revisions to § 4.1363. The suggestion concerning notification is also not accepted. The regulation is not intended to require notice by publication, although it would not preclude it. In any event, the requirement that a hearing commence within 30 days of the filing of the request for review would control.

9. Two comments suggested that § 4.1364(b) authorizing waivers of the deadlines for holding a hearing and issuing a decision imposed by 30 U.S.C. 1264(c) upon the agreement of all parties

be revised to make clear that the rule "may be implemented through specified extensions of time to which all parties agree," as well as indefinite extensions, so that parties are not reluctant to agree for fear of losing their right to a decision within an established time frame. The suggestion is accepted and the rule has been revised accordingly. In addition, § 4.1364 has been revised to limit it to waivers of the time limit for commencing a hearing. Waivers of the time limit for issuing a decision are provided for in revised § 4.1368.

10. One comment observed that it "is not possible" for OSM to file a request for review of a permit it has itself granted, as implied in the first paragraph of the discussion of § 4.1366 on 51 FR 35250. It was not the intent of the comment to indicate this was possible; the comment responded to a hypothetical question concerning the allocation of the burden of proof. Another comment suggested revising § 4.1336 to conform to 30 CFR 775.11(b)(5). The present phrasing is retained to distinguish the burden of going forward with the evidence from the burden of ultimate persuasion.

11. One comment observed that the expedited time frames in §§ 4.1368 and 4.1369 "place a substantial burden on parties having to develop and draft pleadings and briefs. We are concerned that full and fair consideration of the issues may not always result. Because permit challenges often are complex and present issues of first impression, a total of 30 days for two sets of briefs, an administrative law judge decision, and Board decision is inadequate." The commenter suggested establishing longer periods by rule, noting that if a party were aggrieved by the period for review extending beyond 30 days it could seek judicial relief under section 514(f). Alternatively, the commenter suggested that filing be effective upon receipt, rather than on mailing as provided currently in 43 CFR 4.1107, and that provisions similar to existing rules 43 CFR 4.1184(b), 4.1185, and 4.1186 be adopted for permit review proceedings under § 4.1360.

OHA agrees that the time frames in proposed §§ 4.1368 and 4.1369 are impractical. Therefore, § 4.1368 is revised to allocate the entire 30-day period mandated by section 514(c) of the Act for the issuance of a decision to the administrative law judge and to provide that this time limit may be waived in writing by the parties if they wish to allow more time after the hearing record is closed, *i.e.*, after the filing of any post-hearing briefs, for the issuance of a decision. As under § 4.1364, the agreement may specify the length of the extension agreed to.

Section 4.1369 has been revised to provide that any party aggrieved by a decision of the administrative law judge granting or denying a permit in whole or in part may elect to file a petition for discretionary review with the Board, or it may seek judicial review in accordance with 30 U.S.C. 1276(a)(2). This election is similar to the one available for review of decisions granting or denying temporary relief under 43 CFR 4.1367(f). If the Board grants the petition, it shall decide the appeal expeditiously.

A provision based on 43 CFR 4.1184(b) has been added as § 4.1363(e).

Requests for Review Concerning Permit Revisions, Permit Renewals, and the Transfer, Assignment, or Sale of Rights Granted Under Permits (Federal Program; Federal Lands Program; Federal Program for Indian Lands), 43 CFR 4.1370 et seq.

1. One comment objects to any differences between the review procedures and time requirements applicable to permit revisions, renewals, and the transfer, assignment, or sale of rights under § 4.1370 et seq. and those applicable to new permits under § 4.1360 et seq. on the grounds that 30 CFR 775.11 provides the same procedures under state programs and "the slower, more cumbersome procedures proposed for decisions on existing permits under federal programs would place operators subject to federal programs at a severe disadvantage in comparison to operators under state programs conducted pursuant to 30 CFR 775.11." Section 4.1360 et seq. should be applicable to all permit decisions, the commenter concludes, and § 4.1370 et seq. should be deleted.

The differences in time requirements, burdens of proof, etc., between § 4.1360 et seq. and § 4.1370 et seq. are based on differences in the provisions of the Act concerning these matters in sections 506, 510, 511, and 514, 30 U.S.C. 1256, 1260, 1261, and 1264. The time limits imposed in section 514(c), for example, are not contained in the other sections (*see, e.g.*, section 511(a)(2)). Similarly, the burden of proof on applications for renewals is specified by section 506(d)(1) to be on any opponents. Thus, different administrative review procedures for federal, state, and federal lands programs were chosen "because of the statutory and institutional differences between the three programs." 44 FR 15104 (Mar. 13, 1979). The suggestion to apply § 4.1360 et seq. to all permit decisions is not accepted.

A new § 4.1379 has been added, however, authorizing any party to a proceeding under § 4.1370 et seq. to request that an administrative law judge or the Board grant expedited consideration to a case. The request must set forth the exigent circumstances that warrant expedited consideration.

2. One comment objects that a "right to public participation in a hearing under 30 CFR 775.11(a) and 43 CFR 4.1370 et seq. of the transfer assignment and sale of permit rights cannot be created when no right to a hearing is created pursuant to section 511" of the Act.

The origin of the right specified in 30 CFR 775.11(a) and (c) is described in the preamble to the equivalent regulation § 787.11) when it was promulgated:

> 10. As is discussed in the preamble to Section 7[7]6.14, the Office accepted comments suggesting that the right to an adjudicatory hearing be provided with respect to decisions of regulatory authorities to approve or disapprove applications to conduct coal exploration in which more than 250 tons of coal is to be removed in any one location. This was done by cross-referencing to Section 787.11. Appropriate revisions were also made to Section 787.11 to include these appeals within its scope. Similarly, the requirements of Section 787.11 have also been made applicable, as suggested by commenters, to Section 786.17(d) hearings, Section 788.11 hearings, *and to review of the decision of the regulatory authority under Sections 788.17–788.19.* [Emphasis added.]

44 FR 15105 (Mar. 13, 1979). (788.17–788.19 applied to the transfer, assignment, or sale of permit rights. *See* 44 FR 15108–09 (Mar. 13, 1979).)

The discussion in the preamble to § 776.14 referred to in this comment explained:

> 3. Several commenters questioned whether there should be an opportunity for a hearing on the approval or disapproval of coal explorations over 250 tons. As proposed, Section 776.14 conferred discretion to the regulatory authority to hold a hearing after approval or disapproval of exploration applications. Under the due-process requirements of the 5th and 14th amendments to the United States Constitution, the Federal and State governments can only take property or deprive individuals of their due-process rights if opportunity for an adjudicatory hearing is afforded on particularized, factual determinations. Furthermore, the Federal Administrative Procedure Act (5 U.S.C. 554) and most State laws provide for a similar right to a hearing. Therefore, any person adversely affected by the decision of the regulatory authority on an exploratory application must be given an opportunity for a hearing. The type of hearing to be afforded is specified in Part 787, which itself has been modified in the final rule to account for exploration application approval and disapproval hearings.

44 FR 15020 (Mar. 13, 1979).

Section 775.11(a) "is the previous 787.11(a), with minor editorial changes." 48 FR 44383 (Sept. 28, 1983). "Section 775.11(c) . . . is the same as previous 787.11(c), with the changes described below." 48 FR 44384 (Sept. 28, 1983). Both 787.11(a) and 787.11(c) provided for administrative review of decisions on applications for the transfer, sale, or assignment of rights granted under permits. 44 FR 15382 (Mar. 13, 1979).

Request for Review of Approval or Disapproval of a Coal Exploration Permit Application (Federal Program), 43 CFR 4.1380 et seq.

1. One comment objects to the provision of § 4.1385 that filing a request for review stays issuance of a permit pending completion of administrative review. "No valid distinction exists for treating the status of a coal exploration permit decision differently from other permitting decisions," the commenter argues. The argument is persuasive. The review of an application for a coal exploration permit, though somewhat less extensive, is similar to that for an application for a new permit. The process does include public notice and the opportunity for comment. The rule has been revised so that filing a request for review will not stay issuance of a coal exploration permit. Interested persons adversely affected by the issuance of the coal exploration permit may seek temporary relief, including a stay, under 43 CFR 4.1387.

Request for Review of OSM Determinations of Issues Under 30 CFR Part 761 (Federal Program; Federal Lands Program; Federal Program for Indian Lands), 43 CFR 4.1390 et seq.

1. Two comments observe that a determination by OSM under 30 CFR Part 761 could either take place in advance of an application for a permit or in the context of a decision on such an application. There is need for only one determination, however, and therefore for only one opportunity to request review of that determination. If the determination is made separately from a permit application, the review procedures provided in § 4.1390 et seq. apply; if it is made in the context of a permit application decision, administrative review of the determination will occur in accordance with the procedures applicable to review of the decision on the permit application, *i.e.*, §§ 4.1360 et seq., 4.1370 et seq., or 4.1380 et seq.

2. One comment objects to the applicability of 43 CFR 4.21(a) to OSM decisions under 30 CFR Part 761 that are the subject of a request for review. *See* 4.1392. "The proposal contravenes [the Act] by substituting § 4.21(a) for the specific statutory scheme which uniformally [sic] requires that those who object to OSM's decisions affirmatively seek relief. *See, Virginia Surface Mining and Reclamation Assn.* v. *Andrus*, 604 F.2d 312 (4th Cir. 1979)," the commenter argues.

The general rule in 43 CFR 4.21(a), contained in § 4.1393, is provided so that there is an opportunity for administrative review on behalf of the Secretary before agency action is final for purposes of judicial review. *See* 5 U.S.C. 704; *United States* v. *Consolidated Mines & Smelting Co.*, 455 F.2d 432 (9th Cir. 1971); *Conoco, Inc.* v. *Watt*, 559 F. Supp. 627, 629 (E.D. La. 1982). The rule implements the policy that the Secretary structure adjudication procedures to assure objective administrative review of initial decisions. *See* 43 U.S.C. 1701(a)(5). It provides an opportunity for OHA to develop and review a record and it protects private parties from investing resources on the basis of an initial decision that may be erroneous. With the exception noted in the response to the preceding comment, OSM decisions under Part 761 take place before decisions concerning permits. In addition, such decisions more often involve legal rather than technical issues. For both these reasons there is less reason to exempt decisions under Part 761 from the general rule in 43 CFR 4.21(a).

Except for sections 514(c) and 506(d)(1)), discussed above, the Act does not contain a "specific statutory scheme," as suggested by the comment, that precludes application of the general rule to decisions by OSM under 30 CFR Part 761. Application of the rule does not alter the parties' burdens of proof, it simply provides for the conduct of administrative review. *Andrus*, cited by the comment, deals with the showings that must be made to obtain temporary relief from decisions of the Secretary during judicial review under section 526. It does not speak to any such uniform requirements during administrative review by the Secretary. The suggestion in the comment that § 4.21(a) not apply is rejected.

3. Section 4.1391(a) has been revised to provide for filing of a request for review in the office of the OSM official making the determination, with a copy to the Board. *Cf.* 43 CFR 4.1282(a). OSM will file the administrative record with the Board as soon as practicable.

Determination of Effects

Because these rules only set forth the details of procedures for conducting hearings and appeals of decisions of OSM under the Surface Mining Control and Reclamation Act of 1977, the Department has determined that they are not major, as defined by Executive Order 12291, and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

National Environmental Policy Act

The Department has determined that these rules will not significantly affect the quality of the human environment on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, section 1.10.

Paperwork Reduction Act

These rules contain no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*

The author of these regulations is Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mine, Public lands-mineral resources, Surface mining.

For the reasons set forth in the preamble, Subparts L and M of Part 4 of Title 43 of the Code of Federal Regulations are amended as set forth below.

Dated: October 15, 1987.

Donald Paul Hodel,

Secretary.

PART 4—[AMENDED]

43 CFR Part 4 is amended as follows:

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

Authority: 5. U.S.C. 301.

§§ 4.1300–4.1310 [Redesignated as §§ 4.1600–4.1610].

2. 43 CFR Part 4, Subpart M, is amended by redesignating existing § 4.1300–4.1310 as 4.1600–4.1610. All references to §§ 4.1300–4.1310 are changed to reference §§ 4.1600–4.1610 respectively.

2a. The authority citation for Part 4, Subpart L, continues to read as follows:

Authority: 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

3. 43 CFR 4.1105 is amended by revising paragraph (a)(2) to read as follows:

§ 4.1105 Parties.

(a) * * *

(2) In a review proceeding under §§ 4.1160 et seq., 4.1180 et seq., 4.1300 et seq., 4.1350 et. seq., 4.1360 et seq., 4.1370 et seq., 4.1380 et seq., or 4.1390 et seq., of this part, OSM, as represented by the Office of the Solicitor, Department of the Interior, and—

(i) If an applicant, operator, or permittee files an application or request for review, the applicant, operator, or permittee; and

(ii) If any other person having an interest which is or may be adversely affected files an application or request for review, the applicant, operator, or permittee and the person filing such application;

* * * * *

4. 43 CFR 4.1109 is amended by revising paragraph (a) to read as follows:

§ 4.1109 Service.

(a) Any party initiating a proceeding in OHA under the Act shall simultaneously serve, on the date of filing, copies of the initiating documents on the Field or Regional Solicitor, Division of Surface Mining, U.S. Department of the Interior, representing OSM in the state in which the mining operation is located, and on any other statutory parties under 4.1105. The addresses and telephone numbers of the field and regional solicitors follow.

For cases arising in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia: Office of the Field Solicitor, U.S. Department of the Interior, P.O. Box 15006, Knoxville, Tennessee 37901. Phone 615–673–4233.

For cases arising in Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming: Office of the Regional Solicitor, U.S. Department of the Interior, Denver Federal Center, P.O. Box 25007, Denver, Colorado 80225. Phone 303–236–8444.

For cases arising in Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennnsylvania, Rhode Island, Vermont, and West Virginia: Office of the Field Solicitor, U.S. Department of the Interior, Suite 502J, U.S. Post Office and Courthouse, Pittsburgh, Pennsylvania 15219. Phone 412–644–4455.

Any party or other person shall simultaneously serve any other documents being filed subsequently with OHA on all other parties and all other persons participating in the proceeding.

* * * * *

5. 43 CFR Part 4, Subpart L, is further amended by adding new center headings and §§ 4.1350 through 4.1394 to read as follows:

Request for Hearing on a Preliminary Finding Concerning a Demonstrated Pattern of Willful Violations Under Section 510(c) of the Act, 30 U.S.C. 1260(c) (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

Sec.
4.1350 Scope.
4.1351 Preliminary finding by OSM.
4.1352 Who may file; where to file; when to file.
4.1353 Contents of request.
4.1354 Determination by the administrative law judge.
4.1355 Burden of proof.
4.1356 Appeals.

Request for Review of Approval or Disapproval of Applications for New Permits (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

4.1360 Scope.
4.1361 Who may file.
4.1362 Where to file; when to file.
4.1363 Contents of request; amendment of request; responses.
4.1364 Time for hearing; notice of hearing; extension of time for hearing.
4.1365 Status of permit pending administrative review.
4.1366 Burden of proof.
4.1367 Requests for temporary relief from a decision to approve or disapprove a permit application in whole or in part.
4.1368 Determination by the administrative law judge.
4.1369 Petitions for discretionary review; judicial review.

Requests for Review Concerning Permit Revisions, Permit Renewals, and the Transfer, Assignment, or Sale of Rights Granted Under Permits (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

4.1370 Scope.
4.1371 Who may file; where to file.
4.1372 When to file.
4.1373 Contents of request; amendment of request; responses.
4.1374 Notice of hearing.
4.1375 Status of decision pending administrative review.
4.1376 Burden of proof.
4.1377 Request for temporary relief.
4.1378 Petitions for discretionary review.
4.1379 Request for expedited consideration.

Request for Review of Approval or Disapproval of a Coal Exploration Permit Application (Federal Program)

4.1380 Scope.
4.1381 Who may file.
4.1382 Where to file; when to file.
4.1383 Contents of request; amendment of request; responses.
4.1384 Notice of hearing.
4.1385 Status of permit pending administrative review.
4.1386 Burden of proof.
4.1387 Request for temporary relief.
4.1388 Petitions for discretionary review.

Request for Review of OSM Determinations of Issues Under 30 CFR Part 761 (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

4.1390 Scope.
4.1391 Who may file; where to file; when to file; filing of administrative record.
4.1392 Contents of request; amendment of request; responses.
4.1393 Status of decision pending administrative review.
4.1394 Burden of proof.

Request for Hearing on a Preliminary Finding Concerning a Demonstrated Pattern of Willful Violations Under Section 510(c) of the Act, 30 U.S.C. 1260(c) (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

§ 4.1350 Scope.

These rules set forth the procedures for obtaining review of a preliminary finding by OSM, prior to approval or disapproval of a permit application, that the applicant, or operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this Act or the applicable State or Federal program.

§ 4.1351 Preliminary finding by OSM.

If OSM determines during review of the permit application that the applicant, or operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply, OSM shall issue the applicant or operator a notice of such preliminary finding. The notice shall state with specificity the violations upon which the preliminary finding is based.

§ 4.1352 Who may file; where to file; when to file.

(a) The applicant or operator may file a request for hearing on OSM's preliminary finding of a demonstrated pattern of willful violations.

(b) The request for hearing shall be filed with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800), within 30 days of

receipt by the applicant or operator of the notice of the preliminary finding.

(c) Failure to timely file a request shall constitute a waiver of the opportunity for a hearing prior to a final finding by OSM concerning a demonstrated pattern of willful violations, and the request shall be dismissed.

§ 4.1353 Contents of request.

The request for hearing shall include—

(a) A clear statement of the facts entitling the one requesting the hearing to administrative relief;

(b) An explanation of the alleged errors in OSM's preliminary finding; and

(c) Any other relevant information.

§ 4.1354 Determination by the administrative law judge.

The administrative law judge shall promptly set a time and place for and give notice of the hearing to the applicant or operator and shall issue a decision within 60 days of the filing of a request for hearing. The hearing shall be of record and governed by 5 U.S.C. 554.

§ 4.1355 Burden of proof.

OSM shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the existence of a demonstrated pattern of willful violations of the Act or the applicable State or Federal program which are of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent to comply.

§ 4.1356 Appeals.

(a) Any party aggrieved by the decision of the administrative law judge may appeal to the Board under procedures set forth in § 4.1271 et seq. of this subpart, except that the notice of appeal must be filed within 20 days of receipt of the administrative law judge's decision.

(b) The Board shall order an expedited briefing schedule and shall issue a decision within 45 days of the filing of the appeal.

Request for Review of Approval or Disapproval of Applications for New Permits (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

§ 4.1360 Scope.

These rules set forth the procedures for review of decisions by OSM on applications for new permits, including applications under 30 CFR Part 785, and the terms and conditions imposed or not imposed in permits by those decisions. They do not apply to decisions on applications to mine on Federal lands in states where the terms of a cooperative agreement provide for the applicability of alternative administrative procedures (*see* 30 CFR 775.11(c)), but they do apply to OSM decisions on applications for Federal lands in states with cooperative agreements where OSM as well as the state issue Federal lands permits.

§ 4.1361 Who may file.

The applicant or any person having an interest which is or may be adversely affected by a decision of OSM to approve or disapprove a permit application, in whole or in part, may file a request for review of that decision.

§ 4.1362 Where to file; when to file.

(a) The request for review shall be filed with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800), within 30 days after the applicant is notified by publication in a local newspaper of notice of OSM's written decision approving or disapproving the permit application in whole or in part.

(b) Failure to file a request for review within the time specified in paragraph (a) of this section shall constitute a waiver of a hearing and the request shall be dismissed.

§ 4.1363 Contents of request; amendment of request; responses.

(a) The request for review shall include—

(1) A clear statement of the facts entitling the one requesting review to administrative relief;

(2) An explanation of each specific alleged error in OSM's decision, including reference to the statutory and regulatory provisions allegedly violated;

(3) A request for specific relief;

(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(5) Any other relevant information.

(b) All interested parties shall file an answer or motion in response to a request for review, or a statement that no answer or motion will be filed, within 15 days of receipt of the request specifically admitting or denying facts or alleged errors stated in the request and setting forth any other matters to be considered on review.

(c) A request for review may be amended once as a matter of right prior to filing of an answer or motion or statement filed in accordance with paragraph (b) of this section. Thereafter, a motion for leave to amend the request shall be filed with the administrative law judge. An administrative law judge may not grant a motion for leave to amend unless all parties agree to an extension of the date of commencement of the hearing under § 4.1364. A request for review may not be amended after a hearing commences.

(d) An interested party shall have 10 days from filing of a request for review that is amended as a matter of right or the time remaining for response to the original request, whichever is longer, to file an answer, motion, or statement in accordance with paragraph (b) of this section. If the administrative law judge grants a motion to amend a request for review, the time for an interested party to file an answer, motion, or statement shall be set forth in the order granting it.

(e) Failure of any party to comply with the requirements of paragraphs (a) or (b) of this section may be regarded by an administrative law judge as a waiver by that party of the right to commencement of a hearing within 30 days of the filing of a request for review if the administrative law judge concludes that the failure was substantial and that another party was prejudiced as a result.

§ 4.1364 Time for hearing; notice of hearing; extension of time for hearing.

Unless all parties agree in writing to waive the statutory requirement that a hearing be held within 30 days of a request, the administrative law judge shall commence a hearing within 30 days of the date of the filing of the request for review or amended request for review and shall simultaneously notify the applicant and all interested parties of the time and place of such hearing before the hearing commences. The hearing shall be of record and governed by 5 U.S.C. 554. An agreement to waive the time limit for commencement of a hearing may specify the length of the extension agreed to.

§ 4.1365 Status of permit pending administrative review.

The filing of a request for review of the approval of an application for a permit shall not suspend the permit pending completion of administrative review.

§ 4.1366 Burden of proof.

(a) If the permit applicant is seeking review, OSM shall have the burden of going forward to establish a prima facie case as to failure to comply with the applicable requirements of the Act or the regulations or as to the appropriateness of the permit terms and conditions, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the permit or as to the inappropriateness of the permit terms and conditions.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application fails in some manner to comply with the applicable requirements of the Act or the regulations, or that OSM should have imposed certain terms and conditions that were not imposed.

§ 4.1367 Request for temporary relief from a decision to approve or disapprove a permit application in whole or in part.

(a) Where review is requested pursuant to § 4.1362, any party may file a request for temporary relief at any time prior to a decision by an administrative law judge, so long as the relief sought is not the issuance of a permit where a permit application has been disapproved in whole or in part.

(b) The request shall be filed with the administrative law judge to whom the case has been assigned. If no assignment has been made, the application shall be filed in the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800).

(c) The application shall include—

(1) A detailed written statement setting forth the reasons why relief should be granted;

(2) A statement of the specific relief requested;

(3) A showing that there is a substantial likelihood that the person seeking relief will prevail on the merits of the final determination of the proceeding; and

(4) A showing that the relief sought will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(d) The administrative law judge may hold a hearing on any issue raised by the application.

(e) The administrative law judge shall issue expeditiously an order or decision granting or denying such temporary relief. Temporary relief may be granted only if—

(1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting such relief shows a substantial likelihood of prevailing on the merits of the final determination of the proceeding; and

(3) Such relief will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(f) *Appeals of temporary relief decisions.* (1) Any party desiring to appeal the decision of the administrative law judge granting or denying temporary relief may appeal to the Board, or, in the alternative, may seek judicial review pursuant to section 526(a), 30 U.S.C. 1276(a), of the Act.

(2) The Board shall issue an expedited briefing schedule and shall issue a decision on the appeal expeditiously.

§ 4.1368 Determination by the administrative law judge.

Unless all parties agree in writing to waive the statutory requirement that a decision be issued within 30 days after the hearing, the administrative law judge shall issue a written decision in accordance with 43 CFR 4.1127 within 30 days of the date the hearing record is closed by the administrative law judge. An agreement to waive the time limit for issuing a decision may specify the length of the extension agreed to.

§ 4.1369 Petition for discretionary review; judicial review.

(a) Any party aggrieved by a decision of an administrative law judge granting or denying a permit in whole or in part may file a petition for discretionary review with the Board within 30 days of receipt of the decision, or, in the alternative, may seek judicial review of the decision in accordance with 30 U.S.C. 1276(a)(2). A copy of the petition shall be served on the administrative law judge who issued the decision, who shall forthwith forward the record to the Board, and on all other parties to the proceeding. The petition shall set forth specifically the alleged errors in the decision, with supporting argument, and shall attach a copy of the decision.

(b) Any party may file a response to a petition for discretionary review within 20 days of receipt of the petition.

(c) The Board shall grant or deny the petition within 30 days of receipt of the responses. If the petition is granted, the Board shall decide the appeal expeditiously.

Requests for Review Concerning Permit Revisions, Permit Renewals, and the Transfer, Assignment, or Sale of Rights Granted Under Permits (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

§ 4.1370 Scope.

These rules set forth the procedures for obtaining review of decisions by OSM concerning permit revisions, permit renewals, and the transfer, assignment, or sale of rights granted under permits.

§ 4.1371 Who may file; where to file.

The applicant, permittee, or any person having an interest which is or may be adversely affected by a decision of OSM ordering revision of a permit, or approving or disapproving applications for permit revisions, permit renewals, or the transfer, assignment, or sale of rights granted under permits, may file a request for review of that decision with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800).

§ 4.1372 When to file.

(a) The request for review shall be filed within 30 days after the applicant or permittee is notified by publication in a local newspaper of notice of OSM's written order or decision.

(b) Failure to file a request for review within the time specified in paragraph (a) of this section shall constitute a waiver of a hearing and the request shall be dismissed.

§ 4.1373 Contents of request; amendment of request; responses.

(a) The request for review shall include—

(1) A clear statement of the facts entitling the one requesting review to administrative relief;

(2) An explanation of the alleged errors in OSM's decision;

(3) A request for specific relief;

(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(5) Any other relevant information.

(b) All interested parties shall file an answer or motion in response to a request for review or a statement that no answer or motion will be filed, within 15 days of receipt specifically admitting or denying facts or alleged errors stated in the request and setting forth any other matters to be considered on review.

(c) A request for review may be amended once as a matter of right prior to receipt of an answer or motion or statement filed in accordance with paragraph (b) of this section. Thereafter, a motion for leave to amend the request shall be filed with the administrative law judge. A request for review may not be amended after a hearing commences.

(d) An interested party shall have 10 days from receipt of a request for review that is amended as a matter of right or the time remaining for response to the original request to file an answer, motion, or statement in accordance with paragraph (b) of this section, whichever is longer. If the administrative law judge grants a motion to amend a request for

review, the time for an interested party to file an answer, motion, or statement shall be set forth in the order granting the motion.

§ 4.1374 Notice of hearing.

The administrative law judge shall notify the applicant or permittee and all interested parties of the time and place of the hearing. The hearing shall be of record and governed by 5 U.S.C. 554.

§ 4.1375 Status of decision pending administrative review.

The filing of a request for review of the approval or disapproval of an application for a permit revision, permit renewal, or the transfer, assignment, or sale of rights granted under a permit or of an order requiring revision of a permit shall not stay the effectiveness of the decision pending completion of administrative review.

§ 4.1376 Burden of proof.

(a) In a proceeding to review a permit revision ordered by OSM, OSM shall have the burden of going forward to establish a prima facie case that the permit should be revised and the permittee shall have the ultimate burden of persuasion.

(b) In a proceeding to review the approval or disapproval of an application for a permit renewal, those parties opposing renewal shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the renewal application should be disapproved.

(c) In a proceeding to review the approval or disapproval of an application for a permit revision or an application for the transfer, assignment, or sale of rights granted under a permit—

(1) If the applicant is seeking review, OSM shall have the burden of going forward to establish a prima facie case as to failure to comply with applicable requirements of the Act or the regulations, and the applicant requesting review shall have the ultimate burden of persuasion as to entitlement to approval of the application; and

(2) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails in some manner to comply with the applicable requirements of the Act and the regulations.

§ 4.1377 Request for temporary relief.

(a) Where review is requested pursuant to § 4.1371, any party may file a request for temporary relief at any time prior to decision by an administrative law judge, so long as the relief sought is not the issuance of a permit where an application has been disapproved in whole or in part.

(b) The request shall be filed with the administrative law judge to whom the case has been assigned. If no assignment has been made, the request shall be filed in the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800).

(c) The request shall include—

(1) A detailed written statement setting forth the reasons why relief should be granted;

(2) A statement of the specific relief requested;

(3) A showing that there is a substantial likelihood that the person seeking relief will prevail on the merits of the final determination of the proceedings; and

(4) A showing that the relief sought will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(d) The administrative law judge may hold a hearing on any issue raised by the request.

(e) The administrative law judge shall issue expeditiously an order or decision granting or denying such temporary relief. Temporary relief may be granted only if—

(1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting such relief shows a substantial likelihood of prevailing on the merits of the final determination of the proceeding; and

(3) Such relief will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(f) Appeals of temporary relief decisions.

(1) Any party desiring to appeal the decision of the administrative law judge granting or denying temporary relief may appeal to the Board or, in the alternative, may seek judicial review pursuant to section 526(a), 30 U.S.C. 1276(a), of the Act.

(2) The Board shall issue an expedited briefing schedule and shall issue a decision on the appeal expeditiously.

§ 4.1378 Petitions for discretionary review.

(a) Any party aggrieved by a decision of the administrative law judge on a request for review of a permit revision, permit renewal, or the transfer, assignment, or sale of rights may file a petition for discretionary review with the Board no later than 30 days from receipt of the decision. The time for filing a petition may not be extended.

(b) The petition shall contain a statement of reasons in support and shall attach a copy of the decision.

(c) All parties may file a response to the petition within 20 days of receipt.

(d) The Board shall grant or deny the petition by order within 30 days of the filing of responses.

§ 4.1379 Request for expedited consideration.

Any party to a proceeding under § 4.1370 et seq. may request an administrative law judge or the Board to grant expedited consideration of a request for review or petition for discretionary review. The request shall set forth the exigent circumstances that warrant expedited consideration. The administrative law judge or the Board has discretion whether to grant or deny the request.

Request for Review of Approval or Disapproval of a Coal Exploration Permit Application (Federal Program)

§ 4.1380 Scope.

These rules set forth the procedures for obtaining review, pursuant to 30 CFR 772.12(e)(2), of a decision by OSM to approve or disapprove a coal exploration permit application.

§ 4.1381 Who may file.

(a) The applicant or any person having an interest which is or may be adversely affected by a decision of OSM to approve or disapprove a coal exploration permit application, in whole or in part, may file a request for review of that decision.

§ 4.1382 Where to file; when to file.

(a) The request for review shall be filed with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800), within 30 days after the applicant is notified by publication in a local newspaper of notice of OSM's written decision approving or disapproving the coal exploration permit application.

(b) Failure to file a request for review within the time specified in paragraph (a) of this section shall constitute a waiver of a hearing and the request shall be dismissed.

§ 4.1383 Contents of request; amendment of request; responses.

(a) The request for hearing shall include—

(1) A clear statement of the facts entitling the one requesting review to administrative relief;

(2) An explanation of the alleged errors in OSM's decision;

(3) A request for specific relief;

(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(5) Any other relevant information.

(b) All interested parties shall file an answer or motion in response to a request for review or a statement that no answer or motion will be filed within 15 days of receipt specifically admitting or denying facts or alleged errors stated in the request and setting forth any other matters to be considered on review.

(c) A request for review may be amended once as a matter of right prior to receipt of an answer or motion or statement filed in accordance with paragraph (b) of this section. Thereafter, a motion for leave to amend the request shall be filed with the administrative law judge. A request for review may not be amended after a hearing commences.

(d) An interested party shall have 10 days from receipt of a request for review that is amended as a matter of right or the time remaining for response to the original request to file an answer, motion, or statement in accordance with paragraph (b) of this section, whichever is longer. If the administrative law judge grants a motion to amend a request for review, the time for an interested party to file an answer, motion, or statement shall be set forth in the order granting the motion.

§ 4.1384 Notice of hearing.

The administrative law judge shall notify the applicant and all interested parties of the time and place of the hearing. The hearing shall be of record and governed by 5 U.S.C. 554.

§ 4.1385 Status of permit pending administrative review.

The filing of a request for review of approval of an application for a coal exploration permit shall not stay the issuance of the permit pending completion of administrative review.

§ 4.1386 Burden of proof.

(a) If the coal exploration permit applicant is seeking review, OSM shall have the burden of going forward to establish a prima facie case as to failure to comply with the applicable requirements of the Act or the regulations, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the approval.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish prima facie case and the ultimate burden of persuasion that the application fails in some manner to comply with the applicable requirements of the Act or the regulations.

§ 4.1387 Request for temporary relief.

(a) Where review is requested pursuant to § 4.1381, any party may file a request for temporary relief at any time prior to decision by an administrative law judge, so long as the relief sought is not the issuance of a permit where an application has been disapproved in whole or in part.

(b) The request shall be filed with the administrative law judge to whom the case has been assigned. If no assignment has been made, the request shall be filed in the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800).

(c) The request shall include—

(1) A detailed written statement setting forth the reasons why relief should be granted;

(2) A statement of the specific relief requested;

(3) A showing that there is a substantial likelihood that the person seeking relief will prevail on the merits of the final determination of the proceedings; and

(4) A showing that the relief sought will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(d) The administrative law judge may hold a hearing on any issue raised by the request.

(e) The administrative law judge shall issue expeditiously an order or decision granting or denying such temporary relief. Temporary relief may be granted only if—

(1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting such relief shows a substantial likelihood of prevailing on the merits of the final determination of the proceeding; and

(3) Such relief will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(f) *Appeals of temporary relief decisions.* (1) Any party desiring to appeal the decision of the administrative law judge granting or denying temporary relief may appeal to the Board or, in the alternative, may seek judicial review pursuant to section 526(a), 30 U.S.C. 1276(a), of the Act.

(2) The Board shall issue an expedited briefing schedule and shall issue a decision on the appeal expeditiously.

§ 4.1388 Petitions for discretionary review.

(a) Any party aggrieved by a decision of the administrative law judge on a request for review of an application for a coal exploration permit may file a petition for discretionary review with the Board no later than 30 days from receipt of the decision. The time for filing a petition may not be extended.

(b) The petition shall contain a statement of reasons in support and shall attack a copy of the decision.

(c) All parties may file a response to the petition within 20 days of receipt.

(d) The Board shall grant or deny the petition by order within 30 days of the filing of responses.

Request for Review of OSM Determinations of Issues Under 30 CFR Part 761 (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

§ 4.1390 Scope.

These rules set forth procedures for obtaining review pursuant to 30 CFR 761.12(h) of a determination by OSM that a person holds or does not hold a valid existing right, or that surface coal mining operations did or did not exist on the date of enactment of the Act, on lands where operations are prohibited or limited by section 522(e) of the Act, 30 U.S.C. 1272(e), or that surface coal mining operations may be permitted within the boundaries of a national forest in accordance with section 522(e)(2).

§ 4.1391 Who may file; where to file; when to file; filing of administrative record.

(a) The permit applicant or any person with an interest which is or may be adversely affected by a determination of OSM that a person holds or does not hold a valid existing right, or that surface coal mining operations did or did not exist on the date of enactment of the Act, or that surface coal mining operations may be permitted within the boundaries of a national forest, may file a request for review of that determination with the office of the OSM official whose determination is being appealed and at the same time shall send a copy of the request to the Board of Land Appeals, Office of

Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3750). The OSM official shall file with the Board the complete administrative record of the decision under review as soon as practicable.

(b) The request for review shall be filed within 30 days after the applicant or permittee is notified by publication in a local newspaper of notice of OSM's written determination.

(c) Failure to file a request for review within the time specified in paragraph (b) of this section shall constitute a waiver of the right to review and the request shall be dismissed.

§ 4.1392 Contents of request; amendment of request; responses.

(a) The request for review shall include—

(1) A clear statement of the reasons for appeal;

(2) A request for specific relief;

(3) A copy of the decision appealed from; and

(4) Any other relevant information.

(b) All interested parties shall file an answer or motion in response to a request for review or a statement that no answer or motion will be filed within 15 days of receipt specifically admitting or denying facts or alleged errors stated in the request and setting forth any other matters to be considered on review.

(c) A request for review may be amended once as a matter of right prior to receipt of an answer or motion or statement filed in accordance with paragraph (b) of this section. Thereafter, a motion for leave to amend the request shall be filed with the Board.

(d) An interested party shall have 10 days from receipt of a request for review that is amended as a matter of right or the time remaining for response to the original request to file an answer, motion, or statement in accordance with paragraph (b) of this section, whichever is longer. If the Board grants a motion to amend a request for review, the time for an interested party to file an answer, motion, or statement shall be set forth in the order granting the motion.

§ 4.1393 Status of decision pending administrative review.

43 CFR 4.21(a) applies to determinations of the Office of Surface Mining under 30 U.S.C. 1272(e).

§ 4.1394 Burden of proof.

(a) If the permit applicant is seeking review, OSM shall have the burden of going forward to establish a prima facie case and the permit applicant shall have the ultimate burden of persuasion.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that a person holds or does not hold a valid existing right, or that surface coal mining operations did or did not exist on the date of enactment of the Act, or that surface coal mining operations may or may not be permitted within the boundaries of a national forest.

[FR Doc. 87–24218 Filed 10–21–87; 8:45 am]

BILLING CODE 4310–79–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 160

[CGD 84–069a]

Lifesaving Equipment; Immersion Suits

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rulemaking revises the specifications for immersion suits to bring them into accord with international standards. Vessels, the construction or conversion of which started on or after July 1, 1986, will be required to carry these new immersion suits. Other vessels may continue to carry previously approved suits, called exposure suits, as long as the suits remain serviceable. These changes will conform the regulations governing United States vessels to the International Convention for Safety of Life at Sea, as amended (SOLAS 74/83) and assure international acceptance of the new immersion suits.

EFFECTIVE DATE: These rules and the rules published on January 12, 1987 (52 FR 1185) are effective on January 20, 1988.

ADDRESSES: The comments, draft evaluation, and materials referenced in this final rule will be available for examination and copying between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G–CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: LCDR William M. Riley, (202) 267–1444.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal authors of this final rule are LCDR William M. Riley, Office of Marine Safety, Security, and Environmental Protection, and LT Sandra R. Sylvester, Office of the Chief Counsel.

Discussion

A notice of Proposed Rulemaking was published on February 4, 1986 (51 FR 4401), and invited comments for 90 days ending May 5, 1986. A final rule establishing the specification for immersion suits was published on January 12, 1987 (52 FR 1185), with an effective date of April 13, 1987. However, the effective date of the final rule was postponed indefinitely by a notice published on April 23, 1987, because of interpretations of the International Convention for Safety of Life at Sea (SOLAS 74/83) which required additional changes. A Supplemental Notice of Proposed Rulemaking concerning these changes was also published on April 23, 1987.

Other nations are not allowing the alternative test method of removing an immersion suit from the cold chamber and immediately donning it in a relatively warm room. The method of having the test subject enter the cold chamber and don the suit more acurately simulates the conditions under which the suit might have to be donned during an emergency. This portion of the test can be conducted in any commercial cold storage facility without increasing the overall cost of the temperature cycling test.

The Recommendation on Testing of Life-Saving Appliances, IMO Resolution A–521, calls for the body strength test to be conducted for a period of 30 minutes rather than 5 minutes. This change is not expected to impose an additional burden on manufacturers since a suit which will support the test weight for 5 minutes is unlikely to fail if the weight is left hanging undisturbed for an additional 25 minutes.

No comments were received which addressed these issues.

Economic Analysis and Certification

This rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A final evaluation was prepared and placed in the rule making docket prior to issuance of the final rule on January 12, 1987. It may be inspected or copied at the address listed above under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** The changes made in this rule impose no new costs. The effect of the changes in this rulemaking is so minimal, further evaluation is unnecessary.

The expected benefit of these rules will be compliance of U.S. Coast Guard

approved immersion suits with the requirements of the International Convention for Safety of Life at Sea, 1974, as amended and acceptance of these suits by other signatory nations.

Paperwork Reduction Act

This rulemaking contains no information collection requirements. The requirements in the final rule of January 12, 1987 were approved by the Office of Management and Budget under control number 2115-0141.

List of Subjects in 46 CFR Part 160

Marine safety, Incorporation by reference.

In consideration of the foregoing, the final rule amending Part 160 of Title 46 of the Code of Federal Regulations published on January 12, 1987 (52 FR 1185) is amended as follows and is effective on January 20, 1988.

PART 160—LIFESAVING EQUIPMENT

The authority citation for Subpart 160.171 continues to read as follows:

Authority: 46 USC 3306; 49 CFR 1.46.

1. Section 160.171-17, paragraphs (f)(4) and (l)(2) are revised to read as follows:

§ 160.171-17 Approval testing for adult size immersion suit.

* * * * *

(f) * * *

(4) The specimens removed from the cold chamber that same day and left exposed under ordinary room conditions until the next day. At the conclusion of the final cycle of cold storage, two test subjects who successfully completed the donning test in paragraph (c)(2) of this section enter the cold chamber, unpack and don the immersion suits. Neither of the suits must show damage such as shrinking, cracking, swelling, dissolution or change of mechanical qualities.

* * * * *

(l) * * *

(2) *Test procedure.* The suit is cut at the waist and wrists, or holes are cut into it as necessary to accommodate the test apparatus. The suit is immersed in water for at least two minutes. The suit is then removed from the water and immediately arranged on the test apparatus, using each closure as it would be used by a person wearing the suit. The 135 kg (300 lb.) load is applied for 30 minutes. No part of the suit may tear or break during this test. The suit must not be damaged in any way that would allow water to enter or that would affect the performance of the suit.

* * * * *

Dated: September 22, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87-24499 Filed 10-21-87; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32 and 64

[CC Docket No. 86-111; FCC 87-305]

Separation of Costs of Regulated Telephone Service From Costs of Nonregulated Activities; Amendment of the Uniform System of Accounts for Class A and Class B Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission grants, in part, reconsideration of its decision adopting rules for the separation of costs of regulated telephone service from the costs of nonregulated activities for use by regulated telephone companies that offer nonregulated services and products on an integrated basis with regulated telephone service. The Commission reconsidered its decision to require that cost allocations of central office equipment and outside plant be allocated based on a forecast of peak relative regulated and nonregulated use over the depreciation life of the plant or equipment, deciding that the forecast period should be reduced to three years. The Commission decided that the practical problems associated with forecasting usage over the lengthy depreciation lives of most telephone plant and equipment would render the carriers unable to make accurate forecasts. The three-year period is within the range that will permit forecasting with reasonable accuracy. The Commission also decided not to apply its cost allocation or affiliate transactions rules to average schedule companies. The actual costs of these companies are not considered in interstate ratemaking and therefore the separation of actual regulated and nonregulated costs is unnecessary.

EFFECTIVE DATE: January 1, 1988 except amendments to Part 32, which are effective April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mary L. Brown, Accounting and Audits Division, Common Carrier Bureau, at (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, CC Docket No. 86-111, FCC 87-305, adopted September 17, 1987, and released October 16, 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 contractors, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Order on Reconsideration

1. On February 6, 1987, the Commission released a Report and Order (hereinafter *Joint Cost Order*) establishing rules and requirements for the allocation of costs between regulated telephone service and nonregulated activities. AT&T and the Bell Operating Companies, pursuant to the Commission's *Computer III* decision, are required to comply with the terms of the *Joint Cost Order* before they can offer enhanced services on a joint basis with network services. The independent local exchange carriers (LECs) were also made subject to the terms of the *Joint Cost Order* pursuant to a 1984 Commission decision. Although that decision permitted the independent LECs to offer nonregulated services on an integrated basis immediately, the Commission stated that it would in the future establish cost allocation rules for the LECs to govern the distribution of their shared expense and common investment. Until that time, they were required to allocate costs on a fully distributed cost basis.

2. The *Joint Cost Order* adopted a general set of cost allocation principles that seek to maximize the ability of carriers to associate costs with their causes. A hierarchy of assignment, attribution, and allocation rules forms the basis of the cost allocation process. Carriers directly assign, directly or indirectly attribute, or allocate costs by formulating homogenous "cost categories" from among the accounts prescribed in the Uniform System of Accounts (USOA). The method used to assign, attribute, or allocate costs must be specified in a cost allocation manual. AT&T and the Tier 1 LECs are required to file their manuals with the Commission and have those manuals approved.

3. The Commission also adopted a set of affiliate transactions rules designed to discourage cost shifting between regulated and nonregulated affiliates.

The rules establish specific valuation standards to determine the price at which an asset or service is to be recorded on the regulated books of account. By minimizing the ability of carriers to manipulate the values of assets or services, the affiliate transactions rules enhance the Commission's ability to ensure that regulated rates are just and reasonable, eliminate the ability of carriers to shift nonregulated investment risk to regulated entities, and discourage carriers from avoiding our cost allocation requirements.

4. On reconsideration, the Commission modified and clarified its cost allocation and affiliate transactions rules. While cost allocations for central office equipment and outside plant continue to be based on the relative usage ratio during the year in which nonregulated usage of the plant and equipment is predicted to be greatest in comparison to regulated usage, the Commission amended the time period over which the forecast of use is made. Instead of basing the forecast on the depreciable life of the plant or equipment, the forecast should be made for a three-year period. The Commission found that requiring carriers to make long-term predictions about usage of plant and equipment would render the forecasts inaccurate. A three-year forecast period will permit carriers to forecast usage of their networks with reasonable accuracy.

5. Forecast periods of shorter than three years can be employed, provided that a carrier makes the following showing: (a) Proof that the relevant engineering period is less than three years; (b) a demonstration that the planning and deployment process is not merely the activation of capacity that is already in place but not yet in service; (c) a particularized demonstration that use of the shorter forecast period will result in substantially more accurate cost allocations; and (d) a demonstration that the overall costs of implementing the shorter periods do not exceed the benefits.

6. The Commission also modified in part the requirements for developing the general allocator, which is used to allocate those costs which cannot be directly assigned, directly attributed or indirectly attributed to nonregulated or regulated activities. The Commission decided that basing the allocator on the ratio of regulated to nonregulated expenses in the current month would contribute to a delay in the carriers' ability to conduct cost allocations because the allocator for the current month could not be ascertained until the monthly books were closed. The Commission found that carriers should instead use expense data from the three-month period ending two months before the current month.

7. The requirement for the retention of employee time records was also modified to mandate that carriers retain employee time records for one year beyond the close of the fiscal year to which the records relate. This requirement will ensure that carriers retain employee time records long enough to permit examination by auditors.

8. The Commission affirmed its affiliate transactions rules, finding that the rules were consistent with *Democratic Central Committee* v. *Washington Metropolitan Area Transit Commission*, 485 F.2d786 (D.C. Cir. 1973), *cert. denied* 415 U.S. 935 (1974), a case governing the distribution of capital gains on utility property transferred out of regulation. Under the Commission's rules, affiliates are permitted to provide assets or services at a tariffed rate or, if the entity sells assets or services to nonaffiliated companies, at a generally available price. The Commission decided on reconsideration that the generally-available price need not be available in a price list format, provided that sufficient documentation existed to determine the existance of a prevailing price.

9. Where a tariffed price or prevailing price to nonaffiliated entities does not exist, the rules distinguish between the transfer of assets and the provision of services between affiliates. For services, the cost of the service is allocated between the regulated entity and the nonregulated affiliate pursuant to the cost allocation rules. The value assigned to assets differs according to whether the asset is being transferred into regulation or out of regulation. Assets transferred to a carrier are valued at the lower of net book cost or fair market value, in order to protect ratepayers from the dangers of rate base inflation and cost shifting. Assets transferred to a nonregulated affiliate are valued at the higher of net book cost or fair market value, in order to prevent cross subsidization of the nonregulated affiliate and to permit ratepayers to benefit from the gain, if any, on the assets while they were under regulation. These rules were affirmed by the Commission.

10. The Commission also clarified that average schedule companies were exempted from the cost allocation and affiliate transactions rules. The Commission found that its rules were adopted in order to ascertain with greater certainty carriers' interstate revenue requirements, thereby enabling the Commission to make a judgment concerning the reasonableness of interstate rates. Average schedule carriers, however, do not employ actual costs in ascertaining interstate rates. They rely on an "average schedule" of costs determined to be representative of companies of their size. Requiring average schedule carriers to calculate the actual breakdown of regulated and nonregulated costs, therefore, is a meaningless exercise so long as their rates are based on average schedules.

11. Finally, the Commission, on its own motion, made changes to several Part 32 rules to ensure that nonregulated activities receive proper accounting treatment. Amendments were made to Accounts 1220, 2311, and 2341.

Regulatory Flexibility Act

12. We certify that the Regulatory Flexibility Act [1] is not applicable to the changes we are proposing in this proceeding. In accordance with the provisions of section 605 of that Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of this *Reconsideration* in the **Federal Register**. As part of our analysis of the proposal described in this Order, however, this Commission has considered the impact of the proposal on small telephone companies, *i.e.*, those serving 50,000 or fewer access lines.[2] Our modifications to the requirements of the *Joint Cost Order* substantially lessen the regulatory requirements on small carriers because we have exempted average schedule companies from the requirements contained in the *Joint Cost Order*. Our amendments to Part 32 adopted herein will have a beneficial economic impact on 29 fully subject small telephone companies serving 50,000 or fewer access lines since the amendments clear up technical

[1] 5 U.S.C. 601, *et seq.*

[2] Because of the nature of local exchange and access service, this Commission concluded that small telephone companies are not dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338–39 (1983). Thus, this Commission is not required by the terms of that Act to apply the formal procedures set forth therein. We are nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with our other public interest responsibilities. Accordingly, we have chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of proposed regulations on small telephone companies.

problems that have been uncovered since the adoption of the *Order*.

Ordering Clauses

13. *It Is Hereby Ordered*, that the Motions for Acceptance of Late-Filed Pleadings submitted by Compuserve Incorporated and Capital Cities/ABC, Inc., CBS Inc., and National Broadcasting Company *Are Granted*.

14. *It Is Further Ordered*, that pursuant to sections 4(i), 4(j), 201–205, 215, 218, 219, and 220 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 215, 218, 219, and 220, that the modifications to the Part 64 rules set forth herein *Are Adopted*, effective January 1, 1988.

15. *It Is Further Ordered*, that pursuant to sections 4(i), 4(j), 201–205, 215, 218, 219, and 220 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 215, 218, 219, and 220, that the modifications to the Part 32 rules set forth herein *Are Adopted*, effective six months after publication in the **Federal Register**.

16. *It Is Further Ordered*, that pursuant to sections 4(i), 4(j), 201–205, 215, 218, 219, and 220 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 215, 218, 219, and 220, that the Petitions for Reconsideration filed in this proceeding *Are Denied*, except as provided herein.

List of Subjects

47 CFR Part 32

Uniform system of accounts.

47 CFR Part 64

Communication common carriers.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PARTS 32 AND 64—[AMENDED]

Parts 32 and 64 of Title 47 of the CFR are amended as follows:

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

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

2. The authority citation for Part 64 continues to read:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, unless otherwise noted.

3. Section 64.901 is amended by revising paragraph (b)(4) to read as follows:

§ 64.901 Allocation of costs.

* * * * *

(b) * * *

(4) The allocation of central office equipment and outside plant investment costs between regulated and nonregulated activities shall be based upon the relative regulated and nonregulated usage of the investment during the year when nonregulated usage is greatest in comparison to regulated usage during the three consecutive years following the effective date of the current annual access charge filing.

* * * * *

4. Section 64.902 is added as follows:

§ 64.902 Transactions with affiliates.

Except for carriers which employ average schedules in lieu of determining their costs, all carriers subject to § 64.901 are also subject to the provisions of §§ 31.01–11 and 32.27 concerning transactions with affiliates.

5. Section 32.27 is amended by revising paragraphs (b), (c), and (f) to read as follows:

§ 32.27 Transactions with affiliates.

* * * * *

(b) Charges for assets purchased by or transferred to the regulated telephone activity of a carrier from affiliates shall be recorded in the operating accounts of the regulated activity at the invoice price if that price is determined by a prevailing price held out to the general public in the normal course of business. If a prevailing price for the assets received by the regulated activity is not available, the charges recorded by the regulated activity for such assets shall be the lower of their cost to the originating activity and the affiliated group less all applicable valuation reserves, or their fair market value.

(c) Assets sold or transferred from the regulated accounts to affiliates shall be recorded as operating revenues, incidental revenues or asset retirements according to the nature of the transaction involved. If such sales are reflected in tariffs on file with a regulatory commission or in a prevailing price held out to the general public, the associated revenues shall be recorded at the prices contained therein in the appropriate revenue accounts. If no tariff or prevailing price is applicable, the proceeds from such sales shall be determined at the higher of cost less all applicable valuation reserves, or estimated fair market value of the asset.

* * * * *

(f) Companies that employ average schedules in lieu of actual costs are exempt from the provisions of this section. For other organizations, the principles set forth in this section shall apply equally to corporations, proprietorships, partnerships and other forms of business organizations.

6. Section 32.1220 is revised to read as follows:

§ 32.1220 Inventories.

(a) This account shall include the cost of materials and supplies held in stock and inventories of goods held for resale or lease. The investment in inventories shall be maintained in the following subaccounts:

1220.1 Material and supplies
1220.2 Property held for sale or lease

(b) These subaccounts shall not include items which are related to a nonregulated activity unless that activity involves joint or common use of assets and resources in the provision of regulated and nonregulated products and services.

(c) 1220.1 Material and supplies. This subaccount shall include cost of material and supplies held in stock including plant supplies, motor vehicles supplies, tools, fuel, other supplies and material and articles of the company in process of manufacture for supply stock. (Note also § 32.2000(c)(2)(iii) of this subpart.)

(d) Transportation charges and sales and use taxes, so far as practicable, shall be included as a part of the cost of the particular material to which they relate. Transportation and sales and use taxes which are not included as part of the cost of particular material shall be equitably apportioned among the detail accounts to which material is charged.

(e) So far as practicable, cash and other discount on material shall be deducted in determining cost of the particular material to which they relate or credited to the account to which the material is charged. When such deduction is not practicable, discounts shall be equitably apportioned among the detail accounts to which material is charged.

(f) Material recovered in connection with construction, maintenance or retirement of property shall be charged to this account as follows:

(1) Reusable items that, when installed or in service, were retirement units shall be included in this account at the original cost, estimated if not known. (Note also § 32.2000(d)(3) of this subpart.)

(2) Reusable minor items that, when installed or in service, were not retirement units shall be included in this account at current prices new.

(3) The cost of repairing reusable material shall be charged to the appropriate account in the Plant Specific Operations Expense accounts.

(4) Scrap and nonuseable material included in this account shall be carried at the estimated amount which will be received therefor. The difference between the amounts realized for scrap and nonusable material sold and the amounts at which it is carried in this account, so far as practicable, shall be adjusted in the accounts credited when the material was taken up in this account.

(g) Interest paid on material bills, the payments of which are delayed, shall be charged to Account 7540, Other interest deductions.

(h) Inventories of material and supplies shall be taken during each calendar year and the adjustments to this account shall be charged or credited to Account 6512, Provisioning expense.

(i) 1220.2 Property held for sale or lease. This subaccount shall include the cost of all items purchased for resale or lease. The cost shall include applicable transportation charges, sales and use taxes, and cash and other purchase discounts. Inventory shortages and overages shall be charged and credited, respectively, to Account 7991, Other nonregulated revenues.

7. Section 32.1406 paragraph (a), as published on March 4, 1987, 52 FR 6561, is correctly revised to read as follows:

§ 32.1406 Nonregulated investments.

(a) This account shall include the carrier's investment in nonregulated activities accounted for in a separate set of books as provided in § 32.23(b).

* * * * *

8. Section 32.2311 paragraphs (g) and (h) are revised to read as follows:

§ 32.2311 Station apparatus

* * * * *

(g) Items of station apparatus in stock for which no further use in the ordinary conduct of the business is contemplated, but which as a precautionary measure are held for possible future contingencies instead of being discarded shall be excluded from this account and included in Account 1220, Inventories.

(h) Embedded CPE is that equipment or inventory which was tariffed or otherwise subject to the jurisdictional separations process as of January 1, 1983.

9. Section 32.2341 paragraph (g) is revised to read as follows:

§ 32.2341 Large private branch exchanges.

* * * * *

(g) Embedded CPE is that equipment or inventory which is tariffed or otherwise subject to the jurisdictional separations process as of January 1, 1983. Inventories of Large private branch exchanges equipment are included in Account 1220, Inventories.

10. Section 32.7991 is amended by revising paragraph (b) and adding (c) to read as follows:

§ 32.7991 Other nonregulated revenues.

* * * * *

(b) This account shall be debited for amounts recorded in the regulated revenue accounts for charges made to nonregulated activities for tariffed services provided to nonregulated activities accounted for as prescribed in § 32.23(c) of this subpart.

(c) Separate subaccounts shall be maintained for each nonregulated revenue item recorded in this account.

[FR Doc. 87-24460 Filed 10-21-87; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 245 and 253

Department of Defense Federal Acquisition Regulation Supplement; Government Property

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory Council has approved changes to Subpart 245.5 and Part 253 of the Defense Federal Acquisition Regulation Supplement (DFARS), as well as a change to DAR Supplement No. 3, to expand the reporting requirement for DoD property in the custody of contractors.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DAR Council issued a proposed rule and solicited public comments on July 8, 1987 (52 FR 25614). After reviewing the comments, the Council amended the proposed rule by changing the report due date to the Government from October 20 to October 31 of each year.

As indicated in the proposed rule, changes were made to DAR Supplement No. 3, "Property Administration". DAR Supplement No. 3 is not codified in the Code of Federal Regulations, and it is not part of the subscription to the DoD FAR Supplement.

B. Regulatory Flexibility Act Information

The final rule will apply to approximately 1,500 small businesses using government property under DoD contracts. The impact on small businesses should be minimal since most are in compliance with the final rule. The proposed requirement to report additions and deletions of specific categories of property from the contract will require some small businesses to revise their Government property control system, but the businesses affected and changes required should be small in number. A Final Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy for the Small Business Administration.

C. Paperwork Reduction Act Information

On October 21, 1986, the Office of Management and Budget approved a paperwork burden increase of 38,000 hours to OMB Number 0704-0246 as a result of a deviation (DAR Case 86-931) to allow use of this coverage. This rule does not change the reporting requirements approved on October 21, 1986. Another Paperwork Reduction Act analysis, therefore, is not required.

List of Subjects in 48 CFR Parts 245 and 253

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, CFR Parts 245 and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 245 and 253 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 245—GOVERNMENT PROPERTY

2. Section 245.505-14 is amended by revising paragraph (a) and by adding a new paragraph (b) to read as follows:

245.505-14 Reports of Government property.

(a) The contractor's property control system shall provide annually a report, by contract, of all DoD property for which the contractor is accountable, categorized as follows:

(1) Acquisition cost of:

(i) Land and rights therein;

(ii) OPE (See 245.301);

(iii) IPE (See 245.301);

(iv) Special test equipment to which the Government has title (see 245.101);

(v) Special tooling to which the Government has title (see 245.101);

(vi) Agency-peculiar (military) property including reparables and other

end items or components for which the Government continues to maintain an asset record while it is with the contractor (see 245.301);

(vii) Government material, including Government-furnished and contractor-acquired (see 245.301 and 245.101).

(2) Quantity of:

(i) Land (in acres);

(ii) OPE;

(iii) IPE;

(iv) Special test equipment;

(v) Special tooling;

(vi) Agency—peculiar (military) property.

(3) Additions to and deletions from the contract, in dollars, of:

(i) Land and rights therein;

(ii) Other real property;

(iii) OPE;

(iv) IPE;

(v) Special test equipment;

(vi) Special tooling;

(vii) Agency—peculiar (military) property.

(b) The above report shall be as of September 30 each year. Those property-bearing contracts which are closed with zero property balances prior to September 30 shall be reported at the time the property balances become zero. The prime contractor shall flow this reporting requirement to include DoD property in the possession of subcontractors. The prime contractor is responsible for reporting to DoD all property accountable to the contract, including that at subcontractor and alternate locations. The contractor shall prepare the report on DD Form 1662 (October 1986 or later version), DoD Property in the Custody of Contractors, or an approved substitute, and shall furnish it, in duplicate, to the property administrator no later than October 31 of each year. Office of Management and Budget No. 0704–0246 has been assigned to the report.

PART 253—FORMS

3. The list of forms following section 253.270 is amended by revising 253.303–70–DD–1662, the title for DD Form 1662 to read "DoD Property in the Custody of Contractors" in lieu of "Report of Government (DoD) Facilities".

DAR Supplement No. 3

4. Section S3–603 is amended by revising paragraphs (a), (b), and (c) to read as follows:

S3–603 Report of property.

(a) The property administrator is responsible for obtaining the reports as prescribed in 245.505–14 of the DoD FAR Supplement for all contracts assigned for property administration including those for which supporting property administration was requested from other DoD CAS components. Reports should be accumulated and reviewed to determine that inputs are complete and that the DD Form 1662, October 1986 or later version, is properly filled out. Each report shall be processed to the Defense Logistics Agency (DLA) by November 10 of each year, either manually or electronically, in accordance with Departmental instructions. One copy shall be retained by the property administrator.

(b) The Defense Logistics Agency (DLA) shall receive, consolidate, and integrate the data and submit error listings to each administering department for correction, as required. DLA shall maintain the corrected data and provide reports, either in hard copy or electronically, as required or requested by Departments or agencies.

(c) On NASA contracts, the annual contractor's report (NASA Form 1018), specified in NASA FAR Supplement 1845.106–70(d), will be transmitted by the property administrator to the NASA contracting officer's designee as identified in the property reporting clause (NASA FAR Supplement 1852.245–73) within ten working days after receipt of the report from the contractor.

Note:—The DoD Supplements are not published in the **Federal Register** or the Code of Federal Regulations.

[FR Doc. 87–24426 Filed 10–21–87; 8:45 am]
BILLING CODE 3810–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[No. 37321 (Sub-1)]

Revision of Tariff Regulations; Computer Determination of Mileages

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rule.

SUMMARY: The Commission is amending 49 CFR Part 1312 to allow all motor common carriers to file electronic distance determination systems in lieu of printed distance guides. The rule revision will allow for the filing of computer programs that provide distances to be used in connection with carriers' tariffs of mileage rates. The Commission has found that the revision would insure that all tariff users would have the right to access or retrieve information as filed, thus satisfying the requirements of 49 U.S.C. 10761 and 10762.

DATE: The revision is effective November 21, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 275–6887. (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy, write to Office of the Secretary, Rm. 2215, Interstate Commerce Commission Bldg., Washington, DC 20423, or call (202) 275–7428 (assistance for the hearing impaired is available through TDD services (202) 275–7121) or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

List of Subjects in 49 CFR Part 1312

Motor carriers, Railroads.

This action will not significantly affect the quality of the human environment or energy conservation.

Decided: October 14, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre and Simmons.

Noreta R. McGee,

Secretary.

Appendix

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for 49 CFR Part 1312 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10762; 5 U.S.C. 553.

2. Section 1312.30 is amended by revising paragraph (c)(5) to read as follows:

§ 1313.30 Distance rates.

* * * * *

(c) * * *

(5) Distance guides shall provide distance tables or combinations of tables and maps. Tables shall provide specific distances between a substantial number of the points and be shown as having precedence over the distances determined by the use of maps. Each guide shall provide rules stating its application. The rules shall include a means for determining distances between all locations within the territorial coverage of the guide, regardless of whether all the locations are shown in the guide or whether distances are shown between all locations. If distances between certain

points or areas are to be determined only through a certain gateway or interchange point, those points or areas and the gateway or interchange point shall be identified. Distance guides filed in "paper" format may exceed the maximum size limitations imposed by § 1312.3 but may not exceed 14½ by 17½ inches in size. Carriers may file automated distance determination systems which are linked by reference in abbreviated distance guides or rate tariffs to computer stored information provided the following conditions are met:

(i) Carriers or their tariff publishing agents shall make arrangements with the Commission for the receipt, storage and use of the systems through existing Commission technology and facilities.

(ii) In the event that a system is not compatible with Commission technology, the necessary implementing equipment and programs shall be placed on file with the Commission for use by Commission personnel and the public at no cost.

(iii) Proposed changes in the system shall be given notice and reflect the nature of the change, as required by 49 U.S.C. 10762(c)(3) and § 1312.4(e) and § 1312.17(f). However, if an electronic distance determination system is not inherently capable of giving notice and symbolization of changes within the program, then printed tariff amendments to the distance guides or rate tariffs will be required. The amendments shall show the currently effective provisions as well as the proposed changes thereto.

(iv) The distance guides or rate tariffs shall provide all the information necessary to access and utilize the systems.

* * * * *

[FR Doc. 87-24476 Filed 10-21-87; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 641, 650, and 651

[Docket No. 70620-7184]

Reef Fish Fishery of the Gulf of Mexico, Atlantic Sea Scallop Fishery, and Northeast Multispecies Fishery; Correction

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

ACTION: Final rules; corrections.

SUMMARY: This document corrects errors (1) in a scientific name in the technical amendment that included corrections to the Reef Fish Fishery of the Gulf of Mexico published October 1, 1987 (52 FR 36781); (2) in the regulatory text of the final rule implementing Amendment 1 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery published January 14, 1987 (52 FR 1462); and (3) in the final rule implementing Amendment 1 to the Fishery Management Plan for the Northeast Multispecies Fishery published September 17, 1987 (52 FR 35093).

EFFECTIVE DATE: October 21, 1987.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon, Fisheries Management Officer, 202-673-5315.

List of Subjects in 50 CFR Parts 641, 650, and 651

Fisheries.

Dated: October 16, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries National Marine Fisheries Service.

50 CFR Parts 641, 650, 651, and 681 are corrected as follows:

1. The authority citation for Parts 641, 650, and 651 continues to read as follows:

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

PART 641—[CORRECTED]

In rule document 87-22636 beginning on page 36781 in the issue of October 1, 1987, make the following correction:

§ 641.2 [Corrected]

2. In § 641.2, paragraph (b), the family name for Tilefishes is corrected to read "Malacanthidae Family".

PART 650—[CORRECTED]

In rule document 87-816 beginning on page 1462 in the issue of January 14, 1987, make the following correction:

§ 650.22 [Corrected]

3. In § 650.22(b), the paragraph symbol "(a)" is corrected to read "(1)".

PART 651—[CORRECTED]

In rule document 87-21389 beginning on page 35093 in the issue of September 17, 1987, make the following corrections:

§ 651.4 [Corrected]

4. In § 651.4(a)(1), the hyphen is removed from the word "multi-species", correcting it to read "multispecies".

§ 651.6 [Corrected]

5. In § 651.6(e), line 6, the word "they" is corrected to read "its number" and on the next line, the phrase, "nonpermanent markings" is corrected to read "official number".

§ 651.21 [Corrected]

6. In § 651.21(a)(3), the period is removed after the word "apply".

7. In § 651.21(a)(4), line 2, the word "of" is corrected to read "or" between "either" and "both".

8. In § 651.21(b)(2), the paragraph designator "(iii)" is corrected to read "(ii)".

[FR Doc. 87-24488 Filed 10-21-87; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 204
Thursday, October 22, 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

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion and Research

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion Research and Consumer Information Act of 1985 and the order issued thereunder, this proposed rule would (1) increase the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1986 seven-market average price for domestic barrows and gilts and to bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals, and (2) modify the schedule for remitting assessments on domestic porcine animals to the National Pork Board.

DATE: Comments must be received by November 23, 1987.

ADDRESS: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610–S; P.O. Box 96456; Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Room 2610 South Building, 14th and Independence Avenue SW.; Washington, DC.

Comments concerning the information collection requirements contained in this proposed rule should be directed to Lisa Grove, Desk Officer for the Agricultural Marketing Service, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch (202) 447–2650.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation 1512–1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The effect of the order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the order would not have a significant effect upon a substantial number of small entities. Many producers, importers, and collecting persons may be classified as small entities. This proposed rule (1) increases the assessments per pound on imported pork and pork products by an amount of two-to three-hundredths of a cent per pound, and (2) promotes greater efficiency and cost-effectiveness by modifying the schedule for remitting and reporting monthly assessments of less than $25 to the National Pork Board (Board). Adjusting the per pound assessments on imported pork and pork products would result in about $200,000 more in assessments over a 12-month period. The proposed modification of the remittance schedule for assessments on domestic porcine animals will benefit those persons who remit less than $25 per month to the Board. Any additional costs would be outweighed by the benefits from the improved operation of the Pork Promotion, Research, and Consumer Information program. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and Section 3504(h) of that Act, the information collection requirements contained in this proposed rule have been submitted to OMB for review. Comments concerning these requirements should be directed to the OMB Desk Officer for the Agricultural Marketing Service at the above referenced address.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) approved December 23, 1985, authorizes the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected at 51 FR 36383) and assessments began on November 1, 1986. The order requires importers of porcine animals to pay to the Customs Service, upon importation, the assessment of 0.25 percent of the animal's declared value and importers of pork and pork products to pay to the Customs Service, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced. As a matter of practicality, the assessment on imported pork and pork products is expressed in dollars per pound for each type of such products. The initial schedule of assessments was listed in a table in § 1230.71 of the order for each type of pork and pork product identified by a Tariff Schedule of the United States (TSUS) number.

Assessments due upon the sale of domestic porcine animals must be remitted by the purchaser, or in some special cases by the producer, to the Board by the 10th day of the month following the month in which the animals were marketed. This proposed rule would increase the per-pound assessments on imported pork and pork products. This increase would be consistent with increases in the annual average price of domestic barrows and gilts at the seven markets for calendar year 1986 as reported by the USDA Agricultural Marketing Service's Livestock and Grain Market News Branch. This increase in cents-per-pound assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.25 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dresssing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average seven-market price for barrows and gilts as reported by the USDA Agricultural Marketing Service's Livestock and Grain Market News Branch. This average price is published on a yearly basis during the month of January in the Livestock and Grain Market News Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment amount due on imported pork or pork products. The end result is expressed in an amount per pound for each type of pork or pork product.

When the order was first published, the initial per pound assessment listed in the table was calculated using the conversion formula described above and the 1985 annual seven market average price of $44.50 per hundredweight for domestic barrows and gilts. The formula in the preamble to the order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products. The 1986 annual seven-market average price per hundredweight was $50.59—an increase of slightly more than 13 percent over the comparable 1985 per hundredweight price. It is estimated that a corresponding increase in the per-pound import assessment would result in about $200,000 more in importer assessments over a 12-month period.

The table for assessments on imports presently appears in the order. Since it is anticipated that adjustments, if necessary, would be made on a yearly basis, it is proposed that the table be removed from § 1230.71(e) of the order and be added to a new subpart containing regulations implementing the order.

In addition, this rule proposes to establish two separate due dates for remitting assessments on domestic porcine animals to the Board based on the total dollar amount of assessments each month. The procedures and schedule for the collection and remittance of domestic assessments are specified in § 1230.71 of the order. Under that section, purchasers of porcine animals (purchaser) are required to collect assessments from producers upon the sale of porcine animals, if an assessment is due, and remit such assessment to the Board by the 10th day of the month following the month in which porcine animals were marketed. As referenced in § 1230.71(b)(1) of the order, a purchaser is any person buying feeder pigs or market hogs, and for purposes of collection and remittance of assessments also includes any person engaged as a commission merchant, as well as an auction market, or livestock market in the business of receiving porcine animals for sale or commission for or on behalf of a producer. However, in certain situations producers are required to pay assessments directly to the Board. Those instances are seed stock producers and producers who slaughter their porcine animals for sale or who sell porcine animals to consumers for custom slaughter. Based on the Board's experience since collection of assessments began November 1, 1986, most purchasers collecting assessments collect and remit substantial amounts of assessments to the Board each month. However, the producers described above who are responsible for remitting assessments to the Board upon sale of their porcine animals may have only a limited number of sales per month and therefore owe relatively small amounts of assessments at the end of each month (i.e., $5 to $10). Likewise, some small volume purchasers may collect and remit only small amounts of assessments each month. The time and the costs involved with reporting and remitting these small amounts monthly and the cost of processing them are disproportionally greater than for remitting and processing larger amounts. The Board believes that establishing a different remittance date for such small volume purchasers and producers based on a minimum monthly dollar amount could facilitate collection and remittance and reduce processing costs.

Accordingly, this proposed rule would establish a quarterly remittance schedule to permit purchasers and producers whose total assessments are less than $25 per month to accumulate such assessments for a designated 3-month period. If, during any month of the quarter assessments totaled $25 or more, they would have to be remitted to the Board, together with any previously unremitted assessments, by the 10th day of the following month. A purchaser or producer would be required to remit all assessments collected during the quarter by the 10th day of the month following the end of the applicable quarter. Purchasers and producers whose monthly assessment amounts total $25 or more would continue to submit such assessments by the 10th day of the month following the month in which porcine animals were marketed. No change is needed concerning those reporting requirements. Reports would continue to be due at the time for remitting assessments to the Board, as required by § 1230.80 of the order.

The proposed regulations would provide for a section that would display the Office of Management and Budget control number assigned pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) to the information collection requirements in Part 1230.91. The present provision displaying the applicable number for the order appears in § 1230.91. That section would be deleted as unnecessary.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 be amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B [Redesignated as Subpart C]

2. Subpart B is redesignated as subpart C.

3. Subpart A—Pork Promotion, Research, and Consumer Information Order by revising § 1230.71 (b)(3) and (e) to read as follows:

§ 1230.71 [Amended]

* * * * *

(b) * * *

(3) Assessments on domestic porcine animals shall be remitted in the form of a negotiable instrument made payable to the "National Pork Board," which, together with the reports required by § 1230.80, shall be sent to the address designated by the Board in accordance with the following remittance schedule:

(i) Monthly assessments totaling $25 or more shall be remitted to the Board by the 10th day of the month following the month in which the porcine animals were marketed.

(ii) Assessments totaling less than $25 during each month of a quarter in which the porcine animals were marketed may be accumulated and remitted by the 10th day of the month following the end of a quarter. The quarters shall be: January through March; April through June; July through September; October through December.

(iii) Assessments totaling $25 or more during any month of a quarter must be remitted in accordance with paragraph (b)(3)(i) of this section, together with any unremitted assessments from the previous month(s) of the quarter, if applicable.

(iv) Assessments collected during any calendar quarter and not previously remitted as described in paragraphs (b)(3)(i), (ii), or (iii) of this section must be remitted by the 10th day of the month following the end of the quarter regardless of the amount.

* * * * *

(e) Assessments on imported pork and pork products shall be expressed in an amount per pound for each type of pork or pork product subject to assessment, which shall be established by regulations prescribed by the Board and approved by the Secretary.

§ 1230.91 [Removed]

4. Section 1230.91 is removed.

5. A new Subpart B is added to read as follows:

Subpart B—Rules and Regulations

Subpart B—Rules and Regulations,

Definitions

§ 1230.100 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in Subpart A of this part.

Assessments

§ 1230.110 Assessments on imported pork and pork products.

The following imported pork and pork products are subject to assessment in the amount per pound as follows:

Pork and pork products (U.S. Tariff schedule No.)	Assessment (dollars per pound)
106.4020	0.0018
106.4040	.0018
106.8000	.0018
106.8500	.0018
107.1000	.0025
107.1500	.0025
107.3020	.0018
107.3040	.0019
107.3060	.0021
107.3515	.0027
107.3525	.0027
107.3540	.0019
107.3560	.0025

§ 1230.120 Miscellaneous OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0851–0151.

Done at Washington, DC on: October 16, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87–24470 Filed 10–21–87; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Proposed Regulatory Program Amendment; Blasting Certification; Reopening of Comment Period

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

ACTION: Reopening of public comment period.

SUMMARY: OSMRE is reopening the public comment period on the substantive adequacy of a program amendment submitted by the Commowealth of Kentucky to modify the Kentucky permanent regulatory program [hereinafter referred to as the Kentucky program] under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The resubmitted amendment incorporates modifications to, and supersedes a previously submitted amendment to the Kentucky program for certifications for blasting operations incident to coal exploration, surface mining activities, and surface disturbances of underground mining activities.

This notice sets forth the times and location that the Kentucky program and the proposed amendment will be available for public inspection, and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments relating to Kentucky's proposed modification to its program not received on or before November 6, 1987, will not necessarily be considered in the decision process.

ADDRESSES: Written comments should be mailed or hand-delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Copies of the Kentucky program, the amendment, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–7327

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343–5492

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2828

Department of Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940

Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Lexington Field Office.

FOR FURTHER INFORMATION CONTACT:

Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On April 13, 1982, the Secretary approved the Kentucky program. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404–21435). Information pertinent to the general background on the Kentucky program, including the Secretary's findings, disposition of comments, and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982, **Federal Register** notice. Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of the Proposed Amendment

On December 10, 1985, OSMRE published in the **Federal Register** (50 FR 50293) the approval of the Kentucky Administrative Regulations (KAR) at 405 KAR 7:070 concerning the blaster certification program. By letter dated June 17, 1987 (Administrative Record Ky–739), Kentucky submitted to OSMRE an amendment to the Kentucky program that modified the procedures for certification of persons responsible for blasting operations incident to coal exploration and surface coal mining.

On September 11, 1987 (Administrative Record KY–761), Kentucky submitted additional proposed modifications to 405 KAR 7:070. This new submittal supersedes the proposed amendment submitted on June 17, 1987, to modify the procedures for the blaster's certification program.

The September 11, 1987, submittal of an amendment to 405 KAR 7:070 is substantively the same as the June 17, 1987, submittal, with the following exceptions: The term "surface blasting operations" is now defined in Section 1 of the regulation; the provisions that apply when information in certification applications is falsified or misrepresented have been revised in section 2(7)(b); the grace period for certification renewal has been extended in section 3(2)(b); the time period during which a blaster may contest a cited violation has been revised in section 4(2)(c)2; the provisions requiring that revoked, suspended, and invalid certificates be delivered by hand to the Department for Surface Mining Reclamation and Enforcement have been removed from sections 4(6)(d)2 and (7)(a); and several minor changes have been made to improve clarity of the regulations without altering the original intent.

The full text of the proposed program amendment submitted by Kentucky is available for public inspection at the addresses listed above. The director now seeks public comment on whether the proposed program amendment, as modified, is no less effective than the Federal regulations. If approved, the amendment will become part of the Kentucky program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by Kentucky satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become a part of Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington, Kentucky Field Office will not necessarily be considered in the final rulemaking, or included in the Administrative Record.

IV. Procedural Determinations

1. Compliance with the National Environmental Policy Act

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

2. Compliance with Executive Order 12291

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

3. Compliance with the Regulatory Flexibility Act

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

4. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 917

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

Ronald C. Recker,

Acting Assistant Director, Eastern Field Operations.

Date: October 8, 1987.

[FR Doc. 87–24481 Filed 10–20–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 84

[CGD 87–051]

Annex I: Positioning and Technical Details of Lights and Shapes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the regulations concerning the horizontal positioning and spacing of lights in 33 CFR 84.05(b) to include certain navigable "waters specified by the Secretary." This rulemaking is necessary to extend the application of the horizontal positioning and spacing of lights regulations in the Inland Navigation Rules to the "specified waters", and will complete making all of the "Western Rivers" provisions applicable to the listed "specified waters." This rulemaking would require power-driven vessels of 50 meters but less than 60 meters in length operating on Western Rivers as well as the "specified waters" to comply with the horizontal positioning and spacing of lights provisions of the Inland Navigation Rules.

DATE: Comments must be received on or before December 7, 1987.

ADDRESSES: Comments should be submitted to Commandant (G–CMC), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Peter S. Palmer, Regulations and Policy Branch, (202) 267–0362.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or

arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 87–051), and give reasons for each comment.

Drafting Information

The principal persons involved in the drafting of this proposal are Mr. Peter S. Palmer, Project Manager, Regulations and Policy Branch, and LCDR Don M. Wrye, Project Attorney, Office of Chief Counsel.

Discussion of Proposed Regulations

The Inland Navigation Rules are codified in Chapter 34 of Title 33 of the United States Code (33 U.S.C. 2001 et seq.). The Inland Rules contain several provisions which are unique to the Great Lakes, Western Rivers or other waters as may be designated by the Secretary. The Tennessee-Tombigbee Waterway and certain connecting rivers were previously designated as waterways to which the existing Western Rivers provisions apply (CGD 83–038, 49 FR 33875, August 27, 1984). That designation appears in § 89.25 of Title 33, Code of Federal Regulations.

Annex I of the Inland Rules, which appears in Part 84 of Title 33, Code of Federal Regulations, contains the positioning and technical details of lights and shapes on vessels. Section 84.05 prescribes the horizontal positioning and spacing of lights on power-driven vessels and paragraph (b) of this section provides for the positioning of masthead lights for certain size vessels operating on the Western Rivers.

At its February 28, 1987, meeting, the Rules of the Road Advisory Council (RORAC), recommended that the Coast Guard initiate rulemaking to complete application of all of the "Western Rivers" provisions to the waters specified in 33 CFR 89.25. The Coast Guard proposes to amend 33 CFR 84.05(b) to include the waters specified in 33 CFR 89.25. This proposed amendment would extend the provisions for the horizontal spacing of masthead lights on power-driven vessels 50 meters but less than 60 meters in length to the specified waters.

Regulatory Evaluation

This notice of proposed rulemaking is considered to be non-major under Exeuctive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rule merely updates Annex I, § 84.05(b) to include waters specified by the Secretary as a provision applicable to the Tennessee-Tombigbee Waterway and connecting waters. Since the impact is expected to be minimal, the Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 84

Navigable (waters) Waterways.

PART 84—[AMENDED]

In consideration of the foregoing, Part 84 of Title 33 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 84 is revised to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

2. In § 84.05, paragraph (b) is revised to read as follows:

§ 84.05 Horizontal positioning and spacing of lights.

* * * * *

(b) On power-driven vessels 50 meters but less than 60 meters in length operated on the Western Rivers and those waters specified in § 89.25, the horizontal distance between masthead lights shall not be less than 10 meters.

* * * * *

Date: September 1, 1987.

A.B. Smith,

Captain, U.S. Coast Guard Acting Chief, Office of Navigation.

[FR Doc. 87–24501 Filed 10–21–87; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–320–07–4211–02]

43 CFR Parts 2400, 2410, 2420, 2430, 2440, 2450, 2460 and 2470

Land Classification; Revision of Land Classification Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would revise the existing regulations on land classification to remove provisions no longer applicable because the public laws under which they were issued have either expired or been repealed, and would provide new procedures to facilitate the determination of suitability of lands for proposed lease or disposal, and where appropriate, classification. These new procedures would streamline and standardize into one system several existing procedures for making suitability, and where necessary, classification determinations needed to authorize a proposed lease or disposal. Suitability and classification decisions would be made by the appropriate employee of the Bureau of Land Management. Any adversely affected party would have the opportunity to protest the adverse decision to the next higher level of the Bureau under procedures provided in the proposed rulemaking.

DATE: Comments should be submitted by December 21, 1987. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Annette Jameson, (202) 343–8693.

SUPPLEMENTARY INFORMATION: This proposed rulemaking would remove from the existing regulations provisions that are no longer applicable because the public land laws under which they were issued were repealed by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and because the Classification and Multiple Use Act of 1964 (43 U.S.C. 1411–1418) has expired by its own terms. The proposed rulemaking would incorporate the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), and the Federal Land Policy and Management Act, including the requirement that the making of a determination of suitability be consistent with the recommendations of approved land use plans. For discretionary leases and disposals under various public land laws, the proposed rulemaking would provide a revised administrative review system that would expedite processing actions and permit quicker responses to applications by field offices of the Bureau of Land Management.

The proposed rulemaking would provide that the land suitability determination in a Notice of Realty Action would constitute the land classification decision when a classification is required by law Use of

the Notice of Realty Action procedure would make the processing of classification actions consistent with the processing of applications for other types of land use or disposal.

Another significant change made by the proposed rulemaking would be the streamlining and standardization of procedures by which applicants and parties in interest would obtain administrative review of decisions made by local officials of the Bureau of Land Management. The administrative review authority for land classification would be delegated to the Bureau official having supervisory jurisdiction over the official who issues the decision. This process would ensure that those Bureau officials most familiar with the public lands under application will evaluate comments and protests from applicants and interested parties. Together with the Notice of Realty Action procedure provided in the proposed rulemaking, this change would streamline and standardize into one system several existing procedures for making land suitability and classification determinations associated with land use or disposal. The procedures in this proposed rulemaking would apply to leases and other disposals made under the following parts of Title 43 of the Code of Federal Regulations: Desert Land Entries (Part 2520); Indian Allotments (Part 2530); Carey Act Grants (Part 2610); State Grants (Subparts 2621 and 2622); and Omitted Land Conveyances (Subpart 2547). The procedures for issuance of a notice of realty action already exist in the regulations on Exchanges (43 CFR Group 2200); Airport Grants (43 CFR Part 2640); Sales (43 CFR Part 2710); Conveyances and Leases under the Recreation and Public Purposes Act (Part 2740 and Subpart 2912); Airport Leases (43 CFR Part 2911); and Leases for Use, Occupancy, and Development (43 CFR Part 2920) and this proposed rulemaking is not applicable to these areas.

This proposed rulemaking is being promulgated under the discretionary authority of the Secretary of the Interior. The proposed rulemaking is intended to serve the public interest by streamlining operations, by providing consistency in the procedure to be used by the public in commenting on decisions of officers of the Bureau of Land Management, and by providing a procedure for the administrative review of those decisions.

The principal author of this proposed rulemaking is Jim Crisp, Division of Land, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

There are no information collection requirements in this proposed rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects for 43 CFR Group 2400

43 CFR Part 2400

Agriculture, Forest and forest products, Grazing lands, Indian lands, Public lands—classification, Public lands—mineral resources, Recreation, Soil conservation, Watersheds, Wilderness areas, Wildlife.

43 CFR Part 2410

Administrative practice and procedure, Agriculture, Forest and forest products, Grazing lands, Indian lands, Public lands—classification, Public lands—mineral resources, Recreation, Soil conservation, Watersheds, Wilderness areas, Wildlife.

43 CFR Part 2420

Administrative practice and procedure, Agriculture, Forest and forest products, Grazing lands, Indian lands, Public lands—classification, Public lands—mineral resources, Recreation, Soil conservation, Watersheds, Wilderness areas, Wildlife:

43 CFR Part 2430

Homesteads, Indian lands, Public lands—classification, Public lands—mineral resources.

43 CFR Part 2440

Public lands—classification, Public lands—mineral resources.

43 CFR Part 2450

Administrative practice and procedure, Public lands—classification.

43 CFR Part 2460

Administrative practice and procedure, Public lands—classification.

43 CFR Part 2470

Public lands—classification.

Under the authority of section 2578 of the Revised Statutes (43 U.S.C. 1201); sections 1 and 7 of the Act of June 26, 1934, as amended (43 U.S.C. 315, 315f); the Act of June 14, 1926, as amended (43 U.S.C. 869); the Act of March 3, 1877 (43 U.S.C. 321–323), as amended by the Act of March 3, 1891 (43 U.S.C. 231, 323, 325, 327–329); section 4 of the Act of February 8, 1887 (25 U.S.C. 334), as amended by the Act of August 8, 1891 (26 Stat. 794) and section 17 of the Act of June 25, 1910 (25 U.S.C. 336); sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852); section 516 of the Airport and Airways Improvement Act of 1982 (49 U.S.C. 2215); the Act of May 24, 1928 (49 U.S.C. 211–214) as amended by the Act of August 16, 1941 (55 Stat. 621); section 4 of the Act of August 18, 1894 (28 Stat. 422) as amended (43 U.S.C. 641 et seq); sections 203, 205, 206, 211, 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1715, 1716, 1721, 1732); and Executive Orders 6910 and 6964; it is proposed to amend Group 2400, Subchapter B, Chapter II of the Code of Federal Regulations as set forth below:

Group 2400 [Revised]

1. Group 2400 is revised to read:

Group 2400—Land Classification

PART 2400—LAND CLASSIFICATION AND SUITABILITY DETERMINATIONS

Subpart 2400—Land Classification; General

Sec.

PART 2410—LAND SUITABILITY DETERMINATIONS

Subpart 2410—Land Suitability Determinations; General

Sec.

PART 2400—LAND CLASSIFICATION AND SUITABILITY DETERMINATIONS

Authority: 43 U.S.C. 1201; 43 U.S.C. 315, 315f; 43 U.S.C. 869 et seq.; 43 U.S.C. 321–323, as amended by 43 U.S.C. 321, 323, 325, 327–329; 25 U.S.C. 334, as amended by 26 Stat. 794 and 25 U.S.C. 336; 43 U.S.C. 851, 852; 49 U.S.C. 2215; 49 U.S.C. 211–214 as amended by 55 Stat. 621; 43 U.S.C. 851, 852; 49 U.S.C. 2215; 28 Stat. 422 as amended by 43 U.S.C. 641 et seq.;

43 U.S.C. 1713, 1715, 1716, 1721, 1732; Executive Orders 6910 and 6964.

Subpart 2400—Land Classification; General

§ 2400.0–1 Purpose.

The regulations in this group describe procedures used by the Secretary of the Interior to determine whether public lands are suitable for use or disposal under certain laws affecting the public lands and, where appropriate, to classify those lands found suitable under applicable law.

§ 2400.0–2 Objective.

The objective of the regulations in this group is uniformity, insofar as practicable, in the systems used for determining the suitability of public lands for lease or disposal and, where required, for classifying those lands found suitable.

§ 2400.0–3 Authority.

(a) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), authorizes the Secretary of the Interior to establish uniform procedures for the use and disposition of public lands and to carry out the purposes of the Act and of other laws applicable to public land management, including authority to lease or dispose of those public lands (See sections 203, 205, 206, 211, and 302 of the Federal Land Policy and Management Act).

(b) With certain exceptions, all public lands, except those in Alaska, have been withdrawn from entry, sale, settlement, and location under the non-mineral lands laws by Executive Order 6910 of November 26, 1934, Executive Order 6964 of February 5, 1935, and section 1 of the Act of June 28, 1934, as amended (43 U.S.C. 315) (commonly and hereinafter referred to as the Taylor Grazing Act). Section 7 of the Taylor Grazing Act (43 U.S.C. 315f) authorizes the Secretary of the Interior, in his/her discretion, to examine, classify and open to disposition under applicable law any lands withdrawn by Executive Orders 6910 and 6964 or within a grazing district established under section 1 of the Act where certain conditions are satisfied.

(c) The Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), authorizes the Secretary of the Interior to classify public lands in Alaska for recreational and other public purposes. The regulations covering lease or disposal of lands under this Act are contained in Part 2740 and Subpart 2912 of this Title.

(d) The Classification and Multiple Use Act of 1964 (43 U.S.C. 1411–1418), authorized the Secretary of the Interior to classify public lands as suitable for disposal under various land laws or as suitable for retention in Federal ownership for multiple use management. Although authority under this Act to make such determinations expired on December 20, 1970, classifications made before its expiration continue in full force and effect until modified or revoked.

§ 2400.0–5 Definitions.

As used in this group, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this group.

(b) "Conformance" means that a proposed lease or disposal shall be specifically provided for in an applicable land use plan prepared by the Bureau of Land Management, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment.

(c) "Land suitability determination" means a specific finding, which shall constitute a classification action when one is required, that certain public lands are either more valuable or proper for lease or disposal under one or more of the public land laws or more suitable for retention under Federal management.

(d) "Public interest determination" means a finding by the authorized officer that the objectives served by the lease or disposal of certain public lands will outweigh the public values which will be served by retaining such lands under Federal management.

(e) "Lease" means a document authorizing use of the public lands for enumerated purposes that is issued pursuant to section 302 of the Federal Land Policy and Management Act, the Recreation and Public Purposes Act, as amended, or the Act of May 24, 1928, as amended.

(f) "Notice of realty action" means an announcement that advises the public that a land suitability determination pertaining to the lands described in the notice has been made.

PART 2410—LAND SUITABILITY DETERMINATIONS

Authority: 43 U.S.C. 1701 et seq; Executive Orders 6910 and 6964; 43 U.S.C. 315 and 315f; 43 U.S.C. 869 et seq.

Subpart 2410—Land Suitability Determinations; General

§ 2410.1 Land suitability determinations.

When a need for a land suitability determination arises, either as the result of a motion by the Bureau of Land Management or a properly filed request for such a determination under the regulations in this Title covering a proposed lease or disposal, the authorized officer shall evaluate the lands and determine whether they are suitable for such lease or disposal.

§ 2410.2 Conformance with land use plans.

It is the policy of the Department of the Interior that public lands shall be retained in Federal ownership, unless as a result of land use planning procedures set forth in Part 1600 of this Title, a determination is made that lease or disposal will serve the public interest. Therefore, prior to the lease or disposal of public lands, the authorized officer shall make a determination that such lands are more valuable or suitable for lease or disposal than for retention under Federal management; such determination shall be supported by decisions made in accordance with Part 1600 of this Title, including, but not limited to, a resource management plan or management framework plan. A lease or disposal shall conform to the following:

(a) The objectives served by the lease or disposal of public lands that may be determined suitable for such lease or disposal shall outweigh the public values which would be served by using the lands for other purposes in Federal ownership.

(b) Lease or disposal of public lands shall be consistent with State and local government plans, programs and zoning regulations to the extent that such are consistent with Federal plans and programs for the area in which the lands are located.

(c) A proposed lease or disposal shall be consistent with applicable State and Federal laws and regulations intended to protect the environment.

(d) The public lands intended for a lease or disposal shall be physically suitable for the proposed lease or disposal.

(e) If it is determined by the authorized officer that the lease or disposal of public lands may result in the sustained dissipation of water reserves, those lands shall not be determined suitable for the intended lease or disposal.

(f) Where public lands are found suitable for more than one form of lease or disposal and such lease or disposal may be permitted under more than one authority, preference shall be given to that option yielding the greatest public benefit. In making a determination of public benefit, the authorized officer shall consider, among other factors:

(1) Federal plans, programs and policies;

(2) The need to satisfy outstanding lieu rights or land grants;

(3) The needs of State and local governments and communities;

(4) Return of fair market value to the United States;

(5) The relative scarcity of values involved; and

(6) Availability of alternative means to accomplish the intended purposes.

(g) A proposed lease or disposal shall meet all specific criteria established under the regulations in this Title covering such lease or disposal.

§ 2410.3 Notice of realty action.

(a)(1) If the public lands are determined suitable for the proposed lease or disposal, the authorized officer shall publish a notice of realty action describing the determination of suitability in accordance with the regulations in this Title covering such lease or disposal. Where classification is required before lease or disposal may be approved, the notice shall constitute the classification decision and opening order and make the lands available for lease or disposal. The notice shall be published in the **Federal Register** and once a week for 3 consecutive weeks in a newspaper of general circulation in the vicinity of the public lands included in the notice.

(2) The segregative effect of a notice of realty action shall be governed by applicable laws and regulations and be stated in the notice of realty action. Any subsequent application for lease or disposal inconsistent with the terms of the notice of realty action shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of the notice shall terminate automatically at the end of 2 years unless sooner terminated by:

(i) Publication of an opening order in the **Federal Register**; or

(ii) Issuance of a patent or other conveyance document; or

(iii) As otherwise provided in Part 2091 of this Title and other applicable regulations in this Title.

(3) The notice of realty action shall be mailed to the Governor of the State within which the public lands covered by the notice are located, to the head of the governing body of any political subdivision having zoning or other land use regulatory authority in the area within which the lands are located and to other known interested parties of record, including, but not limited to, adjoining landowners and authorized users of the lands. The notice shall be mailed not less than 60 days before lease or conveyance of the lands or interests in lands occurs.

(b) If the public lands are determined to be not suitable for the proposed lease or disposal, the authorized officer shall issue a notice of realty action to that effect. The notice shall be sent to affected parties and to any other individual, group, organization, or governmental entity determined appropriate by the authorized officer.

§ 2410.4 Protests.

(a) For a period of 45 days after issuance of a notice of realty action pursuant to § 2410.3 (a) or (b) of this Title, interested parties may submit written comments to the authorized officer issuing the notice. Parties objecting to a determination of suitability shall provide specific reasons for their objection.

(b) If no objections are filed within the 45-day period provided in paragraph (a) of this section, the determination of suitability shall become the final decision of the Department of the Interior and the authorized officer may authorize the lease or disposal in accordance with the regulations in this Title covering such lease or disposal.

(c) If an objection is filed within the 45-day period provided in paragraph (a) of this section, it shall be reviewed by the authorized officer who shall issue a decision to affirm, modify, or vacate the determination of suitability made in the notice of realty action. The authorized officer shall send copies of the decision to all interested parties.

(d) Any adversely affected party may, within 30 days of the issuance of a decision by the authorized officer, protest that decision to the next higher level of supervisory authority, i.e., the appropriate State Director or the Director, Bureau of Land Management. The State Director or Director, as appropriate, shall consider the protest and promptly render a decision, sending copies to all interested parties. The decision of the State Director or Director, as appropriate, shall be the final decision of the Department of the Interior.

(e) The notice published under § 1610.5–5(a) of this Title may, if so designated in the notice, serve as the notice of realty action required by this Subpart. In such instances, adversely affected parties or persons having standing under § 1610.5–2(a) of this Title may protest the authorized officer's decision by filing their objections with the Director within 45 days after the issuance of the notice. Protests filed pursuant to § 1610.5–2 of this Title shall include the statements required by § 1610.5–2(a)(2) of this Title. The Director shall promptly render a decision on the protest which shall be the final decision of the Department of the Interior.

PARTS 2420, 2430, 2450, 2460 AND 2470 [REMOVED]

2. Parts 2420, 2430, 2440, 2450, 2460, and 2470 are removed in their entirety.

September 2, 1987.

James E. Cason,

Acting Assistant Secretary of the Interior.

[FR Doc. 87–24429 Filed 10–21–87; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6912]

Proposed Flood Elevation Determinations, West Virginia; Correction

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 52 FR 22811 on June 16, 1987. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Unincorporated Areas of Berkeley County, West Virginia.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Berkeley County, West Virginia, previously published at 52 FR 22811 on June 16, 1987, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L.

90–448)), 42 U.S.C. 4001 through 4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The proposed base (100-year) flood elevations for selected locations are: Proposed Base (100-year) Flood Elevations

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
Tributary 1 of the Potomac River.	At confluence with Potomac River.	*363
	Approximately 200 feet downstream of Interstate Route 81.	*385

Issued October 13, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87–24458 Filed 10–21–87; 8:45 am]

BILLING CODE 6718–03–M

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA–6914]

Proposed Flood Elevation Determinations, New York; correction

AGENCY: Federal Emergency Management agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 52 FR 31428 on August 20, 1987. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Village of Spring Valley, Rockland County, New York.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Village of Spring Valley, previously published at 52 FR 31428 on August 20, 1987, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

PART 67—[CORRECTED]

In the entries for New York, Spring Valley, Village, Rockland County, the third though sixth columns are revided to read as follows:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
		Existing	Modified
Pascack Brook	At downstream corporate limits	None	*349
	At confluence of North Branch Pascack Brook	None	*350
	Approximately 80 feet downstream of State Route 59	*432	*411
	Upstream side of Maple Avenue	*444	*441
	Downstream side of Union Road	*469	*470
	At upstream corporate limits	*478	*477
North Branch Pascack Brook	At confluence with Pascack Brook	None	*350
	At upstream corporate limits	None	*359

Issued: October 16, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87–24456 Filed 10–21–87; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 25

[CGD–87–016]

Emergency Position Indicating Radio Beacons for Uninspected Fishing, Fish Processing, and Fish Tending Vessels

AGENCY: Coast Guard, DOT.

ACTION: Proposed Rule; extension of comment period.

SUMMARY: The Coast Guard is extending the comment period on its notice of proposed rulemaking concerning emergency position indicating radio beacons (EPIRBs) to be carried on uninspected fishing, fish processing, and fish tender vessels operating on the high seas. This extension is granted at the request of the Radio Technical Commission for Maritime Service (RTCM), to allow that organization time to refer the matter to its Special Committee No. 110 on EPIRBs, and at the request of the National Aeronautics and Space Administration (NASA).

DATE: Comments must be submitted on or before November 19, 1987.

ADDRESSES: Comments should be submitted to the Commandant (G–CMC/21), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593–0001. Between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays, comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council (G–CMC) Room 2110 U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593–0001, (202) 267–1477. The Draft Evaluation may also be inspected or copies at the Marine Safety Council.

FOR FURTHER INFORMATION CONTACT:

LCDR William M. Riley, Survival Systems Branch, Room 1404, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593–0001, (202) 267–1444. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** on September 3, 1987 (52 FR 33448). In a request dated September 22, 1987, RTCM asked for an extension of time to reply and listed 10 issues to be referred to their Special Committee 110 on EPIRBs for formulation of comments. RTCM proposed a definite date, November 19, 1987, for submission of their comments. In an undated request hand-delivered to the Coast Guard on October 9, 1987, NASA also asked for an extension of time for the same period. The Coast Guard considered these requests and

determined that an extension of the comment period was justified.

In consideration of the foregoing the comment period is extended as requested.

Dated: October 16, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87-24500 Filed 10-21-87; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-445, RM-6007]

Radio Broadcasting Services; Hardeeville, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Benjamin M. Tucker *et al.* d/b/a Jessup Broadcasting Limited Partnership, permittee of a new Class A station at Hardeeville, SC, seeking the substitution of Channel 266C2 for its Channel 266A and the modification of its permit to specify the higher powered channel. Channel 266C2 can be allocated to Hardeeville, SC, in compliance with the Commission's minimum distance separations requirements with a site restriction of 30.2 kilometers (18.8 miles) southwest to avoid a short-spacing to Station WALD-FM, Walterboro, South Carolina. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expression of interest in use of Channel 266C at Hardeeville.

DATES: Comments must be filed on or before December 10, 1987, and reply comments on or before December 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Morton L. Berfield, Esq., Roy W. Boyce, Esq., Cohen & Berfield, P.C., 1129 20th Street, NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-445, adopted September 25, 1987, and released October 16, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission condideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing precedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24466 Filed 10-21-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-442, RM-6011]

Radio Broadcasting Services; Stamford, TX

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Jon Bruce Thoen, permittee of FM Station KZM(FM), Channel 221A, Stamford, Texas, proposing the substitution of Channel 246C2 for Channel 221A and the modification of its constuction permit to specify operation on the new frequency, as that community's first wide coverage area FM station.

DATES: Comments must be filed on or before December 10, 1987, and reply comments on or before December 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, their counsel or consultant, as follows: Jon Bruce Thoen, Radio Station KZOM, 407 North Swenson Street, Stamford, Texas 79553-KZOM (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-442, adopted September 25, 1987, and released October 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of the decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Member of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communication Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24463 Filed 10-21-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-443, RM-5968]

Radio Broadcasting Services; Spokane, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by P-N-P Broadcasting, Inc., seeking the allotment of Channel 245A to Spokane, Washington, as a ninth FM service. Concurrence of the Canadian government is required.

DATES: Comment must be filed on or before December 10, 1987, and reply comments on or before December 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Duane J. Polich, P–N–P Broadcasting, Inc., 9235 NE. 175th Bothell, WA 93011 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricial Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–443, adopted September 25, 1987, and released October 16, 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 contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, SEE 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–24464 Filed 10–21–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–444, RM–5973]

Radio Broadcasting Services; Parkersburg, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Parkersburg/Marietta Broadcasting, Inc., licensee of Station WMGP(FM), Channel 257A, Parkersburg, West Virigina, proposing the substitution of Channel 256B1 for Channel 257A and modification of its facilities accordingly. A site restriction of 6.2 kilometers (3.9 miles) southwest of Parkersburg is required. Also concurrence of the Canadian government is required.

DATES: Comments must be filed on or before December 10, 1987, and reply comments on or before December 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David D. Oxenford, Esquire, Fisher, Wayland, Cooper & Leader, 1255 23rd Street NW., Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–444, adopted September 25, 1987, and released October 16, 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 contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–24465 Filed 10–21–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–440, RM–5921]

Radio Broadcasting Services; Pukalani, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making by Obie Broadcasting of Maui, Inc., Licensee of Station KMVI–FM, Pukalani, Hawaii, which proposes to substitute Channel 252C2 for Channel 252A at Pukalani, and to modify its Class A license to specify the new channel.

DATES: Comments must be filed on or before December 10, 1987, and reply comments on or before December 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J. Dominc Monahan, Dow, Lohnes and Albertson, 1255 23rd Street NW., Suite 500, Washington, DC 20037, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–440, adopted September 25, 1987, and released October 16, 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 contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suit 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public shold note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-24461 Filed 10-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-441, RM-5993]

Radio Broadcasting Services; Pinedale, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Phillip W. O'Bryan, proposing the allotment of Channel 266C2 to Pinedale, Wyoming, as that community's first FM service.

DATES: Comments must be filed on or before December 10, 1987, and reply comments on or before December 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

Phillip W. O'Bryan, 212 Eagle Ridge Drive, Birmingham, AL 35243 (Petitioner).

Larry G. Fuss, Contemporary Communications, P.O. Box 1901, El Dorado, AR 71731 (Counsultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-441, adopted September 25, 1987, and released October 16, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-24462 Filed 10-21-87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1312 and 1314

[Ex Parte No. 444]

Electronic Filing of Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to an advance notice of rulemaking in Ex Parte No. 444, *Electronic Filing of Tariffs* (48 FR 9672, March 8, 1983), and comment, the Commission proposes deleting its current tariff filing rules at 49 CFR Part 1312 and replacing them with simplified rules at 49 CFR Part 1314 (as set forth in full below). These revised rules would accommodate the filing of electronic tariffs and greatly simplify tariff filing requirements generally to facilitate compliance with statutory requirements and, more particularly, establishment of competitive rate changes.

DATES: Interested parties must notify the Commission, in writing, of their intent to participate by December 7, 1987, so that the Commission can issue a service list. Comments from interested parties are due January 20, 1988 and reply comments are due February 19, 1988. All comments and reply comments must be served on all parties on the service list.

ADDRESS: An original and fifteen copies of comments should be sent to: Noreta R. McGee, Secretary, Interstate Commerce Commission, 12th & Constitution Avenue, NW, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Charles E. Langyher, (202) 275-7739

or

Lawrence C. Herzig, (202) 275-7358.

TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of the Secretary, Rm. 2215, Interstate Commerce Commission Bldg., Washington, DC 20423, or call (202) 275-7428.

List of Subjects in 49 CFR Parts 1312 and 1314

Freight forwarders, Maritime carriers, Motor carriers, Pipelines, Railroads.

This action will not significantly affect the quality of the human environment or energy conservation.

Decided: October 13, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

Chapter X of Title 49 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1312—[REMOVED]

1. Part 1312 is removed.

2. Part 1314 is added to read as follows:

PART 1314—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS AND RELATED DOCUMENTS

Sec.

Authority: 49 U.S.C 10321, 10708, 10761 and 10762; 5 U.S.C. 553.

§ 1314.1 Definitions.

For the purpose of this part—

"*Act*" means the Interstate Commerce Act, as amended.

"*Agent*" means a person, association or corporation authorized to publish and file rates and provisions on behalf of a carrier(s) in tariffs published in the agent's name.

"*Carrier*" means a common carrier, motor contract carrier of passengers or household goods freight forwarder subject to the Act. It also means an ocean carrier participating in joint tariff provisions with carriers subject to the Act.

"*Carrier's tariff*" means a tariff issued by, and filed in the name of the carrier.

"*Collectively established*" tariff means the rate, charge, rule, or other provision of a tariff not independently established.

"*Commission*" means the Interstate Commerce Commission.

"*Common carrier*" means all common carriers and household goods freight forwarders subject to the Act.

"*Independently established*" carrier matter means the rate, charge, rule, or other provision as published either in a tariff filed in the carrier's own name or under independent action instructions for only the particular carrier's account in a tariff filed in an agent's name.

"*Joint rate*" means a rate that applies over the lines or routes of two or more carriers made by an agreement between the carriers, effected by a concurrence or power of attorney.

"*Joint tariffs*" are those which contain joint rates or provisions affecting those rates.

"*Local rate*" means a rate that applies over the lines or routes of one carrier only.

"*Local tariffs*" are those which contain local rates or provisions affecting those rates.

"*Ocean carrier*" means a vessel-operating common carrier engaged in foreign commerce and regulated by the Federal Maritime Commission.

"*Original tariff*" means the tariff as originally filed excluding amendments.

"*Publication*" — see "Tariff".

"*Rate*" means a rate, fare or charge.

"*Tariff*" or "*Tariff publication*" means an issuance (in whole or in part) bearing designation required by §1314.6 and containing rates, rules, regulations or other provisions filed with the Commission for compliance with 49 U.S.C. 10761 and 10762.

"*Through rate*" means the total rate from point of origin to destination. It may be a local rate, a joint rate, or a combination of separately established rates.

"*Title page*" means the initial, introductory, portion of tariff publications.

§ 1314.2 Application.

(a) These provisions govern the construction, publication, filing and maintenance of any tariff filed under the Act or which contains a through route and joint rate application over the lines of a common carrier on the one hand, and a nonvessel or vessel operating ocean carrier, on the other hand, for transportation of property between any place in the United States and a foreign country. Tariffs may include provisions "for information only," or for intrastate application, when such provisions are plainly identified to preclude any suggestion that such provisions are subject to economic regulation by the Commission. Tariffs which fail to meet the provisions of this part, or which violate any decision or order of the Commission or of a court, may be rejected or stricken by the Commission.

(b) Relief from the provisions of this part may be sought. Requests by authorized parties for such relief shall be submitted in duplicate and accompanied by appropriate fee (see 49 CFR Part 1002). Envelopes addressed to the Commission containing applications for relief shall be prominently marked "SPECIAL TARIFF AUTHORITY APPLICATION". The application shall cite all pertinent tariff matter and shall provide complete information regarding applicant's justification, purpose and manner of relief. See also 49 CFR 1118.4.

§ 1314.3 Tariff standards—essential criteria.

The requirement for the filing of tariffs are established at 49 U.S.C. 10761 and 10762. All tariffs must observe the following criteria:

(a) Tariffs filed with the Commission must describe accurately and fully the services offered to the public and must provide the specific rate, fare or charge for the performance of those services;

(b) Tariffs must be filed and maintained in a manner that allows all tariff users to determine the exact rate, fare or charge applicable to any given shipment, or to any given set of shipments in the case of volume/time pricing;

(c) All information necessary to determine applicable rates, fares or charges for a given shipment need not be contained in a single tariff, but in the event of multiple tariffs used to convey that information, all tariffs so linked must reference by ICC tariff designation all other tariffs required to determine applicable rates, fares and charges;

(d) Tariff information must be presented in a manner that facilitates tariff users' determination of the services and pricing offered;

Tariffs of motor passenger contract carriers shall provide an explicit statement of the minimum rates, fares, or charges maintained. Rates for rail movements of circuses and other show outfits may consist of a proper title page, containing the phrase "as per copy of contract attached", with a copy of the contract attached.

§ 1314.4 Filing of Tariffs.

(a) Tariffs shall be prepared in the English language, with rates and charges explicitly stated per unit in U.S. dollars and cents. To file with the Commission, two submissions of the publication shall be transmitted to the Interstate Commerce Commission, Bureau of Traffic—Section of Tariffs, Washington, DC 20423, and shall be accompanied by an authorized document of transmittal which identifies the matter being filed, together with the appropriate filing fee (see 49 CFR Part 1002). Acknowledgment of Commission receipt of filed tariffs can be obtained by enclosing a duplicate transmittal and a postage-paid, self-addressed return envelope.

(b) Tariffs prepared and filed in paper form shall not be larger than 8½ x 11 inches, except paper distance guides shall not be larger than 14½ x 17½ inches.

(c) Tariffs prepared and filed in non-paper form or medium shall:

(1) Be compatible with existing Commission technology and facilities available for the receipt, storage and use of such filed publications; or

(2) Alternatively the necessary implementing equipment, facilities and programs shall be placed on file with the Commission for use by Commission personnel and the public at no cost.

§ 1314.5 Timely filing.

(a) Tariff matter should be announced to the public and the Commission with as much advance notice as practical, but in no case (except as otherwise specifically authorized) shall such notice be less than shown below. The effective dates shall be clearly indicated in the tariff. "Notice" means the number of days the publication shall be on file with the Commission at Washington, DC prior to its effective date(s). The date the publication is received by the Commission counts as the first day of notice.

(b) The following is the notice required for new service (new), provisions which result in expanded service or lower charges (reduced), and provisions which result in lessened service or higher charges (increased).

Number of days notice required for publication of matter—	Mode and type		
	New	Reduced	Increased
Rail:			
Circus or show outfits	1	1	1
Surcharge or joint rate cancellation under 49 U.S.C. 10705a(f)	45	45	45
49 U.S.C. 10705(e)	20	20	[1] 20
All other matter:			
Collectively established	20	10	20
Independently established	1	1	[2] 20
Motor or Freight Forwarder:			
Property:			
MC–82 general rate actions	45	45	45
Collectively established	30	30	30
Independently established	1	1	[3] 7
Passenger:			
Collectively established	30	30	30
Independently established	1	1	1
Water:			
Property	10	30	30
Passenger	1	30	30
Motor—Water:			
Single factor domestic:			
Collectively established	30	30	30
Independently established	1	1	[3] 7
Ocean/Surface International: (see § 1314.15)			
All other Intermodal	30	30	30

[1] In Ex Parte No. 445 (Sub-No. 1), *Intermodal Rate Competition*, served October 31, 1985, the Commission adopted a new rule at 49 CFR 1144.1 which provides for additional notice in the case of cancellations under 49 U.S.C. 10705(e): (a) *Notification.* A rail carrier proposing to cancel a through route and/or joint rate shall comply with the requirements of 49 U.S.C. 10762(c)(3) and 10705a(f) , as appropriate, and 49 CFR Part 1312, and shall give notice of its intent to make such a cancellation 45 days prior to the effective date of the cancellation. For cancellations under 49 U.S.C. 10705(e), the 45-day period must consist of at least a 25-day notice of intent to file followed by a 20-day tariff filing in compliance with 49 U.S.C. 10762(c)(3).

[2] Ex Parte No. 346 (Sub-No. 22), *Short Notice Effectiveness for Independently Filed Rail Carrier Rates*, served January 5, 1987.

[3] Workdays.

(c) Workdays mean all days except Saturdays, Sundays, and all federal holidays observed in the District of Columbia.

§ 1314.6 ICC tariff designation.

(a) Every tariff publication filed with the Commission shall show an authorized tariff designation consisting of: (1) The characters "ICC", immediately followed by (2) the assigned alpha code of the carrier or agent issuing the publication, immediately followed by (3) the tariff number (selected by the issuing carrier or agent) to distinguish that publication from all other publications filed with the Commission by the same issuing carrier or agent. Tariff numbers shall not exceed 7 characters consisting of not more than 5 digits and not more than 2 letter suffixes.

Examples:

ICC XXXX 100
ICC XXXX 2000
ICC XXX 10000–A

Also see § 1314.7

(b) Alpha codes are assigned to carriers and tariff agents by industry organizations as follows:

Railroads: Mr. W.J. Hardin, Tariff Publishing Officer, North Pacific Coast Freight Bureau, Pacific Southcoast Freight Bureau, Trans-Continental Freight Bureau, Suite 1150, 222 South Riverside Plaza, Chicago, IL 60606

Water Carriers: Mr. A. Carling, Waterways Freight Bureau, 11720 Briggs Court, Fairfax, VA 22030

All Others: Messrs. N.J. Zavolta or P.G. Levine, National Motor Freight Traffic Association, Inc., 2200 Mill Road, Alexandria, VA 22314

(c) Fees may be assessed to carriers or agents by the industry organizations assigning codes, but such fees may not exceed the processing costs. Except in unusual circumstances, and for compelling reasons, industry organizations shall assign only one alpha code (not to exceed 4 characters) to carriers or agents which shall be unique for that carrier or agent.

§ 1314.7 Identification of tariff publication.

Every publication filed with the Commission shall include:

(a) The ICC tariff designation (see § 1314.6);

(b) The name of the issuing carrier, or its tariff agent;

(c) The date(s) on which the publication is to become effective (see § 1314.5).

§ 1314.8 Statement of tariff application.

Every new tariff of first issuance, or complete tariff reissuance, filed with the Commission shall lead with a "title page" which shall:

(a) Comply with § 1314.7; and

(d) Provide a succinct statement of territorial application, mode of serving carrier(s), type of rates, and description of tariff content.

(1) Examples:

(i) Local, all motor truckload distance rates on FREIGHT, ALL KINDS from points in Ohio to points in the United States.

(ii) Joint motor/water commodity rate in containerized service between interior points in the United States and ports in Puerto Rico and Hawaii: and governing rules.

§ 1314.9 Notification of tariff changes and nature of changes.

Every publication filed with the Commission containing provisions which result in changes from the provisions previously applicable shall clearly identify such changes; and the nature of those changes shall be clearly indicated when the effect of the change is an increase or decrease in service, rates or transportation charges.

§ 1314.10 Special notification.

Every tariff publication containing matter of the nature described below shall—as indicated below—reference in the publication or in the accompanying letter of transmittal the decision, order, regulation, proceeding, or pertinent Section of the Act, as well as the number of days notice authorized or required:

(a) Publications filed in compliance with a Commission decision or court order (publication reference);

(b) Publications filed pursuant to the "zone of rate freedom" provisions of 49 U.S.C. 10708 (d)(1), (d)(3) and (d)(4) (transmittal reference);

(c) Publications of collectively proposed general increase or rate restructuring under the MC–82 procedures for motor carriers of property or for the motor transportation of household goods as defined in § 1056.1(b) (publication reference);

(d) Publication of the establishment of surcharges or cancellation of joint rates or routes pursuant to the authority of 49 U.S.C. 10705(e) and 10705a(f) (publication reference);

(e) Publication of collectively proposed provisions for motor common carriers of passengers filed pursuant to 49 U.S.C. 10708(e) (transmittal reference).

§ 1314.11 Posting of Tariff and public access to Tariffs.

(a) Each carrier, during normal business hours and at its principal office, shall have available for inspection by any party a complete set of its tariffs (proposed and effective) and those to which it is a party. Any equipment or devices required for such inspection will be made available without charge.

(b) Each carrier must, within 20 days of a written request by any person, provide all tariff matter relevant to requester's interest; alternatively, at its option carriers may provide a formal quotation of the applicable tariff rate in any form that is clear and verifiable. Reasonable charges may be assessed for this service.

§ 1314.12 [Reserved]

§ 1314.13 Powers of attorney and concurrences.

(a) Rates and services of a carrier must be filed in a tariff issued in that carrier's name; alternatively, rates and services of a carrier may be filed (1) in an agent's tatiff when the carrier has executed a power of attorney authorizing that individual or entity to serve as its tariff agent; or (2) in a tariff of another carrier (or the latter's tariff agent) through issuance of a concurrence to the latter carrier authorizing the first carrier's participation in joint rates and through routes.

If two or more carriers execute powers of attorney to the same agent, it is not necessary for those carriers to exchange concurrences. Powers of attorney and concurrences are not to be filed with the Commission but shall be provided to any party on request.

(b) Two or more agents may jointly issue a single tariff provided each agent acts only on behalf of those carriers it represents through powers of attorney or concurrences. The provisions of §1314.7 must be observed for each agent joining in the filing of the single tariff.

§ 1314.14 Change of tariff issuing carrier or agent.

(a) When a succeeding agent is appointed to take over an agency, or when an alternate agency assumes the duties of the principal agent, each of the superseded agent's effective tariffs shall immediately be amended to reflect the change, bearing an effective date the same as the date of the transfer. In the case of a new agent, this may only occur after one or more of the participating carriers issues a power of attorney to the new agent, and revokes the previous power of attorney. Concurrently, all affected tariffs will be appropriately amended to reflect the new powers of attorney, and all carriers who have not issued new powers of attorney must be canceled from the tariff.

(b) When a carrier's name is lawfully changed, or operating authority is transferred to another carrier, or a fiduciary assumes possession and control of a carrier's property, all affected tariffs must be amended to reflect the change. The effective date for an amendment to reflect a chance in name is the date the name change occurs. The effective date in all other instances is the date of consummation, or as set by the Commission or a court.

§ 1314.15 Export and import traffic and joint rates with ocean carriers.

(a) *Definitions.* The term "domestic carrier" as used in this section means a common carriers by rail, motor, water, or freight forwarder subject to the Act.

(b) *Through routes and joint rates.* (1) A domestic carrier may establish a through route and joint rate with a non-vessel or vessel operating ocean carrier for the transportation of property between any place in the United States and any place in a foreign country. Tariffs for such service shall be filed with the Commission in either long form or abbreviated form, as follows:

(2) An abbreviated tariff shall refer to a specific tariff(s) on file with the Federal Maritime Commission (FMC) containing the joint through rates in which the domestic carrier participates, and shall be filed in the name of the domestic carrier or the publishing agent of the domestic carrier.

(c) *Tariff provisions.* (1) Tariffs filed with the Commission under the provision of paragraph (b)(1) above shall comply with all of the other requirements of this part. Rail carriers are exempt from this tariff filing requirement (see 49 CFR 1039.21). The division or rate to be received by the domestic carrier for its share of the revenue covering a through shipment or aggregate of shipments may, but need not, be shown in the tariff.

(2) Abbreviated tariffs filed under the provisions of paragraph (b)(2) above shall—when read in conjuction with referenced FMC tariffs—comply with all other requirements of this part.

(3) A tariff filed in the name of a conference need not show "Agent" after the name of the conference unless the conference publishes as an agent.

(d) *Changes on less than statutory notice.* (1) Abbreviated tariffs, or amendments thereto, filed under the provisions of paragraph (b)(2) above may be filed to become effective on a specified date on not less than one day's notice.

(2) For tariffs filed under the provisions of paragraph (b)(1) above that include the division of rate accuring to the domestic carrier, the following changes may be published by amendment to the tariff to become effective on a specified date not prior to the date filed with the Commission:

(i) A change in a published rate or other provision which results in reduction or in no change in charges, provided that there is no change in the separately stated division or rate

(ii) The establishment of a rate on a specific commodity not previously

named in a tariff which results in a reduction or no change in charges.

(3) Changes in charges for terminal services, canal tolls, or other additional charges may be made effective upon a specified date not prior to the date filed with the Commission, provided the charges are not under the control of the carrier or conference, and the agency assessing the charges to the carrier increases the charges without notice or without adequate notice to the carrier or conference. If the tariff separately states the division, rate, or charge accruing to the domestic carrier, and if a change occurs in the division, rate, or charge, the amendment shall contain a statement explaining the change.

(e) *Through export and import billing.* When export and import shipments are forwarded under through billing, the through bills of lading shall clearly separate the liability of the domestic carriers and the ocean carriers. The name of the domestic carrier shall appear on the face of the bill of lading when that carrier originates the shipment. Tariffs which provide the use of a specified kind of bill of lading shall reproduce all its terms and conditions.

§ 1314.16 Substitution of service.

Paragraph (a), of this section only applies to property carriers. Paragraph (b) of this section only applies to passenger carriers. The provisions of this section may not be used in connection with joint rates and provisions for which concurrences are in effect (unless they so provide).

(a) *Substituted service may be provided.* If a rail, water, or motor carrier (hereafter referred to as Carrier A) desires to have the option to substitute the services of a carrier of a different transportation mode (hereafter referred to as Carrier B) for part of its movement of a shipment, it may do so if:

(1) The shipment moves on the bill of lading that would be used if Carrier A was performing the service;

(2) Carrier A assumes the responsibility for the lading while it is in the possession of Carrier B; and

(3) Movement of the lading has been made prior to, or will be made subsequent to, the service performed by Carrier B.

(b) *Passenger ticket arrangements.* Provisions may be published affirming an agreement of two or more carriers for the acceptance by one carrier of a ticket sold over the route of another carrier. The carriers' names shall be shown, along with the names of the points between which the tickets will be honored, and any restrictions or exceptions stated.

§ 1314.17 Rail cost recovery increases.

Rail carriers or their agents may publish cost recovery tariffs in master tariff format to provide increases in rail rates and charges as authorized by the Commission under Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.* The increases may apply to joint rates and single-line traffic to the extent adopted by individual carriers. All publications may be filed upon 1 day's notice, with 2-year expiration dates. Annual, accumulated master tariffs may be published to expire no later than September 30 of the second calendar year following the year in which the tariff became effective, by which date all increases shall be transferred to the base tariffs. Extension of any expiration dates may, however, be requested. The master tariffs may not be amended except that new or reduced provisions may be published upon 1 day's notice.

[FR Doc. 87-24477 Filed 10-21-87; 8:45 am]
BILLING CODE 7035-01-N

Notices

Federal Register
Vol. 52, No. 204
Thursday, October 22, 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

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: Notice is hereby given that USDA proposes the establishment of a Privacy Act system of records. This system is titled USDA/AMS–11 "AMS Office of Compliance Review Cases."

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on December 21, 1987, unless modified by a subsequent notice to incorporate public comments. USDA invites comments from the public on this proposal, to be received by the contact person listed below on or before November 23, 1987.

FOR FURTHER INFORMATION CONTACT: John M. Wyatt, U.S. Department of Agriculture, Agricultural Marketing Service, Office of Compliance, Room 3529–S, 14th & Independence Avenue SW., Washington, DC 20250, 202–447–6766.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is developing a system of records maintained by the Agricultural Marketing Service (AMS). The records system will contain detailed information pertaining to cases in which the AMS Office of Compliance (Compliance) is involved. This information will be collected during the course of investigations and reviews conducted by Compliance and includes such information as investigative notes, signed statements, correspondence, case history, case status, and reported findings by Compliance and other entities. The system of records provides documentation of all cases involving AMS Compliance. It also provides status reports regarding the disposition of all cases.

A "Report on new systems" required by 5 U.S.C. 552a(o), has been sent to the President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget.

Signed at Washington, DC, on October 8, 1987.

Richard E. Lyng,

Secretary of Agriculture.

USDA/AMS–11

SYSTEM NAME:

AMS Office of Compliance Review Cases.

SYSTEM LOCATION:

U.S. Department of Agriculture, Agricultural Marketing Service, Office of Compliance, Room 3529–S, 14th and Independence Ave., Sw, Washington, DC 20250.

CATEGORIES OF INDIVIDUALS ON WHOM RECORDS ARE MAINTAINED:

AMS employees, such as commodity graders, inspectors, supervisors; various industry Committee or Board members and/or managers; employees of various industry organizations; and any other individuals involved in a review or investigation as an alleged violator or otherwise the subject of a review or investigation.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

The system consists of investigatory files regarding cases involving the AMS Office of Compliance. These files contain reports by AMS Compliance and other investigative entities such as the Office of the Inspector General, USDA. They also contain evidence gathered in the course of reviews and investigations, as well as intra and interdepartmental recommendations. The records system also includes a tracking system maintained by computer which provides current status reports on all cases involving the Agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Office of Compliance is responsible for compliance activities pertaining to programs administered by AMS authorized by the legislation listed in 7 CFR 2.50.

ROUTINE USES OF RECORDS, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, of any record within this system, when information available indicates a violation or potential violation of law, whether civil, criminal, or regualtory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto;

(2) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is

compatible with the purpose for which the records were collected.

(4) Records may be disclosed in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and in computer data files at the address listed under "System location."

RETRIEVABILITY:

The records filed in this system are issued a primary name and case number specifying the appropriate division in AMS to which they pertain. A secondary name stating the subject being investigated is also issued. The records are filed in order of occurrence. Files are retrieved by identifying the division, subject, and case number.

SAFEGUARDS:

Records are stored in file folders and computer data files. The computer data base in accessed through a procedure used by the Compliance Staff. Offices containing these records are locked during nonbusiness hours and when offices are otherwise vacant. All records are accessible to AMS Compliance Staff.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with AMS Directive 270.1 "Files Maintenance and Records Disposition Handbook." Records are maintained for a period of three years at the system location, after which they are to be disposed of by authority of the National Archives and Records Service.

SYSTEM MANAGER AND ADDRESS:

Questions or requests regarding this system can be sent to the Associate Deputy Administrator for Compliance at the address listed under "System location."

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), material in this system of records is exempt from the rquirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f), because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. 5 U.S.C. 552a(d) requires that an individual be given access to and the right to amend files pertaining to him or her. Individual access to these files could impair investigations in progress and alert subjects involved in the investigations that their actions are under scrutiny, which may allow them the opportunity to alter their actions or prevent detection of any illegal actions to escape prosecution. Release of these records would also disclose investigative techniques and procedures employed by AMS and other agencies, which would hamper law enforcement activities.

5 U.S.C. 552a(c)(3) requires that an accounting of disclosures be made available to an individual. This would impair investigations by alerting subjects of investigations to the existence of those investigations. Release of the information could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

5 U.S.C. 552a(e)(1) requires that only such information as is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order can be maintained. Exemption from this provision is required because relevance and necessity can be determined only after information is evaluated. Evaluation at the time of collection is too time consuming for the efficient conduct of an investigation. Further, determining relevance or necessity of specific information in the early stages of an investigation is not possible.

5 U.S.C. 552a(e)(4)(G) and (H), and (f) provide for notification and access procedures. These requirements, if followed, would necessarily alert subjects of investigations to the existence of the investigation which could impair the investigation. Access to the records likewise could interfere with investigative and enforcement proceedings; disclose confidential informants and information; constitute an unwarranted invasion of personal privacy of others; and reveal confidential investigative techniques and procedures.

5 U.S.C. 552a(e)(4)(I) requires that categories of sources of records in each system be published. Application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentially. This would compromise the ability to conduct investigations.

[FR Doc. 87-24515 Filed 10-21-87; 8:45 am]

BILLING CODE 3410-02-M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Coffee, Sugar & Cocoa Exchange, Inc. ("CSCE") has applied for designation as a contract market in futures on the International Market Index—an index of foreign stocks traded in the United States. The Deputy Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before December 21, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CSCE International Market Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 354-6314.

Other materials submitted by the CSCE in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts

Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CSCE in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on October 16, 1987.

Blake Imel

Deputy Director, Division of Economic Analysis.

[FR Doc. 87-24433 Filed 10-21-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Defense Science Board Task Force on Military System Applications of Superconductors

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Military System Applications of Superconductors will meet in closed session on December 16–17, 1987 at the Defense Advanced Research Projects Agency, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will enumerate and evaluate military system applications that may be enabled by the recent progress in high temperature superconductors.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Thomas J. Condon,

Acting Division Chief, Directives Division

[FR Doc. 87-24482 Filed 10-21-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: Tuesday, 17 November 1987, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340-1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classifed information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on intelligence support systems.

Thomas J. Condon,

Acting Division Chief, Director Division

[FR Doc. 87-24483 Filed 10-21-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligency Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defence Intelligency Agency Scientific Advisory Committee, DOD.

ACTION: Notice of Closed Meeting

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: Friday, 20 November 1987, 9:00 a.m., to 500 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC. 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on tactical intelligence information handling systems.

Thomas J. Condon,

Acting Division Chief, Directives Division

[FR Doc. 87-24484 Filed 10-21-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee; DOD.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Committee has been scheduled as follows:

DATES: Tuesday and Wednesday, 26–27 January 1988, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

Thomas J. Condon,

Acting Division Chief, Directives Division, Department of Defense

[FR Doc. 87-24485 Filed 10-21-87; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Cancellation of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Small Navigation Project at Sturgeon Point Marina, Erie County, NY

AGENCY: U.S.Army Corps of Engineers, DoD.

ACTION: Cancellation of Previous Notice of Intent to Prepare a DEIS.

SUMMARY: The U.S. Army Corps of Engineers, Buffalo District has concluded that construction of proposed navigation improvements at Sturgeon Point Marina would result in no significant impacts on the human environment. Therefore, the Notice of Intent to Prepare a DEIS (published in 49 FR 33702-33703) is hereby canceled.

An Environmental Assessment of the proposed project was circulated for public and agency review on 1 April 1987. After a review of comments received, a Finding of No Significant Impact was signed on 23 July 1987. This conclusion was based upon the following factors:

—The proposed Sturgeon Point Marina project involves a limited number of planning objectives and plans.

—Proposed navigation improvements and marina expansion represent modifications to an existing facility and involve no land use changes.

—Consultation with various Federal, State, and local agencies has uncovered no significant concerns related to the waterside improvements.

—No significant impacts to significant resources (threatened or endangered species, fish and wildlife resources, cultural resources, mineral resources, etc.) are anticipated.

—An evaluation prepared in accordance with section 404(b)(1) of the Clean Water Act concluded that the placement of dredged and fill material would result in only minor impacts. Section 401 State Water Quality Certification was granted on 23 July 1987.

—Upland improvements proposed by the town of Evans have been evaluated and approved under the New York State Environmental Quality Review Act. In response to public review and comment, appropriate modifications have been incorporated into these plans which adequately address the concerns of local property owners.

ADDRESS: Questions may be forwarded to Mr. William Butler, Environmental Analysis Branch, U.S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo, New York 14207-3199. Phone (716) 876-5454 or FTS 473-2175.

Dated: October 15, 1987.

Daniel R. Clark,

Colonel, U.S. Army Commanding.

[FR Doc. 87-2441 Filed 10-21-87; 8:45 am]

BILLING CODE 3710-GP-M

DEPARTMENT OF EDUCATION

National Board, Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463.

DATE: November 9, 1987 beginning at 8:30 p.m. and ending at 9:00 p.m.

ADDRESS: Ramada Renaissance Hotel, 1143 New Hampshire Avenue NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets SW., Washington, DC 20202 (202) 245-8091.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 1001 of the higher Education Amendments of 1980, Title X (20 U.S.C. 1135a-1). The National Board of the Fund is established to "advise the Secretary and the Director of the Fund for the improvement of postsecondary education * * * on the selection of projects under consideration for support by the Fund in its competitions."

The meeting of the National Board will be open to the public. The proposed agenda includes:

—An orientation and introduction of new Board members;

—A discussion and review of the past year;

—Development and discussion of policies and priority for the coming year.

—Observation and participation in the Fund for the Improvement of Postsecondary Education Annual Project Directors' Meeting.

Records shall be kept of all Board proceedings, and shall be available for public inspection at the Fund for the Improvement of Postsecondary Education, 7th & D Streets, SW., Room 3100, Washington, DC 20202 from the hours of 8:00 a.m. to 4:30 p.m. weekdays, except Federal Holidays.

Dated: October 19, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-24472 Filed 10-21-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP88-17-000]

Natural Gas Pipeline Company of America; Application

October 15, 1987.

Take notice that on October 9, 1987, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-17-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity to provide transportation service on behalf of Mississippi River Transmission Corporation (MRT), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NGPL states in entered into a Limited Term Gas Transportation Agreement with MRT dated October 25, 1983, as amended, to provide on an interruptible basis transportation of up to a maximum of 200,000 MMBtu of natural gas per day for MRT from receipt points in Custer, Woodward, Grady, Dewey and Washita Counties, Oklahoma to delivery points in Clinton County, Illinois, Randolph County, Arkansas, Harrison County, Texas and Cameron and Vermilion Parishes, Louisiana pursuant to the transitional provisions of Order No. 436, *et al.* and Subpart G of Part of 284 of the Commission's Regulations. NGPL's "grandfathered" transportation service for MRT expired on October 9, 1987, pursuant to § 284.105 of the Natural Gas Policy Act of 1978.

NGPL proposes to extend the transportation service for MRT for a period extending through October 9, 1988 and for successive one (1) month terms thereafter.

NGPL states it currently receives natural gas for the account of MRT at the existing point of interconnection between the facilities of NGPL and those of: (1) Lear Gas Transmission Company (Lear), an intrastate pipeline, formerly known as Producer's Gas Company, located in Custer County, Oklahoma; (2) Lear located in Dewey County, Oklahoma; (3) Lear located in

Grady County, Oklahoma; (4) ONG Transmission Company (ONG), an intrastate pipeline, located in Custer County, Oklahoma; (5) ONG located in Woodward County, Oklahoma; (6) Delhi Gas Pipeline Corporation located in Custer County, Oklahoma; and (7) Enogex Inc. an intrastate pipeline, formerly known as Mustang Fuel Corporation located in Washita County, Oklahoma.

NGPL states it currently redelivers natural gas for the account of MRT at the following points of delivery: (1) The existing point of interconnection between the facilities of NGPL and those of MRT located in Clinton County, Illinois; (2) the existing point of interconnection between the facilities of NGPL and those of MRT located in Harrison County, Texas; (3) the existing point of interconnection between the facilities of NGPL and those MRT located in Randolph County, Arkansas; (4) the existing point of interconnection between the facilities of NGPL and those of ANR Pipeline Company located in Cameron Parish, Louisiana;[1] and (5) the existing point of interconnection between the facilities of NGPL and those of Dow Intrastate Pipeline Company located in Vermilion Parish, Louisiana.[1] NGPL further states no new facilities will be required for the continuation of this service.

NGPL also proposes to reduce the volumes of gas redelivered to MRT by certain percentages for fuel consumed and lost and unaccounted for gas or will charge MRT for fuel used and lost and unaccounted for gas as provided for in the agreement, as amended.

NGPL proposes to charge MRT the following transportation rates:

TRANSPORTATION RATES (CENTS/MMBTU)
DELIVERY POINTS

Point of Receipt	Clinton Co., IL	Harrison Co., TX	Randolph Co., AR	Cameron Par., LA	Vermilion Par., LA
Custer Co., OK	29.61	9.22	29.61	14.88	14.88
Dewey Co., OK	29.61	9.22	29.61	14.88	14.88
Grady Co., OK	29.61	6.72	29.61	12.38	12.38
Woodward Co., OK	29.61	11.04	29.61	16.90	16.90
Washita Co., OK	29.61	9.22	29.61	14.88	14.88

[1] NGPL has been informed by MRT that this delivery point will not be used at this time. Consequently, arrangement have not been made by MRT for the delivery of gas by NGPL to the designated party at this delivery point. Although NGPL has included this delivery point in it's application, it recognizes that appropriate authorization must be obtained by the designated party before NGPL's service to this delivery point can commence.

NGPL also proposes to charge MRT an incremental amount of two tenths of a cent (0.02) per MMBtu for the Annual Charges Adjustment pursuant to Commission order issued September 29, 1987, in Docket No. RP87-109-000, *et al.*, (NGPL's Docket No. RP87-97-000), effective October 1, 1987.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 3, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10)). All protests filed with the Commission will be considererd by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NGPL to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 88-24490 Filed 10-21-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-11-000]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

October 15, 1987.

Take notice that on October 7, 1987, Northwest Pipeline Corporation ("Northwest") submitted for filing, Seventh Revised Sheet No. 127, to be a part of its FERC Gas Tariff, First Revised Volume No. 1.

Northwest states that Seventh Revised Sheet No. 127 revises paragraph (C) of section 16.7 of the General Terms and Conditions of its First Revised Volume No. 1 to provide for the pass-through of all demand credit amounts which it receives from Westcoast to its jurisdictional customers. This revision allows for the pass-through of all demand credits rather than just the pass-through of off-system sales credits which are currently in the tariff language.

Northwest requests waiver of the Commisison's regulations to permit an effective date of January 1, 1987 for the tendered tariff sheet. A copy of this filing has been mailed to all jurisdictional customers and affected state commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 22, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-24491 Filed 10-21-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC88-1-000]

Tariff Sheet Filing; Southwest Gas Corp.

October 16, 1987.

Take notice that on October 5, 1987, Southwest Gas Corporation (Applicant).

5241 Spring Mountain Road, P.O. Box 15015, Las Vegas, Nevada 89114–5015, filed seventh Revised Tariff Sheet No. 25C to its FERC Gas Tariff, Original Volume No. 1, to become effective November 1, 1987, pursuant to § 281.204(b) of the Commission's Regulations which requires interstate pipelines to update their indices of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before October 30, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.214) or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–24492 Filed 10–21–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–9–000]

Southwest Gas Corp.; Establishment of Annual Charge Adjustment Clause and Change in Rates

October 15, 1987.

Take notice that Southwest Gas Corporation (Southwest) on October 5, 1987, tendered for filing Thirty-sixth Revised Sheet No. 10 and Second Revised Sheet No. 35 applicable to its FERC Gas Tariff, Original Volume No. 1. The purpose of said filing is to establish an annual charge adjustment (ACA) clause in Southwest's FERC Gas Tariff and set forth the applicable ACA surcharge in Southwest's interstate pipeline sales rate schedule in accordance with Order Nos. 472 and 472–B issued in Docket No. RM87–3. Order Nos. 472, *et seq.*, which provide for annual charges to natural gas pipelines under the Omnibus Budget Reconciliation Act of 1986, authorize such pipeline companies to pass along the annual charges to their customers through an ACA clause pending approval of such clause by the Commission.

Southwest has requested waiver of the notice requirements and any other applicable Commission regulations as may be necessary so as to permit the tendered tariff sheets to become effective October 1, 1987.

Southwest states that copies of this filing have been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National Corporation.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214. All such motions or protests should be filed on or before October 22, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–24489 Filed 10–21–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP87–196–007]

Petition to Amend; Transcontinental Gas Pipe Line

October 16, 1987.

Take notice that on October 15, 1987,[1] Transcontinental Gas Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP87–196–007 a petition to amend the Commission's April 18, 1987, Order issued in Docket No. CP87–196–000, *et al.*, pursuant to section 7(c) of the Natural Gas Act so as to (1) reallocate for a limited term 0.4 Bcf of storage capacity and 5,300 dekatherms (dt) per day of storage deliverability which will be available during the 1987–88 winter period, and (2) obtain temporary certification of the petition to amend pursuant to § 157.17 of the Commission's Regulations in order to enable Petitioner to receive customer storage quantities for injection prior to the commencement of the withdrawal season on November 1, 1987, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner explains that on February 8, 1987, it filed an application for a certificate of public convenience and necessity requesting authorization to provide 9.0 Bcf of firm storage capacity and 120.00 dt/d of firm storage deliverability to six existing distribution customers under Rate Schedule SS–1; Atlanta Gas Light Company (Atlanta), Elizabethtown Gas Company (Elizabethtown), Long Island Lighting Company (LILCO), Public Service Electric and Gas Company(PSE&G), South Jersey Gas Company (South Jersey) and Brooklyn Union Gas Company (Brooklyn Union).

It is further explained that on February 10, 1987, Consolidated Gas Transmission Corporation (Consolidated) and North Penn Gas Company (North Penn) filed a joint application seeking, *inter alia*, authority to revise their existing operating plan for the jointly-owned Tioga Storage Complex and to increase the storage capacity of the Tioga Storage Complex by installing additional compression facilities. Petitioner states that North Penn and Consolidated also requested authorization to provide a firm storage service and a firm transportation service, respectively, for Petitioner, which services will be utilized to enable Petitioner to provide SS–1 Storage Service to its customers.

It is stated by order issued August 18, 1987, the Commission authorized Petitioner, subject to certain conditions, to provide Rate Schedule SS–1 storage service to its six resale customers. Petitioner now states, that because delays were encountered and regulatory approval was not received until after July 1, 1987, it is not possible to complete construction of all the necessary facilities in time to provide the full 120,000 dt/d level of service during the 1987–88 winter period. Petitioner now states the sufficient time exists to enable Petitioner, Consolidated and North Penn to construct a portion of the authorized facilities in order to enable Petitioner to render 6 Bcf and 80,000 dt/d of the authorized Rate Schedule SS–1 storage service this winter. Consolidated has advised petitioner that it has scheduled to complete construction of sufficient pipeline capacity on its system this year to enable Consolidated to receive and deliver the 6 Bcf of storage capacity and

[1] The petition to amend was tendered for filing on October 5, 1987; however the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until October 15, 1987. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

80,000 dt/d of deliverability which North Penn will have available on a firm basis during the 1987–88 winter period.

Petitioner states that Atlanta, Elizabethtown and South Jersey have requested the right to forego the receipt of service until 1988, while LILCO, PSE&C and Brooklyn Union have requested their full Rate Schedule SS–1 contract entitlement plus the right to receive any remaining storage service which customers have elected not to utilize this year. Therefore, it is stated that in order to reallocate the remaining storage service, which otherwise would not be utilized, to the three customers requesting service this year, Petitioner requests that the following certificated levels of service be increased to the interim levels during the 1987–88 winter season.

	Certificated level of service		Increased interim level of service	
	Capacity (Bcf)	Demand (dt/d)	Capacity (Bcf)	Demand (dt/d)
LILCO	1.3074	17,432	1.4006	18,675
PSE&G	3.2475	43,300	3.4790	46,386
Brooklyn Union	1.00459	13,945	1.12.04	14,939
Total	5.6008	74,677	6.0000	80,000

Petitioner states that deliveries of the increased Rate Schedule SS–1 quantities will be prorated among each customers' delivery points and corresponding adjustments to each customers monthly demand charges will be implemented to reflect the increased levels of service during the interim period.

Petitioner states that the increased levels of service to Brooklyn Union, LILCO and PSE&G will be rendered at the authorized rates and pursuant to the terms and conditions of service of Petitioner's Rate Schedule SS–1. Petitioner states further that when initial nominations for SS–1 service were received, total nominations exceeded the level of available service. Therefore, Petitioner states that when service was allocated among its customers, nominations—including nominations from the above three customers—were reduced ratably. Consequently, Petitioner submits that the public convenience and necessity would be served by granting the amendment expeditiously and reallocating to Brooklyn Union, LILCO and PSE&G the remaining storage service which is available and which otherwise will not be utilized during the 1987–88 winter period.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 3, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–24493 Filed 10–21–87; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–44021; FRL–3281–6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces test data submissions received by EPA during July–September 1987 from voluntary industry testing programs on certain chemical substances or groups of chemicals considered by EPA under section 4 of the Toxic Substances Control Act (TSCA).

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

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires the EPA to issue a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a). In the **Federal Register** of June 30, 1986 (51 FR 23705), EPA issued procedures for entering into Enforceable Consent Agreements (ECAs) under section 4 of TSCA. Those procedures provide that EPA will follow the procedures specified in section 4(d) in providing notice of test data received pursuant to ECAs. In addition, EPA from time to time receives industry submissions of test data developed voluntarily (*i.e.*, not under test rules or ECAs) or chemicals EPA has considered for testing under section 4. Although not required by section 4(d), EPA issues periodically notices of receipt of such test data.

I. Test Data Submissions

This notice announces test data submissions received during July–September 1987 from voluntary industry testing programs.

The following table lists the chemicals by Chemical Abstracts Service Registry Number (CAS No.), date received, submitter, and study.

TABLE 1—VOLUNTARY TEST DATA SUBMISSIONS UNDER TSCA SECTION 4, 4th QUARTER (JULY—SEPTEMBER) FY 87

Chemical	CAS No.	Date Rec'd.	Submitter	Study
Propylene oxide	75–56–9	July 7, 1987	ARCO Chemical Co.	Range-finding developmental toxicity study (inhalation) in Fischer 344 rats.
Diethylene glycol monobutyl ether.	112–34–5	Aug. 19, 1987.	[1] CMA	Bone marrow micronucleus test in mouse.
Do.	112–34–5	do	do	Hypoxanthine-guanine-phosphoribosyl-trans-ferase (HGPRT) forward mutation assay in Chinese hamster ovary (CHO) cells.
Biphenyl	92–52–4	Sep. 15, 1987.	[2] SOCMA	96-hour static embryo-larval (Salmo gairdneri) acute test.
Do.	92–52–4	do	do	192-hour flow-through embryo-larval (*S. gairdneri*) acute test.
2-Phenoxy-ethanol	122–99–6	Sep. 23, 1987.	Dow Chemical Co	HGPRT forward mutation assay in CHO cells.

[1] Chemical Manufacturers Association.
[2] Synthetic Organic Chemical Manufacturers Association, Inc.

EPA has established a public record for this quarterly receipt of data notice (docket number OPTS–44021). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OPTS Reading Room, NE–G004, 401 M Street SW., Washington, DC 20460.

Dated: October 16, 1987.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 87–24567 Filed 6–21–87; 8:45am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Addison Broadcasting Co., Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MMDocket No.
A. Addison Broadcasting Co, Inc., Ellwood, CA.	BPH–850709MQ	87–429
B. Robert A. Benns, Ellwood, CA.	BPH–850710NB	
C. Thomas M. Eells, Ellwood, CA.	BPH–850711OT	
D. Deborah Blair Thomas and Kinnon Thomas, dj/b/a Blair Media, Ellwood, CA.	BPH–850711OU	
E. Lorrain L. Chow, Ellwood, CA.	BPH–850712V9	
F. Video Services Broadcasting Corp., Ellwood, CA.	BPH–850712V9	
G. Susan Lundborg, Ellwood, CA.	BPH–850712WT	
H. Starlight Broadcasting Company, Inc., Ellwood, CA.	BPH–850712WU	
I. Susan Marie Beth Romaine, Ellwood, CA.	BPH–850712WW	
J. Marigold Broadcasting, Inc., Ellwood, CA.	BPH–850712WV	
K. Patricia Ann Sauro, Ellwood, CA.	BPH–850712WZ	
L. Ross H. Boyd, Ellwood, CA.	BPH–850712W1	
M. Ellwood Beach Broadcasters, Inc., Ellwood, CA.	BPH–850712W3	
N. Commercial Broadcast Co., Ellwood, CA.	BPH–850712W3	
O. Ellwood FM Services Partners, A California Limited Partnership, Ellwood, CA.	BPH–850712XC	
P. KIKJ Company, Ellwood, CA.	BPH–850712XD	
Q. George Aguilar Baron d/b/a Baron Broadcasting, Ellwood, CA.	BPH–850712XE	
R. Dos Compadres Communications, Inc., Ellwood, CA.	BPH–850712XO	
S. Roselle Radio, Ltd., Ellwood, CA.	BPH–850712XT	
T. Vince Lee Broadcasting Ltd., Ellwood, CA.	BPH–850712Y7	
U. C & A Broadcasting, A Limited Partnership, Ellwood, CA.	BPH–850712W2	(Dismissed).

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 F.R. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading Applicant(s)

1. (See Appendix), All.
2. Environmental Impact, All.
3. Comparative, All.
4. Ultimate, All.

3. If there is any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set fourth in an Appendix to this Notice. A copy of the complete HDO in this proceeding 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 may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

1. To determine the correct height of the KEYT-TV tower.

[FR Doc. 87–24467 Filed 10–21–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Jerome Gillman, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Jerome Gillman, Inc., Wurtsboro, NY.	BPH–831201AE	87–428
B. Preston Mark Pollack and Susan Lea Pollack, Wurtsboro, NY.	BPH–840605ID	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to the particular applicant.

Issued Heading Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which is applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding 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 may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–24468 Filed 10–21–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–794–DR]

Amendment to Notice of a Major-Disaster Declaration; Oklahoma

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–794–DR), dated July 9, 1987, and related determinations.

DATED: October 8, 1987.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency

Management Agency, Washington, DC 20472, (202) 646–3614

Notice: The notice of a major disaster for the State of Oklahoma, dated July 9, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1987:

The City of Pauls Valley in Garvin County for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 87–24457 Filed 10–21–87; 8:45 am]

BILLING CODE 6718–02–M

Training and Fire Programs Directorate; Board of Vistors for the National Fire Academy; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy (NFA).

Dates of Meeting: November 16–17, 1987.

Place: National Emergency Training Center, G BLdg., 2nd Floor Conference Room, Emmitsburg, Maryland 21727.

Time:

November 16—8:30 a.m. to 5:00 p.m.

November 17—8:30 a.m. to agenda completion

Proposed Agenda: Old Business, New Business; BOV Visitation to NFA Classes and Facilities Survey.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, Training and Fire Programs Directorate, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301–447–1123) on or before November 9, 1987.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Training and Fire Programs Directorate, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD, 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Caesar A. Roy,

Deputy Associate Director, Training and Fire Programs.

Dated: September 16, 1987.

[FR Doc. 87–24455 Filed 10–21–87; 8:45 am]

BILLING CODE 6718–01–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.: 202–002744–060.

Title: Atlantic and Gulf/West Coast of South America Conference.

Parties:

Compania Chilena De Navigacion Interoceania, S.A.
Compania Sud Americana De Vapores, S.A.
Lykes Bros. Steamship Co., Inc.
Compania Peruana De Vapores
Lineas Navieras Bolivianas, S.A.M.

Synopsis: The proposed amendment would republish the agreement in its entirety and permit the parties to: (1) Establish rates on excepted commodities; (2) file tariffs which may include rates on excepted commodities; (3) take independent action with respect to any level of compensation paid to an ocean freight forwarder who is also a custom broker; and (4) enter into service contracts concerning excepted commodities and to prohibit an individual member from doing so. The amendment also deletes Article 21 (Effectiveness of Agreement) in its entirety.

Agreement No.: 203–010869–001.

Title: Mediterranean/U.S.A. Associated Parties Agreement.

Parties:

South Europe/U.S.A. Freight Conference

South Europe/U.S.A. Pool Agreement

Synopsis: The proposed amendement makes various clarifying revisions to reflect changes in the names of the parties and of the agreement as listed above, as well as the conduct of meetings and the implementation of agreements. It would also amend the geographic scope to be consistent with that of the South Europe/U.S.A. Freight Conference.

Agreement No.: 203–010999–001.

Title: Ecuador Discussion Agreement.

Parties:

United States Atlantic and Gulf/Ecuador Freight Association
Naviera Consolidada, S.A.

Synopsis: The proposed amendment would admit Transportes Navieros Equatorianos as a party to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 19, 1987.

[FR Doc. 87–24430 Filed 10–21–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Dominion Bankshares Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications

must be received not later than November 10, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia. 23261:

1. *Dominion Bankshares Corporation,* Roanoke, Virginia; to merge with Franklin First National Corporation, Decherd, Tennessee, and thereby indirectly acquire The First National Bank of Franklin County at Decherd, Decherd, Tennessee.

2. *Dominion Bankshares Corporation,* Roanoke, Virginia; to merge with The Peoples National Bancorp, Inc., Shelbyville, Tennessee, and thereby indirectly acquire The Peoples National Bank of Shelbyville, Shelbyville, Tennessee.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Roseville Bankshares, Inc.,* Roseville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Roseville State Bank, Roseville, Illinois.

Board of Governors of the Federal Reserve System, October 16, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24431 Filed 10-21-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 6, 1987.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Hazel B. Mittet,* Rapid City, South Dakota; to acquire 30.4 percent, and Faye B. Jones, Midland, South Dakota, to acquire 32.4 percent of the voting shares of Philip Bancorporation, Inc., Philip, South Dakota, and thereby indirectly acquire First National Bank, Philip, South Dakota.

Board of Governors of the Federal Reserve System, October 16, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-24432 Filed 10-21-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87P-0274]

Canned Green Beans Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Seymour Canning Co. to market test experimental packs of canned green beans containing added glucono delta-lactone. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATE: The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0121.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Seymour Canning Co., 530 East Wisconsin St., P.O. Box 5, Seymour, WI 54165.

The permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added glucono delta-lactone in an amount reasonably necessary to maintain an equilibrium pH below 4.6 (up to a maximum of 0.62 percent of the net weight of the finished product). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 10,000 cases containing 24 No. 303 X 406 cans each and 20,000 cases containing 6 No. 603 X 700 cans each of the test product. The experimental packs of the test product will be distributed in the States of Indiana, Michigan, Minnesota, Ohio, and Wisconsin. The test product is to be manufactured at the Seymour Canning Co. plant located in Seymour, WI.

The principal display panel of the label states the product name as "Cut Green Beans" and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than January 19, 1988.

Dated: October 9, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-24435 Filed 10-21-87; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting: **Dallas District Office,** chaired by Gerald E. Vince, District Director. The topic to be discussed is health messages on food labels.

DATE: Friday, October 30, 1987, 10 a.m. to 12 m.

ADDRESS: Food and Drug Administration Office, 1445 North Loop West, Suite 420, Houston, TX 77008.

FOR FURTHER INFORMATION CONTACT: Sheryl Lunnon-Baylor, Consumer Affairs Officer, Food and Drug Administration, 1445 North Loop West, Suite 420, Houston, TX 77008, 713-229-3530.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 15, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-24436 Filed 10-21-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-040-4410-08]

Plan Amendments for the Lemhi Resource Management Plan et al.; Critical Environmental Concern

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability-Proposal to amend the Lemhi Resource Management Plan (RMP), the Challis Management Framework Plan (MFP), the Mackay MFP and the Ellis-Pahsimeroi MFP to designate 10 Research Natural Areas (RNAs)/Areas of Critical Environmental Concern (ACECS).

NOTICE: Notice is hereby given that the Proposed Plan Amendments for the Lemhi RMP, the Challis MFP, the Mackay MFP, and the Ellis-Phasimeroi MFP to designate 10 RNA/ACECSs and ACECs is available.

SUMMARY: The following 10 areas are proposed for designation as Research Natural Areas/Areas of Critical Environmental Concern or ACEC.

(1) Designate 236 acres of Upper Trail Creek in the Lemhi Resource Area as an RNA/ACEC.

(2) Designate 8,516 acres in Malm Gulch/Germer Basin in the Challis Resource Area as an ACEC, within which 2,643 acres would be designated RNA/ACEC.

(3) Designate 572 acres in Antelope Flat in the Challis Resource Area as an RNA/ACEC.

(4) Designate 802 acres in Peck's Canyon in the Challis Resource area as an RNA/ACEC.

(5) Designate the East Fork Salmon River Bench (76 acres) in the Challis Resource Area as an RNA/ACEC.

(6) Designate 1,450 acres in Cronk's Canyon in the Challis Resource Area as an ACEC, within which 362 acres would be identified as an RNA/ACEC.

(7) Designate 1,060 acres in Sevenmile Creek in the Lemhi Resource Area as an ACEC.

(8) Designate 305 acres with the Summit Creek Exclosure in the Challis Resource Area as an ACEC, within which 230 acres would be identified as an RNA/ACEC.

(9) Designate 2,064 acres of the Upper Lake Creek basin above Herd Lake in the Challis Resource Area as an ACEC. Within this ACEC, 1060 acres would be designated RNA/ACEC.

(10) Designate 824 acres in Thousand Springs in the Challis resource area as an ACEC, within which 252 acres would be designated as an RNA/ACEC.

The following Management Actions are common to all of the RNA/ACECs and ACECs and *will* be required for implementation:

(1) Approved plans of operation will be required prior to any mining operations, except casual use (42 CFR 3809.1-4(b)(1)).

(2) Any new leases for fluid minerals on the areas will be subject to no surface occupancy restrictions. Any such restriction would be subject to existing leases.

(3) Any new right-of-way applications will be reviewed to see if the proposal would negatively affect or enhance the values for which the area was designated as a special area. If the right-of-way would adversely affect the area's quality as an RNA/ACEC, the right-of-way would be denied.

(4) Follow modified fire suppression.

The following Management Actions common to all of the RNA/ACECs and ACECs *may* be required for implementation:

(1) Withdraw lands from mineral entry (1872 Mining Law) subject to existing rights, provided that later studies and analysis indicate that such a withdrawal would provide significant benefits to the resources the RNA/ACEC or ACEC was designed to protect.

(2) Areas designated as RNA/ACEC or ACEC will be closed to solid mineral leasing if later studies and analysis showed that such closure will provide significant benefits to the resources that the RNA/ACEC or ACEC was designed to protect.

Besides the management actions common to all of the RNA/ACECs and ACECs there are actions which would be specific for each RNA/ACEC or ACEC. Information about the specific actions for each RNA/ACEC or ACEC can be obtained from the Salmon BLM District Office.

SUPPLEMENTARY INFORMATION: Detailed information about the RNA/ACECs and ACECs can be obtained by contacting Lyle Lewis, District Hydrologist, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467, phone (208) 756-5400.

Planning Protest

Any party that participated in the plan amendments and is adversely affected by the amendments may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the Director (760), Bureau of Land Management, 1800 "C" Street, NW., Washington, DC 20240, within 30 days of this notice. The procedures for filing a protest are listed in the "Dear Reader" letter included with the proposed plan and listed in 43 CFR 1610.5-2.

Designation

In the absence of any planning protests this action will become the final determination of the Department of the Interior and the Plan Amendments will be in effect.

Dated: October 15, 1987.

Jerry W. Goodman,

District Manager.

[FR Doc. 87-24437 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-84-M

Bakersfield District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bakersfield District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) and the Federal Land Policy and Management Act (Pub. L. 94-579) that the Bakersfield District Grazing Advisory Board will meet formally from 10 a.m. to 3 p.m. on Friday, November 20, 1987 in Room 335 of the Federal Building, 800 Truxtun Avenue, Bakersfield, California.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include discussion of FY87 project accomplishments, FY 88 planned projects, and coordinated resource management.

The meeting is open to the public. Interested persons may make oral statements to the Board, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify, in writing, the Bakersfield District Manager (Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301) by November 17, 1987.

Summary minutes of the meeting will be maintained in the Bakersfield District Office and will be available for reproduction, during business hours, within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Tim Burke, District Range Conservationist, Bureau of Land Management, 800 Truxtun Ave., Room 311, Bakersfield, CA 93301; (805) 861-4191.

Date: October 13, 1987.

Robert D. Rheiner, Jr.

District Manager.

[FR Doc. 87-24507 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-40-M

[WY-920-08-4121-10]

Powder River Regional Coal Team (RCT); Rescheduling of Meeting

ACTION: Public notice.

SUMMARY: The Powder River Regional Coal Team (RCT) meeting, which was scheduled for October 29, 1987, is rescheduled.

DATE: The RCT will now meet at 8:30 a.m. on November 10, 1987.

ADDRESS: The RCT meeting will be held at the original location, which remains the Holiday Inn of Sheridan, 1809 Sugarland Drive, Sheridan, Wyoming 82801; telephone (307) 672-8931.

FOR FURTHER INFORMATION CONTACT: Don Brabson, telephone (307) 772-2571 or FTS 328-2571.

SUPPLEMENTARY INFORMATION: By **Federal Register** notice dated July 31, 1987, the Bureau of Land Management announced a Powder River RCT meeting for October 29, 1987. That meeting is rescheduled to November 10, 1987. The agenda items, as announced in the **Federal Register** notice of July 31, 1987, will remain as is.

October 16, 1987.

Hillary A. Oden,

State Director.

[FR Doc. 87-24428 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-22-M

[UT-050-08-4322-14]

Grazing Advisory Board Meeting and Tour; Richfield District

AGENCY: Bureau of Land Management, Richfield, Utah.

ACTION: District Grazing Advisory Board Meeting and Field Tour.

SUMMARY: The Richfield District Grazing Advisory Board will hold a meeting and field tour on November 17 and 18, 1987. The meeting on November 17 will begin at 9:00 a.m. in the District Office.

Agenda For The Meeting Will Be

1. Election of Officers.
2. Weed Program Update.
3. Grazing Allotment Changes.
4. Proposed FY 88 Range Projects.
5. Mount Ellen Rehabilitation Project.
6. Livestock Trespass.
7. Update on the Henry Mountain CRMP.
8. Update on the Henry Mountain RPS.
9. Update on the Mountain Valley RPS.
10. Update on Proposed Grazing Regulation and Grazing Fee.
11. Update on the Warm Springs and House Range ROD.

The field tour is scheduled for November 18 to review the range rehabilitation work done in the Sand Ledge Area. Individuals wishing to go on the tour need to furnish their own transportation.

Interested persons may make oral statements to the Board between 2:00 p.m. and 3:00 p.m. or file written comments for the Board's consideration. Anyone wishing to make an oral statement or participate in the tour must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

October 16, 1987.

Neil D. Thomas,

Acting District Manager.

[FR Doc. 87-24451 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-DQ-M

[AA-48557-P]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48557-P has been received covering the following lands:

Copper River Meridian, Alaska

T. 7 S., R. 1 E.
Sec. 4, S½SE¼.
(80 acres).

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $10 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accuring from May 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48557-P as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1987, subject to the terms and conditins cited above.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

Dated: October 14, 1987.

[FR Doc. 87-24438 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-JA-W

[MT-920-08-4111-13; MTM 62858]

Proposed Reinstatement of Terminated Oil and Gas Lease; Carbon County, MT

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease MTM 62858, Carbon County, Montana, was timely filed and accompanied by the required accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent respectively. Payment of a $500 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: October 4, 1987.

June A. Bailey,

Chief, Leasing Unit.

[FR Doc. 87-24508 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-020-4212-12; A 21809]

Realty Action Federal Land Exchange in La Paz County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Reissuance of notice of realty action—exchange of public lands in La Paz County for State of Arizona Lands.

SUMMARY: All or portions of the following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Gila and Salt River Meridan, Arizona

T. 7 N., R. 13 W.,
Sec. 6;
T. 7 N., R. 14 W.,
Sec. 7, 11, 14, 15, 21, 22, 28-31;
T. 7 N., R. 15 W.,
Sec. 1, 8, 22, 26, 36;
T. 8 N., R. 13 W.,
Sec. 7, 18-21, 29-31;
T. 8 N., R. 14 W.,
Sec. 8-17, 20, 22, 27, 28, 31, 35.

Comprising 19,782.04 acres of public land.

In exchange for these lands, the federal government will acquire all or portions of

nonfederal land from the Arizona State Land Department, described as follows:

Gila and Salt River Meridian, Arizona

T. 39 N., R. 5 E.,
Sec. 36;
T. 18 N., R. 15 W.,
Sec. 16, 32, 36;
T. 41 N., R. 6 W.,
Sec. 2, 10, 16;
T. 42 N., R. 6 W.,
Sec. 32;
T. 34 N., R. 8 W.,
Sec. 2, 32;
T. 35 N., R. 8 W.,
Sec. 16;
T. 34 N., R. 9 W.,
Sec. 36;
T. 23 N., R. 11 W.,
Sec. 4, 6, 8, 10, 16, 18, 20, 28, 30, 32;
T. 24 N., R. 11 W.,
Sec. 16, 32, 36;
T. 23 N., R. 12 W.,
Sec. 8, 10, 14, 16, 24, 32, 36;
T. 24 N., R. 12 W.,
Sec. 2, 8, 10, 12, 14, 16, 20, 22, 30, 32, 36;
T. 24 N., R. 13 W.,
Sec. 2, 12, 14, 16, 24, 26, 28, 32, 34, 36;
T. 25 N., R. 13 W.,
Sec. 16;
T. 41 N., R. 13 W.,
Sec. 16;
T. 38 N., R. 14 W.,
Sec. 2;
T. 41 N., R. 14 W.,
Sec. 2, 16;
T. 18 N., R. 15 W.,
Sec. 16, 32, 36;
T. 38 N., R. 15 W.,
Sec. 2, 16;

Comprising 33,535.61 acres of land owned by the State of Arizona.

The exchange proposal involves the surface and mineral estate of the state land and the surface and mineral estate of the public land with the exception of existing oil and gas leases which will be reserved to the government until lease expiration. The exchange has been proposed in the Bureau's planning system.

Value of the lands and interests to be exchanged have been determined by appraisals.

Lands transferred from the United States will be subject to the following reservations, terms and conditions.

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat 391.43 U.S.C. 945.

2. A reservation of all existing oil and gas leases until lease termination.

3. All valid existing rights and reservations of record on the date of patenting.

A complete list of legal descriptions for the lands listed in this Notice is available at the Phoenix District Office.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this Notice, from appropriations under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation: Or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona.

Henri R. Bisson,
District Manager.
Date: October 13, 1987.

[FR Doc. 87-24444 Filed 10-21-87; 8:45 am]
BILLING CODE 4310-32-M

[AZ020-8-4212-13; A-18908]

Public Lands Exchange; Yavapai County, AZ

AGENCY: Bureau of Land Management (BLM) Interior.

ACTION: Notice of realty action; exchange of public lands in Yavapai County, Arizona.

SUMMARY: The following described public lands are being considered for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 13 N., R. 4 W.,
Sec. 24, All;
Sec. 25, All;
Sec. 26, All exclusive of patented mill site claims
Sec. 27, All;
Sec. 28, N½, SE¼.

Comprising 3,020 acres of public land.

In exchange for these lands the Federal government will acquire non-Federal land from Phelps Dodge Corporation, located within the Prescott, Coconino and Apache-Sitgreaves National Forests.

The exchange proposal involves the surface and mineral estate of the public land with the exception of oil and gas.

Purpose of the exchange is to acquire non-Federal land located within the boundaries of the previously listed National Forests.

Publication of this notice in the **Federal Register** will segregate the public lands described herein to the extent they will not be subject to appropriation under the public land laws, including the mining laws. As set forth in 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. This segregative effect shall terminate upon issuance of patent to such lands, upon publication in the **Federal Register** of a termination of the segregation, or two years from date of this publication, whichever occurs first.

ADDRESS: For a period of 45 days, interested parties may submit comments to: Bureau of Land Management, District Manager, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Herman L. Kast,
Associate District Manager.
Date: October 16, 1987.

[FR Doc. 87-24446 Filed 10-21-87; 8:45 am]
BILLING CODE 4310-32-M

[AZ-940-4212-13; A-19162]

Conveyance of Public Land: Pima County, AZ

October 13, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the completion of an exchange between the United States and John J. Woodin.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office, (602) 241-5534.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management transferred the following described land on June 3, 1987, by Patent No. 02-87-0032, pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976:.

Gila and Salt River Meridian, Arizona

T. 12 S., R. 11 E.,
Sec. 33, lots 2, 6, 7, 11, 13, S½ of lot 3, E½SW¼NE¼, E½E½W½SW¼NE¼, E½W½E½W½SW¼NE¼;

Containing 237.41 acres in Pima County, Arizona.

In exchange the surface in the following described land was reconveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 11 S., R. 8 E.,
Sec. 36, N½N½NE ¼, SW¼NW¼NE¼, N½SE¼NE¼NE¼, SW¼NE¼, W½SE¼NE¼, SE¼SE¼NE¼, W½NE¼SE¼NE¼, NW¼;

Containing 290.00 acres in Pima County, Arizona.

The mineral estate in the above-described land is owned by the State of Arizona and, therefore, will not be subject to entry under the United States Mining or Mineral Leasing Laws.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and the acquisition of private land by the Federal Goverment.

John T. Mezes

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-24443 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-32-M

[OR 43308; OR-100-08-4212-21; GP8-007]

Realty Action; Lease; Douglas County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-competitive lease of a land parcel in Douglas County, Oregon.

ADDRESS: 777 NW. Garden Valley Blvd., Roseburg, Oregon 97470.

FOR FURTHER INFORMATION CONTACT: Dave Baker, North Umpqua Resource Area Manager (503) 672-4491.

The following described land (revested Oregon and California railroad grant land) has been examined and identified as suitable for lease under section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1740), at not less than the fair market value: Portion of Lot 17 of Section 3, T. 27 S., R. 2 W., W.M.

The purpose of this lease is to authorize the residential use of a parcel of land containing 0.06 acres more or less. The triangular shaped parcel is located approximately 400 feet east of the S1/16 corner of sections 3 and 4, T. 27 S., R. 2 W., W.M. Because the private improvements already exist, the land will not be offered for lease through competitive bidding. The tract is to be leased to Mr. and Mrs. Michael A. Maurice of Little River Road, Glide, Oregon 97443 for a period of ten years with an option to renew.

The tract presently contains a portion of a mobile home, a satellite dish, a storage shed, and portions of the Maurice's yard. The proposed lease will settle an unintentional unauthorized occupancy.

Detailed information concerning this proposed lease, including land report and environmental analysis is available for review of the Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, Roseburg, Oregon. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: October 16, 1987.

Richard G. Burch,

Acting District Manager.

[FR Doc. 87-24439 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-33-M

[CO-942-06-4520-12]

Colorado; Filing of Plats of Survey

October 15, 1987.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., October 15, 1987.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of section 20, T. 50 N., R. 11 E., New Mexico Principal Meridian, Colorado for Group No. 863, was accepted October 9, 1987.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215

Jack A. Eaves

Chief, Cadastral Surveyor, for Colorado.

[FR Doc. 87-24450 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-JB-M

[NM-940-084520-1]

Filing of Plat of Survey; New Mexico

October 15, 1987.

The plat of surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on the dates shown.

The surveys representing:

The dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, the adjusted record meanders of the left bank of the Red River, in sections 19 and 20, and Tract 686, in section 20, the subdivision of section 20, and the survey of the meanders of the present left bank of the Red River, in sections 19 and 20, and the survey of the partition of accretion lines to former lots 1 and 2, section 20, Township 8 South, Range 12 East, Indian Meridian, Oklahoma, executed under Group 48, Oklahoma, filed September 16, 1987.

This survey was requested by the Area Director, Bureau of Indian Affairs, Muskogee, Oklahoma.

A survey representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sec. 16, and the survey of the right-of-way of the Chicago-Rhode Island and Pacific Railroad through a portion of sec. 16, Township 12 North, Range 17 West, Indian Meridian, Oklahoma, executed under Group 40, Oklahoma, filed October 9, 1987.

A survey representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 20, and the metes and bounds survey of certain Indian trust lands in section 20, Township 1 South, Range 13 West, of the Indian Meridian, Oklahoma, executed under Group 40, Oklahoma, filed August 31, 1987.

A survey representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the subdivision of section 25, Township 14 North, Range 10 West, Indian Meridian, Oklahoma, executed under Group 49, Oklahoma, filed October 9, 1987.

These surveys were requested by the Area Director, Bureau of Indian Affairs, Anadarko, Oklahoma.

A survey representing the dependent resurvey of a portion of the subdivisional lines, and the survey of a portion of the meanders of the present left bank of the Washita River in section 15, Township 7 North, Range 10 West, Indian Meridian, Oklahoma, executed under Group 52, Oklahoma, filed September 16, 1987.

The dependent resurvey of a portion of the subdivisional lines, the adjusted 1874 meanders of a portion of the right bank of the Washita River in section 15, and the survey of a portion of the meanders of the present right bank of the Washita River in section 15, Township 7 North, Range 11 West, Indian Meridian, Oklahoma, executed under Group 52, Oklahoma, filed September 16, 1987.

The dependent resurvey of a portion of the subdivisional lines, and the adjusted record meanders of the left bank of the Canadian River in section 11, Township 8 North, Range 3 West, Indian Meridian, Oklahoma, executed under Group 52 Oklahoma, filed October 9, 1987.

These surveys were requested by the Area Manager, ORAH, Tulsa District, Oklahoma.

A survey representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 26, and the survey of certain lot boundaries, Township 21 South, Range 26 East, of the New Mexico Principal Meridian, New Mexico, executed under Group 861, New Mexico, filed August 3, 1987.

This survey was requested by the District Manager, Roswell District Office, New Mexico.

A supplemental plat representing the south one-half of sec. 29, Township 17 South, Range 12 West, New Mexico Principal Meridian, New Mexico, filed August 31, 1987.

This supplemental plat was requested by the Records Improvement Unit, New Mexico State Office, Bureau of Land Management.

A survey representing the corrective dependent resurvey of a portion of the south boundary of the Santa Clara Indian Reservation, between sections 16 and 21, Township 20 North, Range 7 East, New Mexico Principal Meridian, New Mexico, executed under Group 854, New Mexico, filed September 10, 1987.

This survey was reqeusted by the Area Director, Bureau of Indian Affairs, Albuquerque Area Office, Albuquerque, New Mexico.

A survey of Exception No. 9, within that portion of the Juan Jose Lobato Grant, acquired December 30, 1942, Township 24 North, Range 7 East, New Mexico Principal Meridian, New Mexico, executed under Group 860, New Mexico, filed October 9, 1987.

This survey was requested by the Director of Lands and Minerals, U.S. Forest Service, Region 3, Albuquerque, New Mexico.

A survey representing the dependent resurvey and survey of Lots 89 through 126 in section 28, Township 23 North, Range 10 East, New Mexico Principal Meridian, New Mexico, executed under Group 769, New Mexico, filed October 9, 1987.

This survey was requested by the District Manager, Albuquerque, New Mexico.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plats may be obtained from the office upon payment of $2.50 per sheet.

William S. DeGroot,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 87-24447 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-920-4111-02; et al.]

Arizona; Public Review Period for USGS/USBM "Mineral Survey Reports" Prepared for BLM Wilderness Study Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Arizona Bureau of Land Management (BLM), is requesting the public to review combined U.S. Geological Survey (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" which have been or will be completed for Wilderness Study Areas (WSAs) preliminarily recommended suitable for inclusion into the National Wilderness System. If the public identifies a new interpretation of the data presented in the reports or submits new minerals data for consideration, the Bureau of Land Management will send these comments to USGS/USBM.

No suitability recommendations will be changed by BLM based on the public comments or on the results of the USGS/USBM mineral survey reports. However, significant new findings will be documented in the BLM "Wilderness Study Report", which will also be reviewed by the Secretary, the President, and by Congress before final decisions on wilderness are made. Copies of the WSA mineral survey reports listed below can be reviewed in BLM offices in Phoenix, Safford and Yuma, Arizona.

WSA No.	Name	USGS Report No.
AZ-020-060	Lower Burro Creek	Bull. 1701-B.
AZ-020-099	Big Horn Mountains	Bull. 1701-A.
AZ-040-001A	Needle's Eye	Bull. 1703-B.
AZ-040-008	Black Rock	Bull. 1703-C.
AZ-040-014	Fishhooks	Bull. 1703-A.
AZ-040-065	Dos Cabezas Mountains	Bull. 1703-D.
AZ-050-004	Chemehuevi/Needles	OF 87-586.

Reports available for review in BLM offices will not be available for sale or removal from those offices. Ordering and price information for these reports may be obtained at the following address: Books and Open-File Report Section, Western Distribution Branch, U.S. Geological Survey, Box 25425, Federal Center, Denver, CO 80225, (303) 236-7476.

DATE: New information will be accepted on the reports enumerated in this notice until January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Larry P. Bauer, BLM, Arizona State Office, Division of Mineral Resources, P.O. Box 16563, Phoenix, AZ 85011 (602) 241-5507.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of the Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable by BLM for inclusion into the wilderness system to determine the mineral values, if any, that may be present in such areas.

There are 2,140,748 acres of Wilderness Study Areas identified by BLM in Arizona of which 1,015,656 acres have been preliminarily recommended suitable. To date, 7 combined mineral survey reports have been completed by the USGS/USBM. Approximately 9 reports will be completed in calendar year 1988.

To ensure that all available minerals data are considered by Congress prior to making its final wilderness suitability decisions, the BLM in Arizona is providing this public review and comment period. Usually there is a one to two year lag time between actual field work and final printing of a mineral survey report. New information may have been collected by the public during this lag time or the public may have a new interpretation of the data presented in the mineral survey reports. Any new data or new interpretations of data in the reports will be considered for its relevance and validity by the Bureau of Land Management. Significant new minerals data or new interpretations of the minerals data will be forwarded to the USGS and USBM for their information.

The information requested from the public via this invitation is not limited to any specific energy or mineral resource. Comments should be provided in writing and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and USGS/USBM Mineral Survey Report.
2. Mineral(s) of interest.
3. A map or land description by legal subdivision of the public land surveys or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area.
4. Information and documents that depict the new data or reinterpretation of data.
5. The name, address, and phone number of the person who may be

contacted by technical personnel of the BLM, USGS, or USBM assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc., should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and market confidential will be treated as proprietary data and will not be released to the public without consent.

Lynn H. Engdahl,

Acting Arizona State Director, Bureau of Land Management.

Date: October 13, 1987.

[FR Doc. 87-24440 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 5992 and 5993, Blocks 780 and 781, respectively, Mustang Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Harbor Island, Texas.

DATE: This subject DOCD was deemed submitted on October 15, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service in considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 15, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-24442 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6177, Block A-14, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on October 13, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: October 14, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-24509 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Union Pacific Resources Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Pacific Resources Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6214, Block A-231, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on October 13, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: October 14, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-24510 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Walter Oil & Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil & Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 078, Block 51, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on October 13, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: October 14, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-24511 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-MR-M

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement on the Use of Lampricides in a Temporary Program of Sea Lamprey Control in Lake Champlain With an Assessment of Effects on Certain Fish Populations and Sport Fisheries

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice advises the public that the Draft Environmental Impact Statement on the Use of Lampricides in a Temporary Program of Sea Lamprey Control in Lake Champlain with an Assessment of Effects on Certain Fish Populations and Sport Fisheries is available for public review. Comments and suggestions are requested.

This proposal concerns the use of lampricides in a temporary program of sea lamprey control in the United States portion of Lake Champlain with an assessment of effects on certain fish populations and sport fisheries. The New York State Department of Environmental Conservation, Division of Fish and Wildlife, Bureau of Fisheries, in cooperation with the Vermont Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service, have proposed an 8-year program to reduce the abundance of sea lamprey in Lake Champlain. Landlocked Atlantic salmon, brown trout, steelhead, lake trout and other sport fish populations are being depressed by mortality from sea lamprey parasitism.The principal benefits of the program would be substantial improvement in sport fish populations and generation of $2.5 to $3.5 million in annual economic expenditures from increased angling activity.

This project would include the application of lampricides to tributaries, in-lake delta areas, and an evaluation of the effects of this treatment program on salmonid populations and fisheries. Specifically, the lampricide TFM would be applied to portions of the Great Chazy, Saranac, Salmon, Little Ausable, Ausable, and Boquet Rivers; Beaver and Mt. Hope Brooks, and Putnam Creek in New York State; Lewis Creek and Trout, Stone Bridge, and Indian Brooks in the State of Vermont, and the Poultney River which is a boundary water between the States of New York and Vermont. The lampricide Bayer 73 would be applied to delta areas associated with the Saranac, Salmon, Little Ausable, Ausable, and Boquet Rivers in New York State. Treatment areas are located in Clinton, Essex and Washington Counties in New York State and Addison, Chittendon and Rutland Counties in the State of Vermont. At each site, two treatments would occur during the 8-year program beginning in fall 1989.

DATES: Written comments are requested by March 31, 1988. Public hearings are likely to be held in February, 1988. The exact dates and locations will be announced via a separate notice to be published later.

ADDRESS: Comments should be addressed to Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph W. Abele, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158. (617-965-5100, extension 382.)

Individuals wishing copies of the Draft Environmental Impact Statement should contact the above individual. Copies have been sent to appropriate federal, state and local agencies and are available for review at the above address. Copes are also available for review at the New York Department of Environmental Conservation, Bureau of Fisheries, Albany, New York; Vermont Agency of National Resources, Essex Junction, Vermont, as well as a number of libraries on the Vermont and New York sides of Lake Champlain.

SUPPLEMENTARY INFORMATION: This Draft Environmental Impact Statement presents an analysis of a proposal to use two chemical lampricides, TFM and Bayer 73 (5% Granular) to substantially reduce sea lamprey abundance in Lake Champlain for an 8-year period in order to determine the economic impact of the program and benefits to salmonid populations and sport fisheries.

TFM would be applied twice to sea lamprey-inhabited sections of 14 tributaries to the U.S. portion of Lake Champlain. The first round of treatments would begin in year 1 (1989) while the second round of treatments would begin in year 5 of the 8-year program. Each complete round of treatments would require application of 32,000 pounds of the TFM formulation (12,000 pounds of active ingredient) to about 81 miles of streams. Treatments would be conducted in September and October. Among the 14 streams, 9 are in New York, 4 are in Vermont and 1 is a boundary water between New York and Vermont.

Bayer 73 (5% Granular) would be applied twice to five sea lamprey-inhabited areas in New York waters of

Lake Champlain with the second round of treatments following the first by 4 years. Each round of treatments would require the application of 85,000 pounds of the Bayer 73 (5% Granular) formulation (4,250 pounds of active ingredient) to 850 acres of stream deltas in September.

Three program alternatives are discussed in this Draft Environmental Impact Statement. These include the following:

Alternative I

This is the proposed action. It proposes an 8-year experimental program involving two complete rounds of treatments with lampricides to reduce sea lamprey abundance and incorporating a comprehensive evaluation of impacts. Results would determine the long term direction.

This approach would (1) demonstrate the maximum salmonid performance harvest, and economic impacts that a sea lamprey control program is capable of providing, and (2) it would provide information required for long term efficient management program of sea lamprey control.

Alternative II

This alternative discusses an immediate implementation of a permanent sea lamprey control program using lampricides as the primary control method and supplemented with selective development of sea lamprey barriers. Long term fine tuning would lead to the most cost-efficient and environmentally compatible program, incorporation new sea lamprey control methods as they became available. While this alternative would not provide a comprehensive evaluation of program impacts, information available from the Great Lakes and Finger Lakes suggest that this approach would probably be correct in that sea lamprey reduction would lead to dramatic improvements in salmonid abundance and size, fisheries quality, and recreational and economic benefits.

Alternative III

This is the "No Action" alternative. It features abandonment of all efforts to control sea lamprey and a substantial cutback in annual salmonid stocking levels resulting from termination of federal involvement in the program.

Benefits from this alternative would be somewhat less than those presently obtained without sea lamprey control as a result of stocking reduction. Environmental impacts and concerns associated with use of lampricides and barrier dams are eliminated as is the need for funding to support sea lamprey control/evaluation efforts.

There are several other program alternatives which were considered but dismissed including partial sea lamprey control using only barrier dams (no lampricides), and partial sea lamprey control treating one major sea lamprey inhibited basin with lampricides, and holding a second basin as an untreated control.

Eleven techniques for sea lamprey control were examined as possible alternatives to the use of lampricides. These included trapping, fishing, electrofishing, parasites and pathogens, natural predators, sterile male releases, attractants and repellents, competitive displacement by nonparasitic lamprey, modification of stream habitat, increased stocking of salmonids, and stocking of sea lamprey resistant strains of salmonids. It was concluded that none would be effective in the control of sea lamprey in Lake Champlain.

Howard N. Larsen,

Regional Director

[FR Doc. 87-24469 Filed 10-21-87; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Avenue NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Revision
Bureau/Office: Office of Transportation Analysis
Title of Form: Boxcar Exemption Monitoring Study
OMB Form No.: 3120-0125
Agency Form No.: NA
Frequency: Nonrecurring
Respondents: Firms shipping or receiving freight by rail boxcar
No. of Respondents: 40
Total Burden Hrs.: 53

Brief Description of the need & proposed use: This information is needed to monitor the exemption of boxcar traffic and to provide information to the congressional oversight committees on the results of the Stagers Rail Act.

Type of Clearance: Extension
Bureau/Office: Office of Proceedings
Title of Form: Application for authority under 49 U.S.C. 11343, 11344 to consolidate, merge, purchase or lease operating rights and properties, or any part thereof, of a motor carrier.
OMB Form No.: 3120-0080
Agency Form No.: OP-F-44
Frequency: Nonrecurring
Respondents: Motor carriers proposing transactions under 49 U.S.C. 11343 & 11344.
No. of Resondents: 14
Total Burden Hrs.: 1,120

Brief Description of the need & proposed use: Information regarding business structure, affiliates, financial status and transportation operations under the proposal provides the Commission minimum factual basis to make a decision whether to authorize a transaction.

Noreta R. McGee,

Secretary.

[FR Doc. 87-24478 Filed 10-21-87; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. P-93]

Passenger Train Operation; The Atchison, Topeka and Santa Fe Railway Co.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Chicago, Illinois and San Antonio, Texas, via Taylor, Texas. The operation of these trains requires the use of the tracks and other facilities of Missouri-Kansas-Texas Railroad Company (MKT). A portion of the MKT tracks near Little River, Texas, are temporarily out of service because of bridge fire. An alternate route is available via The Atchison, Topeka and Santa Fe Railway Company between Temple and Taylor, Texas.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, (a) Pursuant to the authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), The Atchison, Topeka and Santa Fe Railway Company (ATSF) is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Temple, Texas, and a connection with Missouri-Kansas-Texas Railroad Company at Taylor, Texas.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 5:00 p.m., (EDT), October 3, 1987.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. (CDT), October 5, 1987, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon The Atchison, Topeka and Santa Fe Railway Company and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, October 3, 1987.

Noreta R. McGee,

Secretary.

[FR Doc. 87-24314 Filed 10-21-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-33 (Sub-No. 47X)]

Union Pacific Railroad Co.; Abandonment Exemption; Solano County, CA (Dozier Branch)

Union Pacific Railroad Company has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments,* to abandon its 0.64-mile line of railroad in Solano County, CA, between milepost 6.93 near Cannon, and the end of the line at milepost 7.57.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and the line does not handle overhead traffic; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective November 21, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by November 2, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 12, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Law Department, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 8, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-24224 Filed 10-21-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Arizona et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on September 29, 1987, a proposed partial Consent Decree in *United States v. State of Arizona, et al.,* Civil No. 86-1059 PHX RGS was lodged with the United States District Court for the District of Arizona. The proposed Consent Decree concerns the prevention of the discharge of pollutants by the Town of Florence without a National Pollutant Discharge Elimination System permit and in violation of the Clean Water Act. The proposed Consent Decree requires the Town of Florence to achieve compliance with the Act and its new permit, to expand the capacity of its wastewater treatment plant and to pay a civil penalty of $25,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Town of Florence, D.J. Ref. 90-5-1-1-2649.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Arizona, 230 North First Avenue, Phoenix, Arizona 85025, and at the Region 9 Office of the Environmental Protection Agency, 216 Fremont Street, San Francisco, California 94105. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.10 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-24454 Filed 10-21-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and The Resource Conservation and Recovery Act in United States v. Royal N. Hardage et al.

In accordance with Department policy, 28 CFR 50.7, and section 112(i) of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-

499, 100 Stat 1613 (1986) notice is hereby given that on October 13, 1987, a proposed Partial Consent Decree in *United States* v. *Royal N. Hardage, et al.* ("Hardage"), Civil Action No. CIV–86–1401–P was lodged with the United States District Court for the Western District of Oklahoma. The complaint in this enforcement action was filed on June 25, 1986, against Royal N. Hardage, the Hardage Site owner-operator, and thirty-five companies who allegedly generated or transported hazardous waste to the Site for disposal. The complaint was brought under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 & 9607 and section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, seeking equitable relief to remedy an imminent and substantial endangerment to the health and welfare of persons and to the environment at the Hardage Site, a 75 acre parcel of land located approximately one mile west of the town of Criner, McClain County, Oklahoma on which an industrial and hazardous waste landfill was operated from 1972 through 1980. The Partial Consent Decree provides for the defendants who participate in the Partial Consent Decree to conduct a Remedial Investigation and Feasibility Study (RI/FS) designed to investigate the off-site migration of hazardous substances from the Hardage Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Royal N. Hardage, et al.*, D.J. No. 90–7–1–30A.

The proposed Partial Consent Decree may be examined at the Office of the United States Attorney, Room 4434, United States Courthouse, Oklahoma City, Oklahoma; at the Environmental Enforcement Agency, Region VI, Office of Regional Counsel, 13th Floor, 1445 Ross Ave., Dallas, Texas; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Partial Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Lands and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $17.00 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–24453 Filed 10–21–87; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of established 1988 Aggregate Production Quotas.

SUMMARY: This notice establishes 1988 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATE: This order is effective upon publication.

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.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration (DEA) by § 0.100 of Title 28 of the Code of Federal Regulations.

On Wednesday, July 29, 1987, a notice of the proposed 1988 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (52 FR 28360). All interested parties were invited to comment on or object to those proposed aggregate production quotas on or before August 28, 1987.

DEA received more than thirty-five comments concerning the proposed aggregate quota for methylphenidate. These comments were from numerous individuals, including physicians, educators and parents, and from organizations including C.H.I.L.D. Group, Inc. of Atlanta, Georgia, and the Citizens Commission on Human Rights of Los Angeles, California. These comments, in one way or another, expressed opposition to the use of methylphenidate in the treatment of Attention Deficit Disorder (ADD) in children, the primary medical use for methylphenidate in the United States. The propriety of the use of of methylphenidate to treat ADD is a medical issue which should be addressed to the Food and Drug Administration. It should be noted that the use of methylphenidate in the treatment of ADD is one of the uses of methylphenidate specifically approved by FDA. Accordingly, these comments have been misdirected to DEA. Copies of each of the comments concerning methylphenidate have been forwarded to FDA for any appropriate consideration by that agency.

Western Fher Laboratories, Ciba-Geigy and Boehringer Ingelheim jointly and through counsel filed objections and comments and requested a hearing on the proposed 1988 aggregate production quota for phenmetrazine. They commented that the proposed 1988 aggregate quota is apparently based on an inappropriate estimate by the FDA of the medical need for phenmetrazine in the United States for 1988. They also stated that since the proposed APQ is zero, existing inventories will not be sufficient to supply the legitimate medical need and inventory needs for phenmetrazine during 1988 and for the remainder of 1987. DEA has received data from Ciba-Geigy and Western Fher which indicates that December 31, 1986 inventories were sufficient to meet medical needs for 1987 and projected requirements for 1988. Therefore, DEA has determined that no increase in the 1988 APQ for phenmetrazine is necessary.

Relative to alfentanil and sufentanil, Janssen, Inc., of Puerto Rico commented that based on their marketing forecasts, the 1988 aggregate production quotas for alfentanil and sufentanil should be increased. At this time, DEA has determined that no increase is necessary; however, DEA will consider these comments when the established quotas are reviewed in early 1988.

Pursuant to sections 3(c)(3) and 3(e)(2)(b) 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.C. 601 *et seq.* The establishment of annual aggregate production quotas for Schedule I and II controlled substances is mandated by law and by 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. 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 1988 aggregate production quotas for Schedule I and II controlled substances, expressed as grams of anhydrous acid or base, be established as follows:

Basic Class and established 1988 Quotas	
Schedule I:	
2,5-Dimethoxyamphetamine	13,500,000
Lysergic Acid Diethylamide	6
3,4-Methylenedioxyamphetamine	5
3,4-Methylenedioxymethamphetamine	10
Tetrahydrocannabinols	20,000
Psilocyn	2
Psilocybin	2
Normorphine	3
Schedule II:	
Alfentanil	3,500
Amobarbital	0
Amphetamine	371,000
Cocaine	700,000
Codeine (for sale)	58,277,000
Codeine (for conversion)	4,349,000
Desoxyephedrine	1,418,000
1,400,000 grams for the production of levodesoxyephedrine for use in a noncontrolled, nonprescription product, and 18,000 grams for the production of methamphetamine.	
Dextropropoxyphene	74,075,000
Dihydrocodeine	582,000
Diphenoxylate	1,098,000
Ecgonine (for conversion)	650,000
Fentanyl	6,100
Hydrocodone	2,360,000
Hydromorphone	198,000
Levorphanol	16,800
Meperidine	10,719,000
Methadone	1,591,000
Methadone Intermediate (4-Cyano-2-dimethylamino-4,4-diphenylbutane)	1,989,000
Methamphetamine (for conversion)	1,920,000
Methylphenidate	2,317,000
Mixed Alkaloids of Opium	7,000
Morphine (for sale)	3,148,000
Morphine (for conversion)	62,845,000
Opium (tinctures, extracts, etc., expressed in terms of USP powdered opium)	1,527,000
Oxycodone (for sale)	2,122,000
Oxycodone (for conversion)	5,200
Oxymorphone	2,500
Pentobarbital	11,737,000
Phencyclidine	31
Phenmetrazine	0
Phenylacetone (for conversion)	1,020,000
1-Piperidinocyclohexanecarbonitrile (for conversion)	20
Secobarbital	1,573,000
Sufentanil	450
Thebaine	5,116,000

DEA will review the above established quotas early in 1988 to take into consideration actual 1987 sales and actual December 31, 1987 inventories as well as other information which might be available to DEA. At that time, DEA will again consider comments received in response to the proposal of July 29, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

Dated: October 9, 1987.

[FR Doc. 87-24473 Filed 10-21-87 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received Under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 23, 1987. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctic and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional informatiaon was published in the **Federal Register** on July 24, 1987.

The application received is as follows:

1. Applicant

John L. Bengtson, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, Washington 98115.

Activity for Which Permit Requested

Export from U.S.A. The applicant seeks permission to export samples taken from Antarctic pinnipeds. The samples were taken under the authority of an Antarctic Conservation Act Permit previously issued to the applicant. Blubber, liver and muscle/organ samples are to be exported to the Swedish Museum of Natural History. Exported samples would be retained in Sweden for analysis and curation.

Dates

November 1987-October 1989.

Charles E. Myers,

Permit Office.

[FR Doc. 87-24449 Filed 10-21-87; 8:45 am]

BILLING CODE 7550-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Science and Technology Centers Development; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Science and Technology Centers Development

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, DC 20550

Date: November 9 and 10, 1987

Time: 9:00 a.m.

Type of Meeting: Open

Contact: Dr. Alan I. Leshner, Director, Office of Science and Technology Centers Development, Room 414, National Science Foundation, Washington, DC 20550 Telephone: 202/357-9808. Please call by November 4 if you plan to attend.

Purpose of Meeting: To provide advice on the development of the National Science Foundation's Science and Technology Research Centers Program.

Summary Minutes: May be obtained from Director, Office of Science and Technology Centers Development.

Agenda: Discussion of review and selection procedures and criteria for Science and Technology Centers.

M. Rebecca Winkler,

Committee Management Officer.

October 19, 1987.

[FR Doc. 87-24496 Filed 10-21-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Advanced Scientific Computing and Networking and Communications Research and Infrastructure; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Advanced Scientific Computing and Networking and Communications Research and Infrastructure

Dates and Times: November 13–8:00 a.m.–3:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Open

Contact Person:

Dr. Melvyn Ciment, National Science Foundation, Room 533, Phone: 202/357–7558

Summary of Minutes: May be obtained from Melvyn Ciment.

Purpose of Meeting: To provide advice and recommendations concerning NSF support of advanced scientific computing.

Agenda: The sessions will focus on planning and policy issues. These will include a review of recent actions and budget priorities.

M. Rebecca Winkler,

Committee Management Officer.

October 19, 1987.

[FR Doc. 87–24495 Filed 10–21–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Molecular and Cellular Neurobiology Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Molecular and Cellular Neurobiology Program.

Date & Time: November 9–11, 1987, 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., Washington, DC Room 1242.

Type of Meeting: Closed.

Contact Person: Dr. Richard D. Broadwell, Director for the Molecular and Cellular Neurobiology Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7471.

Minutes: May be obtained from the contact person at the above stated address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in molecular and cellular neurobiology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

October 19, 1987.

[FR Doc. 87–24516 Filed 10–21–87; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Northern States Power Co., Monticello Nuclear Generating Plant; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22, issued to Northern States Power Company (the licensee), for operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota.

Identification of Proposed Action

The amendment would consist of a change to the operating license to extend the expiration date of the operating license for Monticello Nuclear Generating Plant from June 19, 2007 to September 8, 2010. The license amendment is responsive to the licensee's application dated February 14, 1986, as supplemented on August 26, 1987. The Commisison's staff has prepared an environmental assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Date of Facility Operating License No. DPR–22, Monticello Nuclear Generating Plant, Docket No. 50–263," dated October 1987.

Summary of Environmental Assessment

The Commission's staff has reviewed the potential environmental impact of the proposed change in the expiration date of the operating license for Monticello Nuclear Generating Plant. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Related to Operation of Monticello Nuclear Generating Plant," (FES) November 1972, and more recent NRC policy.

Radiological Impacts

Based on the 1980 census, the population within 10 miles of the plant has not changed significantly over what was forecast in the FES. The actual permanent population within the low population boundary (a 1-mile radius) was 8 in 1970, 24 in 1986 and is estimated not to change significantly in 2010. The staff concludes that the Low Population Zone and the nearest population center distances will likely be unchanged from those used for licensing the unit. Therefore, the conclusion reached in the staff's Safety Evaluation in 1970 that Monticello Nuclear Generating Plant meets the requirements of 10 CFR Part 100 remains unchanged.

Station radiological effluents released to unrestricted areas during normal operation have been well within Commission regulations regarding as-low-as-is-reasonably-achievable (ALARA) limits, and are indicative of future releases. In addition, the proposed additional years of reactor operation do not increase the annual public risk from reactor operation. Thus, environmental impact findings in the FES are not changed.

With regard to normal plant operation, the licensee complies with Commission guidance and requirements for keeping radiation exposures "as low as is reasonably achievable" (ALARA) for occupational explosures and for radioactivity in effluents. The licensee would continue to comply with these requirements during any additional years of facility operation and also apply advanced technology when available and appropriate. Accordingly, radiological impacts on man, both onsite and offsite, are not significantly more severe than previously estimated in the FES and our previous cost-benefit conclusions remain valid.

The environmental impacts attributable to transportation of fuel and waste to and from the Monticello Nuclear Generating Plant, with respect to normal conditions of transport and possible accidents in transport, would be bounded as set forth in Summary Table S–4 of 10 CFR 5012, and the values in Table S–4 would continue to represent the contribution of transportation to the environmental costs associated with the reactor.

Nonradiological Impacts

The Commission has concluded that the proposed extension will not cause a

significant increase in the impacts to the environment and will not change any conclusions reached by the Commission in the FES.

Finding of No Significant Impact

The Commission's staff has reviewed the proposed change to the expiration date of the Monticello Nuclear Generating Plant operating license relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated February 14, 1986, as supplemented August 26, 1987, (2) the Final Environmental Statement Related to Operation of Monticello Nuclear Generating Plant, issued November 1972, and (3) the Environmental Assessment dated October 15, 1987. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, Washington, DC, 20555 and in the local public document room located at Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Bethesda, Maryland, this 15th day of October 1987.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Acting Director, Project Directorate III–3, Division of Reactor Projects.

[FR Doc. 87–24503 Filed 10–21–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–440]

Cleveland Electric Illuminating Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to the Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

The amendment would make various changes to the organization charts, Figures 6.2.1–1 and 6.2.2–1 of the Technical Specifications, to revise titles and delete non-key positions in accordance with the licensees' application for amendment dated September 22, 1987.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commisssion has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previsouly evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensees have submitted an analysis in accordance with 10 CFR 50.91 as to whether the proposed amendment involves a significant hazards consideration. The licensees have stated that this proposed amendment does not affect any portions of the plant operations, or the manner in which plant operations will be conducted. As a result, the licensees have concluded that this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Further, the licensees have stated that this proposed amendment does not involve any change to the physical structure of the plant, or any of the systems or components of the plant. This proposed change is purely administrative in nature, and does not reduce the qualification requirements described in Final Safety Analysis Report (FSAR) section 13.1.3. Therefore, the licensees have concluded that this amendment does not create the possibility of a new or different kind of accident from any accident previously evalated.

The licensees have also stated that this proposed amendment does not affect any portion of the Technical Specifications other than the organization charts. No technical changes, changes to the bases, or any other administrative changes are involved with this proposed change. The licensees have concluded that this proposed amendment does not involve a significant reduction in a margin of safety.

The Commission's staff has reviewed the licensees' determination and agrees with their findings. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not mormally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Offices of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing or requests for hearing and petitions for leave to intervene is discussed below.

By November 23, 1987, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule in the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the

results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requested leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, nothwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H. Street NW, Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW, Washington, DC 20037, attorney for the licensees.

Nontimely filings petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, DC, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Bethesda, Maryland, this 16th day of October 1987.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Project Manager Project, Directorate III–1, Division of Reactor Projects–III, IV, V & Special Projects.

[FR Doc. 87–24504 Filed 10–21–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–400]

Carolina Power & Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–63, issued to Carolina Power & Light Company (the licensee), for operation of the Shearon Harris Nuclear Power Plant, Unit 1 located in Wake County, North Carolina.

The amendment would revise Technical Specification 4.8.1.1.2.f.11 such that the diesel generator voltage maximum value would be based on a 110 percent of the diesel generator starting voltage at the beginning of the diesel generator load rejection test rather than the limiting value of 7590 volts currently stipulated in the Technical Specifications.

The Shearon Harris plant is presently in a scheduled maintenance outage. The licensee stated in a submittal dated October 15, 1987, that restart is scheduled for November 4, 1987. The noticing of the amendment is being handled as an exigency because insufficient time exists for the Commission's usual 30-day notice without extending the current outage.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of

a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed this request and determined, and the NRC staff concurs, that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated because the change does not affect the method in which the diesel generators, or any other safety system, perform their intended safety function. Diesel generator and voltage regulator operability is still ensured and the intent of Surveillance Requirement 4.8.1.1.2.f.11 to verify the ability of the diesel generator to perform satisfactorily during a full load rejection is still fulfilled by the revised surveillance requirement. The revision merely allows the operational flexibility to perform the required surveillance without reliance on system grid voltage conditions.

2. The proposed amendment does not create the possibility of a new or different kinds of accident than previously evaluated. As stated above, no physical change to any safety related system, nor change in the method in which any safety system performs its intended function result from the proposed amendment. Therefore, the proposed amendment cannot create the possibility of a new or different kind of accident than previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety. Diesel generator and voltage regulator operability and the ability to incur a load rejection without a diesel generator overspeed trip or excess voltage is adequately ensured by the revised surveillance requirement. As such, the margin of safety is not affected by the proposed amendment.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Licensee has provided the Commission with an explanation of the circumstances justifying consideration of this amendment on an exigent basis. The licensee stated in its October 15, 1987 submittal that it "had no previous reason to suspect that failure of this surveillance requirement would occur." The NRC staff has reviewed the Licensee's request and finds that the Licensee has used its best efforts to apply for the subject amendment in a timely manner and that it has not acted in a manner as to create the exigency to take advantage of these procedures.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 6, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the

amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas A. Baxter, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 15, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Dated at Bethesda, Maryland, this 20 day of October 1987.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II–1, Division of Reactor Projects I/II.

[FR Doc. 87–24593 Filed 10–21–87; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25019; File No. SR–MSE–87–12]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc.

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 September 11, 1987, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission ("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

Article XX, Rule 8 of the Rules of the Midwest Stock Exchange, Incorporated is hereby amended as follows:
Additions italicized—[Deletions Bracketed]

Article XX Making Exchange Contracts Recognized Quotations.

Rule 8. Paragraph 1 remains changed.
Paragraph 2.

The following interpretations and policies pertain, *except where otherwise indicated,* to all specialist system issues for which last sale information is reported in the consolidated transaction reporting system.

* * * Interpretations and Policies:

.01 remains unchanged.

.02 In respect to Dual Trading System issues specialists utilizing the Auto Quote mode are prohibited from disseminating a bid and/or offer more than 1/8 point away from the best [ITS] *primary* market[.] *in those specialist system issues not specified in .03 below.*

.03 In respect to specialist system issues that have fifty million (50,000,000) or more shares outstanding, and where the price per share is less than one hundred dollars ($100.00), specialists utilizing the Auto Quote mode are required to display a bid 3/8 point less than the best primary market bid and 3/8 point greater than the best primary market offer.

Paragraphs previously numbered .03 through .10 will be renumbered so that they now read .04 through .11.

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. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

The purpose of the proposed rule change is to establish, in certain designated issues, new quotation parameters in respect to the use by specialists of the Auto Quote capability of the Exchange's trading support system. The proposed rule change will require that specialists utilizing Auto-Quote must display a bid 3/8 point less than the best primary market offer. This will encourage specialists to quote manual markets a majority of the time, and use the Auto Quote function only when circumstances warrant.

This rule change will be implemented on a pilot basis for three (3) months or such earlier period, if so determined by the Committee on Floor Procedure. If the pilot program terminates and is not extended the current Auto Quote Paramenters will again govern.

The proposed rule change is consistent with Section 6 of the Securities Exchange Act of 1934 in that it will facilitate transactions in securities, and remove impediments to, and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

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 the proposed rule change, or (B) institute proceeddings 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. Person 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 coyping at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 21, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 13, 1987.

[FR Doc. 87-24505 Filed 10-21-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25020; File No. SR-MSRB-87-10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB") submitted on August 26, 1987, a proposed rule change (File No. SR-MSRB-87-10) pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4. The proposed rule change amends MSRB Rule G-34 on CUSIP numbers and dissemination of initial trade date information. The proposed rule change requires brokers, dealers and municipal securities dealers who sell or offer to sell secondary market municipal securities to apply for new CUSIP numbers for the securities whenever the CUSIP number assigned to the securities no longer designates a single, fully fungible group of securities.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 24875 (September 3, 1987), 52 FR 34331. The Commission received no comments on the proposal. This order approves the proposal.

Currently, Rule G-34 currently requires brokers, dealers and municipal securities dealers to apply for CUSIP numbers for secondary market municipal securities in two circumstances: (1) When a new issue will be used to refund a maturity of an outstanding issue to more than one date or price; and (2) when a dealer arranges for an enhancement of the security or source of payment for part of a maturity of an outstanding issue (*e.g.*, bond insurance or a put option). The amendments to Rule G-34 are intended to expand the scope of the Rule to cover other circumstances in which a new CUSIP number should be obtained because the securities represented by the CUSIP number are no longer fungible.

Amended Rule G-34 would require a broker, dealer or municipal securities dealer to apply for new CUSIP numbers for any securities it offers or sells if the CUSIP number assigned to the issue no longer designates a group of fungible securities because they no longer have certain identical features. These features are:

(1) Complete name of issue and series designation, if any;

(2) Interest rate(s) and maturity date(s);

(3) Dated date;

(4) Type of issue (*e.g.*, general obligation, limited tax or revenue);

(5) Type of revenue, if the issue is a revenue issue;

(6) Details of all redemption provisions; [1]

(7) Name of any company or other person in addition to the issuer obligated, directly or indirectly, on the debt service on all or part of the issue; and

(8) Any distinction(s) in the security or source of payment of the debt service on the issue.

The Commission believes the importance of CUSIP numbers cannot be understated. Because they serve as a universally accepted shorthand description for securities issues, it is critical that they accurately describe a single, fungible group of securities. The Commission believes that this proposed rule change imposes an appropriate burden on brokers, dealers, and municipal securities dealers to ensure that securities they sell or offer to sell are assigned a unique CUSIP number that accurately describes a single, fungible group of securities. The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular the requirements of Section 15B of the Act 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.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: October 14, 1987.

[FR Doc. 87-24506 Filed 10-21-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0342]

Issuance of a Small Business Investment Company License; Milk Street Partners, Inc.

On May 20, 1987, a notice was published in the **Federal Register** (52 FR 19013) stating that an application has been filed by Milk Street Partners, Inc., Boston, Massachusetts with the Small Business Administration (SBA) pursuant

[1] Consistent with prior Board interpretations, the term "redemption provisions" includes put options that may apply to a particular issue. *See* MSRB Manual (CCH), ¶ 3556.25.

to the Regulations governing small business investment companies (13 CFR 107.102 (1987)) for a license as a small business investment company.

Interested parties were given until close of business June 19, 1987, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01-0342 on September 17, 1987, to Milk Street Partners, Inc., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: October 15, 1987.

[FR Doc. 87-24517 Filed 10-21-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0498]

Issuance of License of a Small Business Investment Company License; Onondaga Venture Capital Fund, Inc.

On August 13, 1986, a notice was published in the **Federal Register** (51 FR 29041) stating that an application had been filed by Onondaga Venture Capital Fund, Inc., Syracuse, New York, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR !07.102 (1987)) for a license to operate as a small business investment company.

Interested parties were given until close of business September 12, 1986, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0498 on September 30, 1987, to Onondaga Venture Capital Fund, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: October 15, 1987.

[FR Doc. 87-24518 Filed 10-21-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1128]

Soviet and Eastern European Studies Advisory Committee; Meeting

The Department of State announces that the Soviet and Eastern European Studies Advisory Committee will meet on November 17, 1987 starting at 9:00 a.m. in Room 1107, U.S. Department of State, 2201 C Street NW., Washington, DC.

The Advisory Committee will recommend grant recipients for the advancement of the objectives of the Soviet-Eastern European Research and Training Act of 1983. The agenda will include: Opening statements by the Chairman of the Committee and its members; oral statements by interested members of the public and receipt of written statements; and within the Committee, discussion, approval, and recommendation that the Department of State negotiate grant agreements with certain "national organizations with an interest and expertise in conducting research and training concerning the USSR and Eastern Europe" based on the guidelines contained in the Call for Applications published in the **Federal Register** on July 28, 1987.

Public attendance is permitted but will be limited to the seating available. Entry into the Department of State building is controlled and must be arranged in advance of the meeting. It is required that persons planning to attend notify Susan H. Nelson, Soviet and Eastern European Studies Advisory Committee, INR/LAR, U.S. Department of State, Washington, DC 20520, (202)632-5924. All attendees must use the C Street entrance to the building.

E. Raymond Plating,

Executive Director, Soviet and Eastern European Studies Advisory Committee.

Date: October 13, 1987.

[FR Doc. 87-24512 Filed 10-21-87; 8:45 am]

BILLING CODE 4710-32-M

DEPARTMENT OF TRANSPORTATION

[Docket No. 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 87-8-15 set the currently effective two-month SFFL applicable through September 30, 1987.

In establishing the SFFL for the two-month period beginning October 1, 1987, we have projected nonfuel costs based on the year ended June 30, 1987 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as required to the Department.

By Order 87-10-28 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic: 1.1205
Latin America: 1.1335
Pacific: 1.5426
Canada: 1.0950

For further information contact: Julien R. Schrenk (202) 366-2441.

By the Department of Transportation:

Dated: October 16, 1987.

Philip W. Haseltine,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-24448 Filed 10-21-87; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 87-080]

Towing Safety Advisory Committee; Request for Membership Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for Applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership in the Towing Safety Advisory Committee (TSAC). This committee Advises the Secretary of Transportation on rulemaking matters related to shallow draft and coastal waterway navigation and towing safety.

Nine members will be appointed as follows: Four (4) representatives from the barge and towing industry; one (1) representative from the offshore mineral and oil supply vessel industry; two (2) representatives from maritime labor; and two (2) representatives for shippers.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The Committee will meet at least once a year in Washington, DC or another location selected by the Coast Guard.

DATES: Requests for applications should be received no later than 1 December 1987 and must be completed and

returned to the Coast Guard no later than 15 December 1987.

ADDRESS: Persons interested in applying should write to Commandant (G-CMC/21), U.S. Coast Guard, Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Captain J.J. Smith, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-CMC/21), Washington, DC 20593-0001 or by calling (202) 267-1477.

Dated: October 19, 1987.

J.J. Smith,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 87-24502 Filed 10-21-87; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Anchorage, AK

AGENCY: Federal Highway Administration (FHWA), 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 the Municipality of Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Tom Neunaber, Field Operations Engineer, Federal Highway Administration, P.O. Box 021648, Juneau, Alaska 99802, Telephone (907) 586-7428; or Merlyn L. Paine, Central Region Environmental Coordinator, Alaska Department of Transportation and Public Facilities, P.O. Box 196900, Anchorage, Alaska 99519-6900, Telephone (907) 266-1508.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alaska Department of Transportation and Public Facilities (ADOT&PF), will prepare an environmental impact statement (EIS) on proposed improvements to the Seward Highway in the Municipality of Anchorage, Alaska. The project area extends from Girdwood (Milepost [MP] 90.3) to Bird Point (MP 97.0). This is the final part of a three-stage project to reconstruct the Seward Highway from Girdwood to Potter (Project No. F-031-2[40]). The proposed action involves the reconstruction of an approximately seven mile stretch of the Seward Highway between MP 90.3 and MP 97.0.

The proposed action is necessary to upgrade the existing facility to current State standards in order to meet the public need for more efficient traffic flow and increased safety for highway users. The following alternatives are under consideration: (1) No action; (2) Upgrade the roadway along the existing alignment; and, (3) Realignment of the highway to the Turnagain Arm side of the Alaska Railroad Corporation (ARRC) tracks.

Comments from appropriate Federal, State, and local agencies; private organizations; and the public; will be solicited during the scoping process to identify the full range of issues related to the proposed action. This process will include informational/scoping meetings, as well as written correspondence. All meetings will be announced well in advance of their scheduled dates.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from any interested parties. Comments and questions concerning the proposed action and the EIS should be directed to the FHWA or the ADOT&PF at the addresses provided above.

(Catalog of Federal μDomestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: October 14, 1987.

Barry F. Morehead,

Division Administrator, Federal Highway Administration, Juneau, Alaska.

[FR Doc. 87-24514 Filed 10-21-87; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Cities of Virginia Beach and Chesapeake

AGENCY: Federal Highway Administration (FHWA), 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 the Cities of Virginia Beach and Chesapeake.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, Telephone (804) 771-2380.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an environmental impact statement (EIS) on a proposal to construct a six-lane (ultimate eight-lane) limited access highway from Interstate Route 64 in the City of Chesapeake to a connection with Route 44 in the City of Virginia Beach. The length of the proposed highway is approximately 21 miles. The proposed highway will provide freeway access to the developing area in Southeastern Virginia and will afford relief to many congested urban arterial routes.

Alternatives under consideration include: (1) Taking no action (no build), (2) mass transit, (3) Transportation System Management (improving existing streets), and (4) build alternatives.

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 previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment. Following publication of the Draft EIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Draft EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.250, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on: October 16, 1987.

George E. Kirk, Jr.,

District Engineer.

[FR Doc. 87-24445 Filed 10-21-87; 8:45 am]

BILLING CODE 4910-22-M

VETERANS ADMINISTRATION

Advisory Committee on Structural Safety of Veterans Administration Facilities; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee on Structural Safety of Veterans Administration Facilities has been renewed for a two year period beginning October 13, 1987 through October 13, 1989.

Dated: October 15, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 24487 Filed 10–21–87; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 204
Thursday, October 22, 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).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 27, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: .

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, October 29, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: .

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Proposed Rulemaking on Allocations Between Federal and Non-federal Accounts.
Draft Advisory Opinion 1987-27-Philip R. Marx on behalf of Bell Atlantic Corporation
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 87-24589 Filed 10-20-87; 3:13 pm]

BILLING CODE 6715-01-M

POSTAL SERVICE

(Board of Governors)

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, November 2, 1987, in Washington, DC, and at 8:30 a.m. on Tuesday, November 3, 1987, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. As indicated in the following paragraph, the November 2 meeting is closed to the public. The November 3 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

The Board voted in accordance with the provisions of the Government in the Sunshine act to close to public observation its meeting scheduled for November 2, 1987, to consider pros and cons of independent advisers for Governors in considering rate decisions. [52 FR 38564, October 16, 1987.]

Agenda

Monday Session

November 2, 1987—1:00 p.m. (Closed)

1. Consideration of Independent Advisers for Governors for R87-1 Rate Decision.

Tuesday Session

November 3, 1987—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, October 5-6, 1987.
2. Remarks of the Postmaster General.
3. Status Report on CSRS/FERS.
4. Review of 5-Year Plan.
5. Quarterly Report on Service Performance.
6. Report on Human Resources Group Programs.
7. Capital Investments:
   a. Alhambra, CA, GMF;
   b. Champaign, IL, GMF/VMF.
8. Tentative Agenda for December 7-8, 1987, Meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 87-24587 Filed 10-20-87; 2:36 pm]

BILLING CODE 7710-12-M

federal register

Thursday
October 22, 1987

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 617

Trade Adjustment Assistance For Workers; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 617

Trade Adjustment Assistance For Workers

AGENCY: Employment and Training Administration, Labor

ACTION: Proposed rule.

SUMMARY: The Department of Labor proposes to amend the regulations on trade adjustment assistance for workers (TAA program) provided under Chapter 2 of Title II of the Trade Act of 1974 to implement the amendments to the Trade Act of 1974 enacted in 1986. The 1986 amendments further extend and reauthorize the TAA program, add a new job search program requirement, and make other changes affecting primarily eligibility for trade readjustment allowances (TRA) and training.

DATE: Written comments on these proposed amendments to the regulations must be received in the Department of Labor on or before November 23, 1987.

ADDRESS: Comments on this proposed rule may be mailed or delivered to the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street NW., Room 6434, Washington, DC 20213.

All comments received will be available for public inspection during normal business hours in Room 6434 at the above address.

FOR FURTHER INFORMATION CONTACT: Glenn M. Zech, Deputy Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street NW., Washington, DC 20213; Telephone: (202) 376–2646 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Trade Act of 1974 made major changes to the TAA program for workers displaced by increased imports of articles like or directly competitive with articles produced by the workers' firm. On receiving a petition for trade adjustment assistance (TAA) from a group of workers or its representative, the Department of Labor conducts a factfinding investigation in response to the petition. If the findings substantiate that the workers of a firm or subdivision of a firm have been adversely affected by import competition, a certification is issued declaring that the workers are eligible to apply for TAA.

The 1981 amendments to the Trade Act of 1974 (Pub. L. 97–35) made extensive changes in the TAA program, and further changes were made in the 1984 amendments (Pub. L. 98–364). Final regulations implementing the 1981 and 1984 amendments were published in the **Federal Register** on December 22, 1986, which also moved the regulations from 29 CFR Part 91 to 20 CFR Part 617. It is these regulations that are now being amended to implement the 1986 amendments.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), enacted into law on April 7, 1986, contains amendments to the TAA program in the "Trade Adjustment Assistance Reform and Extension Act of 1986" (hereinafter called the 1986 Amendments), which is Part 1 of Subtitle A of Title XIII of COBRA (sections 13001 to 13009). These amendments change the TAA provisions of the Trade Act of 1974 by extending the program to September 30, 1991; requiring participation in a job search program, where reasonably available, as a condition for receiving TRA payments; changing the number of weeks of employer-authorized leave credited to satisfy the 26 weeks of employment in the last 52 weeks to qualify for TRA; extending the period to receive basic TRA from 52 weeks to 104 weeks (no increase in the number of weeks payable); and making other changes as described below.

The changes proposed in this document are:

1. The definition for "Adversely affected employment," § 617.3(b), is expanded to include workers in any agricultural firm or subdivision of an agricultural firm. Workers in agricultural firms or subdivisions of firms have been eligible to apply for and be certified for adjustment assistance prior to the 1986 amendments, if they met the group eligibility requirements in section 222 of the Trade Act of 1974. Section 13002(a) of the 1986 Amendments; sections 221(a) and 222 of the Act.

2. The definition for "Eligibility period" in paragraph (m) of § 617.3 is revised to reflect the change in the 1986 Amendments in the time period a worker has to collect TRA payments which was increased from 52 weeks to 104 weeks after the exhaustion of regular unemployment insurance (UI) benefits in the worker's first UI benefit period which pertains to the first qualifying separation. Section 13003 (d)(1) of the 1986 Amendments; section 233(a)(2) of the Act.

3. Definitions are added in § 617.3 for "Job search program", "Job search workshop", and "Job finding club" as new paragraphs (w), (x) and (y), respectively, to reflect the definitions contained in section 13005(b) of the 1986 Amendments and the definition for "On-the-job training" is added as new paragraph (bb) of § 617.3 to reflect the definition contained in section 13004(b) of the 1986 Amendments. Former paragraphs beginning with (w) through (nn) have been redesignated. Sections 13004(b) and 13005(b) of the 1986 Amendments; sections 247 (16) and (17) of the Act.

4. The definition for "State agency" in redesignated paragraph (ii) ((ee) in the present regulations) of § 617.3 is revised to reflect the change in the 1986 Amendments expanding the scope of the definition of State agency to include: The employment service agency of such State; any State ageny carrying out Title III of the Job Training Partnership Act (JTPA); and any other State or local agency administering job training or related programs. Section 13004(c)(2) of the 1986 Amendments; new section 239(e) of the Act.

5. Section 617.11, *Qualifying requirements for TRA*, is modified to allow the use of up to 7 weeks of employer-authorized leave for vacation, sickness, injury, maternity, active or inactive duty military service for training, and for service as a full-time labor organization representative. Up to 7 weeks of any of these types of leave may be used but no more than 7 weeks may be used for all of them combined. In addition to such 7 weeks of employer-authorized leave, however, up to 26 weeks of unemployment due to a disability which is compensated in a worker's compensation law may now be counted toward the 26-week qualifying requirement for TRA. Section 13003(b) of the 1986 Amendments; section 231(a)(2) of the Act.

6. Section 617.11, *Qualifying requirements for TRA*, is also amended by changing paragraph (a)(6)(ii) to clarify the inapplicability of the Extended Benefits work-test requirements to past weeks when a worker qualifies for TRA payments for weeks of unemployment which begin prior to receipt of notice from the State agency of eligibility for TRA payments. This is a clarifying amendment unrelated to the 1986 Amendments.

7. Section 617.11, *Qualifying requirements for TRA*, is further amended by adding a new paragraph (a)(7), *Job search program participation*, which provides that to qualify for TRA a worker must be enrolled in, be participating in, or have successfully completed a job search program (JSP) which meets the statutory requirements,

or have the JSP requirement waived by the State agency because it determined that a JSP is not reasonably available. Section 13003(a)(1) of the 1986 Amendments; section 231(a) of the Act.

8. Section 617.13(c) *Reduction of amount*, is amended to correct the reference under paragraph (2) to read "Veterans Educational Assistance" rather than "Veterans Education Assistance" as presently printed. This is a technical correction unrelated to the 1986 Amendments.

9. Section 617.15(a), *Basic weeks*, is amended to reflect the increase in the basic eligibility period from 52 weeks to 104 weeks. While the maximum amount of TRA benefits remains unchanged, the time period a worker is eligible to receive basic TRA is extended to 104 weeks following exhaustion of regular UI benefits in the worker's first UI benefit period. This amendment is given effect by applying it to all workers whose eligibility periods begin on or after April 7, 1986, as well as all workers who have a previously established 52-week TRA eligibility period that ends on or after April 7, 1986. Workers with 52-week eligibility periods that end before April 7, 1986, will not have their eligibility periods extended to 104 weeks. Section 13003(d)(1) of the 1986 Amendments; section 233(a)(2) of the Act.

Paragraph (c), *Limit*, is revised since the 78-week limit for workers to receive TRA is inexactly expressed and in any case is no longer applicable. Under the "Gramm-Rudman" provision in section 13009(d) of the 1986 Amendments, weekly TRA payments were reduced in the period March 1 to October 1, 1986, by a percentage equal to the non-defense sequester percentage in the Sequestration Report (submitted under the Balanced Budget and Emergency Deficit Control Act of 1985). While weekly TRA payments were reduced under this provision a worker's maximum amount in the TRA account was reduced only by the amount actually paid; therefore, the worker actually could receive more than 26 weeks of basic TRA payments, and before and after the application of the "Gramm-Rudman" provision the eligibility period for receipt of basic and additional TRA could extend over a greater period than 78 weeks. Accordingly, paragraph (c) is revised to limit the maximum TRA payable on the basis of a single certification to the basic amount determined under section 233(a)(1) of the Act plus additional TRA of 26 times the TRA/WBA (weekly benefit amount). This is a clarifying amendment which pertains in part to sections 13003(d)(1) and 13009(d) of the 1986 Amendments.

10. Section 617.17, *Availability and active search for work*, is revised by adding a sentence at the end of the section referring to § 617.11(a)(6)(ii) on the inapplicability of the Extended Benefits work-test requirements to past weeks when a worker qualifies for TRA payments for weeks of unemployment which begin prior to receipt of notice from the State agency of eligibility for TRA payments. This is a clarifying amendment unrelated to the 1986 Amendments.

11. Section 617.18, *Disqualifications*, is revised by adding a new paragraph (c) which disqualifies a worker from receiving TRA for any week during which the worker is receiving on-the-job training. Section 13003(d)(2) of the 1986 Amendments; new section 233(e) of the Act.

12. Section 617.20, *Responsibilities for the delivery of reemployment services*, is revised by adding that the State agency will advise each adversely affected worker to apply for training at the time the worker makes application for TRA, and within 60 days after an individual applies for training the State agency will interview each applicant regarding available training opportunities. New section 239(f) of the Act, added by section 13004(c)(2) of the 1986 Amendments.

13. Section 617.22(a), *Conditions for approval* (of training), is changed from "may" approve training subject to the availability of funds to "shall" approve training to the extent that appropriated funds are available and the criteria for approval of training are met. Section 13004(a)(2) of the 1986 Amendments; section 236(a)(1) of the Act.

Prior to the 1986 Amendments, job search and relocation allowances were treated as entitlements under the regulations, while training was not. However, once training was approved for an individual, the payment of the training costs also became an entitlement. Approval of training was based on the availability of appropriated funds allocated to the State by the Department to pay the full cost of training and the determination by the State agency that specifc criteria in paragraphs (a)(1) through (a)(5) of § 617.22 were satisfied. This amendment makes training an entitlement if appropriated funds are available. In essence, the change is technical insofar as entitlement to training is concerned. There is no change in the treatment of job search and relocation allowances.

Paragraph (a)(3) of this section is also changed to require reasonable expectation of employment as a condition for approval of training, but not require that employment opportunities be available, or offered, immediately upon completion of training. Section 13004(a)(6) of the 1986 Amendments; new paragraph (2) of section 236(a) of the Act.

A new paragraph (i) is added to this section stating that in no case will an individual be approved for training when the training program is conducted totally or partially at a location outside the United States. This is a clarifying amendment unrelated to the 1986 Amendments.

14. Section 617.25, *Purchased training*, is amended to reflect that no training costs may be paid by the Secretary if they have been paid under any other Federal program, and to prohibit double reimbursement to workers and institutions; training opportunities are expanded to include those available through JTPA; to add criteria for approving and paying for on-the-job training; and to ensure that any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of identical costs incurred in training the adversely affected worker under the TAA program, are not considered double reimbursement of training costs even if such other use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker. New paragraphs (3) and (4) of subsection (a) and new subsection (d) of section 236 of the Act, as added by section 13004(a) (6) and (7) of the 1986 Amendments.

15. Section 617.34(a)(1) *Travel*, concerns allowable travel costs when a worker is conducting an approved job search. The current section confines the State agency's authority to approving "the lesser of" the most economical public transportation or the cost per mile at the mileage rate authorized under the Federal travel regulations. This limitation restricts the administrative flexibility and judgment of the State agency in approving the most appropriate and efficient transportation method for the worker. It is possible that the lowest cost transportation may require more travel time which could add costs greater than the transportation savings. It is the intent of the Department to have workers conduct job search at the lowest reasonable total cost for travel, lodging and meals; therefore, this section is amended to give the State agency broader administrative flexibility in approving an individual worker's job search plan in order to

realize this intent. This is a technical amendment unrelated to the 1986 Amendments.

16. Section 617.46(a)(1) concerns allowable transportation costs when a worker's application to relocate to the area of new employment is approved by the State agency. The current section confines the State agency's authority to approving "the lesser of" the most economical public transportation or the cost per mile at the mileage rate authorized under the Federal travel regulations. This limitation restricts the administrative flexibility and judgment of the State agency in approving the most appropriate, efficient and reasonable transportation method for the individual worker and his or her family. It is possible that the lowest cost of transportation may not always be reasonable or may require more travel time which could have the effect of adding costs greater than the transportation savings. It is the intent of the Department to have individuals relocate at the lowest reasonable total cost for travel, lodging and meals. The State agency is given broader administrative flexibility to approve an individual worker's relocation plan in order to realize this intent. This is a technical amendment unrelated to the 1986 Amendments.

17. A new Subpart F and § 617.49 are added on the Job Search Program (JSP) to reflect the requirement in the 1986 Amendments that workers participate in a JSP as a condition for receiving TRA payments, except when it is determined that no acceptable JSP is reasonably available, and to provide for reimbursement to a worker for necessary expenses to participate in a JSP approved by the Secretary. New paragraph (5) of subsection (a) and new subsection (c) of section 231 of the Act, as added by sections 13003(a)(1) and (2) of the 1986 Amendments, and new subsection (c) of section 237 of the Act, as added by section 13005(a) of the 1986 Amendments.

18. Subpart F, *Administration by Applicable State Agencies*, is redesignated as Subpart G; section numbers and headings are not changed.

19. Section 617.59, *Agreements with State agencies*, is changed by modifying paragraphs (a) and (b) to authorize and execute agreements for the delivery of TAA program services with one or more State or local agencies as defined in redesignated § 617.3(ii). Paragraph (f) is also modified by deleting the reference to section 3302(c)(3) of the Internal Revenue Code of 1954. Although sanctions are still applicable under this section against certain State entities, reference to section 3302(c)(3) is not necessary since appropriate sanctions for not fulfilling commitments in the Agreement will be delineated in the Agreement with the State or a State agency. These changes are made pursuant to section 13004(c)(2) of the 1986 Amendments; new paragraph (e) of section 239 of the Act.

20. Section 617.62(c), *Fraud and recovery of overpayments*, is modified to reflect the redesignation of Subpart F as Subpart G in the content of this section.

21. Section 617.66, *Transition procedures for amendments in sections 13002 through 13009 of Pub. L. 99–272 (the Consolidated Omnibus Budget Reconciliation Act of 1985)*, is added to reflect that amendments to the TAA provisions of the Trade Act of 1974, as amended by Pub. L. 99–272, are effective on enactment of the 1986 Amendments, except the provision concerning the "job search program". Workers who were certified for TAA under petitions filed with the Labor Department on or after April 7, 1986, are subject to the JSP provision. In addition, the amendments on extension and termination of Chapter 2 and authorization of appropriations (sections 13007 and 13008) are to be applied as if they took effect on December 18, 1985. The effective date provisions also include a provision on the application of Gramm-Rudman, which was applicable only until the end of fiscal year 1986. Section 13009 of the 1986 Amendments.

22. Changes in the Table of Contents of Part 617.

23. Other technical and clarifying changes. In this regard it has been determined that no technical or other changes are required in §§ 617.13(c) and 617.59 to reflect the amendments to sections 232(c) and 239(a) of the Act, respectively, in sections 13003(c) and 13003(a)(3) of the 1986 Amendments.

Classification—Executive Order 12291

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

Regulatory Flexibility Act

No regulatory flexibility analysis is required where the rule "will not * * * have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The definition of the term "small entity" under 5 U.S.C. 601(6) does not include States. Since these regulations involve only the States, no regulatory flexibility analysis is required. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at No. 17.245, "Trade Adjustment Assistance—Workers."

List of Subjects in 20 CFR Part 617

Job search assistance, Labor, Reemployment services, Relocation assistance, Trade readjustment allowances, Unemployment compensation, Vocational education.

Words of Issuance

For the reasons set out in the preamble, Part 617 of Title 20, Code of Federal Regulations, is proposed to be amended as set forth below.

Signed at Washington, DC, on October 15, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

PART 617—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS UNDER THE TRADE ACT OF 1974

1. The authority for Part 617 continues to read as follows:

Authority: 19 U.S.C. 2320; Secretary's Order No. 3–81, 46 FR 31117.

2. Section 617.3 is amended by redesignating paragraphs (w) and (x) as (z) and (aa), redesignating paragraphs (y) through (bb) as (cc) through (ff), redesignating paragraphs (cc) through (nn) as (gg) through (rr), revising paragraphs (b), (m), and newly designated (ii), and adding paragraphs (w), (x), (y) and (bb) to read as follows:

§ 617.3 Definitions.

* * * * *

(b) "Adversely affected employment" means employment in a firm or appropriate subdivision of a firm, including workers in any agricultural firm or subdivision of an agricultural firm, if workers of such firm or appropriate subdivision are certified

under the Act as eligible to apply for TAA.

* * * * *

(m) "Eligibility period" means, for purposes of paying TRA:

(1) *Basic weeks.* The 104-week period beginning with the first week following the first week with respect to which the individual first exhausts all rights to regular compensation (as defined in paragraph (oo)(1) of this section) in such individual's first benefit period (as defined in paragraph (r) of the section); and

(2) *Additional weeks.* The 26-week period that—

(i) Follows the last week of entitlement to basic TRA otherwise payable under this Part 617 to the individual; or

(ii) Begins with the first week of approved training, if a bona fide, timely application for training is approved after the last week described in paragraph (m)(2)(i) of this section.

* * * * *

(w) "Job search program" means a job search workshop or job finding club.

(x) "Job search workshop" means a short (1 to 3 days) seminar designed to provide participants with knowledge that will enable the participants to find jobs. Subjects should include, but not be limited to, labor market information, resume writing, interviewing techniques, and techniques for finding job openings.

(y) "Job finding club" means a job search workshop which includes a period of 1 to 2 weeks of structured, supervised activity in which participants attempt to obtain jobs.

* * * * *

(bb) "On-the-job training" means training provided by an employer to an individual who is employed by the employer.

* * * * *

(ii) "State agency" means the State Employment Security Agency; the employment service of the State; any State agency carrying out title III of the Job Training Partnership Act; or any other State or local agency administering job training or related programs with which the Secretary has an agreement to carry out any of the provisions of the Act.

* * * * *

3. The introductory text of paragraph (a) and paragraphs (a)(3)(i) and (ii) and (a)(6)(ii) of § 617.11 are revised to read as follows:

§ 617.11 Qualifying requirements for TRA.

(a) *Basic qualifying requirements for entitlement.* To qualify for TRA for any week of unemployment, an individual must meet each of the following requirements of paragraphs (a)(1) through (a)(7) of this section:

* * * * *

(3) *Wages and employment.* (i) In the 52-week period (i.e., 52 consecutive weeks) ending with the week of the individual's first qualifying separation, the individual must have had at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm. Evidence that an individual meets this requirement shall be obtained as provided in § 617.12. Employment and wages covered under more than one certification may not be combined to qualify for TRA.

(ii)(A) For purposes of this paragraph (a)(3), any week in which such individual:

(*1*) Is on employer-authorized leave from such adversely affected employment for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training,

(*2*) Does not work in such adversely affected employment because of a disability compensable under a workers' compensation law or plan of a State or the United States, or

(*3*) Had adversely affected employment interrupted to serve as a full-time representative of a labor organization in such firm or subdivision, shall be treated as a week of employment at wages of $30 or more;

(B) *Provided,* that—

(*1*) Not more than 7 weeks in the case of weeks described in paragraph (a)(3)(ii)(A)(*1*) or paragraph (a)(3)(ii)(A)(*3*) of this section, or both, and

(*2*) Not more than 26 weeks described in paragraph (a)(3)(ii)(A)(*2*) of this section, may be treated as weeks of employment for purposes of paragraph (a)(3) of this section.

* * * * *

(6) *EB work test.*

* * * * *

(ii) The EB work test shall not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to receipt by the claimant of notice of determination of eligibility for TRA. The claimant shall not be subject to the EB work test requirement set out in § 617.17, nor to any State agency timely filing requirement, but shall be required to be unemployed and able to work and available for work with respect to any such week except as provided for workers in approved training in paragraph (a) of this section. TRA claimants shall be subject to these work test requirements for weeks of unemployment beginning after the date they are notified of eligibility for TRA payments.

* * * * *

4. Paragraph (a) of § 617.11, as amended in item 3 above, is further amended by adding at the end thereof a new paragraph (a)(7) to read as follows:

§ 617.11 Qualifying requirements for TRA.

(a) *Basic qualifying requirements for entitlement.* * * *

* * * * *

(7) *Job search program participation.* The worker is enrolled in, participating in, or has successfully completed a job search program which meets the requirement of § 617.49(a); or the State agency has determined that no acceptable job search program is reasonably available under the criteria set forth in § 617.49(c).

* * * * *

§ 617.13 [Amended]

5. Paragraph (c)(2) of § 617.13 is amended to correct a printing error. In § 617.13(c)(2), "Veterans Education Assistance" is revised to read "Veterans Educational Assistance".

6. Paragraphs (a) and (c) of § 617.15 are revised to read as follows:

§ 617.15 Duration of TRA.

(a) *Basic weeks.* An individual shall not be paid basic TRA for any week after the 104-week eligibility period beginning with the first week following the first week with respect to which the individual has first exhausted (as determined under § 617.11(a)(5)), in such individual's first benefit period, all rights to that part of UI which is regular compensation.

* * * * *

(c) *Limit.* The maximum TRA payable on the basis of a single certification is limited to the basic amount determined under section 233(a)(1) of the Act plus additional TRA of 26 times the TRA/WBA (weekly benefit amount).

7. Section 617.17 is revised to read as follows:

§ 617.17 Availability and active search for work.

An individual shall not be paid TRA for any week of unemployment during which the individual is not able to work or is unavailable for work under the applicable State law, or for any week for which TRA is claimed if the individual fails or refuses to make an active search for work and furnish tangible evidence

of such work search or to apply for or accept work or to accept a referral to work under those provisions of the applicable State law which apply to EB claimants and which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970. This paragraph shall not apply to weeks during which the individual is actually undergoing training approved under the provisions of the applicable State law or under Subpart C of this Part 617, unless the individual is determined to be ineligible for such week under the applicable State law or § 617.18(b)(2). The EB work test is applicable under the circumstances set forth in § 617.11 (a)(6)(ii).

8. Paragraph (c) is added to § 617.18 as follows:

§ 617.18 Disqualifications.

* * * * *

(c) *Disqualification while in OJT.* In no case may an individual receive TRA for any week with respect to which the worker is engaged in on-the-job training.

9. Paragraph (a) of § 617.20 is revised as follows:

§ 617.20 Responsibilities for the delivery of reemployment services.

(a) *State agency referral.* The State agency shall be responsible for:

(1) Advising each adversely affected worker to apply for training, with the State agency responsible for reemployment services, at the time the worker makes an application for TRA; and

(2) Referring each adversely affected worker to the State agency responsible for reemployment services.

* * * * *

10. Paragraph (b) of § 617.20 is amended by redesignating paragraphs (b)(1) through (b)(12) as (b)(2) through (b)(13), revising (b) introductory text and adding new paragraph (b)(1):

§ 617.20 Responsibilities for the delivery of reemployment services.

* * * * *

(b) *State agency responsibilities.* State agency responsibilities under this Subpart C include, but are not limited to:

(1) Interviewing the adversely affected worker regarding suitable training opportunities available to the worker under section 236 of the Act and reviewing such opportunities with the worker within 60 days after the worker applies for training;

* * * * *

11. The introductory text of paragraph (a) and paragraph (a)(3) of § 617.22 are revised, and a new paragraph (i) of § 617.22 is added, as follows:

§ 617.22 Approval of training

(a) *Conditions for approval.* To the extent that appropriate funds are available and are allocated by the Department to the State to pay the full costs of any training, such training shall be approved for an adversely affected worker if the State agency determines that: * * *

* * * * *

(3) There is a reasonable expectation of employment following the completion of the training (but a reasonable expectation does not require that employment opportunities be available, or offered, immediately upon the completion of training).

* * * * *

(i) *Training outside the United States.* In no case shall an individual be approved for training under this Subpart C which is conducted totally or partially at a location outside the United States.

12. Section 617.25 is revised as follows:

§ 617.25 Purchased training.

(a) *State agency determination.* If the State agency determines that placement of an adversely affected worker in preferred training under § 617.24 cannot be accomplished, the State agency shall attempt to make arrangements or enter into agreements to purchase training or provide for reimbursement of the cost of training through:

(1) On-the-job training offered by an employer;

(2) Any training program provided by a State pursuant to section 303 of the JTPA;

(3) Any training program approved by a private industry council established under section 102 of the JTPA; and

(4) Any other training program approved by the Secretary.

(b) *Costs of training.* (1) When the direct payment of costs of training are made from TAA program funds, no other payment for such direct costs of training may be made under any other Federal law. When the direct payment of the costs of training have been made under any other Federal law, or are reimbursable under any other Federal law and a portion of the direct costs have already been paid under other Federal law, payment of such training costs may not be paid from TAA program funds.

(2) When the payment of the direct costs for training an adversely affected worker are paid or payable under more than one Federal law, the State agency shall establish procedures to insure that individuals and institutions do not receive duplicate reimbursement.

(3) The provisions of paragraphs (b)(1) and (2) of this section shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of identical costs incurred in training the adversely affected worker under the TAA program, even if such other use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker. For example, education or training grants to communities or to institutions for building construction under other provisions of Federal law, which are not concerned with the direct payment of costs for training adversely affected workers, shall not apply.

(c) *Costs of on-the-job training.* The cost of OJT for an eligible worker may be paid to an employer only if:

(1) No currently employed individual is displaced by such eligible worker, including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits.

(2) Such training does not impair existing contracts for services or collective bargaining agreements.

(3) In the case of training which would be inconsistent with the terms of a collective bargaining agreement, written concurrence has been obtained from the concerned labor organization.

(4) No other individual is on layoff from the same or any substantially equivalent job for which such eligible worker is being trained.

(5) The employer has not terminated the employment of any regular employee or otherwise reduced the workforce with the intention of filling the vacancy so created by hiring the eligible worker.

(6) The job for which the eligible worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals.

(7) Such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 222 of the Act.

(8) The employer certifies to the State agency that the employer will continue to employ the eligible worker for at least 26 weeks after completing the training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment.

(9) The employer has not received payment under section 236 and this part for any other on-the-job training

provided by such employer which failed to meet the requirements of paragraphs (c)(1) through (6) of this section, and

(10) The employer has not taken, at any time, any action which violated the terms of any certification described in paragraph (c)(8) of the section made by the employer with respect to any other on-the-job training provided by the employer for which the employer has received a payment under section 236 and this part.

13. Paragraph (a)(1) introductory text of § 617.34 is revised to read as follows:

§ 617.34 Amount.

(a) *Computation.* * * *

(1) *Travel.* The more cost effective mode of travel reasonably available shall be approved by using:

* * * * *

14. Paragraph (a)(1) introductory text of § 617.46 is revised to read as follows:

§ 617.46 Travel allowance.

(a) *Computation.* * * *

(1) *Transportation.* The more cost effective mode of transportation reasonably available shall be approved by using:

* * * * *

§§ 617.50—617.65 (Subpart F) [Redesignated as §§ 617.50—617.65 (Subpart G)]

15. Subpart F, consisting of §§ 617.50 through 617.65, is redesignated as Subpart G.

16. A new Subpart F consisting of § 617.49 on the Job Search Program is added as follows:

Subpart F—Job Search Program

§ 617.49 Job Search Program.

(a) *Program requirements.* (1) A worker after being separated from adversely affected employment must participate in an approved job search program (JSP), or have completed a JSP, as a condition for receiving TRA, except where the State agency determines that an acceptable JSP is not reasonably available.

(2) Workers who qualify for TRA payments for weeks prior to the date they are notified of eligibility for TRA are not subject to participation in a JSP as a condition for receiving retroactive TRA payments. TRA claimants are subject to participation in JSP with respect to TRA claims for weeks of unemployment which begin after the date they are notified.

(3) When the State agency determines that the worker has failed to begin participation in an approved JSP, or ceased to participate in such a JSP before completion, and there is no justifiable cause for failure or cessation, no TRA may be paid to the worker on or after the date of such determination until the worker begins or resumes participation in an approved JSP.

(4) A worker in training approved under §§ 617.22 through 617.26, or approved by the State agency under State law, is excepted from the JSP qualifying requirement while the worker is attending and making satisfactory progress in the training. This exception applies whether training begins before or after entitlement to basic TRA commences, and also applies after training begins for a worker who is attending a JSP program. Exceptions to the JSP qualifying requirement must be documented in the worker's file by the State agency.

(b) *Approved JSPs.* A job search program may be approved if:

(1) The JSP is provided through the JTPA, the public employment service, or any other Federal and State funded program, and complies with paragraphs (w), (x), and (y) of § 617.3.

(2) The JSP is sponsored by a company or firm from which the worker has been separated, and complies with paragraphs (w), (x), and (y) of § 617.3.

(c) *Determination of reasonably available.* (1) Reasonably available means an existing approved JSP that is located in the worker's normal commuting area, as defined in § 617.3, and has sufficient capacity to accommodate the worker.

(2) When the State determines that a JSP is not reasonably available for a worker, the requirement is not a condition of qualifying for TRA for the weeks involved. When a determination is made with respect to a worker, the State agency must document its records, and the weeks involved, prior to making TRA payments to the worker.

(3) The State agency may issue a blanket waiver of the JSP qualifying requirement for TRA for groups of workers, where deemed appropriate, when it is determined that there is no functioning JSP.

(4) All determinations that a JSP is not reasonably available should extend only for that period of time that a JSP is not reasonably available, and the exception for workers in approved training should extend until the completion of training. If the State determines that a JSP is reasonably available at a later date, then the JSP qualifying requirement must be met for entitlement to basic TRA for weeks of unemployment beginning after the date the JSP becomes reasonably available.

(d) *JSP allowances.* Subsistence and transportation costs shall be approved for workers participating in JSPs when deemed appropriate and within available State funding levels. Costs incurred may not exceed those allowable for training under §§ 617.27 and 617.28, if, and when, the State refers a worker to a JSP outside the normal commuting area.

* * * * *

17. Paragraphs (a), (b) and (f) of § 617.59 are revised as follows:

§ 617.59 Agreements with State agencies.

(a) *Authority.* Before performing any function or exercising any jurisdiction under the Act and this Part 617, a State or State agency (as defined in § 617.3(ii)) shall execute an Agreement with the Secretary meeting the requirements of the Act.

(b) *Execution.* An Agreement under paragraph (a) of this section shall be signed on behalf of a State or State agency by an authorized official of the State or such State agency, and the signature shall be dated. The authority of the State or State agency official shall be certified by the Attorney General of the State or counsel for the State agency, unless the Agreement is signed by the Governor of the State. An agreement will be executed on behalf of the United States by the Secretary.

* * * * *

(f) *Breach.* If the Department believes a State or State agency may not have fulfilled its commitments under an Agreement under this section, the procedures delineated in the Agreement shall apply. A State or State agency shall receive reasonable notice and opportunity for hearing before a finding is made whether there has been a failure to fulfill commitments under an Agreement.

* * * * *

Section 617.62(c) is revised as follows:

§ 617.62 Transitional procedures.

* * * * *

(c) *Fraud and recovery of overpayments.* The fraud and overpayment recovery provisions of this Subpart G shall take effect on August 13, 1981, and shall apply to all overpayments outstanding on that date or determined on or after that date.

* * * * *

20. Section 617.66 is added to Subpart G as follows:

§ 617.66 Transition procedures for amendments in sections 13002 through 13009 of Pub. L. 99-272 (the Consolidated Omnibus Budget Reconciliation Act of 1985).

The procedures for administering the Trade Act of 1974 before and after the amendments made by the Pub. L. 99-272 are as follows:

(a) *Duration of TRA.* The provisions contained in § 617.15 expanding the eligibility period for payment of basic TRA benefits from 52 weeks to 104 weeks shall apply only to those claimants whose eligibility periods begin on or after April 7, 1986, or who have a previously established 52-week TRA eligibility period that ends on or after April 7, 1986. Workers with 52-week eligibility periods that end before April 7, 1986, will not have their eligibility periods extended to 104 weeks.

(b) *TRA payments*—(1) *Retroactive TRA payments.* Retroactive claims of eligible workers may be approved for weeks of unemployment beginning with the first week after the week which includes December 18, 1985. Claims for weeks beginning before April 7, 1986 (or, if later, before claimants are notified of their potential entitlement to retroactive benefits) are not subject to the application of the Extended Benefits (EB) work test, nor to the State timely filing requirement. TRA weekly payments are subject to those requirements for weeks of unemployment beginning after the date eligible workers are notified of such requirements.

(2) *Employer-authorized leave, disability leave and union service.* The change to § 617.11(a)(3) for crediting weeks of specified leave to qualify for TRA will apply only to initial claims for basic TRA filed with the State agency by eligible workers on or after April 7, 1987.

(c) *Job search program.* The job search program requirement applies to workers certified under petitions for trade adjustment assistance filed with the Department on or after April 7, 1986.

(d) *Training and other amendments.* Other amendments in Pub. L. 99–272 are effective on April 7, 1986, and apply to application for TAA benefits approved on or after April 7, 1986.

(e) *Application of Gramm-Rudman.* TRA payments to workers made under Part 1 of Chapter 2 of Title II of the Trade Act of 1974 shall be reduced by a percentage equal to the non-defense sequester percentage applied in the Sequestration Report (submitted under the Balanced Budget and Emergency Deficit Control Act of 1985 and dated January 21, 1986) of the Comptroller General of the United States for Fiscal Year 1986, for the period from March 1, 1986 to October 1, 1986.

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Federal Register

Thursday
October 22, 1987

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 905

Surface Mining and Reclamation Operations Under a Federal Program for California; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 905

Surface Mining and Reclamation Operations Under a Federal Program for California

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the Department of the Interior (DOI) proposes a Federal program to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in the State of California. This includes surface effects of underground coal mining. This proposed program is necessary in order to regulate surface coal mining activities in the absence of a State program.

DATES: *Written comments:* OSMRE will accept written comments on the proposed rule until 4:00 p.m. local time on December 31, 1987.

Public hearings: Upon request, OSMRE will hold a public hearing on the proposed rule in Sacramento, California on December 24, 1987 at 9:30 a.m. local time. OSMRE will accept requests for public hearings until 4:00 p.m. local time on November 23, 1987. Individuals wishing to attend but not testify at any hearing should contact a person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that the hearing will be held.

Proposed effective date: Thirty days after publication of the final rule in the Federal Register.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, New Mexico, or mail to the Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Albuquerque, New Mexico 87102.

Public hearing: Conference Room, Federal Building, 300 Cottage Way, Sacramento, California 95825.

Requests for public hearings: Submit requests orally or in writing to a person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Robert Hagen, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Albuquerque, New Mexico 87102; Telephone (505) 766–1486 or Patrick W. Boyd, Branch of Federal and Indian Programs, Division of Regulatory Programs, OSMRE, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 343–1864.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the proposed California Federal regulatory program are available for inspection and may be obtained at the OSMRE office listed above under **"ADDRESSES."**

Written Comments

Written comments on the proposed rules should be specific, should be confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where possible, commenters should submit three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) or delivered to addresses other than those listed above may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The time, date, and addresss scheduled for the hearing in Sacramento, California is specified previously in this notice (see **"DATES"** and **"ADDRESSES"**).

Any person interested in participating at the hearing should inform Mr. Hagen or Mr. Boyd (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing by 4:00 p.m. local time November 23, 1987. If no one has contacted Mr. Hagen or Mr. Boyd to express an interest in participating in a hearing by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons in attendance wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who play to testify submit an advance copy of their testimony to OSMRE, at least two working days prior to any hearing. The testimony should be submitted to the address previously specified for the submission of written comments (see **"ADDRESSES"**).

II. Background

Under section 504(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, the Secretary of the Interior (the Secretary) is required to promulgate a Federal program for a State for, among other reasons, the failure of the State to submit a proposed State program to the Secretary. Upon promulgation of a Federal regulatory program, the Secretary becomes the regulatory authority.

Once a decision is made that a Federal regulatory program is necessary for a State, the Secretary must make several determinations before promulgating a program. Section 504(a) of SMCRA requires that the Secretary take into consideration the nature of the state's terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also set forth in the regulations for the promulgation of Federal programs, 30 CFR Part 736. Section 505(b) of SMCRA and 30 CFR 736.22(a)(1) provide that if a State has more stringent land use and environmental protection laws or regulations, they shall not be construed to be inconsistent with SMCRA or the Secretary's regulations. The Secretary believes that the requirements of section 505(b) of SMCRA can best be met by identifying any State laws and regulations that may impose more stringent environmental controls and by listing them in the Federal program. If the State's laws or regulations establish more stringent standards than those of SMCRA or the Secretary's regulations, or if the State regulates any aspect of the environment which neither SMCRA nor the Secretary's regulations protect, the Secretary would then specifically preserve those State standards in the Federal program.

Also, in promulgating a program for a State, section 504(g) of SMCRA specifies that any State statutes or regulations which regulate surface mining and reclamation operations are to be identified by the Secretary and will be superseded and preempted by the Federal program to the extent that they interfere with the achievement of the purposes and requirements of SMCRA and the Federal program. This provision is reinforced by section 505(a), which states that only inconsistent State laws shall be superseded by any provision of SMCRA or regulation. Thus, State statutes and rules and regulating the same activities as those covered by the Federal law and regulations and which do not provide as much protection as do the Federal law and regulations are

considered to interfere with the achievement of the purposes of SMCRA. Accordingly, they must be identified and preempted.

OSMRE reviewed California State statutes to determine which ones provide regulatory requirements for coal exploration and surface coal mining and reclamation operations as defined by SMCRA, and to identify provisions that might be either more stringent than or inconsistent with the requirements of SMCRA. The more stringent requirements, whether State or Federal, would be adopted for this program by listing in the proposed rules the California State statutes that set different controls and for which compliance is required in the surface coal mining and reclamation operation. Determining whether the State statutes are more stringent than the Federal regulations will be done on a case-by-case basis. Citation in the proposed Federal program of State statutes with which compliance is required is not meant as an adoption of those State statutes and regulations for purposes of enforcement by OSMRE. Citation of such statutes is intended as an aid to persons who must comply with both the Federal program requirements and State statutes. However, if a State law is cited below as interfering with the achievement of the purposes of SMCRA, it would be superseded to the extent that it is less stringent than the Federal program.

In accordance with 30 CFR 736.23, OSMRE has tentatively identified the following statutes and regulations as interfering with achievement of the purposes of SMCRA and the Federal program and thus proposes to supersede and preempt them to the extent they relate to surface coal mining and reclamation subject to regulation under SMCRA: (1) The California Surface Mining and Reclamation Act of 1975, Cal. Pub. Res. Code Ann. 2710 *et seq.* (West); (2) 14 Cal. Adm. Code 3500 *et seq.*, regulations implementing the California Surface Mining and Reclamation Act of 1975; and (3) Cal. Labor Code Ann. 7990 *et seq.* (West), concerning the licensing of blasters. Permittees will be required to conduct surface coal mining activities in compliance with all other existing State statutes and regulations.

To the degree practicable, OSMRE would coordinate coal mining permit requirements with State agencies to avoid unnecessary duplication. The California Department of Conservation, Division of Mines and Geology, has responsibility for administering the laws and rules pertaining to surface mining. OSMRE tentatively concludes that these statutes and rules are not consistent with SMCRA or the Federal permanent program rules and would interfere with the attainment of the reclamation goals and purposes expressed in SMCRA. Thus, OSMRE proposes that the California statutes and rules described above be followed only to the extent that they are not inconsistent with the regulation of coal exploration, surface coal mining operations or the reclamation of surface coal mined lands in the State of California pursuant to the proposed Federal regulations.

Finally, a Federal program, according to section 504(h) of SMCRA, must include a process for coordinating the review and issuance of surface mining permits with other Federal or State permits applicable to the proposed operation. The Federal statutes for which compliance must be coordinated in the issuance of a surface mining permit are set out in 30 CFR 736.22(c). State statutes for which a permit is required must be identified in the process of promulgating a Federal program, and the Federal program must provide for coordination with the permit review and issuance procedures.

Federal programs are based on the Secretary's permanent program regulations, 30 CFR Subchapters A, F, G, H, J, K, L, and M. The permanent program regulations implement five essential aspects of the surface coal mining regulatory program: permitting, performance standards, designation of lands as unsuitable for mining, bonding, and inspection and enforcement. These rules form the benchmark of state and Federal regulatory programs.

The permanent program rules refer to the "regulatory authority", which, under a Federal program, is the Secretary. The Secretary has delegated all of his authority under SMCRA to the Assistant Secretary-Land and Minerals Management. (Secretarial Order No. 3013, Nov. 9, 1977, and Order No. 3099, Dec. 22, 1983). With limited exceptions, the Assistant Secretary has in turn redelegated all of this authority under SMCRA to the Director, OSMRE. (216 Departmental Manual 1, November 9, 1977). Thus, the Director of OSMRE is the official directly responsible for the implementation of a Federal regulatory program.

The parts of the permanent regulatory program rules that must be included in a Federal program are listed in 30 CFR 736.22(b). They include the general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands as unsuitable for surface mining (Parts 761, 762, and 769), permits and permit applications (Subchapter G), small operator assistance (Subchapter H), reclamation bonding (Subchapter J), performance standards (Subchapter K), inspection and enforcement (Parts 842, 843, and 845), and blaster training and certification (Subchapter M).

Federal programs are promulgated by means of cross-referencing the permanent program rules which set the substantive standards. The proposed Federal regulatory program for California would establish 30 CFR Part 905. Sections on various topics would cross-reference the counterpart permanent program rules on those topics. For example, for general requirements for permits and permit applications, proposed Section 905.773 of the California Federal regulatory program would cross-reference 30 CFR Part 773 of the permanent program rules by stating that 30 CFR Part 773 shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations. Cross-referencing avoids duplication of the full text of the permanent regulatory program rules for each Federal program.

If a particular permanent program regulation needs to be modified for use in a Federal program, an additional paragraph of the Federal program rule would be added to modify the permanent regulatory program standard for the Federal program State or to add additional requirements or standards. If more than one standard needs to be modified in any particular permanent program rule, additional paragraphs would be added to the Federal program section.

One effect of cross-referencing in a Federal program is that if a permanent program rule is revised, the corresponding Federal program rule would be similarly revised. However, the notice of proposed rulemaking would invite comments not only on the proposed rule generally, but also on how it might affect a particular Federal program. If certain changes were needed for a Federal program, then a separate provision would be added to the Federal program regulation that is the counterpart to the permanent program rule. Several provisions of the permanent program rules are already applicable to all Federal programs because they were promulgated for application to all regulatory programs and therefore need not be cross-referenced. These provisions are 30 CFR Chapter VII, Subchapter P—Protection

of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining; Subchapter D—Federal Lands Program. Part 955—Certification of Blasters in Federal Program States and on Indian lands.

III. Discussion of Proposed Rule

On July 28, 1982, OSMRE published a proposed Federal Program for California to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in that State (47 FR 32686). On August 12, 1982, OSMRE postponed the scheduled public hearing and extended the comment period indefinitely (47 FR 35011). During the comment period, OSMRE was informed by the California Division of Mines and Geology that all known coal deposits in California were too small and of too poor quality for commercial recovery in the foreseeable future.

As a result of California's comments, it was determined that development of the State's known coal reserves on non-Federal and non-Indian lands was extremely unlikely and that a regulatory program was not needed. Publication of this determination was made in the May 10, 1983, **Federal Register** (48 FR 20939). The notice also provided that "Should information come to light which indicates an increased likelihood of coal exploration or surface coal mining on non-Federal and non-Indian lands within the State, promulgation of the required program will be reinitiated by subsequent rulemaking notice."

Subsequent information available to OSMRE indicates that coal exploration and coal surface mining operations do exist, and OSMRE has determined it is necessary to reinitiate the Federal program rulemaking for the State of California.

The following proposed rule, 30 CFR Part 905, is consistent with the previous proposed rulemaking of July 28, 1982 (47 FR 32690). However, some modifications have been made to take into account revisions OSMRE has made to its permanent program rules since that date.

Content and Organization of the Federal Program

The content and organization of the proposed Federal program for California would follow the permanent program regulations. As discussed above, however, instead of the full text appearing, each section includes only a reference to the pertinent permanent program regulation section. Section 905.700 (e) and (f) set out both inconsistent and more stringent State statutes. A separate paragraph is proposed to be added under each section where there are deviations from the Federal permanent program regulations for the California Federal program. These paragraphs will generally be found in a subsection (b). The content and organization of the proposed California Federal program would be based on the following provisions of the Federal permanent program regulations, 30 CFR Chapter VII:

Subchapter A—General
Subchapter F—Areas Unsuitable for Mining
Subchapter C—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration
Subchapter H—Small Operator Assistance
Subchapter J—Bond Insurance Requirements for Bonding of Surface Coal Mining and Reclamation Operations
Subchapter K—Permanent Program Performance Standards
Subchapter L—Permanent Program Inspection and Enforcement Procedures
Part 955—Certification Program for Blasters

Technical literature cited by OSMRE in the preambles to the permanent regulatory program (44 FR 14901–15309, March 13, 1979) and the regulatory reform rulemaking notices ending September 30, 1983, was relied upon in developing the California Federal program. The reader is referred to those preambles for a discussion of the bases and purposes of the permanent program rules proposed to be referenced in the California program without substantive change.

The numbering system of the permanent program regulations has been incorporated into the numbering system for the proposed California Federal program. Subchapter T in 30 CFR Chapter VII has been established to include regulatory programs by State in alphabetical order. Each State is assigned a part number; the regulatory program for California is assigned Part 905. Program elements have been categorized under headings similar to the subchapter titles of the permanent program in 30 CFR Chapter VII.

Detailed Discussion of the California Program

General

Section 905.700 would contain six subsections: the first four subsections, § 905.700 (a), (b), (c), and (d), would contain general statements on the scope and applicability of the program. Section 905.700(e) would indicate California State laws that have been identified as having provisions that regulate activities involved in surface coal mining operations and that have provisions that in some instances are more stringent than the Act and the Secretary's regulations. Section 905.700(f) would identify the California Surface Mining and Reclamation Act and regulations promulgated pursuant to it as interfering with achievement of the purpose of SMCRA and Federal regulations. The State statute and regulations would be preempted and superseded.

Sections 905.701 through 905.707 would establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter A, General. Section 905.701(a) would contain all applicable general requirements, including the definitions in 30 CFR 700.5 and 701.5. Subsection (b) is proposed to be added at § 905.701 to make clear that beginning on the effective date of this program and continuing until an operation has a permanent program permit issued by OSMRE, compliance with the interim program standards in 30 CFR Chapter VII, Subchapter B is required. Section 502(c) of SMCRA provides that all surface coal mining operations on lands on which such operations are regulated by a State shall comply with the interim program standards until a permanent program permit is issued. Paragraph (c) of § 905.701 would provide that records required by 30 CFR 700.14 to be made available locally to the public shall be retained at the OSMRE Albuquerque Field Office. Section 905.707 would establish the same requirements as Part 707, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction.

Areas Designated Unsuitable for Mining

Sections 905.761 through 905.764 would establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter F, Areas Unsuitable for Mining. However, 30 CFR 736.15(b)(1) provides that the procedures and criteria for designating lands unsuitable shall be implemented one year after a Federal program is made effective for a State. Therefore, § 905.764 provides that Part 764 shall apply beginning one year after the effective date of the California program. No separate section for Federal lands is proposed because 30 CFR Part 769 is directly applicable and need not be made a part of a Federal program for a State.

Permits and Coal Exploration Approvals

Sections 905.772 through 905.785 would establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems Under Regulatory Programs. The following amplifications are being proposed:

Section 905.772(b), concerning written notice of intent to explore, is proposed to substitute for 30 CFR 772.11(a), which has been suspended. This would require any person who intends to conduct coal exploration operations outside a permit area during which 250 tons or less of coal will be removed to file a written notice of intention to explore with the regulatory authority. In addition, for exploration applications where 30 CFR 772.12 applies, § 905.772(c) would require publication of public notice of the filing upon submission of an administratively complete application. Section 905.772(d) would allow ten days after publication of the public notice for persons adversely affected to file written comments. Section 905.772(e) would require the regulatory authority to act upon a complete exploration application and any written comments within 15 days from the close of the comment period.

In addition to the requirements under the permanent program rules, other provisions are proposed to be added for permit review. More detail is necessary when OSMRE is the regulatory authority in order to provide direction to the permit applicant. In § 905.773, requirements for permits and permit processing, proposed subsection (b) would establish specific permit application review procedures. This is necessary to dispose of grossly deficient applications early in processing, to provide a procedure for obtaining additional information, and to indicate the procedure for determinations of completeness. The proposed rule at § 905.773(c) would allow OSMRE to require an applicant to submit supplemental information to ensure compliance with applicable Federal laws and regulations other than the Act and its implementing regulations. The proposed rule at § 905.773(d) would establish, pursuant to 30 CFR 773.15(a)(1), a time period of 60 days from the close of the comment period for the regulatory authority to issue a written decision. The proposed rule at § 905.773(e) would establish a procedure for ensuring confidentiality of qualified permit application information. Such information would have to be labeled confidential and submitted separately to be reviewed by OSMRE for withholding from disclosure. In addition, § 905.773(e)(1) would require the public notice required by § 905.773(b)(3) to identify the type of information considered to be confidential. Finally, § 905.773(e)(2) would require OSMRE to rule on the confidentiality of labeled application information within ten days of the last publication of the notice required under § 905.773(b)(3).

The proposed rule at § 905.774(b) would provide that a revision of the permit would be considered significant if it has the potential to adversely affect the achievement of reclamation as specified in the approved plan. A significant revision would require public notice and would be subject to a formal hearing if one is requested.

The proposed rule at § 905.774(c) would specify a period of 30 days within which OSMRE must approve or disapprove non-significant permit revisions. The proposed rule at § 905.774(d) would allow ten days for any person having an interest that is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights to submit written comments after publication of the notice required by 30 CFR 774.17(b)(2). The proposed rule at § 905.774(e) would allow interested persons and public entities 30 days from the last publication of the notice to submit written comments of objections on an application for significant revision or renewal of a permit.

The permanent program regulations at 30 CFR 779.19(a) give the regulatory authority discretion to require a map that delineates vegetation types in the proposed permit area. The proposed rule at § 905.779(b) requires the applicant for a surface mining permit to submit such a map. Similarly, the proposed rule at § 905.783(b) exercises the discretion provided to the regulatory authority by 30 CFR 783.19(a) to require a vegetation map for underground mining permits.

Small Operator Assistance

Section 905.795 would establish the same standards for the small operator assistance program as are found in Part 795 of the permanent program rules. OSMRE expects during its administration of the SOAP in California that Federal funds will be sufficient to provide for authorized services, and does not expect to exercise its option at 30 CFR 795.11(b). That option allows OSMRE to establish a formula for allocating limited funds to provide the service pursuant to Part 795. OSMRE will award SOAP contracts to qualified laboratories utilizing a streamlined procurement system that complies with the Federal Acquisition Regulations. Prior to issuing a Request for Proposals, OSMRE will announce its intention through publication in the Commerce Business Daily. OSMRE will qualify labs as part of its contracting process.

Bonding

Section 905.800 establishes the same provisions, where applicable, as CFR Chapter VII, Subchapter J, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations. The proposed rule at § 905.800(b) would require the operator to file an application for release of performance bond no later than 30 days prior to the end of the growing season. Proposed § 905.800(c) would specify the three types of acceptable bonds, surety bond, collateral bond and self-bond. These terms are defined in 30 CFR 800.5. The proposed rule at § 905.800(d) would allow a permittee to replace existing bonds with other bonds that provide equivalent coverage. In addition, OSMRE is requesting information pertaining to any bonding requirements which may have been placed on existing surface coal mining operations in California.

Performance Standards

Section 905.815 through 905.828 would establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter K. The following changes would be made:

Proposed § 905.816(b) would require (1) that the standards for revegetation success for surface mining activities shall be those specified in 30 CFR 816.116(a)(2) and (2) that the statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan.

Proposed § 905.817(b) would require (1) that the standards for revegetation success for underground mining activities shall be those specified in 30 CFR 817.116(a)(2) and (2) that the statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan.

Inspection and Enforcement Procedures

Sections 905.842, 905.843 and 905.845 establish the same provisions as 30 CFR Chapter VII, Subchapter L, Permanent Program Inspection and Enforcement Procedures. No changes to the inspection and enforcement provisions of the permanent program regulations are proposed for the California Federal program. The proposed rules at § 905.842(b) and § 905.843(b) would require OSMRE to furnish to the California Division of Mining and

Geology, on request, copies of inspection reports and enforcement actions respectively.

Blaster Training and Certification

Section 905.955 cross-references 30 CFR Part 955 of the permanent program regulations.

IV. Procedural Matters

Federal Paperwork Reduction Act

The recordkeeping and reporting requirements of this rule are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget (OCB) under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and has determined that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule would affect a relatively small number of surface coal mining operations. The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor, and no incremental economic effects are anticipated as a result of this rule.

National Environmental Policy Act

Section 702(d) of SMCRA provides that promulgation of a Federal program shall not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C. 433. Thus, no environmental assessment or environmental impact statement is required for this rulemaking.

Author

The principal author of these proposed regulations is Patrick W. Boyd, Branch of Federal and Indian Programs, Divsion of Regulatory Programs, OSMRE, 1951 Constitution Avenue NW., Washington, DC 20240.

List of Subjects in 30 CFR Part 905

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting and recordkeeping requirements.

Accordingly, OSMRE proposes to amend 30 CFR Chapter VII, Subchapter T by adding Part 905.

Date: September 2, 1987.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

30 CFR Chapter VII, Subchapter T

1. Part 905 is added to read as follows:

PART 905—CALIFORNIA

Sec.

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

§ 905.700 California Federal Program.

(a) This part contains all rules that are applicable to surface coal mining operations in California which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) Certain of the rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a cross-referenced rule is in the permanent program rule cited under the relevant section of the California Federal program.

(c) This part applies to all coal exploration and surface coal mining and reclamation operations in California conducted on non-Federal and non-Indian lands. To the extent required by 30 CFR Part 740, this part also applies to operations on Federal lands in California.

(d) The information collection requirements contained in this part have already been approved by the Office of Management and Budget under 44 U.S.C. 3507 in its approval of the information collection requirements contained in the permanent regulatory program.

(e) The following provisions of California law generally provide for more stringent environmental control and regulation of some aspects of surface coal mining operations than do the provisions of the Surface Mining Control and Reclamation Act of 1977, and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not generally be construed to be inconsistent with the Act, unless in a particular instance the rules in this chapter are found by OSMRE to establish more stringent environmental or land use controls:

(1) California Hazardous Waste Management Act of 1986, Cal. Health and Safety Code Ann. 25179.1 *et seq.* (West).

(2) Cal. Water Code Ann. 13370 *et seq.* (West) (compliance with the provisions of the Federal Water Pollution Control Act as amended in 1972).

(3) California Coastal Act of 1976, Cal. Pub. Res. Code Ann. 30000 *et seq.* (West).

(4) Cal. For. Code Ann. 4656 (West) (use of state forest lands for mining purposes).

(f) The following are the California laws and regulations that generally interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded. Other California laws may in an individual situation interfere with the purposes and achievements of the Act and may be preempted and

superseded with respect to the performance standards of § 905.815 through 905.828 as they affect a particular coal exploration or surface mining operation by publication of a notice to that effect in the Federal Register.

(1) The California Surface Mining and Reclamation Act of 1975, Cal. Pub. Res. Code Ann. 2710 *et seq.* (West), as it relates to coal mining, except to the extent that it regulates other activities that are not regulated by the Act.

(2) 14 Cal. Adm. Code 3500 *et seq.*, regulations implementing the California Surface Mining and Reclamation Act of 1975, except as they apply to other activities that are not regulated by the Act.

(3) Cal. Labor Code Ann. 7990 *et seq.* (West) (licensing of blasters), except as the regulations apply to other activities that are not regulated by the Act.

(4) California Health and Safety Code 25100 *et seq.*, the California Hazardous Waste Control Act, except to the extent that it regulates other activities that are not regulated by the Act.

(5) Hazardous Waste Management Regulations, 22 California Adm. Code 66011 *et seq.*, except as they apply to other activities that are not regulated by the Act.

(6) California Solid Waste Management and Resource Recovery Act of 1972, California Government Code 66700 *et seq.*, except to the extent that it regulates other activities that are not regulated by the Act.

(7) California Solid Waste Management Act of 1980, California Government Code 66000 *et seq.*, except to the extent that it regulates other activities that are not regulated by the Act.

(8) California Solid Waste Management Regulations, 14 California Adm. Code 17020 *et seq.*, except as they apply to other activities that are not regulated by the Act.

§ 905.701 General.

(a) Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to coal exploration and surface coal mining and reclamation operations in California.

(b) Beginning on the effective date of this program, each surface coal mining and reclamation operation in California shall comply with Subchapter B of this chapter until issuance of a permanent program permit under the provisions of Subchapter C of this chapter.

(c) Records required by § 700.14 of this chapter to be made available locally to the public shall be made available in the OSMRE Albuquerque Field Office.

§ 905.707 Exemption for coal extraction incident to government—financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 905.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining operations.

§ 905.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mining operations.

§ 905.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitions, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mining operations beginning one year after the effective date of this program.

§ 905.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts coal exploration, except for § 772.11(a) regarding written notice of intention to explore, for which paragraph (b) of this section substitutes. In addition, for applications where § 772.12 applies, the requirements of paragraphs (c) through (e) apply in place of § 772.12(c) (1) and (3) and § 772.12(d)(1).

(b) Notice of Intent. Any person who intends to conduct coal exploration operations outside a permit area during which 250 tons or less of coal will be removed shall file with the regulatory authority a written notice of intention to explore.

(c) Upon submission of an administratively complete application for an exploration permit, the operator shall publish one public notice of the filing in a newspaper of general circulation in the county of the proposed exploration area, and provide proof of this publication to the regulatory authority within one week after the newspaper notice is published.

(d) Any person having an interest which is or may be adversely affected, shall have the right to file written comments for 10 days after the advertisement appears in the newspaper.

(e) The regulatory authority shall act upon an administratively complete application for a coal exploration permit and any written comments within 15 days from the close of the comment period. The approval of a coal exploration permit shall be based only on a complete and accurate application.

§ 905.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Western Field Operations (WFO) Office.

(2) The WFO Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The WFO Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied.

(iii) Judge the application administratively complete and acceptable for further review.

(3) When the application is judged administratively complete, the applicant shall be advised by the WFO Office to file the public notice required by § 773.13 of this chapter.

(4) A representative of the WFO Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(5) Adequacy of information to allow the WFO Office to comply with the National Environmental Policy Act, 42 U.S.C. 4322, shall be considered in the determination of a complete application. The WFO Office may require specific

additional information from the applicant as any environmental review progresses when such specific information is needed.

(c) In addition to the information required by subchapter G of this chapter, the WFO Office may require an applicant to submit supplemental information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) The regulatory authority shall review the application for a permit, written comments and objections submitted; and records of any informal conference or hearing held on the application and, where there is no EIS, issue a written decision within 60 days from the close of the comment period or if an informal conference is held under § 773.13(c), 60 days from the close of the informal conference. Where an EIS has been prepared for the application, the written decision shall be issued within 60 days from the Environmental Protection Agency's publication of the notice of availability of the final EIS in the **Federal Register.**

(e) Only application information that is labeled confidential by the applicant and submitted separately from the remainder of the application will be reviewed by OSMRE for withholding from disclosure under § 773.13(d).

(1) If the application contains information identified as confidential by the applicant, the public notice required by § 905.773(b)(3) must identify the type of information considered to be confidential.

(2) OSMRE shall determine in regard to qualification of any application information labeled confidential within 10 days of the last publication of the notice required under § 905.773(b)(3) of this chapter, unless additional time is necessary to obtain public comment or in the event of unforeseen circumstances.

§ 905.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights,* shall apply to any such actions involving surface coal mining and reclamation operations permits, except as specified below.

(b) Any revision to the approved mining or reclamation plan will be subject to review and approval by the WFO Office. A significant revision to the reclamation plan will be subject to the public notice and hearing provisions of §§ 905.773(b)(3) and 773.13 (b) and (c) prior to approval and implementation. A revision to the reclamation plan will be considered significant if it has the potential to adversely affect the achievement of reclamation as specified in the approved plan.

(c) The regulatory authority will approve or disapprove non-significant permit revisions within 30 days of receipt of the administratively complete revision. Significant revision and renewals will be approved or disapproved under the provisions of § 905.773(f).

(d) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within 10 days of the publication of this chapter.

(e) Within 30 days from the last publication of the newspaper notice, written comments or objections on an application for significant revision, or renewal of a permit under § 774.15 may be submitted to the regulatory authority by any person having an interest that is or may be adversely affected by the decision on the application, or by public entities notified under § 773.13(a)(3) of this chapter with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

§ 905.775 Administrative and judicial review of decisions.

Part 775 of this chapter, *Administrative and Judicial Review of Decisions,* shall apply to all decisions on permits.

§ 905.777 General content requirements for permit applications.

Part 777 of this chapter, *General Content Requirements for Permit Applications,* shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 905.778 Permit applications—Minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information,* shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 905.779 Surface mining permit applications—Minimum requirements for information on environmental resources.

(a) Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources,* shall apply to any person who makes application to conduct suface coal mining and reclamation operations.

(b) In addition to the requirements of Part 779, the permit application shall contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area.

§ 905.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.

Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan,* shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 905.783 Underground mining permit applications—Minimum requirements for information on environmental resources.

(a) Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources,* shall apply to any person who makes application to conduct underground coal mining operations.

(b) In addition to the requirements of Part 783, the permit application shall contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area.

§ 905.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan,* shall apply to any person who makes application for a permit to conduct underground coal mining operations.

§ 905.785 Requirements for Permits for special categories of mining.

Part 785 of this chapter, *Requirements for permits for Special Categories of Mining,* shall apply to any person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 905.795 Small operator assistance program.

Part 795 of this chapter, *Small Operator Assistance Program,* shall apply to any person making application for assistance under the small operator assistance program.

§ 905.800 Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

(a) Part 800 of this chapter, *Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, shall apply to all surface coal mining and reclamation operations, except for § 800.40(a)(1) regarding the bond release application, for which paragraph (b) of this section substitutes and except as provided in paragraphs (c) and (d) of this section.

(b) The permittee may file an application with the regulatory authority for the release of all or part of a performance bond. The application shall be filed no later than 30 days prior to the end of the vegetation growing season in order to properly evaluate the completed reclamation operations. The appropriate season for evaluating reclaimed operations shall be identified in the mining and reclamation plan required by Subchapter G of this chapter and approved by the regulatory authority.

(c) The following bonds are acceptable for compliance with the California Federal Program.

(1) A surety bond;

(2) A collateral bond;

(3) A self-bond;

(d) A permittee may replace existing bonds with other bonds that provide equivalent coverage.

§ 905.815 Performance standards—Coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person who conducts coal exploration.

§ 905.816 Performance standards—Surface mining activities.

(a) Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface mining activities, except for § 816.(a)(1) regarding revegetation success standards, for which paragraph (b) of this section substitutes.

(b) Standards for success shall be those identified in § 816.116(a)(2). Statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan, and approved by the regulatory authority.

§ 905.817 Performance standards—Underground mining activities.

(a) Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to any person who conducts underground mining activities, except for § 817.(a)(1) regarding revegetation success standards, for which paragraph (b) of this section substitutes.

(b) Standards for success shall be those identified in § 816.117(a)(2). Statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan, and approved by the regulatory authority.

§ 905.819 Special performance standards—Auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 905.822 Special performance standards—Operations in alluvial valley floors.

Part 822 of this chapter, *Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors*, shall apply to any person who conducts surface coal mining and reclamation operations on alluvial valley floors.

§ 905.823 Special performance standards—Operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmland.

§ 905.824 Special performance standards—Mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining and reclamation operations constituting mountaintop removal mining.

§ 905.827 Special performance standards—Coal preparation plants not located within the permit area of a mine.

Part 827 of this chapter, *Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of a coal preparation plant not located within the permit area of a mine

§ 905.828 Special performance standards—In situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts surface coal mining and reclamation operations which include the in situ processing of coal.

§ 905.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspection*, shall apply to all coal exploration and surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 842, copies of inspection reports will be furnished, upon request, to the California Division of Mining and Geology.

§ 905.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply regarding enforcement action on coal exploration and surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 843, copies of enforcement actions and orders to show cause will be furnished, upon request, to the California Division of Mining and Geology.

§ 905.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply to the assessment of civil penalties for violations on coal exploration and surface coal mining and reclamation operations.

§ 905.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[FR Doc. 87-24353 Filed 10-21-87; 8:45 am]

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Federal Register

Thursday
October 22, 1987

Part IV

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 420

State Energy Conservation Program; Notice of Proposed Rulemaking and Public Hearing

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 420

[Docket No. CE-RM-87-101]

State Energy Conservation Program

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) proposes to amend the regulation for the State Energy Conservation Program (SECP) by modifying the prohibition on the use of SECP funds to purchase or install equipment or materials for energy conservation building retrofits or weatherization. The proposed changes would allow an exception to that prohibition for so-called eligible petroleum violation escrow (PVE) funds. These funds redress injuries which the States' citizens suffered from violations of former Federal petroleum price and allocation regulations.The proposal would allow eligible PVE funds to be used to promote the purchase and installation of equipment and materials for energy conservation building retrofits and weatherization, except in two instances. No eligible PVE funds could be used for the weatherization or retrofitting of State or local government buildings, nor to duplicate the retrofit activities conducted under DOE's Weatherization Assistance Program or Institutional Conservation Program, commonly known as the Schools and Hospitals Program. In addition, the amount of eligible PVE funds to be used for retrofits and weatherization is proposed not to exceed 25 percent of funds from all sources applied by the State to the SECP program annually. The proposed changes also add new provisions for subawards and for State cost-sharing requirements.

DATES: Written comments (six copies) on the proposed rule must be received no later than December 21, 1987, to ensure their consideration. A public hearing will be held in Washington, DC on December 9, 1987. Requests to speak at the hearing must be received no later than December 7.

ADDRESSES: All written comments (six copies), as well as requests to speak at the public hearing, are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, CE 43.1, Room 6B-025, Docket Number CE-RM-87-101, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9320.

The public hearing will begin at 9:30 a.m., and will be held at the following location: Washington, DC, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Room 1E-245 (1st Floor, E Corridor), Washington, DC 20585.

Each person to be heard is requested to bring seven copies of his/her statement. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

A transcript of the hearing, as well as the entire rulemaking record, will be available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays, at the following address: DOE Freedom of Information Office, Room 1E-090, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Sandra Monje, Office of Energy Management and Extension, Department of Energy, Mail Stop CE-221, 6A-087, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8295.

SUPPLEMENTARY INFORMATION:

I. Introduction

When first enacted, what is now Part D of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 State, 932, provided financial assistance to develop and implement State energy conservation plans. Part D was subsequently amended by Part B of Title IV of the Energy Conservation and Production Act (ECPA), Pub. L. 94-385, 90 Stat. 1158, which provided financial assistance to develop and implement supplemental State energy conservation plans. Together, these EPCA and ECPA provisions constitute the State Energy Conservation Program (SECP), 42 U.S.C. 6321-27, 10 CFR Part 420.

Implementation of SECP was begun on February 26, 1976, 41 FR 8335. Since that time, the regulation has been revised several times: 41 FR 48325, November 3, 1976; 42 FR 26413, May 24, 1977; and 44 FR 20055, April 4, 1979. The current regulation was published on August 30, 1983, 48 FR 39356.

Today DOE is proposing to ease some of the provisions regarding prohibited expenditures under SECP,[1] stimulated primarily by the vast petroleum violations escrow sums which the States may apply to the SECP. The States hold these funds in trust for the benefit of their citizens found to have been injured by various petroleum pricing and allocation violations. In late 1982 Congress enacted the Warner Amendment, section 155 of the Further Continuing Appropriations Act, 1983, Pub. L. 97-377, 96 Stat. 1830, as a means of disbursing to the States $200 million obtained from the settlement of petroleum overcharge cases, and specified SECP as one of the programs eligible to receive those monies. 96 Stat. at 1919.

In March 1983, the United States District Court for the District of Columbia found Exxon Corporation liable for overcharges on sales of certain domestic crude oil.[2] The Court adopted

[1] These provisions are contained within 10 CFR 420.12. For the convenience of the reader, the currently effective text of § 420.12 is set forth here in its entirety.

§ 420.12 Prohibited expenditures.

(a) No financial assistance provided to a State under this part shall be used:

(1) for construction, such as construction of mass transit systems and exclusive bus lanes, or for construction or repair of buildings or structures;

(2) to purchase land, a building or structure or any interest therein;

(3) to subsidize fares for public transportation;

(4) to subsidize utility rate demonstrations or State tax credits for energy conservation;

(5) to conduct or purchase equipment to conduct research, development or demonstration of conservation techniques and technologies not commercially available; or

(6) to purchase or install equipment or materials for energy conservation building retrofits or weatherization, except that this provision shall not prevent such financial assistance from being used to reduce the interest rate charged on loans of non-SECP funds made by a State or financial institutions to fund the purchase or installation, or both, of equipment or materials for energy conservation building retrofits or weatherization.

(b) No more than 20 percent of the financial assistance awarded to the State for this program shall be used to purchase office supplies, library materials, or other equipment whose purchase is not otherwise prohibited by this section.

(c) Demonstrations of commercially available conservation techniques and technologies are permitted, and are not subject to the prohibitions of § 420.12(a) (1) and (6), or to the limitation on equipment purchases of § 420.12(b).

(d) A State may use regular or revolving loan mechanisms to fund SECP services which are consistent with this part and which are included in the State's approved SECP plan. The State may use loan repayments and any interest on the loan funds only for activities which are consistent with this part and which are included in the State's approval SECP plan.

[2] *United States* v. *Exxon Corp.*, 561 F. Supp. 816 (D.D.C. 1983), *aff'd*, 773 F. 2d 1240 (Temp. Emer. Ct. App. 1985), *cert. denied*, 106 S. Ct. 892 (1986), *reh'g denied*, 106 S. Ct. 1526 (1986).

the Warner Amendment as the general framework for restitutionary use of the Exxon overcharge monies. This allowed Exxon monies to be applied to SECP in the States, as well as to four other Federal energy conservation programs. These four programs are the Energy Extension Service (EES), 10 CFR Part 465; the Low-Income Weatherization Assistance Program (WAP), 10 CFR Part 440; the Schools and Hospitals Program, 10 CFR Part 455; and the Low-Income Home Energy Assistance Program, which is administered by the Department of Health and Human Services, 45 CFR Part 96, Subparts A–F, H.

Under the Exxon decision, the States received in excess of $2 billion, including interest earned on the funds while held in Federal escrow. States have received additional petroleum violation funds which they may apply to the SECP in the following proceedings:

From Judicially-Approved Settlement Agreements:[3]

In Re: the Department of Energy Stripper Well Exemption Litigation, M.D.L. 378 (D. Kan. 1986) ($834,151,658.07 distributed to the States as of May 11, 1987).

Diamond Shamrock Refining and Marketing v. *Standard Oil Company* v. *Department of Energy*, C2–84–1432 (S.D. Ohio 1986) ($48,696,039.08 distributed to the States as of May 11, 1987).

From Consent Orders:

Commonwealth Oil Refining Company, Inc., 46 FR 29497, July 21, 1981 (approximately $5,833,332 distributed to Puerto Rico).

Standard Oil Company (Sohio), 47 FR 49705, November 2, 1982 (approximately $10,000,000 distributed to the States).

Standard Oil Company of California (Chevron), 46 FR 52221, October 26, 1981 (approximately $25,000,000 distributed to the States).

USA Petroleum Corporation, 47 FR 50084, November 4, 1982 (approximately $962,500 distributed to the States).

Imperial Refineries Corporation, 48 FR 4029, January 28, 1983 (approximately $600,000 distributed to the States).

Site Oil Company/Flash Oil Company, Consent Order of February 7, 1983 (approximately $450,000 distributed to the States).

World Oil Company, 49 FR 2290, January 19, 1984 (approximately $900,000 distributed to the States).

From Second-Stage Refunds—DOE Office of Hearings and Appeals (OHA):[4]

Funds currently available ($76,336,443) as a result of various second-stage refund proceedings.

State funds potentially available for SECP are further increased by virtue of the facts that generally States hold the awards in interest-bearing accounts until they are used and that generally the States are required to apply this interest to the same purposes and programs for which the initial awards were made.

In May 1986, several States petitioned the Exxon Court to clarify and modify its judgment concerning prohibited expenditures under SECP, as well as three other points.

Regarding prohibited expenditures, the States asked the Court to permit additional restitutionary expenditures under the SECP and the EES by providing that certain DOE regulations which prohibit or limit expenditures of appropriated funds for the purchase of energy conservation equipment or materials would not apply to the funds made available to the States in the Exxon proceeding. Those regulations, found at 10 CFR 420.12(a)(5), (a)(6), and (b) for the SECP and at 10 CFR 465.11(a)(5), (a)(6) and (b) for the EES, read identically as provided *supra* note 1. Subsequently, the States modified their request to use Exxon funds for equipment and materials, by limiting such expenditures to not more than 50 percent of the funds spent on such programs by each jurisdiction.

The Court denied the State's motion in this regard and indicated that any changes with respect to prohibited expenditures should be done by DOE rulemaking.[5]

The Department agrees that this is an appropriate role for it to play in helping assure the best use of Exxon and similar funds. The Department further believes that many States could demonstrate cost-effective uses of such funds for heretofore prohibited materials and equipment expenditures. With respect to so-called "eligible petroleum violation escrow funds," therefore, DOE is proposing to relax some of the SECP provisions defining prohibited expenditures.

The Department would not, however, amend the SECP regulations in this regard with respect to remaining Warner Amendment funds or Federal SECP appropriations, including SECP funding via the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07, Subtitle A, Title III, of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509. The Warner funds were a one-time $200 million disbursement more than four years ago, and States do not have substantial amounts of these funds which have yet to be expended. Fairness to States which most expeditiously applied Warner funds, moreover, dictates that they should not have faced more restrictions than slower States with remaining funds would face under relaxed SECP rules. Appropriations have traditionally been modest enough to have been used cost effectively within the existing constraints on capital expenditures. Funds available under PODRA—which are capped for any given year at $200 million for the SECP, WAP, Schools and Hospitals Program and EES—generally match the appropriation levels historically available for these grant programs. The Department additionally disfavors generally expanded program regulations at this time, inviting, as they could, demands for enduring and increased SECP appropriations. The proposed bifurcated rule, the Department believes, would encourage the State to use their large sums of eligible PVE funds most cost effectively while they are available. These vast sums afford the States a real opportunity to make meaningful long-term improvements in energy conservation and efficiency and reduce the need for further Federal assistance.

The restrictions on materials and equipment for building retrofits and weatherization were not required by statute, but were administratively adopted. Early program rules prohibited use of SECP grants "[t]o purchase equipment, other than office equipment, such as weatherization materials and law enforcement equipment."[6] 41 FR 48325, November 3, 1976 (§ 420.3(a)(1)). Comment on this provision when it was proposed suggested that the prohibition might hamper effective implementation of State energy conservation plans and that DOE, then the Federal Energy Administration (FEA), should allow more flexibility in the guidelines in this respect. *Id.* at 48326. In retaining the prohibition at that time, FEA stated:

> Since it is advisable that undue emphasis not be placed upon purchase of equipment from funds appropriated for the program, FEA has determined not to modify the substance of proposed § 420.3(a)(1) at this time. The agency will, however, consider modifying this provision if need therefor is demonstrated through actual administration of the program.

[3] Additional funds are expected to be distributed to the States later from the M.D.L. 378 escrow, as well as other cases in litigation.

[4] Additional funds are expected to be made available for distribution to the States in the future as a result of other second-stage refunds by OHA.

[5] Order and Memorandum filed June 10, 1986, *id.* (No. 78–1035).

[6] These early rules also prohibited use of grants "[f]or construction, such as construction of mass transit systems and exclusive bus lanes," § 420.3(a)(2), and for certain subsidies, § 420.3(a)(3) and (4).

Id.

In a subsequent rulemaking, comment was again received suggesting that DOE allow more flexibility in the purchase of equipment. DOE again demurred, reiterating that, "It is advisable that undue emphasis not be placed upon purchase of equipment from funds appropriated for the program." 44 FR 20055, 20057, April 4, 1979 (§ 420.14(a)).

The directions of the Exxon Court appear to present the Department with a dilemma, specifying as they do:

> Such a rulemaking, contrary to the contention of the States and DOE, should not solely be directed toward the funds in this action. Rather, the rulemaking should address the use of Warner Amendment funds for capital improvements. Since this Court intends that the Exxon funds be treated similarly to Warner Amendment funds, any changes to regulations regarding Warner funds made by rulemaking, would apply to the funds in this case.

Memorandum *supra* note 5, at 3.

The Department wishes to satisfy the Court's basic concerns with respect to the treatment of the Exxon funds and the manner in which policies are established for that purpose. As discussed above, however, the Department does not propose to amend the SECP regulations to lift restrictions on capital expenditures with respect to the negligible amount of remaining Warner funds, although the Department believes it is appropriate to so propose with respect to the large sums involved in *Exxon* and other cases.

The Department believes the proposal is in substantial compliance with the Court's order. First, the issue before the Court most assuredly was not how the Department should administer the SECP with respect to Federal appropriations, or even with respect to petroleum violation funds other than Exxon funds. Rather, as stated by the Court, "[T]he issue before the Court is whether any changes in the regulations restricting expenditure of funds for capital improvements should be done by rulemaking or mandated by the Court." *Id.* The Court elected rulemaking over judicial action, and the Department is undertaking this rulemaking to accommodate the Court in this regard.

Second, the rulemaking is not directed solely toward the funds involved in the Exxon case, but is directed toward other funds in State hands as well. The Department is proposing that a programmatic distinction be made, not between Exxon and other funds, but between all funds made potentially available to SECP due solely to administrative or court orders, and those made available through the appropriations process or other Congressional action. The total amounts available through such court and administrative orders far exceed the historic levels of amounts available through appropriation. Some administrative and court-ordered dispositions involving relatively small overcharge amounts are retained as "eligible PVE funds" for ease of administration, and because their non-appropriated character stimulates no artificial demand for enduring and increased appropriations, as discussed above. The proposed distinction in treatment rests on the reality that, contrary to the circumstances leading to the SECP's administrative proscription of capital expenditures in the first place, the large amounts now available apart from appropriations make feasible the types of projections long sought by the States, without requiring or creating expectations of a commitment of future Federal tax dollars.

Finally, the proposal can be characterized as consistent with the Court's order on various other grounds, for example that the order does not require identical treatment of all funds in the program; that Warner funds and Exxon funds in many respects are treated similarly under the SECP program; and that so little of the Warner funds remain that it would be meaningless to change the rules of the game for administering those amounts. The proposal reflects the Department's best judgment at this time of what the rules really ought to be for spending funds under the SECP program.

DOE considered the option of making the proposed changes apply both to the SECP and EES, but decided against it. DOE believes that the use of financial incentives for capital expenditures, such as equipment or materials for building retrofits, is much closer to the purposes of the SECP than to the purposes of the EES.

SECP purposes include reducing the rate of growth of energy demand and fostering improvements in energy efficiency. In addition, SECP has a definite thrust toward building-efficiency improvements, as evidenced by the fact that two of SECP's five mandatory measures, 10 CFR 420.6 (a) and (d), concern building efficiency. Conversely, though fostering improvements in energy efficiency, EES is primarily concerned with energy outreach and education activities. Finally, the need also to amend the EES is reduced by State control of PVE funding levels for each program. Under the terms and conditions of the various overcharge proceedings, States may usually, if not always, elect to devote greater amounts to one program, such as the SECP, and lesser amounts to other eligible programs and activities.

The States have raised the restrictions in § 420.12 with the Department as well as the Exxon Court. In December 1986, the National Association of State Energy Officials (NASEO) petitioned the Secretary of DOE to amend the rules governing the SECP by replacing § 420.12(a)(6), the prohibition on the purchase or installation of equipment or materials for building retrofit or weatherization activities, with a modification. According to the NASEO petition:

> The effect of this change would be to allow for the direct expenditure of funds, especially from oil overcharge refunds, in direct material purchases to promote conservation and renewable resources. This will permit an expansion of the innovative uses to which these funds can be directed and will allow for an increasing partnership between the States and businesses in the promotion of energy efficiency in all sectors of the economy. This will also permit the application of innovative financing techniques for energy saving technologies.

NASEO advocated the use of up to 33 percent of a State's annual SECP allocation for eligible expenditures related to State buildings. The NASEO petition defined eligible measures as those "energy conservation or renewable resource measures as defined at 10 CFR [Part] 450, [Subpart] D, at 10 CFR 455.2, or * * * high-efficiency appliances, or measures with equivalent demonstrated energy or capacity saving potential, by permission of the Department of Energy on a case by case basis * * *." The NASEO proposal stipulated that to be funded, projects must be expected to pay for themselves through energy or capacity savings in one to seven years; prohibited duplication of services available under the Energy Extension Service, the Institutional Conservation Program, and the Low-Income Weatherization Program; and allowed expenditures through "direct loans, grants, interest rate reductions on loans made with non-SECP funds, rebates, revolving loans or other financing mechanisms as approved on a case by case basis by the Department of Energy * * *." Finally, the proposal required any interest earnings from SECP funds to be limited to eligible SECP uses only. The NASEO petition has been made a part of the rulemaking record which is available for inspection and copying at DOE's Freedom of Information Office Reading Room, Room 1E-190, Forrestal Building, Washington, DC between the hours of 9:00 a.m., and 4:00 p.m.

II. The Proposal

"Section 420.2 Definitions." DOE is proposing to add definitions of "eligible petroleum violation escrow funds" and "State or local government building."

"Eligible petroleum violation escrow funds" would be defined to mean any funds identified as "Alleged Crude Oil Violation" funds and distributed by the Department or any court to the States, together with any interest earned on those funds by the States. A complete listing of eligible PVE funds is set out earlier in this notice. Eligible PVE funds would include, without being limited to, funds disbursed to the States as a result of the Exxon case, the approved settlement agreements in the Stripper Well and Diamond Shamrock litigation and various consent orders and second-stage refund proceedings. For the reasons discussed above, the term "eligible petroleum violation escrow funds" would exclude any funds received by the States pursuant to the PODRA, any additional Federal appropriations for the SECP, and any remaining Warner Amendment funds still in the hands of the States.

The proposed term "State or local government building" includes all buildings primarily occupied by offices or agencies of a State, as well as buildings which could be defined as buildings owned by units of local government and public care institutions under Title III, Part H, of the EPCA, which is the companion program to the Schools and Hospitals Program.

"Section 420.3 Financial Assistance." Two technical provisions are added. DOE proposes to add a new provision § 420.3(e) to reflect the requirement of 42 U.S.C. 6323a, a 1984 amendment to EPCA, for a matching contribution from States equal to at least 20 percent of the amount of funds appropriated by the U.S. Congress for the State's base SECP program. This provision does not mandate a match of eligible PVE funds, for which matching requirements are typically excluded. The contribution may be in cash or in kind or a combination of the two. The base SECP program consists of sections 361 through 366, 42 U.S.C. 6321–26, of the Energy Policy and Conservation Act, as amended. Because this requirement has been a part of SECP policy and practice for some time, the proposed change represents a formal recognition of that practice, rather than a change in the SECP. As proposed, the matching funds could not be used for the prohibited expenditures listed in § 420.12(a), but would not be subject to the 20 percent limitation on equipment and office supplies discussed in § 420.12(b). The exemption of matching funds from § 420.12(b) will permit States greater flexibility in allocating those funds to meet programmatic needs.

A new provision, § 420.3(f), authorizes the use of subawards so long as they are a part of an approved State SECP plan or supplemental plan. Currently, the Department of Energy Financial Assistance Regulations allow subawards only if specifically authorized by a statute or program rule, 10 CFR 600.3 (at the definition of "subaward"), or if approved through a deviation process, 10 CFR 600.4. The Department is proposing rule provisions specifically authorizing approved subawards.

"Section 420.12 Prohibited Expenditures." DOE proposes to modify the general prohibition in § 420.12(a)(6) on the use of funds to purchase or install equipment or materials for energy conservation building retrofits or weatherization by adding a new § 420.12(e). The proposal, which would apply only to eligible PVE funds, would allow these funds to be used for financial incentives to promote the purchase and installation of equipment and materials for energy conservation building retrofits and weatherization, except in two instances. No eligible PVE funds may be used for the weatherization or retrofitting of State or local government buildings, and no funds may be used to duplicate retrofit activities conducted under DOE's Low-Income Weatherization Assistance Program or Schools and Hospitals Program. In addition, the amount of eligible PVE funds to be used for purchase and installation of materials and equipment could not exceed 25 percent of the total of all funds made available annually to a State's entire SECP program. The total in reference to which the 25 percent would be determined could include, without necessarily being limited to, funds from federally appropriated, State appropriated, PVE or other sources. Of course, these building-related uses would have to be consistent with the terms and conditions whereby the State received the eligible PVE funds and must be included in an approved SECP plan or supplemental plan. Proposed § 420.12(e)(1) sets forth these requirements.

As noted, the proposal at § 420.12(e)(2) allows eligible PVE funds equal to as much as one quarter of a State's total annual SECP funds to support building retrofit and weatherization activities. This provision would allow States substantial latitude in committing funds to these activities, while assuring continuity with traditional SECP activities. DOE believes that a middle course is optimal between a position of placing no limit on the expenditure of funds for capital improvements and a position of strict adherence to traditional SECP functions. By proposing this 25 percent cap, DOE is attempting to balance the expressed need for increased State flexibility with the desire to avoid conversion of the SECP, whenever PVE funds are involved, into a program primarily concerned with building retrofits.

DOE is proposing at § 420.12(e) (5) and (6) that eligible PVE funds spent on energy conservation building retrofit or weatherization activities be expended only through selected financial incentive mechanisms. Under the proposed language, the States may develop financial incentives which take a variety of forms including, but not limited to, regular and revolving loans, loan buy-downs, and up to 50 percent rebates for qualifying materials and equipment. (The proposal requires the States to set appropriate restrictions and limits to insure most efficient use of rebates.) Partial or matching grants are prohibited on the theory that they might stimulate demand for enduring and increased SECP appropriations. The allowable incentives are intended to encourage individuals or organizations to purchase or install equipment or materials for energy conservation building retrofits or weatherization, while not eliminating the need for individuals or organizations to invest other, non-SECP funds. Thus DOE is proposing not to consider rebates for more than half the cost of retrofits to be an appropriate financial incentive, nor would the direct purchase or installation of equipment or materials by State personnel or their contractors be considered a financial incentive. In these disallowed cases, the program beneficiaries make an insufficient, or even no, matching investment. Loan guarantees also would not be permitted. The final prohibited category concerns otherwise eligible expenditures which were contracted for before the effective date of these amendments.

Proposed § 420.12(e)(7) provides that repayments, including interest, to States of any loans made for qualifying materials and equipment must be reused only for approved SECP activities.

DOE has chosen to focus on financial incentives for several reasons. First, the use of financial incentives stimulates the private sector and facilitates the energy conservation marketplace. Such facilitation is consistent with SECP's traditional role of fostering energy efficiency activities. Second, unlike

funds spent on direct purchase or installation, monies used as financial incentives can often be recycled, thereby enabling more people and organizations to benefit. Third, loans and other financial incentives generate additional demand for private sector providers of retrofit and weatherization services.

We anticipate that allowing financial incentives for the purchase and installation of equipment or materials for energy conservation building retrofits or weatherization will give rise to questions concening permissible activities. Rather than prescribing a specific list of eligible energy conservation measures, which can be changed only through a formal rulemaking procedure, DOE is proposing to provide approval or disapproval through the normal State plan approval process, either during the approval of the annual State plan or amendments thereto. As part of this process the State will be expected to identify the energy savings anticipated for any proposed meaure. DOE is particularly interested in comments on this approach and also on the kinds of energy conservation measures that should be favorably considered.

Just as with any other SECP expenditures, proposed § 420.12(e)(3) would continue to exclude the use of financial incentives to purchase or install equipment or materials for energy conservation building retrofits or weatherization of State and local government buildings. As discussed above, these buildings include those which are owned or leased by offices or agencies of State or local governments and public care institutions. This has long been a controversial issue in SECP. Congress has never chosen to provide funds for materials and equipment for the weatherization of these buildings. Under SECP other types of assistance are available for State and local government buildings, such as the provision of information, energy audits, and energy conservation training.

The proposal, at § 420.12(e)(4), would prohibit activities that duplicate retrofit activities conducted under two other DOE programs which are also eligible to receive Exxon and other PVE funds. The proposed language of § 420.12(e)(4) would prohibit use of funds for any building that has been or is being assisted under the Weatherization Assistance Program, 10 CFR Part 440, or the Schools and Hospitals Program, 10 CPR Part 455. The Energy Extension Service is not listed as a prohibited program since it does not authorize any building retrofit or weatherization activities. Essentially, when SECP PVE funds are used as financial incentives in the energy conservation building retrofit or weatherization area, they are not to be directed toward retrofit activities that duplicate those of the Weatherization Assistance Program or the Schools and Hospitals Program. However, DOE believes financial incentives under SECP can be used to complement or supplement the services that such programs provide, if there is careful planning and coordination between the programs. This could provide greater flexibility in reaching needy populations and in utilizing a broader range of technologies to meet the needs of low-income households, schools, and hospitals. In this way, States could complement these programs by weatherizing other than low-income households that are currently being served by the Weatherization Assistance Program. These activities would have to be designed to complement but not supplant existing programs or program features. Additionally, as in the case of schools and hospitals activities, the Department would expect to approve use of PVE funds for purchase and installation of materials and equipment, but not for operations and maintenance activities. Nor does it mean to imply that any SECP funds, including eligible PVE funds, may be used to satisfy matching requirements in other programs.

The States also petitioned the Exxon Court for relaxation of § 420.12(a)(5) (prohibition on research, development, or demonstration of any technique or technology which is not commercially available) and of § 420.12(b) (20 percent limit on office supplies, library materials, and other equipment). The Department is proposing no changes in these two provisions because, in the case of § 420.12(a)(5), the focus of SECP is on supporting energy conservation programs which are very likely to generate energy savings, particularly near-term energy savings, rather than on supporting research into energy conservation hardware which may not begin producing energy savings until some time in the distant future, if at all. In the case of § 420.12(b) DOE has concluded that in view of the large amounts of eligible PVE funds available, the 20 percent limit on office supplies, library materials, and other equipment is both reasonable and sufficient. Moreover, as proposed in § 420.3(e), State matching funds are not subject to this 20 percent limit.

The Department does not intend, however, that any expenditures under the 20 percent limit in § 420.12(b) cause the 25 percent cap in proposed § 420.12(e)(2) on retrofit and weatherization materials and equipment to be exceeded. The 25 percent cap is intended in the proposal to be the program-wide maximum on these materials and equipment expenditures.

DOE is interested in receiving comments on all of the proposals above. By proposing these changes and discussing the associated issues, DOE is encouraging the States and others to express their views on each of these points.

III. Opportunity For Public Comment

A. *Written Comments.*—Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposal set forth in this notice. Comments should be submitted to the address for the Office of Hearings and Dockets, which is given in the beginning of this notice. The envelope and documents submitted should be identified with the designation "State Energy Conservation Program," Docket Number CE–RM–87–101. Six (6) copies should be submitted.

All comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action on the proposed regulation changes.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, as well as six copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. This procedure is set forth in 10 CFR 1004.11, 44 FR 1908, January 8, 1979.

B. *Public Hearings*—DOE will hold a public hearing on this proposed rule in Washington, D.C., as specified at the beginning of this notice.

Any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest in it may make a request for an opportunity to make an oral presentation. Such a request to speak at the hearing should be directed to the Hearings and Dockets address given in the addresses section of this notice and must be received by 4:30 p.m. local time, on the date specified in the dates section.

The person making the request should describe briefly his or her interest in the proceeding. The person should also provide a phone number where the person may be reached. Those persons requesting an opportunity to provide testimony should bring seven copies of their statement to the hearing.

C. *Conduct of Hearing*—DOE reserves the right to schedule oral presentations and to establish the procedures governing the conduct of the hearings. The length of each presentation will be limited to 20 minutes.

A DOE official will preside at the hearing. This will not be a judicial or evidentiary type hearing. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. The DOE official has the discretion to determine if questions are germane to the subject of the hearing. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

D. *Transcript of Hearing*—A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, at the address given in the beginning of this notice. Any person may order a copy of the transcript from the hearing reporter.

E. *Cancellation of Hearing*—If DOE must cancel the hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Direct notice of cancellation will also be given to all persons scheduled to speak at the hearing.

IV. Other Matters

A. *Environmental Review*—In accordance with requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, DOE has determined that the proposed amendments fall within the range of actions addressed in existing environmental assessments and environmental impact statements prepared for the State Energy Conservation Program, the Weatherization Assistance Program, the Schools and Hospitals Program, and the Residential Energy Conservation Service, 10 CFR Part 456, and Commercial and Apartment Conservation Service, 10 CFR Part 458, and will clearly have no significant impact on the quality of the human environment.

B. *Executive Order 12291*—Section 3 of Executive Order (E.O.) 12291, 46 FR 13193, February 19, 1981, requires that DOE determine whether a rule is a "major rule," as defined by section 1(b) of E.O. 12291, and prepare a preliminary regulatory impact analysis for rules which fall within that definition. DOE reviewed the current SECP rule, 48 FR 39356, August 30, 1983, and concluded that it was not a "major rule" under this Executive Order. DOE has concluded that today's proposed amendments do not constitute a "major rule" either, because they 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, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

DOE has based its decision on the following. Today's proposed amendments allow States more flexibility under SECP. States are allowed, but not required, to use up to 25 percent of their SECP funds, spending eligible PVE monies exclusively, to provide financial incentives for building retrofits or weatherization. Consequently, DOE cannot estimate the amount of funds which will be used for this purpose. Even if the amount were to exceed $100 million annually, there should not result major increases in costs or prices 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 fact, the reverse may be true in many respects. The amendments will likely have the effect of increasing energy conservation and hence of decreasing energy costs for beneficiaries of these funds and in the economy generally. Incremental improvements in national productivity and competitiveness may also be expected, as well as increased employment of suppliers and installers of conservation materials and equipment.

The proposed rule was submitted to the Director of the Office of Management and Budget pursuant to E.O. 12291. The Director has concluded his review under that Executive Order and has no objection to the proposal.

C. *Regulatory Flexibility Act*—The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, requires, in part, that agencies prepare an initial regulatory flexibility analysis for any proposed rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the **Federal Register**.

The proposed revisions to this rule involve changes to prohibited expenditure requirements and do not change the basic types of activities supported by SECP. Funding levels for SECP cannot be predicted because of the States' discretion over the allocation of petroleum violation escrow funds. Any impacts, however, are likely to be diffuse and beneficial. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

D. *Paperwork Reduction Act*—These proposed changes require no modification of the program's information collection requirements within the meaning of the Paperwork Reduction Act, as amended, 44 U.S.C. 3501 *et seq.*

E. *The Catalog of Federal Domestic Assistance*—The Catalog of Federal Domestic Assistance number for the State Energy Conservation Program is 81.041.

List of Subjects in 10 CFR Part 420

Energy conservation, Grant programs—energy, Reporting and recordkeeping requirements, Technical assitance.

In consideration of the foregoing, DOE proposes to amend Part 420 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, DC October 16, 1987

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

10 CFR Part 420 is proposed to be amended as follows:

PART 420—[AMENDED]

1. The authority citation for Part 420 continues to read as follows:

Authority: Title III, Part C, as amended, of the Energy Policy and Conservation Act (42 U.S.C. 6321 *et seq.*); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

2. 10 CFR 420.2 is amended by adding definitions of "Eligible petroleum violation escrow funds" and "State or local government building" in the proper alphabetical order, as follows:

§ 420.2 Definitions.

* * * * *

Eligible petroleum violation escrow funds means any funds distributed to the States by the Department of Energy or any court and identified as Alleged Crude Oil Violation funds, together with any interest earned thereon by the States, and includes such funds as funds

disbursed as a result of *United States* v. *Exxon Corp.*, 561 F. Supp. 816 (D.D.C. 1983), *aff'd*, 773 F. 2d 1240 (Temp. Emer. Ct. App. 1985), *cert. denied*, 106 S. Ct. 892 (1986), *reh'g denied*, 106 S. Ct. 1526 (1986), or the settlement approved on July 7, 1986, in *In Re: the Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, in the United States District Court for the District of Kansas, but excludes any funds designated as "excess funds" under section 3003(d) of the Petroleum Overcharge Distribution and Restitution Act, Subtitle A of Title III of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, and the funds distributed under the "Warner Amendment," section 155 of Pub. L. 97–377.

* * * * *

State or local government building means any building, whether owned or leased, which is primarily occupied by offices or agencies of a State; any building which could be covered by Part H, Title III, of the Energy Policy and Conservation Act, 42 U.S.C. 6372–6372i; and any building which could be covered by 42 U.S.C. 6372–6372i, but for the fact it is leased or intended for seasonal use.

3. 10 CFR 420.3 is amended by adding paragraphs (e) and (f) to read as follows:

§ 420.3 Financial assistance.

* * * * *

(e) Each State shall provide cash, in kind contributions, or both for SECP activities in an amount totalling not less than 20 percent of the financial assistance allocated to the State under paragraph (b) of this section. Cash and in-kind contributions used to meet this State cost-sharing requirement are subject to the limitations on expenditures described in § 420.12(a), but are not subject to the 20 percent limitation in § 420.12(b). The type and amount of State cost sharing shall be identified in the annual application with respect to a plan. Nothing in this paragraph shall be read to require a match for eligible petroleum violation escrow funds used under this part.

(f) Subawards which are included in a State's approved SECP plan or supplemental plan are authorized under this part.

4. 10 CFR 420.12 is amended by adding paragraph (e) to read as follows:

§ 420.12 Prohibited expenditures.

* * * * *

(e) Notwithstanding paragraph (a)(6) of this section, a State may use eligible petroleum violation escrow funds under this part to promote the purchase and installation of equipment and materials for energy conservation building retrofits or weatherization, subject to the following terms and conditions:

(1) Such use must be consistent with the terms and conditions whereby the State received the eligible petroleum violation escrow funds and must be included in the State's approved SECP plan or supplemental plan;

(2) Up to 25 percent of such funds may be used for such purposes, although the base upon which the 25 percent is calculated may include, in addition to eligible petroleum violation escrow funds, State cost-sharing contributions under § 420.3(e) and any other funds applied by the State to the SECP, such as any Federal or State appropriations;

(3) No funds may be used for energy conservation building retrofits or weatherization of State or local government buildings;

(4) No funds may be used for energy conservation building retrofits or weatherization of any building that has been or is being assisted under the Weatherization Assistance Program for Low-Income Persons, 42 U.S.C. 6861 *et seq.*, or the Institutional Conservation Program, 42 U.S.C. 6371 *et seq.*;

(5) Subject to paragraph (e)(6) of this section, a State may use a variety of financial incentives to fund purchases and installation of materials and equipment under this paragraph including, but not limited to, regular loans, revolving loans, loan buy-downs, and rebates;

(6) The following mechanisms are not allowed for funding the purchase and installation of materials and equipment under this paragraph:

(i) Direct purchases of goods and services by a State or contractors or others working for the State;

(ii) Rebates for more than 50 percent of the total cost of purchasing and installing materials and equipment (States shall set appropriate restrictions and limits to insure most efficient use of rebates);

(iii) Grants;

(iv) Loan guarantees; and

(v) Any otherwise allowable funding mechanism if the contract for the purchase and installation of materials and equipment was entered into before the effective date of this paragraph, [insert effective date of final rule]; and

(7) A State may use loan repayments, including any interest, only for activities which are included in the State's approved SECP plan or supplemental plan.

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