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Thursday
December 3, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Denver, CO, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

DENVER, CO

WHEN: December 15; at 9 a.m.
WHERE: Room 239, Federal Building, 1961 Stout Street, Denver, CO.
RESERVATIONS: Call the Denver Federal Information Center, 303–844–6575

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 85

[Docket No. 87-137]

Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the pseudorabies regulations by adding the Latex Agglutination Test to the list of official tests for pseudorabies. This is necessary to permit faster diagnostic testing and help reduce pseudorabies in the United States.

EFFECTIVE DATE: January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Robert R. Ormiston, Program Planning Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8378.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 85 (referred to below as the regulations) govern the interstate movement of swine and other livestock (cattle, sheep, goats) to help prevent the spread of pseudorabies.

On September 11, 1987, we published in the **Federal Register** (52 FR 34391-34392, Docket Number 87-076), a document proposing to amend § 85.1 by adding the Latex Agglutination Test (LAT) to the list of official tests for pseudorabies. Our proposal invited the submission of written comments, which were required to be postmarked or received on or before September 28, 1987. We received one comment from the Ohio Department of Agriculture; however, its comment does not address our proposed rule. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action only provides for the use of an additional official pseudorabies test as an option for determining whether an animal is infected with the disease. The testing requirements for pseudorabies will not change. Morever, use of the LAT will not affect the market price for swine. Although faster testing may change the date of sale, the economic effect upon swine owners will not be significant. Nor will the economic effect upon laboratories that wish to use the LAT be significant. Although the cost of this test may be more than other official tests for pseudorabies, using it will result in faster diagnostic testing.

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 85

Animal diseases, Livestock and livestock products, Pseudorabies, Quarantine, Transportation.

PART 85—PSEUDORABIES

Accordingly, 9 CFR Part 85 is amended as follows:

1. The authority citation for Part 85 continues to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 85.1 [Amended]

2. In § 85.1, the definition of "Official pseudorabies test" is amended by changing "and 4. Enzyme-Linked Immunosorbent Assay (ELISA) Test.[3]" to read "4. Enzyme-Linked Immunosorbent Assay (ELISA) Test; and 5. Latex Agglutination Test (LAT).[3]" and the text of footnote 3 remains unchanged.

Done in Washington, DC, on this 30th day of November 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87-27796 Filed 12-2-87; 8:45 am]
BILLING CODE 3410-34-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1213

Release of Information to News and Information Media

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is revising 14 CFR Part 1213, "Release of Information to News and Information Media," to update the reporting procedures and officials authorized to release and approve release of information. This rule establishes NASA policy, responsibilities, and procedures for the release of information concerning NASA programs and activities to news and information media. The intended effect of this action is to respond the mandate in NASA's authorizing legislation in which the Congress has instructed the agency to provide for the widest practicable and appropriate

dissemination of information concerning its activities and the results.

EFFECTIVE DATE: December 3, 1987.

ADDRESS: Media Services Division, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: James W. McCulla, (202) 453–8398.

SUPPLEMENTARY INFORMATION: This revision updates resporting procedures and officials authorized to release and approve release of information. Since this involves administrative and editorial management decisions and procedures, no public comment period is required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1213

News media, Administration practice and procedure.

For reasons set out in the Preamble, 14 CFR Part 1213 is revised to read as follows:

PART 1213—RELEASE OF INFORMATION TO NEWS AND INFORMATION MEDIA

Sec.

Authority. 42 U.S.C. 2473(a) (3) and NSDD–84, "Safeguarding National Security Information."

§ 1213.100 Scope.

This Part 1213 sets forth the policy governing the release of information in any form to news and information media. Not included is the release of scientific and technical information to scientific and technical journals and audiences.

§ 1213.101 Policy.

(a) Consistent with NASA statutory responsibility, NASA will "* * * provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof, * * *"

(b) Release of information concerning NASA activities and the results will be made promptly, factually and completely. Exceptions include that information whch may be exempt from disclosure under the "Freedom of Information Act" (5 U.S.C. 552, as amended) (14 CFR Part 1212). For classified DoD missions on the Naitonal Space Transportation System (NSTS), release of information concerning NASA activities will be restricted by the STS Security Classification Guide. In addition, information concerning the survivability/vulnerability of the NSTS may be classified for all NSTS operations.

(c) NASA will respond promptly to queries from the information media and industry, and cooperate with contractors in their release of NASA related informational material including advertising.

(d) NASA officials may participate in interviews and speak for the Agency in areas of their assigned responsibility.

§ 1213.102 Responsibility.

(a) The Associate Administrator for Communications is responsible for the development and overall administration of an integrated agencywide communications program and determines whether the specific information is to be released. The Associate Administrator for Communications will:

(1) Direct and coordinate all Headquarters and agencywide public information activities.

(2) Direct and coordinate all agencywide news-oriented audiovisual activities.

(b) In accordance with § 1213.104, the Public Affairs Officers assigned to Headquarters Program and Staff Offices are responsible for developing plans and coordinating all public information activities covering their respective programs at Headquarters and in the field.

(c) In accordance with § 1213.104, Directors of Field Installations, through their Public Affairs Officers, are responsible for initiating and obtaining concurrences for information programs and public releases issued by their respective installation and component installations.

(d) The requirements of this section do not apply to the Office of Inspector General (IG) regarding IG activities.

§ 1213.103 Procedures for issuance of news releases.

(a) All Headquarters news releases will be issued by the Office of Communications, Media Services Division.

(b) Directors of Field Installations, through their Public Affairs Officer, may release information for which that field installation is the primary or sole source, i.e., launch, mission, and planetary encounter commentary; telephone recorded messages; status reports; and releases of local or regional interest. Release of information that has national significance will be coordinated with the Associate Administrator for Communications. Material received from contractors prior to its public release may be reviewed for technical accuracy at the contracting installation.

(c) The requirements of this section do not apply to the Office of Inspector General regarding IG activities.

§ 1213.104 Procedures for news release coordination and concurrence.

(a) *General.* All organizational elements of NASA involved in preparing and issuing NASA news releases are responsible for proper coordination and obtaining concurrences and clearances prior to issuance of the news release. Such coordination will be accomplished through the Associate Administrator for Communications, NASA Headquarters.

(b) *Headquarters-field.* (1) The Headquarters Office of Communications will release information after obtaining all necessary concurrences and clearances from the appropriate Program or Staff Office. Field installations will obtain clearances from the appropriate Institutional Program or Staff Office.

(2) Headquarters issuance of a news release bearing on a field installation will be coordinated with the installation through the appropriate Institutional Program Office/Public Affairs Officer, Associate Administrator for Communications, or Director, Media Services Division. If Headquarters is the issuing agency for a release for which the primary source is an installation, the Office of Communications will keep the installation fully informed.

(3) If the Office of Communications changes, delays, or cancels a release proposed for issuance by a field installation, the installation and the appropriate Institutional Program Office affected will be notified of the reasons for the action.

(c) *Field-other.* A release originating in one field installation that involves the activities of another installation (including Headquarters) will not be issued until the concurrences of all installations and appropriate Institutional Program Offices concerned have been obtained. The originating installation is responsible for arranging a mutually acceptable release time.

(d) *Simultaneous release.* Where a release is to be simultaneously issued, whether by Headquarters, a field installation, industry-NASA, or university-NASA, it will be so stated on the news release. Simultaneous release will be coordinated by the Headquarters Director, Media Services Division.

(e) *Date lines.* Out-of-town date lines will not be used on releases issued by Headquarters except in the case of an advance release of a speech text intended for regional distribution in the area where the speech will be delivered.

(f) *Exchange of releases.* All Agency releases will be exchanged electronically with all field installations by the Headquarters newsroom. The full text of important releases, regardless of source, which may generate unusual interest and queries shall be sent by electronic mail or telephoned to all interested installations and Headquarters in advance of release time to enable public information officers to respond intelligently to queries arising locally.

(g) *Exchange of communication activities.* All field installations will exchange information with the appropriate Headquarters Public Affairs Officers concerning news events and releases. Immediate notification will be made to Headquarters and any impacted installation of events or situations that will make news, particularly of a negative nature.

(h) The requirements of this section do not apply to the Office of Inspector General regarding IG activities.

§ 1213.105 Interviews.

(a) NASA personnel will respond promptly to requests to media representatives for information or interviews.

(b) Normally, requests for interviews with NASA officials will be made through the appropriate Public Affairs Office. However, journalists will have direct access to those NASA officials they seek to interview.

(c) Information given to the press will be on an "on-the-record" basis only and attributable to the person(s) making the remarks. Any NASA employee providing material to the press will identify himself/herself as the source.

(d) Any attempt by news media representatives to obtain classified information will be reported through the Headquarters Office of Communications or Installation Public Affairs Office to the Installation Security Office. The knowing disclosure of classified information to unauthorized individuals will be cause for disciplinary actions against the NASA employee involved.

(e) Public information volunteered by a NASA official will not be considered exclusive to any one media source and will be made available to other sources, if requested.

(f) For a DoD classified operation, all inquiries concerning this activity will be responded to by the designated DoD officer.

§ 1213.106 Audiovisual material.

(a) NASA's central repository of audiovisual material will be available to the information media and to all NASA installations.

(b) Field installations will provide NASA Headquarters with:

(1) Selected prints and original or duplicate negatives of news-oriented photographs generated within their respective areas.

(2) Selected color motion picture footage (prints) which, in the opinion of the installation, would be appropriate for use as features in programs.

(3) Audio and/or video tapes of significant news developments and other events of historical or public information interest.

(4) For DoD classified operations, all audiovisual material of or related to the classified operation will be reviewed and deemed releasable by the designated DoD officer.

§ 1213.107 International news releases.

(a) All releases of information involving NASA activities or views affecting another country or an international organization require prior coordination with the International Relations Division, Office of External Relations, through the Public Affairs Officer assigned to that division.

(b) NASA field installations and Headquarters offices will report all visits proposed by representatives of foreign news media to the Public Affairs Officer for the International Relations Division, NASA Headquarters.

(c) Safeguards intended to control access to classified information, materials, or facilities and provisions to protect the NSTS as a national resource will not be diminished in providing assistance to foreign or U.S. news representatives.

§ 1213.108 Security.

It is the responsibility of each Public Affairs Officer to implement the STS Security Classification Guide for each DoD classified operation on the NSTS. Guidance for this implementation will be provided in the joint NASA and USAF Public Affairs plan for each mission. In addition, each NASA installation involved in the NSTS will have information concerning the protection of the NSTS as a national resource. This category of information, including NSTS survivability/vulnerability data, may be classified. Therefore, all questions regarding security classification will be resolved by the appropriate security classification officer at any NASA installation or by the designated DoD security officer for DoD classified information.

November 25, 1987.

James C. Fletcher,

Administrator.

[FR Doc. 87-27768 Filed 12-2-87; 8:45 am]

BILLING CODE 7510-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3220]

New Medical Techniques, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Mystic, Connecticut manufacturer and distributor of countertop water distillers from misrepresenting that the devices are approved or endorsed by any person or organization and from making false and unsubstantiated claims concerning their ability to remove contaminants and impurities from water. Respondent is required, for three years, to maintain the material to substantiate their claims.

DATE: Complaint and Order issued November 18, 1987 [1].

FOR FURTHER INFORMATION CONTACT: FTC/S-4002, Joel Winston, Washington, DC 20580. (202) 326-3153.

SUPPLEMENTARY INFORMATION: On Tuesday, June 16, 1987, there was published in the **Federal Register**, 52 FR 22789, a proposed consent agreement with analysis In the Matter of New Medical Techniques, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding as to New Medical Techniques, Inc.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: Section 13.10 Advertising falsely or misleadingly; § 13.85 Government approval, action, connection or standards; § 13.85–70 Tests and investigations; § 13.85–75 Use; § 13.170 Qualities or properties of products or service; § 13.170–16 Cleansing, purifying § 13.170–70 Preventive or protective; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–10 Corrective advertising; § 13.533–20 Disclosures; § 13.533–40 Furnishing information to media; § 13.533–45 Maintain records; § 13.533–45(a) Advertising substantiation; § 13.533–50 Maintain means of communication. Subpart—Misrepresenting Oneself And Goods—Goods: Section 13.1632 Government endorsement or recommendation; § 13.1710 Qualities or properties; § 13.1730 Results; S.13.1740 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Water distillers, Water purification devices, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 87–27789 Filed 12–2–87; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 83C–0310]

Listing of Color Additives for Coloring Contact Lenses; Confirmation of Effective Date for D&C Yellow No. 10

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of September 3, 1987, for the final rule that amended the color additive regulations to provide for the safe use of D&C Yellow No. 10 as a color additive in contact lenses.

EFFECTIVE DATE: Effective date confirmed: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 3, 1987 (52 FR 28688), FDA amended 21 CFR Part 74 by adding a new § 74.3710 (21 CFR 74.3710) to provide for the safe use of D&C Yellow No. 10 as a color additive in contact lenses.

FDA gave interested persons until September 2, 1987, to file objections or requests for a hearing on this amendment. The agency received no objections or requests for a hearing. Therefore, FDA concludes that the final rule published in the **Federal Register** of August 3, 1987, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the August 3, 1987, final rule. Accordingly, the amendment promulgated thereby became effective September 3, 1987.

Dated: November 27, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–27810 Filed 12–2–87; 3:02 pm]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 536

Claims Against the United States

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army announces a revision of the regulatory provisions controlling the processing and settlement of administrative claims filed against the Army. The revision is necessary because of the publication of a revised regulation, AR 27–20 (10 July 1987) (Claims), effective 10 August 1987. This revision will inform third parties of the procedures controlling the processing and settlement of these administrative claims by the Army.

EFFECTIVE DATE: December 3, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Mounts, Jr., Deputy Director, U.S. Army Claims Service, Office of The Judge Advocate General, Fort Meade, Maryland 20755–5360, (301) 677–7622.

SUPPLEMENTARY INFORMATION: A redesignation table has been provided to implement a more uniform numbering system. The revision to Part 536 provides a more simplified designation of claims authorities and notes a new technical supervision change. It provides guidance for structured settlements. The revision also notes the granting to area claims offices of authority to disapprove certain claims presented for $15,000 or less.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non-major. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 536

Claims, Foreign claims, Tort claims.

Authority: 10 U.S.C. 939, 2733, 2734, 2734a, 2736, 2737, 3012, 4801 through 4804 and 4806; 28 U.S.C. 1346(b), 2401(b), 2402, 2671 through 2680; and 32 U.S.C. 715, unless otherwise noted.

Dated: October 22, 1987.

Jack F. Lane, Jr.,

Colonel, JA, Commander, United States Army Claims Service, Office of The Judge Advocate General, Department of Defense.

Title 32 is amended by revising Part 536 to read as follows:

PART 536—CLAIMS AGAINST THE UNITED STATES

General Provisions

Claims Arising From Activities of Military or Civilian Personnel or Incident to Noncombat Activities

Claims Arising From Activities of National Guard Personnel While Engaged in Duty or Training

Claims Incident To Use of Government Vehicles and Other Property of the United States Not Cognizable Under Other Law

Authority: 10 U.S.C. 939, 2733, 2734, 2734a, 2736, 2737, 3012, 4801 through 4804, and 4806; 28 U.S.C. 1346(b), 2401(b), 2402, 2671 through 2680; and 32 U.S.C. 715, unless otherwise noted.

General Provisions

§ 536.1 Purpose and scope.

(a) *Purpose.* Part 536 prescribes policies and procedures to be followed in the filing, investigation, processing and administrative settlement of Department of Army (DA) generated noncontractual claims. Sections 536.1 through 536.13 contain general instructions and guidance for the investigation and processing of claims and apply to all claims unless other laws or regulations specify other procedures. They are intended to ensure that incidents that may result in claims are promptly and efficiently investigated under supervision adequate to ensure a sound basis for official action and that all claims resulting from such incidents are expeditiously settled. The Secretary of the Army has delegated authority to The Judge Advocate General (TJAG) to assign areas of responsibility and designate functional responsibility for claims purposes. TJAG has delegated authority to the Commander, U.S. Army Claims Service (USARCS) to carry out these responsibilities. USARCS is the agency through which the Secretary of the Army and TJAG discharge their responsibilities for claims administration. The proper mailing address of USARCS is Commander, U.S. Army Claims Service, Office of The Judge Advocate General, Fort George G. Meade, Maryland 20755–5360.

(b) *Scope*—(1) *Applicability.* (i) Sections 536.20 through 536.35 apply in the settlement of claims under the Military Claims Act (MCA) (10 U.S.C. 2733) for personal injury, death or property damage that was either caused by members or employees of the DA acting within the scope of their employment or otherwise incident to noncombat activities of the DA.

(ii) Section 536.40 sets forth the procedures to be followed and the standards to be applied in the processing of claims cognizable under Article 139, Uniform Code of Military Justice (UCMJ) (10 U.S.C. 939) for property willfully damaged or wrongfully taken or withheld by members of the DA.

(iii) Section 536.50 governs the administrative settlement of claims under the Federal Tort Claims Act (FTCA) (28 U.S.C. 1346(b), 2671–2680) for personal injury, death or property damage caused by the negligent act or omissions of members or employees of the DA while acting within the scope of their employment.

(iv) Section 536.60 provides the procedures to be followed in the settlement of claims under the Army Maritime Claims Settlement Act (10 U.S.C. 4801–4804, 4806) for damage caused by a vessel of or in the service of the Army.

(v) Sections 536.70 through 536.81 provide instructions for settlement of claims under the National Guard Claims Act (NGCA) (32 U.S.C. 715) for personal injury, death or property damage that was either caused by a member or employee of the Army National Guard (ARNG) while in training or duty under Federal law, and acting within the scope of their employment; or otherwise incident to noncombat activities of the ARNG not in active Federal service.

(vi) Sections 536.90 through 536.97 provide instructions for settlement of claims under 10 U.S.C. 2737 for personal injury, death or property damage (not cognizable under any other law) incident to the use of Government property by members or employees of the DA.

(2) *Nonappropriated fund activities.* Claims arising from acts or omissions of employees of nonappropriated fund activities within the United States, its Territories, and possessions, are processed in the manner prescribed by §§ 536.1 through 536.13. In oversea areas, such claims will be processed in accordance with treaties or agreements between the United States and foreign countries with respect to the settlement of claims arising from acts or omissions of military and civilian personnel of the United States in such countries, or in accordance with applicable regulations as appropriate.

(3) *Nonapplicability.* Sections 536.1 through 536.13 do not apply to:

(i) Contractual claims which are under the provisions of Pub. L. 85–804, 28 August 1958 (72 Stat. 972) and AR 37–103, or other regulations including procurement regulations.

(ii) Maritime claims (§ 536.60).

§ 536.2 Information and assistance.

(a) Government personnel are forbidden to represent any claimant or to receive any payment or gratuity for services rendered. They may not accept any share or interest in a claim or assist in its presentation, under penalty of Federal criminal law (18 U.S.C. 203, 205). They are prohibited from disclosing information which may be the basis of a

claim, or any evidence of record in any claims matter, except as prescribed in §§ 518.1 through 518.4 of this chapter or other pertinent regulations. A person lacking authority to approve or disapprove a claim may not advise a claimant or his representative as to the disposition recommended.

(b) The prohibitions against furnishing information and assistance do not apply to the performance of official duty. Any person who indicates a desire to file a claim against the United States will be instructed concerning the procedure to follow. He will be furnished claim forms, and, when necessary, will be assisted in completing the forms and assembling evidence. He will not be assisted in determining what amount to claim. In the vicinity of a field exercise, maneuver, or disaster, information may be disseminated concerning the right to present claims, the procedure to be followed, and the names and locations of claims officers, engineer repair teams. When the government of a foreign country in which the U.S. Armed Forces are stationed has assumed responsibility for the settlement of certain claims against the United States, officials of that country will be furnished pertinent information and evidence so far as security considerations permit.

§ 536.3 Definitions and explanations.

The following terms as used in §§ 536.1 through 536.13 and the matters referred to in § 536.1(b) will have the meanings here indicated:

(a) *Affirmative claims.* The government's statutory right to recover money, property, or repayment in kind incurred as a result of property loss, damage, or destruction by any individual, partnership, association or other legal entity, foreign or domestic, except an instrumentality of the United States. Also, the Government's statutory right to recover the reasonable medical costs expended for hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) incurred under circumstances creating tort liability upon some third person.

(b) *Civilian employees.* Civilian employee means a person whose activities the Government has the right to direct and control, not only as to the result to be accomplished but also as to the means used; this includes, but is not limited to, full-time Federal civilian officers and employees. The term should be distinguished from the term "independent contractor" for whose actions the Government generally is not liable. The determination of who is a civilian employee is a Federal question determined under Federal law and not under local law.

(c) *Claim.* A demand for payment of a specified sum of money (other than the ordinary obligations incurred for services, supplies or equipment) and, unless otherwise specified in this regulation, in writing and signed by the claimant or a properly designated representative.

(d) *Claim file.* The claim, report of the claims officer or other report of investigation, supporting documentation, and pertinent correspondence.

(e) *Claim approval authority.* Except for claims under 10 U.S.C. 939, 31 U.S.C. 3721, and treaties or international agreements such as the North Atlantic Treaty Organization (NATO), Status of Forces Agreement (SOFA), and subject to any limitations found in specific provisions of these regulations, the authority to approve and pay a claim in the amount presented or in a lesser amount upon the execution of a settlement agreement by the claimant. A person with approval authority may not disapprove a claim in its entirety nor make a final offer, subject to any limitations found in specific provisions of this regulation.

(f) *Claim settlement authority.* The authority to approve a claim, to deny a claim in its entirety, or to make a final offer subject to any limitations found in specific provisions of this regulation.

(g) *Claims attorney.* DA or DOD civilian attorney assigned to a judge advocate or legal office, who has been designated by the Commander, USARCS.

(h) *Claims judge advocate.* An officer of the Judge Advocate General's Corps designated by a command or staff judge advocate (SJA) to be in immediate charge of claims activities of the command.

(i) *Claimant.* An individual, partnership, association, corporation, country, state, territory, or other political subdivision of such country; does not include the U.S. Government or any of its instrumentalities, except as prescribed by statute. Indian tribes are not proper party claimants but individual Indians can be claimants.

(j) *Combat activities.* Activities resulting directly or indirectly from action by the enemy, or by U.S. Armed Forces engaged in, or in immediate preparation for, impending armed conflict.

(k) *Disaster.* A sudden and extraordinary calamity occasioned by activities of the Army, other than combat, resulting in extensive civilian property damage or personal injuries and creating a large number of potential claims.

(l) *Federal agency.* A federal agency includes the executive departments and independent establishments of the United States and corporations acting as instrumentalities or agencies of the United States but does not include any contractor with the United States.

(m) *Final offer.* An offer of payment by a settlement authority in full and final settlement of a claim which, if not accepted, constitutes a final action for purposes of filing suit under § 536.50 or filing an appeal under §§ 536.20 through 536.35 and §§ 536.70 through 536.81, provided such offer is made in writing and meets the other requirements of a final action as set forth in this regulation.

(n) *Government vehicle.* A vehicle owned or on loan to any agency of the Government of the United States or privately owned, and operated by members or civilian employees of the DA in the scope of their office or employment with the Government of the United States including vehicles being operated on joint operations of the U.S. Armed Forces.

(o) *Medical claims judge advocate.* A judge advocate (JA) assigned to an Army Medical Center, under an agreement between TJAG and The Surgeon General, to perform the primary duty of investigating and processing medical malpractice claims.

(p) *Medical claims investigator.* A senior legal specialist or qualified civilian assigned to assist a medical claims JA on a full-time basis. A medical claims investigator is authorized to administer oaths under the provision of Article 136(b)(7), UCMJ, 10 U.S.C. 936(b)(7) when performing their investigative duties.

(q) *Medical malpractice claim.* A claim arising out of substandard or inadequate care of an Army patient.

(r) *Military personnel.* Military personnel means members of the DA on active duty for training, or inactive duty training as defined in AR 310–25 and 10 U.S.C. 101(22), 101(23), and 101(30). This includes members of the District of Columbia ARNG while performing active duty or training under 32 U.S.C. 316, 502, 503, 504 or 505.

(s) *Personal property.* Property consisting solely of corporeal personal property, that is, tangible things.

§ 536.4 Treaties and international agreements.

(a) The governments of some foreign countries have by treaty or agreement waived or assumed, or may hereafter waive or assume, certain claims against the United States. In such instances

claims will not be settled under laws or regulations of the United States.

(b) The prohibition stated in paragraph (a) of this section is not applicable to claims within the purview of Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty or similar type agreements which normally will be investigated and settled as therein provided.

§ 536.5 Claims.

(a) *Who may present.* (1) A claim may be presented by the owner of the property, or in his name by a duly authorized agent or legal representative. As used in this regulation an owner includes the following:

(i) For real property. The mortgagor, or the mortgagee, if he or she can maintain a cause of action in the local courts involving a tort to that specific property. When notice of divided interests in real property is received, the claim should, if feasible, be treated as a single claim or a release from all interests must be obtained.

(ii) For personal property. A bailee, leasee, mortgagee, and conditional vendor, or others having title for purposes of security only, are not proper claimants unless specifically authorized by the statute and implementing regulations in question. If more than one party has a real interest in the property, all must join in the claim or a release from all interests must be obtained.

(2) A claim for personal injury may be presented by the injured person or duly authorized agent or legal representative.

(3) A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any person determined to be legally or beneficially entitled. The amount allowed will, to the extent practicable, be apportioned among the beneficiaries in accordance with the law applicable to the incident.

(4) A claim for medical, hospital, or burial expenses may be presented by any person who by reason of family relationship has in fact incurred the expenses for which the claim is made. However, for claims cognizable under the provisions of the FTCA, see § 536.50, and for claims cognizable under the provisions of the Nonscope of Employment Claims Act, see §§ 536.90 through 536.97.

(5) A claim presented by an agent or legal representative will be made in the name of the claimant and signed by the agent or legal representative showing the title or capacity. Written evidence of the authority of such person to act is mandatory except when controlling law does not require such evidence.

(6) A claim normally will include all damages that accrue by reason of the incident. Where the same claimant has a claim for damage to or loss of property and a claim for personal injury or a claim based on death arising out of the same incident, each of the foregoing or any combination of them ordinarily represent only an integral part or parts of a single claim or cause of action. Under §§ 536.20 through 536.35 and the Foreign Claims Act (FCA) (10 U.S.C. 2734), a single claimant is entitled to be compensated only one time for all damages or injuries arising out of an incident.

(b) *Subrogation.* A claim may be presented by a subrogee in his own name if authorized by the law of the place where the incident giving rise to the claim occurred, provided subrogation is not barred by the regulation applicable to the type of claim involved.

(1) The claims of the subrogor (insured) and subrogee (insurer) for damages arising out of the same incident constitute separate claims, and it is permissible for the aggregate of such claims to exceed the monetary jurisdiction of the approving or settlement authority.

(2) A subrogor and a subrogee may file a claim jointly or individually. A fully subrogated claim will be paid only to the subrogee. Whether a claim is fully subrogated is a matter to be determined by local law. Some jurisdictions permit the property owner to file for property damage even though the owner has been compensated for the repairs by an insurer. In such instances a release should be obtained from both parties in interest or be released by both of them. The approved payment in a joint claim will be by joint check which will be sent to the subrogee unless both parties specify otherwise. If separate claims are filed, payment will be by check issued to each claimant to the extent of his undisputed interest.

(3) Where a claimant has made an election and accepted workmen's compensation benefits, both statutory and case law of the jurisdiction should be scrutinized to determine to what extent the claim of the injured party against third parties has been extinguished by acceptance of compensation benefits. While it is infrequent that the claim is fully extinguished, it is true in some jurisdictions, and the only proper party claimant is the workmen's compensation carrier. Even where the injured party's claim has not been fully extinguished, most jurisdictions provide that the compensation insurance carrier has a lien on any recovery from the third party, and no settlement should be reached without approval by the carrier where required by local law. Additionally, claims from the workmen's compensation carrier as subrogee or otherwise will not be considered payable where the United States has paid the premiums, directly or indirectly, for the workmen's compensation insurance. Applicable contract provisions holding the United States harmless should be utilized.

(4) Whether medical payments paid by an insurer to its insured can be subrogated depends on local law. Some jurisdictions prohibit these claims to be submitted by the insurer notwithstanding a contractual provision providing for subrogation. Therefore, local law should be researched prior to deciding the issue, and claims forwarded to higher headquarters for adjudication should contain the results of said research. Such claims, where prohibited by state law, will also be barred by the Anti-assignment Act.

(5) Care will be exercised to require insurance disclosure consistent with the type of incident generating the claim. Every claimant will, as a part of his claim, make a written disclosure concerning insurance coverage as to:

(i) The name and address of every insurer;

(ii) The kind and amount of insurance;

(iii) Policy number;

(iv) Whether a claim has been or will be presented to an insurer, and, if so, the amount of such claims; and

(v) Whether the insurer has paid the claim in whole or in part, or has indicated payment will be made.

(6) Each subrogee must substantiate his interest or right to file a claim by appropriate documentary evidence and should support the claim as to liability and measure of damages in the same manner as required of any other claimant. Documentary evidence of payment to a subrogor does not constitute evidence either of liability of the Government or of the amount of damages. Approving and settlement authorities will make independent determinations upon the evidence of record and the law.

(7) Subrogated claims are not cognizable under §§ 536.90 through 536.97 and the FCA (10 U.S.C. 2734).

(c) *Transfer and assignments.* (1) Except as they occur by operation of law or after a voucher for the payment has been issued, unless within the exceptions set forth by statute (see 31 U.S.C. 3727 and AR 37–107), the following are null and void—

(i) Every purported transfer or assignment of a claim against the United

States, or of any part of or interest in a claim, whether absolute or conditional.

(ii) Every power of attorney or other purported authority to receive payment of all or part of any such claim.

(2) The purposes of the Anti-assignment Act are to eliminate multiple payment of claims, to cause the United States to deal only with original parties, and to prevent persons of influence from purchasing claims against the United States.

(3) In general, this statute prohibits voluntary assignments of claims with the exception of transfers or assignments made by operation of law. The operation of law exception has been held to apply to claims passing to assignees because of bankruptcy proceedings, assignments for the benefit of creditors, corporate liquidations, consolidations or reorganizations, and where title passes by operation of law to heirs or legatees. Subrogated claims which arise under a statute are not barred by the Anti-assignment Act. For example, subrogated worker's compensation claims are cognizable when presented by the insurer.

(4) Subrogated claims which arise pursuant to contractual provisions may be paid to the subrogee if the subrogated claim is recognized by state statute or decision. For example, an insurer under an automobile insurance policy becomes subrogated to the rights of a claimant upon payment of a property damage claim. Generally, such subrogated claims are authorized by state law and are therefore not barred by the Anti-assignment Act.

(5) Before claims are paid, it is necessary to determine whether there may be a valid subrogated claim under Federal or State statute or subrogation contract held valid by State law. If there may be a valid subrogated claim forthcoming, payment should be withheld for this portion of the claim. If it is determined that claimant is the only proper party, full settlement is authorized.

(d) *Action by claimant*—(1) *Form of claim.* The claimant will submit his claim using authorized official forms whenever practicable. A claim is filed only when the elements indicated in § 536.3(c) have been supplied in writing by a person authorized to present a claim, unless the claim is cognizable under a regulation that specifies otherwise. A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a).

(2) *Signatures.* (i) The claim and all other papers will be signed in ink by the claimant or by his duly authorized agent. Such signature will include the first name, middle initial, and surname. A married woman must sign her claim in her given name, for example, "Mary A. Doe," rather than "Mrs. John Doe."

(ii) Where the claimant is represented, the supporting evidence required by paragraph (a)(5) of this section will be required only if the claim is signed by the agent or legal representative. However, in all cases in which a claimant is represented, the name and address of the representative will be included in the file together with copies of all correspondence and records of conversations and other contracts maintained and included in the file. Frequently, these records are determinative as to whether the statute of limitations has been tolled.

(3) *Presentation.* The claim should be presented to the commanding officer of the unit involved, or to the legal office of the nearest Army post, camp, or station, or other military establishment convenient to the claimant. In a foreign country where no appropriate commander is stationed, the claim should be submitted to any attache of the U.S. Armed Forces. Claims cognizable under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, Article XVIII of the Japanese Administative Agreement or other similar treaty or agreement are filed with designated claims officials of the receiving State.

(e) *Evidence to be submitted by claimant.* The claimant should submit the evidence necessary to substantiate his claim. It is essential that independent evidence be submitted which will substantiate the correctness of the amount claimed.

(f) *Statute of limitations*—(1) *General.* Each statute available to the Department of the Army for the administrative settlement of claims, except the Maritime Claims Settlement Act (10 U.S.C. 4802), specifies the time during which the right to file a claim must be exercised. These statutes of limitations, which are jurisdictional in nature, are not subject to waiver unless the statute expressly provides for waiver. Specific information concerning the period for filing under each statute is contained in the appropriate implementing sections of this regulation.

(2) *When a claim accrues.* A claim accrues on the date on which the alleged wrongful act or omission results in an actionable injury or damage to the claimant or his decedent. Exceptions to this general rule may exist where the claimant does not know the cause of injury or death; that is, the claim accrues when the injured party, or someone acting on is or her behalf, knows both the existence and the cause of his or her injury. However, this exception does not apply when, at a later time, he or she discovers that the acts inflicting the injury may constitute medical malpractice. (See *United States* v. *Kubrick*, 444 U.S. 111, 100 S. Ct. 352 (1979).) The discovery rule is not limited to medical malpractice claims; it has been applied to diverse situations involving violent death, chemical and atomic testing, and erosion and hazardous work environment. In claims for indemnity or contribution against the United States, the accrual date is the time of the payment for which indemnity is sought or on which contribution is based.

(3) *Effect of infancy, incompetency or the filing of suit.* The statute of limitations for administrative claims is not tolled by infancy or incompetency. Likewise, the statute of limitations is not tolled for purposes of filing an administrative claim by the filing of a suit based upon the same incident in a Federal, State, or local court against the United States or other parties.

(4) *Amendment of claims.* A claim may be amended by the claimant at any time prior to final agency action or prior to the excercise of the claimant's option under 28 U.S.C. 2675(a). A claim may be amended by changing the amount, the bases of liability, or elements of damages concerning the same incident. Parties may be added only if the additional party could have filed a joint claim initially. If the additional party had a separate cause of action, his claim may not be treated as an amendment but only as a separate claim and is thus barred if the statute of limitations has run. For example, if a claim is timely filed on behalf of a minor for personal injuries, a subsequent claim by a parent for loss of services is considered a separate claim and is barred if it is not filed prior to the running of the statute of limitations. Another example is where a separate claim is filed for loss of services or consortium by a spouse arising out of injuries to the husband or wife of the claimant. On the other hand, if a claim is timely filed by insured for their deductible portion of their property damage, a subsequent claim by the insurer based on payment of property damage to its insured may be filed as an amendment even though the statute of limitations has run, unless final action has been taken on the insured's claim.

(5) *Date of receipt stops the running of the statute.* In computing this time to determine whether the period of limitations has expired, exclude the first day and include the last day, except

when it falls on a nonworkday such as Saturday, Sunday, or a legal holiday, in which case it is to be extended to the next workday.

(g) *By the Command concerned.*—(1) *General.* If the claim is of a type and amount within the jurisdiction of the claims office of the command concerned and the claim is meritorious in the amount claimed, it will be approved and paid. If a claim in an amount in excess of the monetary jurisdiction of the claims office, is meritorious in a lesser amount within its jurisdiction, the claim may be approved for payment provided the amount offered is accepted by the claimant in settlement of the claim. If the claim is not of a type within the jurisdiction of the claims office, or if the claimant will not accept an amount within its jurisdiction, the claim with supporting papers and a recommendation for appropriate action will be forwarded to the next higher class authority. If the claim is determined to be not meritorious, it will be disapproved provided the claims office has settlement authority for claims of the type and amount involved. Prior to the disapproval of a claim under a particular statute, a careful review should be made to ensure that the claim is not properly payable under a different statute or on another basis.

(2) *Claims within settlement authority for USARCS or the Attorney General.* A copy of each of the following types of claims will be forwarded immediately to the Commander, USARCS:

(i) One that appears to be of a type that must be brought to the attention of the Attorney General in accordance with his or her regulations;

(ii) One in which the demand exceeds $15,000; or

(iii) One which is a claim under the FTCA (§ 536.50) where the total of all claims, arising from a single incident, actual or potential, exceeds $25,000.

The USARCS is responsible for the monitoring and settlement of such claims and will be kept informed on the status of the investigation and processing thereof. Direct liaison and correspondence between the USARCS and the field claims authority or investigator is authorized on all claims matters, and assistance will be furnished as required. The field claims office will provide the USARCS duplicates of all documentation as it is added to the field file. This will include all correspondence, memoranda, medical reports, reports, evaluations, and any other material relevant to the investigation and processing of the claim.

(3) *Claims involving privately owned vehicles.* In areas where the FTCA (§ 536.50) is applicable, any claim except those under 31 U.S.C. 3721, arising out of an accident involving a privately owned vehicle driven by a member of the DA, or by ARNG personnel as defined in §536.71, based on an allegation that the privately owned vehicle travel was within the scope of employment, should be forwarded without adjudication directly to the Commander, USARCS, together with a seven-paragraph memorandum which includes a discussion of the issue of scope of employment under applicable law. Additional information is provided in §§ 536.20 through 536.35, §§ 536.90 through 536.97.

(4) *Claims within the exclusive jurisdiction of USARCS.* Authority to settle the following claims has been delegated to the Commander, USARCS, only: (i) Claims under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty and other treaties or international agreements;

(ii) Claims under § 536.60 (Maritime claims not arising out of civil works activities);

(iii) Industrial Security claims (Sect. X, para C, DoD Directive 5220.6, 7 December 1966); and

(iv) Claims of the U.S. Postal Service. Files of these claims will be forwarded directly to the Commander, USARCS, with the report of investigation and supporting papers, including a seven-paragraph memorandum.

(5) *Maritime claims.* (i) A copy of a claim arising out of damage, loss, injury, or death which originates on navigable waters and is not considered cognizable under the Army Maritime Claims Settlement Act (10 U.S.C. 4802–4804) will be forwarded immediately to the Commander, USARCS. A determination will be made as to whether the claim must be processed under the Suits in Admiralty Act or the Public Vessels Act or may be considered administratively.

(ii) If a maritime claim cannot be settled administratively, the claimant will be advised that he must file a suit.

(iii) If it is determined that both administrative and judicial remedies are available, the claim may be processed administratively and the claimant advised of the need to file a suit within 2 years of the date of occurrence if he chooses his judicial remedy.

(iv) If the claim is for damage to property, or injury to person, consummated on land, a claimant who makes an oral inquiry or demand will be advised that no suit can be filed until a period of six months has expired after a claim in writing is submitted.

(v) If it is determined by the Commander, USARCS, that a claim, apparently maritime in nature, is not within the maritime jurisdiction, the claimant will be so advised, and the claim will be returned for processing under the appropriate section of this regulation.

(h) *By district or division engineer.* The district or division engineer area claims office will take the action of an initial claims authority. Files of unpaid claims should be forwarded directly to the USARCS. An information copy will be sent to the next higher engineer authority unless such requirement is waived.

(i) *By higher settlement authority.* A higher claims settlement authority may take action with respect to a claim in the same manner as the initial claims office. However, if it is determined that any further attempt to settle the claim would be unwarranted, the claim will be forwarded to the Commander, USARCS, with recommendations.

§ 536.6 Determination of liability.

(a) In the adjudication of tort claims, the liability of the United States generally is determined in accordance with the law of the State or country where the act or omission occurred, except that any conflict between local law and the applicable United States statute will be resolved in favor of the latter. However, in claims by inhabitants of the United States arising in foreign countries, liability is determined in accordance with general principles of tort law common to the majority of American jursidictions as evidenced by Federal case law and standard legal publications, except as it applies to absolute liability. Where liability is not clear or other issues exist, settlements should truly reflect the uncertainties in the adjudication of such issues. Compromise settlements are encouraged provided agreement can be reached that reflects the reduced value of the damages as measured against the full value or range of value if such uncertainties or issues did not exist and were it possible for the claimant to successfully litigate the claim.

(b) Quantum exclusion. The costs of filing a claim and similar costs, for example, court costs, bail, interest, inconvenience expenses, or costs of long distance telephone calls or transportation in connection with the preparation of a claim, are not proper quantum elements and will not be allowed.

§ 536.7 Incident to service exclusionary rule.

(a) *General.* A claim for personal injury or death of a member of the Armed Forces of the United States or a civilian employee of the United States that accrued incident to his service is not payable under this regulation. A property damage claim that accrued incident to the service of a member of the Armed Forces may be payable under 31 U.S.C. 3721 or §§ 536.20 through 536.35 depending on the facts.

(b) *Property damage claims.* A claim for damage to or loss of personal property of a claimant who is within one of the categories of proper party claimants under 31 U.S.C. 3721, which is otherwise cognizable under 31 U.S.C. 3721, must first be considered thereunder. If a claim is not clearly compensable under 31 U.S.C. 3721, and it arises incident to a noncombat activity of the DA or was caused by a negligent or wrongful act or omission of military personnel or civilian employees of the Department of Defense (DOD), it may be cognizable under either §§ 536.20 through 536.35 or § 536.50. The claim, if meritorious in fact, will probably be payable under one authorization or another regardless of whether the claim accrued incident to the service of the claimant.

(c) *Personal injury and death claims.* (1) Only after the death or personal injury (which is the subject of the claim) has been determined to have not been incurred incident to the member's service should §§ 536.20 through 536.35 and § 536.50 be studied to determine which, if either, provides a proper basis for settlement of the claim. In any event, the rule in *U.S. v. Brooks,* 176 F.2d 482 (4th Cir. 1949) requiring setoff of amounts obtained through military or veterans' compensation systems against amounts otherwise recoverable will be followed. Other Government benefits, funded by general treasury revenues and not be the claimant's contributions, may also be used as a setoff against the settlement. (See, *Overton v. United States,* 619 F.2d 1299 (8th Cir. 1980)).

(2) As the incident to service issue is determinative as to whether this type of claim may be processed administratively at all, the applicable law and facts should be carefully considered before deciding that injury or death was not incident to service. Such claims also are often difficult to settle on the issue of quantum and thus more likely to end in litigation. Moreover, the United States may well elect to defend the lawsuit on the basis of the incident to service exclusion, and this could be prejudiced by a contrary administrative determination that a service member's personal injuries or death were not incident to service. Doubtful cases will be forwarded to the Commander, USARCS without action along with sufficient factual information to permit a determination of the incident to service question.

§ 536.8 Use of appraisers and independent medical examinations.

(a) *Appraisers.* Appraisers should be used in all claims where an appraisal is reasonably necessary and useful in effectuating the adminstrative settlement of the claims. The decision to use an appraiser is at the discretion of DA.

(b) *Independent medical examinations.* In claims involving serious personal injuries, for example, normally those cases in which there is an allegation of temporary or permanent disability, the claimant should be examined by an independent physician, or other medical specialist, depending upon the nature and extent of the injuries. The decision to conduct an independent medical examination is at the discretion of DA.

§ 536.9 Effect on Award of other payments to claimant.

The total award to which the claimant (and subrogees) may be entitled normally will be computed as follows:

(a) Determine the total of the loss or damage suffered.

(b) Deduct from the total loss or damage suffered any payment, compensation, or benefit the claimant has received from the following sources:

(1) The U.S. or ARNG employee/member who caused the damage.

(2) The U.S. or ARNG employee's/member's insurer.

(3) Any person or agency in a surety relationship with the U.S. employee; or

(4) Any joint tort-feasor or insurer, to include Government contractors under contracts or in jurisdictions where it is permissible to obtain contribution or indemnity from the contractor in settlement of claims by contractor employees and third parties.

(5) Any advance payment made pursuant to § 536.13.

(6) Any benefit or compensation based directly or indirectly on an employer-employee relationship with the United States or Government contractor and received at the expense of the United States including but not limited to medical or hospital services, burial expenses, death gratuities, disability payment, or pensions.

(7) The State (Commonwealth and so forth) whose employee or ARNG member caused or generated an incident that was a proximate cause of the resulting damages.

(8) Value of Federal medical care.

(9) Benefits paid by the Veterans Administration (VA) that are intended to compensate the same elements of damage. When the claimant is receiving money benefits from the VA under 38 U.S.C. 351 for a non-service connected disability or death based on the injury that is the subject of the claim, acceptance of a settlement or an award under the FTCA (§ 536.50) will discontinue the VA monetary benefits until the amount that would have otherwise been received in VA monetary benefits is equal to the total amount of the agreement or award including attorney fees. While monetary benefits received under 38 U.S.C. 351 must be discontinued as above, medical benefits, that is, VA medical care may continue provided the settlement or award expressly provides for such continuance and the appropriate VA official is informed of such continuance.

(10) When the claimant is receiving money benefits under 38 U.S.C. 410(b) for non-service connected death, arising from the injury that is the subject of the claim, acceptance of a settlement or award under the FTCA (§536.50) or under any other tort procedure will discontinue the VA benefits until the amount that would have otherwise been received in VA benefits is equal to the amount of the total settlement or award including attorney fees. The discontinuation of monetary benefits under 38 U.S.C. 410(b) has no effect on the receipt of other VA benefits. The claimant should be informed of the foregoing prior to the conclusion of any settlement and thus afforded an opportunity to make appropriate adjustment in the amount being negotiated.

(11) Value of other Federal benefits to which the claimant did not contribute, or at least to the extent they are funded from general revenue appropriation.

(12) Collateral sources where permitted by State law (for example, State or Federal workers' compensation, social security, private health, accident, and disability benefits paid as a result of injuries caused by a health care provider).

(c) No deduction will be made for any payment the claimant has received by way of voluntary contributions, such as donations of charitable organizations.

(d) Where a payment has been made to the claimant by his insurer or other subrogee, or under workmen's compensation insurance coverage, as to which subrogated interests are allowable, the award based on total

damages will be apportioned as their separate interests will appear (see § 536.5(b)).

(e) After deduction of permissible collateral and non-collateral sources, also deduct that portion of the loss or damage believed to have been caused by the negligence of the claimant, third parties whose negligence can be imputed to the claimant, or joint tortfeasors who are liable for their share of the negligence (for example, where some form of the Uniform Contribution Among Joint Tortfeasors Act has been passed).

(f) Claims with more than one potential source of recovery.

(1) The Government seeks to avoid multiple recovery, that is, claimants seeking recovery from more than one potential source, and to minimize the award it must make. The claims investigation should therefore identify other parties potentially liable to the claimant and/or their insurance carriers; indicate the status of any claims made or include a statement that none has been made so that it can be assured there is only one recovery and the Government does not pay a disproportionate share. Where no claim has been made by the claimant against others potentially liable, if applicable State law grants the Government the right to indemnity or contribution, and it is felt the Government may be entitled to either under the facts developed by the Claims investigation, the claims officer or attorney should formally notify the other parties of their potential liability, the Government's willingness to share information, and its expectation of shared responsibility for any settlement. Furthermore, the claimant may be receiving or entitled to receive benefits from collateral and non-collateral sources, which can be deducted from the total loss or damage. Accordingly, a careful review must be made of applicable State laws regarding joint and several liability, indemnity, contribution, comparative negligence, and the collateral source doctrine.

(2) If a demand by a claimant or an inquiry by a potential claimant is directed solely to the Army, in a situation where it appears that the responsible Army employee may have applicable insurance coverage, inquiry should be made of the employee as to whether he has liability insurance.

(i) If so, determine the insurer has made or will make any payment to claimant. Under applicable State law, the United States may be an additional named insured entitled to coverage under the employee's liability policy. (See 16 ALR3d 1411; *United States* v. *State Farm Mutual Ins. Co.*, 245 F. Supp. 58 (D. Ore. 1965.) Therefore, where there may be applicable insurance coverage, there should be a review of the policy language together with the rules and regulations of the State insurance regulatory body to determine whether the United States comes within the definition of "insured," whether the exclusion of the United States from policy coverage conforms with state law and policy.

(ii) If the employee refuses to cooperate in providing this information, he or she should be advised to comply with the notice requirements of the insurance policy and to request the insurance carrier contact the claims officer or attorney. The case should be followed to ascertain whether the employee's insurer has made or will make any payment to the claimant before deciding whether to settle the claim against the Government. Normally, the award, if any, to the claimant will be reduced by the amount of the payment of the employee's insurance carrier.

(3) If the employee is the sole target of the claim and Army claims authorities arrange to have the claim made against the Government, the member or employee should be required to notify his or her insurance carrier according to the policy and inform DA claims authorities as to the details of the insurance coverage, including the name of the insurance carrier. Except when the driver's statute is applicable, the insurance carrier is expected to participate in the negotiation of the claims settlement and to pay its fair share of any award to the claimant.

(4) Where the responsible Army employee is "on loan" to another employer other than the United States, for example, civilian institution for ROTC instructor, or performing duties for a foreign government, inquiry should be made to determine whether there is applicable statutory or insurance coverage concerning the acts of the responsible employee and contribution or indemnification sought as appropriate. In the case of foreign governments, applicable treaties or agreements are considered controlling.

(5) A great many claims cognizable under the FTCA (§ 536.50) are now settled on a compromise basis. A major consideration in many such settlements is the identification of other sources of recovery. This is true in a variety of factual situations where there is a potential joint tortfeasor; for example, multi-vehicle accidents with multiple drivers and guest passengers, State or local government involvement, contractors performing non-routine tasks for the Government, medical treatment rendered to a claimant by non-Government employees, or incidents caused by a member or employee of the military department of a State or Commonwealth with whom the DA does not have a cost-sharing agreement. The law of the jurisdiction regarding joint and several liability, idemnity and contribution may permit shared financial responsibility, but even in jurisdictions which do not permit contribution, a compromise settlement can often be reached with the other tortfeasor's insurance company paying a portion of the total amount of the claim against the Government. For these reasons, every effort should be made to identify the insurance of all potential tortfeasors involved and the status of any claims made, and to demand contribution or indemnity where there is a substantial reason to believe the liability for the loss or damage should be shared.

(6) Whenever a claim is filed against the Government under a statute which does not permit the payment of a subrogated interest, it is important to ensure that full information is obtained from the claimant regarding insurance coverage, if any, since it is the clear legislative intent of such statutes that insurance coverage be fully utilized before using appropriated funds to pay the claims.

§ 536.10 Settlement agreement.

(a) *General.* Except under 31 U.S.C. 3721, if a claim is determined to be meritorious in an amount less than claimed, or if a claim involving personal injuries or death is approved in full, a settlement agreement will be obtained prior to payment. Acceptance by a claimant of an award constitutes a full and final settlement and release of any and all claims against the United States and against the military or civilian personnel whose act or omission gave rise to the claim.

(b) *Claims involving workmen's compensation carriers.* The settlement of a claim involving a claimant who has elected to receive workmen's compensation benefits under local law may require the consent of the workmen's compensation carrier and in certain jurisdictions the State agency with authority over workmen's compensation awards. Accordingly, claims approval and settlement authorities should be aware of local requirements.

§ 536.11 Appeals and notification to claimant as to denial of claims.

(a) *General.* The nature and extent of the written notification to the claimant

as to the denial of his claim should be based on whether the claimant has a judicial remedy following denial or whether he has an administrative recourse to appeal. Where there is a judicial remedy, the written notification should be general as the various defenses to be employed by the United States in any subsequent litigation is a matter finally for determination by the Attorney General or the appropriate U.S. Attorney. On the other hand, in cases in which an administrative appeal is provided, the basis for denial should be much more explicit and certain; only in this way can the claimant be required to completely particularize his grounds for appeal.

(b) *Final Actions under the Federal Tort Claims Act (28 U.S.C. 2671–2680), § 536.50.* If the settlement authority has information available which could possibly be a persuasive factor in the decision of the claimant as to whether to resort to litigation, such information may be orally transmitted to the claimant and, in appropriate cases, released under normal procedures in accordance with AR 340–17. However, the written notification of the denial should be general in nature; for example, denial on the weaker ground of contributory negligence should be avoided, and the inclination should be to deny on the basis that the claimant was solely responsible for the incident. The claimant will be informed in writing of his right to bring an action in the appropriate United States District Court not later than 6 months after the date of mailing of the notification.

(c) *Denials under the MCA (10 U.S.C. 2733) §§ 536.20 through 536.35 and the NGCA (32 U.S.C. 715) §§ 536.70 through 536.81.* Claims disapproved under these statutes are subject to appeal and the claimant will be so informed. Also, the notice of disapproval will be sufficiently detailed to provide the claimant with an opportunity to know and attempt to overcome the basis for the disapproval. The claimant should not be afforded a valid basis for claiming surprise when an issue adverse to him is asserted as a basis for denying his appeal.

(d) *Denials on jurisdictional grounds.* Regardless of the nature of the claim presented or the statute under which it may be considered, claims denied on jurisdictional grounds which are valid, certain, and not easily overcome and in which for this reason no detailed investigation as to the merits of the claim is conducted, should contain in the denial letter a general statement to the effect that the denial on such grounds is not to be construed as an expression of opinion on the merits of the claim or an admission of liability. If sufficient factual information is available to make a tentative ruling on the merits of the claim, liability may be expressly denied.

(e) *Where claim may be considered under more than one statute.* In cases in which it is doubtful as to whether the MCA (§§ 536.20 through 536.35) or the NGCA (§§ 536.70 through 536.81) or the FTCA (§ 536.50) is the appropriate statute under which to consider the claim, the claimant will be advised of the alternatives, for example, the right to sue or the right to appeal. Similarly, a claimant may be advised of his alternative remedies when the claimant is a military member and the issue of "incident to service" is not clear.

§ 536.12 Effect of payment.

Acceptance of an award by the claimant, except for an advance payment, constitutes for the United States, and for the military member or civilian employee whose act or omission gave rise to the claim, a release from all liability to the claimant based on the act or omission.

§ 536.13 Advance payments.

(a) *Purpose.* This section implements the Act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by Pub. L. 90–521 (82 Stat. 874) and Pub. L. 98–564 (98 Stat. 2918). No new liability is created by 10 U.S.C. 2736, which merely permits partial advance payments on meritorious claims as specified in this section.

(b) *Conditions for advance payment.* An advance payment not in excess of $10,000 is authorized in the limited category of claims resulting in immediate hardship arising from incidents that are payable under the provisions of §§ 536.20 through 536.35, §§ 536.70 through 536.81, or the FCA (10 U.S.C. 2734). An advance payment is authorized only under the following circumstances:

(1) The claim must be determined to be cognizable and meritorious under the provisions of either §§ 536.20 through 536.35, and §§ 536.70 through 536.81, or the FCA (10 U.S.C. 2734).

(2) There exists an immediate need of the person who suffered the injury, damage, or loss, or of the family of a person who was killed, for food, clothing, shelter, medical or burial expenses, or other necessities, and other resources for such expenses are not reasonably available.

(3) The payee, so far as can be determined, would be a proper claimant, as is the spouse or next of kin of a claimant who is incapacitated.

(4) The total damage sustained must exceed the amount of the advance payment.

(5) A properly executed advance payment acceptance agreement has been obtained.

Claims Arising From Activities of Military or Civilian Personnel or Incident to Noncombat Activities

§ 536.20 Statutory authority.

The statutory authority for §§ 536.20 through 536.35 is contained in the Act of 10 August 1956 (70A Stat. 153, 10 U.S.C. 2733) commonly referred to as the Military Claims Act (MCA), as amended by Pub. L. 90–522, 26 September 1968 (82 Stat. 875), Pub. L. 90–525, 26 September 1968 (82 Stat. 877), Pub. L. 91–312, 8 July 1970 (84 Stat. 412) and Pub. L. 93–336, 8 July 1974 (88 Stat. 291); and the Act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by Pub. L. 90–521, 26 September 1968 (82 Stat. 874) and Pub. L. 98–564, 30 October 1984 (98 Stat. 2918).

§ 536.21 Definitions.

The definitions of terms set forth in § 536.3 are applicable to §§ 536.20 through 536.35.

§ 536.22 Scope.

Sections 536.20 through 536.35 are applicable in all places and prescribe the substantive bases and special procedural requirements for the settlement of claims against the United States for death, personal injury, or damage to or loss or destruction of property caused by military personnel or civilian employees of the DA acting within the scope of their employment, or otherwise incident to the noncombat activities of the DA, provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard or a civilian officer or employee whose injury or death is incident to service.

§ 536.23 Claims payable.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to or loss of real or personal property is payable under §§ 536.20 through 536.35 when—

(1) Caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers or employees of the Army acting within the scope of their employment, or

(2) Incident to the noncombat activities of the Army.

(b) *Property.* The loss or damage to property which may be the subject of claims under §§ 536.20 through 536.35 includes—

(1) Real property used and occupied under a lease, express or implied, or otherwise (for example, in connection with training, field exercises, or maneuvers). An allowance may be made for the use and occupancy of real property arising out of trespass or other tort, even though claimed as rent.

(2) Personal property bailed to the Government under an agreement, express or implied, unless the owner has expressly assumed the risk of damage or loss. Some losses may be payable using Operations and Maintenance, Army funds. Clothing damage or loss claims arising out of the operation of an Army Quartermaster laundry are considered to be incident to service and are payable only if claimant is not a proper claimant under 31 U.S.C. 3721.

(3) Registered or insured mail in the possession of the Army, even though the loss was caused by a criminal act.

(c) *Effect of FTCA.* A claim arising in the United States may be settled under §§ 536.20 through 536.35 only if the FTCA (28 U.S.C. 2671–2680), § 536.50, has been judicially determined not to be applicable to claims of this nature, or if the claim arose incident to noncombat activities.

(d) *Noncombat activities.* A claim may be settled under §§ 536.20 through 536.35 if it arises from authorized activities essentially military in nature, having little parallel in civilian pursuits and which historically have been considered as furnishing a proper basis for payment of claims, such as practice firing of missiles and weapons, training and field exercises, and maneuvers, including in connection therewith the operation of aircraft and vehicles, the use and occupancy of real estate, and the movement of combat or other vehicles designed especially for military use. Activities incident to combat, whether in time of war or not, and use of military personnel and civilian employees in connection with civil disturbances, are excluded.

(e) *Advance payments.* Advance payments under 10 U.S.C. 2736, as amended, in partial payment of meritorious claims to alleviate immediate hardship are authorized.

§ 536.24 Claims not payable.

A claim is not payable under §§ 536.20 through 536.35 which—

(a) Results wholly from the negligent or wrongful act of the claimant or agent.

(b) Is for reimbursement for medical, hospital, or burial expenses furnished at the expense of the United States.

(c) Is purely contractual in nature.

(d) Arises from private as distinguished from Government transactions.

(e) Is based solely on compassionate grounds.

(f) Is for war trophies or articles intended directly or indirectly for persons other than the claimant or members of his or her immediate family, such as articles acquired to be disposed of as gifts or for sale to another, voluntarily bailed to the Army, or is for precious jewels or other articles of extraordinary value voluntarily bailed to the Army. The preceding sentence is not applicable to claims involving registered or insured mail. No allowance will be made for any item when the evidence indicates that the acquisition, possession, or transportation thereof was in violation of DA directives.

(g) Is for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the DA, except as authorized by § 536.23(b)(1). Real estate claims founded upon contract are generally processed under AR 405–15.

(h) Is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to the basic intent of the governing statute (10 U.S.C. 2733); for example, claims by inhabitants of unfriendly foreign countries or by or based on injury or death of individuals considered to be unfriendly to the United States. When a claim is considered to be not payable for the reasons stated in this paragraph, it will be forwarded for appropriate action to the Commander, USARCS, together with the recommendations of the responsible claims office.

(i) If presented by a national, or a corporation controlled by a national, or a country at war or engaged in armed conflict with the United States, or of any country allied with such enemy country unless the settlement authority having jurisdiction over the claim determines that the claimant is and, at the time of the incident, was friendly to the United States. A prisoner of war or an interned enemy alien is not excluded as to a claim for damage, loss, or destruction of personal property in the custody of the Government otherwise payable.

(j) Is for personal injury or death of a member of the Armed Forces or Coast Guard or a civilian employee thereof which is incident to his or her service (10 U.S.C. 2733(b)(3)).

(k) The types of claims not payable under the FTCA (see § 536.50(j)) are also not payable under §§ 536.20 through 536.35 with the following exceptions:

(1) The foreign country exclusion in 28 U.S.C. 2680(k) does not apply to claims under §§ 536.20 through 536.35.

(2) The Feres bar in § 536.50(j)(1) does not apply to claims under §§ 536.20 through 536.35, but see the exclusion in paragraph (j) of this section.

§ 536.25 Claims also cognizable under other statutes.

(a) *General.* Claims based upon a single act or incident cognizable under §§ 536.20 through 536.35, which are also cognizable under the FTCA (28 U.S.C. 2671–2680), § 536.50, the Army Maritime Claims Settlement Act (10 U.S.C. 4801–04, 4806), § 536.60, the FCA (10 U.S.C. 2734), or Title 31, U.S.C. section 3721 (Personnel Claims), will be considered first under the latter statutes. If not payable under any of those latter statutes, the claim will be considered under §§ 536.20 through 536.35.

(b) *Claims in litigation.* Disposition under §§ 536.20 through 536.35 of any claim of the type covered by this section that goes into litigation in any State or Federal court under any State or Federal statute or ordinance will be suspended pending disposition of such litigation and the claim file will be forwarded to the Commander, USARCS. The Commander, USARCS, in coordination with the U.S. Department of Justice, may determine that final disposition under §§ 536.20 through 536.35 during pendency of the litigation is in the best interests of the United States. This section will also apply to any litigation brought against any agent of the United States in his or her individual capacity which is based upon the same acts or incidents upon which a claim under §§ 536.20 through 536.35 is based.

§ 536.26 Presentation of claims.

(a) *When claim must be presented.* A claim may be settled under this §§ 536.20 through 536.35 only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated. As used in this section, a war or armed conflict is one in which any Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict must be as established by concurrent resolution of Congress or by determination of the President.

(b) *Where claim must be presented.* A claim must be presented to an agency or instrumentality of the DA. However, the statute of limitations is tolled if a claim is filed with another agency of the Government and is forwarded to the DA within 6 months, or if the claimant makes inquiry of the DA concerning his or her claim within 6 months after it was

filed with another agency of the Government. If a claim is received by an official of the DA who is not a claims approval or settlement authority under §§ 536.20 through 536.35, the claim will be transmitted without delay to the nearest claims office or JA office for delivery to such an authority.

§ 536.27 Procedures.

So far as not inconsistent with §§ 536.20 through 536.35, the procedures set forth in §§ 536.1 through 536.13 will be followed. Subrogated claims will be processed as prescribed in §536.5(b).

§ 536.28 Law applicable.

(a) As to claims arising in the United States, its territories, commonwealths, and possessions, the law of the place where the act or omission occurred will be applied in determining liability and the effect of contributory negligence on claimant's right to recover damages.

(b) In claims arising in a foreign country, where the claim is for personal injury, death, or damage to or loss of real or personal property caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers or employees of the DA acting within the scope of their employment, liability of the United States will be assessed in accordance with general principles of tort law common to the majority of American jurisdiction as evidenced by Federal case law and standard legal publications, except as to the principle of absolute liability. The law of the foreign country governing the legal effect of contributory or comparative negligence by the claimant will be applied in determining the relative merits of the claim. In the unusual situation where foreign law governing contributory or comparative negligence does not exist, the MCA (10 U.S.C. 2733) requires application of traditional rules of contributory negligence. Foreign rules and regulations governing the operation of motor vehicles ("rules of the road") will be applied to the extent these rules are not specifically superseded or preempted by United States military traffic regulations.

(c) The principle of absolute liability is not applicable to claims cognizable under §§ 536.20 through 536.35 even though prescribed by otherwise applicable local law.

(d) The meaning and construction of the MCA (10 U.S.C. 2733) is a Federal question to be determined by Federal law.

§ 536.29 Compensation for property damage, personal injury, or death.

(a) *Measure of damages for property claims*—(1) *General.* The measure of damages in property claims arising in the United States or its possessions will be determined in accordance with the law of the place where the incident occurred. The measure of damages in property claims arising overseas will be determined in accordance with general principles of American tort law.

(2) *Proof of damage.* The cost of repairs may be established by a receipted bill or estimate signed by a reputable dealer or repairman. Value may be established by the written appraisal of a disinterested, licensed dealer or broker by market quotations, commercial catalogs, or by other evidence of the price at which like property can be obtained in the community. The assistance of appraisers should be used in all claims where, in the opinion of the claims officer, an appraisal is reasonably necessary and useful in providing an administrative settlement of claims.

(b) *Measure of damages in injury or death claims.* Where an injury or an injury resulting in death arises within the United States or its possessions, the measure of damages will be determined in accordance with the law of the State or possession wherein the injury arises. Where an injury or an injury resulting in death arises in a foreign country and is otherwise cognizable and meritorious under §§536.20 through 536.35, damages will be determined in accordance with general principles of American tort law and paragraphs (c) and (d) of this section.

(c) *Personal injury claims arising in foreign countries*—(1) *General.* Allowable compensation includes reasonable medical and hospital expenses necessarily incurred. Allowable compensation may also include compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering.

(2) *Proof of damage.* The allowable compensation normally will be established as to—

(i) Medical, hospital, or burial expenses, by itemized bills.

(ii) Loss of time and earnings, by a written statement of claimant's employer stating claimant's age, occupation, wage or salary, time lost from work as a result of the incident, whether the person injured was a full-time employee, and his or her actual period of employment by dates. If the claimant is self-employed, written statement or other evidence showing the amount of earnings actually lost may be considered. Federal income tax returns are an excellent source of information with regard to prior earnings, provided claimant will voluntarily submit them. A written statement by the attending physician should set forth the nature and extent of the injury and treatment, the duration and extent of the disability involved, the prognosis, including diminution of earning capacity, and the period of hospitalization and anticipated future medical expenses.

(iii) Loss of services, by a statement of the cost necessarily incurred to replace the services to which the claimant is entitled in accordance with the law of the place where the incident occurred.

(iv) Physical disfigurement and pain and suffering, normally by a physician's statement indicating the extent and duration of either. A determination of compensation due on this basis normally should be supported by a written statement of applicable law and precedents.

(v) In claims involving serious personal injuries, that is normally those cases in which there is an allegation of temporary or permanent disability, the claimant should be examined by an independent physician, or other medical specialist, depending upon the nature and extent of the injuries. (See § 536.8(b) for procedures on independent medical examinations.)

(d) *Wrongful death claims arising in foreign countries.*—(1) *General.* Where claims for wrongful death that are otherwise cognizable and payable under §§536.20 through 536.35 arise from an act or omission in a foreign country, the provisions of this paragraph will apply in determining proper beneficiaries and in calculating appropriate damages. To the extent consistent with this paragraph, the general principles used to evaluate and assess damages under the Death on the High Sea Act (46 U.S.C. 761), as interpreted and applied by Federal Courts, will be used as general guidance in calculating a fair and equitable award.

(2) *Who may claim.* Where an act or omission has resulted in a death for which a claim cognizable under this paragraph arises, a claim may be presented by or on behalf of the decedent's spouse, parent, child or dependent relative. Claims may be consolidated for joint presentation by a representative of some or all of the beneficiaries or may be filed by a proper beneficiary individually.

(3) *Payable elements of damage.* (i) Damages awarded will be calculated based upon the demonstrated pecuniary and non-economic losses suffered by the

beneficiary as a result of the death of the decedent. Where a case requires economic assumptions to calculate future pecuniary losses, only generally accepted assumptions as evidenced by federal case law and legal-economic publications will be used.

(ii) Elements of damages not listed separately in this paragraph will be determined by application of law as stated in paragraph (d)(1) of this section.

(A) Loss of support, services, and other reasonably ascertainable monetary or otherwise valuable contributions a beneficiary could have expected to receive had the decedent lived;

(B) Loss of companionship, comfort, society protection and consortium suffered by a spouse for the death of a spouse, a child for the death of a parent, or a parent for the death of a child;

(C) Loss of training, guidance, education, and nurture suffered by a minor child for the death of a parent during the remaining period of minority.

(4) *Elements of damage not payable.* The following elements are not separately compensable in a claim for wrongful death:

(i) Punitive or exemplary damages in any form, such as calculations based upon notions of punishment or retribution, will not be used in assessing damages;

(ii) Mental anguish, grief, bereavement, anxiety or mental pain and suffering;

(iii) Loss of companionship and society other than that suffered by a surviving spouse for the death of a spouse, a child for the death of a parent, or a parent for the death of a child;

(iv) Loss of household services to a parent for the death of a minor child.

(5) *Form of award.* After full consideration of all elements of damage, the settlement authority should present an award to the claimant in composite form. The award normally should not be broken down by elements of damage. Element-by-element negotiation is not recommended because it infers a false degree of precision to an inherently speculative process. The overall award to each beneficiary may be adjusted to ensure its consistency with awards in recent claims presenting similar damages.

§ 536.30 Structured settlements.

(a) The use of the structured settlement device by approval and settlement authorities is encouraged in all appropriate cases. A structured settlement should not be used when contrary to the desires of the claimant.

(b) Notwithstanding the above, the Commander, USARCS may require or recommend to higher authority that an acceptable structured settlement be made a condition of award notwithstanding objection by the claimant or his or her representative where—(1) Necessary to ensure adequate and secure care and compensation to a minor or otherwise incompetent claimant over a period of years;

(2) Where a trust device is necessary to ensure the long-term availability of funds for anticipated further medical care;

(3) Where the injured party's life expectancy cannot be reasonably determined.

§ 536.31 Claims over $100,000.

Claims cognizable under 10 U.S.C. 2733 and §§ 536.20 through 536.35, which are meritorious in amounts in excess of $100,000, will be forwarded to the Commander, USARCS. Commander, USARCS, will negotiate a settlement subject to approval by the Secretary of the Army, or require the claimant to state the lowest amount that will be acceptable and provide appropriate justification. Tender of a final offer by the Commander, USARCS constitutes an action subject to appeal. Upon appeal action, the Commander, USARCS will prepare a memorandum of law with recommendations and forward the claim to the Secretary of the Army for final action. The Secretary will either disapprove the claim or approve it in whole or in part. If the claim is approved in an amount in excess of $100,000, the claimant may be paid $100,000 from the Claims Defense appropriation, after the execution of a settlement agreement in full satisfaction of the claim. The excess will be reported to the Claims Division, GAO, 441 G Street, NW., Washington, DC 20548 together with appropriate documentation.

§ 536.32 Settlement procedures.

(a) *General.* Approval and settlement authorities will follow the procedures set forth in §§ 536.1 through 536.13. The disapproval of a claim is final unless the claimant appeals in writing or the settlement authority reconsiders the claim. The settlement authority will notify the claimant by certified or registered mail of the action taken and reason therefor. The letter of notification will inform the claimant of the following:

(1) He may appeal, and no form is prescribed for the appeal.

(2) The title of the authority who will act on the appeal, and the appeal should be addressed to the settlement authority who last acted on the claim.

(3) The grounds for appeal should be set forth fully.

(4) The appeal must be submitted within 30 days of receipt by the claimant of notice of action on the claim. An appeal will be considered timely if postmarked within 30 days after receipt by the claimant of such notification. For good cause shown, the Commander, USARCS may extend the time for appeal. The 30-day appeal period starts on the day following the claimant's receipt of the letter from the settlement authority informing the claimant of the action taken and of the appellate rights. If the 30th day falls on a day on which the post office is closed, the next day on which it is open for business will be considered the final day of the appeal period.

(5) Where a claim for the same injury has been filed under the FTCA and the denial or final offer applies equally to such claim, that any suit brought under the FTCA must be brought not later than 6 months from the date of mailing of the notice of denial or final offer. Further, if suit is brought, action of any appeal will be held in abeyance pending final determination of such suit.

(b) *Action on appeal.* (1) Upon receipt, the appeal will be examined by the settlement authority to determine if the appeal complies with the requirements of this section. The settlement authority will also examine the claims investigative file and decide whether additional investigation is required; ensure all allegations or evidence presented by the claimant, agent or attorney are documented in the file; and that all pertinent evidence is included in the file. Then the claim with complete investigative file and a seven-paragraph memorandum of opinion will be forwarded to the appropriate appellate authority for necessary action on the appeal. If the evidence in the file, including information submitted by the claimant with the appeal, indicates that the appeal should be sustained, it may be treated as a request for reconsideration under § 536.33. Processing of the appeal may be delayed pending the outcome of further efforts by the settlement authority to settle the claim.

(2) As to an appeal that will be acted on by TJAG, The Assistant Judge Advocate General (TAJAG), or the Secretary of the Army, the Commander, USARCS will forward the claim together with the recommendation for action. All matters submitted by the claimant will be forwarded and considered.

(3) Since an appeal under this authority is not an adversary proceeding, no form of hearing is authorized; however, the claimant should be offered a reasonable period of

time, upon request, to obtain and submit any additional evidence or written argument for consideration by the appellate authority.

§ 536.33 Reconsideration.

(a) An approval or settlement authority may reconsider a claim upon request of the claimant or someone acting in his behalf. In the absence of such a request, the authority may reconsider a claim that was previously disapproved, in whole or in part, (even though a settlement agreement has been executed) when it appears that the original action was incorrect in law or fact. If the original action was incorrect, the action will be corrected and a supplemental payment made, if appropriate. The basis for a change in action will be stated in a memorandum included in the file.

(b) A successor or higher settlement authority may also reconsider the original action on a claim; but only on the basis of fraud or collusion, new and material evidence, or manifest error of fact, such as errors in calculation or factual misinterpretation of applicable law.

(c) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approval or settlement authority will reconsider the claim and attempt to settle it by granting such relief as may appear warranted. When further settlement efforts appear unwarranted or settlement is beyond his jurisdiction, the entire file with a memorandum of opinion will be forwarded through claims channels to the responsible claims authority. If a higher settlement authority is unable to grant the relief requested, he will forward the claim with recommendations to the Commander, USARCS, and inform the claimant of such referral.

§ 536.34 Attorney fees.

In the settlement of any claim under §§ 536.20 through 536.35 attorney fees shall not exceed 20 percent of any award; provided, that when a claim involves payment of an award in excess of $1,000,000, attorney fees on that part of the award which exceeds $1,000,000 may be determined by the Secretary of the Army.

§ 536.35 Payment of costs, settlements, and judgments related to certain medical and legal malpractice claims.

(a) All requests for indemnification of costs, settlements, or judgments cognizable under 10 U.S.C. 1089(f) for personal injury or death caused by any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nurse assistants, and therapists) of DA should be forwarded to Commander, USARCS, for action and will be paid, provided:

(1) The alleged negligent or wrongful actions or omissions arose in performance of medical, dental or related health care functions (including clinical studies and investigations) within the scope of employment; and

(2) Such personnel provide prompt notification and delivery of all process served or received, provide such other documents, information, and assistance as requested, and cooperate in the defense of the action on the merits. (See DoD Directive 6000.6.)

(b) All requests for indemnification of costs, settlements, and judgments cognizable under 10 U.S.C. 1054(f) for damages for injury of loss of property caused by an attorney, paralegal, or other member of a legal staff within the DA should be forwarded to Commander, USARCS, for action and will be paid, provided:

(1) That the alleged negligent or wrongful actions or omissions arose in connection with providing legal services while acting within the scope of the person's duties or employment, and

(2) That such personnel provide prompt notification and delivery of all process served or received, provide such other documents, information and assistance as requested, and cooperate in the defense of the action on the merits. (See DoD Directive 6000.6.)

§ 536.40 Claims under Article 139, Uniform Code of Military Justice.

(a) *Statutory authority.* The authority for this section is Article 139, Uniform Code of Military Justice (10 U.S.C. 939) which provides for redress of damage to property willfully damaged or destroyed, or wrongfully taken, by members of the Armed Forces of the United States.

(b) *Purpose.* This section sets forth the standards to be applied and the procedures to be followed in the processing of claims for damage, loss or destruction of property owned by or in the lawful possession of an individual, whether civilian or military, a business, a charity, or a State or local government, where the property was wrongfully taken or willfully damaged by military members of DA. Claims cognizable under other claims statutes may be processed under this section.

(c) *Effect of disciplinary action.* Administrative action under Article 139 and this section is entirely separate and distinct from disciplinary action taken under other articles of the UCMJ or other administrative actions. Because action under Article 139 and this section requires independent findings on issues other than guilt or innocence, the mere fact that a soldier was convicted or acquitted of charges is not dispositive of a claim under Article 139.

(d) *Claims cognizable.* Claims cognizable under Article 139, UCMJ are limited to—

(1) *Claims for property willfully damaged.* Willful damage is damage which is inflicted intentionally, knowingly, and purposefully without justifiable excuse, as distinguished from damage caused inadvertently or thoughtlessly through simple or gross negligence. Damage, loss, or destruction of property caused by riotous, violent, or disorderly acts, or by acts of depredation, or through conduct showing reckless or wanton disregard of the property rights of others may be considered willful damage.

(2) *Claims for property wrongfully taken.* A wrongful taking is any unauthorized taking or withholding of property, not involving the breach of a fiduciary or contractual relationship, with the intent to temporarily or permanently deprive the owner or person lawfully in possession of the property. Damage, loss, or destruction of property through larceny, forgery, embezzlement, fraud, misappropriation, or similar offense may be considered wrongful taking.

(e) *Claims not cognizable.* Claims not cognizable under this section and Article 139 include—

(1) Claims resulting from negligent acts.

(2) Claims for personal injury or death.

(3) Claims resulting from acts or omissions of military personnel acting within the scope of their employment.

(4) Subrogated claims, including claims by insurers.

(f) *Limitations on assessments*—(1) *Time limitations.* To be considered, a claim must be submitted within 90 days of the incident out of which the claim arose, unless the special court-martial convening authority (SPCMCA) acting on the claim determines that good cause has been shown for the delay.

(2) *Limitations on amount.* No soldier's pay may be assessed more than $5,000 on a single claim without the approval of the Commander, USARCS, or designee. If the commander acting on the claim determines that an assessment against a soldier in excess of $5,000 is meritorious, he or she will assess the

pay of that soldier in the amount of $5,000 and forward the claim to the Commander, USARCS, with his or her recommendation as to the additional amount which should be assessed.

(3) *Direct damages.* Assessments are limited to direct damages for the loss of or damage to property. Indirect, remote, or consequential damages may not be considered under this section.

(g) *Reconsideration*—(1) *General.* Although Article 139 does not provide for a right of appeal, either the claimant or a soldier whose pay is assessed may request the SPCMCA or a successor in command to reconsider the action. A request for reconsideration will be submitted in writing and will clearly state the facutal or legal basis for the relief requested. The SPCMCA may direct that the matter be reinvestigated.

(2) *Reconsideration by the original SPCMCA.* The original SPCMCA may reconsider the action so long as he occupies that position, regardless of whether a soldier whose pay was assessed has been transferred. If the original SPCMCA determines that the action was incorrect, he or she may modify it subject to paragraph (h)(4) of this section. If a request for reconsideration is submitted more than 15 days after notification was provided, however, the SPCMCA should only modify the action on the basis of fraud, collusion, newly discovered evidence, or manifest error of fact or law.

(3) *Reconsideration by a successor in command.* Subject to paragraph (h)(4) of this section, a successor in command may only modify an action on the basis of fraud, collusion, newly discovered evidence, or manifest error of fact or law apparent on the face of the record.

(4) *Legal review and action.* Prior to modifying the original action, the SPCMCA will have the claims office render a legal opinion and will fully explain his or her basis for modification as part of the file. If a return of assessed pay is deemed appropriate, the SPCMCA should request the claimant to return the money, setting forth the basis for the request. There is no authority for repayment from appropriated funds.

§ 536.50 Claims based on negligence of military personnel or civilian employees under the Federal Tort Claims Act.

(a) *Authority.* The statutory authority for this section is the FTCA (60 Stat. 842, 28 U.S.C. 2671–2680), as amended by the Act of 18 July 1966 (Pub. L. 89–506; 80 Stat. 306), the Act of 16 March 1974 (Pub. L. 93–253; 88 Stat. 50), and the Act of 29 December 1981 (Pub. L. 97–124), and as implemented by the Attorney General's Regulations (28 CFR 14.1–14.11).

(b) *Scope.* This section prescribes the substantive basis and special procedural requirements for the administrative settlement of claims against the United States under the FTCA and the implementing Attorney General's Regulations based on death, personal injury, or damage to or loss of property which accrue on or after 18 January 1967. If a conflict exists between the provisions of this section and the provisions of the Attorney General's Regulations, the latter govern.

(c) *Claims payable.* Unless otherwise prescribed, claims for death, personal injury, or damage to or loss of property (real or personal) are payable under this section when the injury or damage is caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the DA or the DoD while acting within the scope of their employment under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The FTCA is a limited consent to liability without which the United States is immune. Similarly, there is no Federal cause of action created by the Constitution which would permit a damage recovery because of the Fifth Amendment or any other constitutional provision. Immunity must be expressly waived, as by the FTCA.

(d) "Employee of the Government" (28 U.S.C. 2671) includes the following categories of tortfeasors for which the DA is responsible:

(1) Military personnel (members of the Army), including but not limited to:

(i) Members on full-time active duty in a pay status, including—

(A) Members assigned to units performing active service.

(B) Members serving as ROTC instructors. (Does not include Junior ROTC instructors unless on active duty.)

(C) Members serving as National Guard instructors or advisors.

(D) Members on duty or in training with other Federal agencies, for example, Nuclear Regulatory Commission, National Aeronautics and Space Administration, Departments of Defense, State, Navy, or Air Force.

(E) Members assigned as students or ordered into training at a non-Federal civilian educational institution, hospital, factory, or other industry. This does not include members on excess leave.

(F) Members on full-time duty at nonappropriated fund activities.

(G) Members of the ARNG of the United States on active duty.

(ii) Members of reserve units during periods of inactive duty training and active duty training, including ROTC cadets who are reservists while they are at summer camp.

(iii) Members of the ARNG while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505 for claims arising on or after 29 December 1981.

(2) Civilian officials and employees of both the DOD and the DA (there is no practical significance to the distinction between the terms "official" and "employee") including but not limited to—

(i) Civil Service and other full-time employees of both DOD and DA paid from appropriated funds.

(ii) Contract surgeons (10 U.S.C. 1091, 4022; paragraph 4–2, AR 40–1) and consultants (10 U.S.C. 1091; paragraph 4–3, AR 40–1; CPR A–9; FPM Chapter 304) where "control" is exercised over physician's day to day practice.

(iii) Employees of nonappropriated funds if the particular fund is an instrumentality of the United States and thus a Federal agency. In determining whether or not a particular fund is a "Federal agency," consider whether the fund is an integral part of the DA charged with an essential DA operational function and the degree of control and supervision exercised by DA personnel. Members or users, as distinguished from employees of nonappropriated funds, are not considered Government employees. The same is true of family child care providers. However, claims arising out of the use of certain nonappropriated fund property or the acts or omissions of family child care providers, may be payable from such funds under chapter 12, AR 27–20, as a matter of policy, even when the user is not within the scope of employment and the claim is not otherwise cognizable under any other claims authorization.

(iv) Prisoners of war and interned enemy aliens.

(v) Civilian employees of the District of Columbia National Guard, including those paid under "service contracts" from District of Columbia funds.

(vi) Civilians serving as ROTC instructors paid from Federal funds.

(vii) National Guard technicians employed under 32 U.S.C. 709(a) for claims accruing on or after 1 January 1969 (Pub. L. 90–486, 13 August 1968; 82 Stat. 755).

(3) Persons acting in an official capacity for the DOD or the DA whether temporarily or permanently in the service of the United States with or without compensation including but not limited to—

(i) "Dollar a year" personnel.

(ii) Members of advisory committees, commissions, boards or the like.

(iii) Volunteer workers in an official capacity acting in furtherance of the business of the United States. The general rule with respect to volunteers is set forth in 31 U.S.C. 665(b), which provides that, "No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property." (5 U.S.C. 3111(c) specifically provides that student volunteers employed thereunder shall be considered Federal employees for purposes of claims under the FTCA. The same classification is applied by 10 U.S.C. 1588 to museum and family support program volunteers.) The DA is permitted to accept and use certain volunteer services in Army family support programs as authorized by Pub. L. 98–94, 24 September 1983.

(iv) Loaned servants. Employees who are permitted to serve another employer may be considered "loaned servants," provided the borrowing employer has the power to discharge the employee, to control and direct the employee, and to decide how he will perform his tasks. Whoever has retained those powers is liable for the employee's torts under the principle of respondeat superior. Where those elements of direction and control have been found, the United States has been liable, for example, for the torts of Government employees loaned for medical training and emergency assistance, and county and state employees discharging Federal programs.

(e) "Scope of employment" means acting in "line of [military] duty" (28 U.S.C. 2671) and is determined in accordance with principles of respondeat superior under the law of the jurisdiction in which the act or omission occurred. Determination as to whether a person is within a category listed in paragraph (d)(3) of this section will usually be made together with the scope determination. Local law should always be researched, but the novel aspects of the military relationship should be kept in mind in making a scope determination.

(f) "Line of duty" determinations under AR 600–8–1 are not determinative of scope of employment. "Joint venture" situations are likely to be frequent where the Federal employee is performing federally assigned duties but is under actual direction and control of a non-Federal entity, for example, a Federal employee in training at a non-Federal entity or ROTC instructors at civilian institutions. This could also occur where the employee is working for another Federal agency. Furthermore, dual purpose situations are commonplace where benefits to the Government and the member or employee may or may not be concurrent, for example, use of privately owned vehicles at or away from assigned duty station, or permanent change of station with delay en route. (See §§ 536.90 through 536.97 for the handling of certain claims arising out of nonscope activities of members of the Army.)

(g) *Law applicable.* The whole law of the place where the act or omission occurred, including choice of law rules, will be applied in the determination of liability and quantum. Where there is a conflict between the local law and an express provision of the FTCA, the latter governs.

(h) *Subrogation.* Claims involving subrogation will be processed as prescribed in § 536.5(b), except where inconsistent with the provisions of this section or the Attorney General's regulations.

(i) *Indemnity or contribution.*—(1) *Sought by the United States.* If the claim arises under circumstances in which the Government is entitled to contribution or indemnity under a contract of insurance or the applicable law governing joint tortfeasors, the third party will be notified of the claim, and will be requested to honor its obligation to the United States or to accept its share of joint liability. If the issue of indemnity or contribution is not satisfactorily adjusted, the claim will be compromised or settled only after consultation with the Department of Justice as provided in 28 CFR 14.6.

(2) *Claims for indemnity or contribution.* Claims for indemnity or contribution from the United States will be compromised or settled under this section, if liability exists under the applicable law, provided the incident giving rise to such claim is otherwise cognizable under this section. As to such claims where the exclusivity of the FECA may be applicable. (See 5 U.S.C. 8101–8150.)

(3) *ARNG vehicular claims.* When a vehicle used by the ARNG, or a privately owned vehicle operated by a member or employee of the ARNG, is involved in an incident under circumstances which make this section applicable to the disposition of administrative claims against the United States and results in personal injury, death, or property damage, and a remedy against the State or its insurer is indicated, the responsible area claims authority will monitor the action against the State or its insurer and encourage direct settlement between the claimant and the State or its insurer. Where the State is insured, direct contact with State or ARNG officials rather than the insurer is desirable. Regular procedures will be established and followed wherever possible. Such procedures should be agreed on by both local authorities and the appropriate claims authorities subject to concurrence by Commander, USARCS. Such procedures will be designed to ensure that local authorities and United States authorities do not issue conflicting instructions for processing claims and that whenever possible and in accordance with governing local and Federal law a mutual arrangement for disposition of such claims as in paragraph (i)(4) of this section is worked out. Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(4) *Claims arising out of training activities of ARNG personnel.* Contributions may be sought from the state involved where it has waived sovereign immunity or has private insurance which would cover the incident giving rise to the particular claim. Where the state involved rejects the request for contribution, the file will be forwarded to the Commander, USARCS. The Commander, USARCS, is authorized to enter into an agreement with a State, territory, or commonwealth to share settlement costs of claims generated by the ARNG personnel or activities of that political entity.

(j) *Claims not payable.* The exclusions contained in 28 U.S.C. 2680 are applicable to claims herein. Other types of claims are excluded by statute or court decisions, including, but not limited to, the following:

(1) Claims for the personal injury or death of a member of the Armed Forces of the United States incurred incident to service, or for damage to a member's property incurred incident to service. *Feres v. United States,* 340 U.S. 135 (1950). Currently the most significant justification for the incident to service doctrine is the availability of alternative compensation systems, and the fear of disrupting the military command relationship. Other supportive factors often cited by the courts are the service member's duty status, location, and receipt of military benefits at the time of the incident.

(i) The exception applies to members of the Army, Navy, Air Force, Marine Corps, and Coast Guard, including the Reserve Components of the Armed

Forces. (See 10 U.S.C. 261.) The exception also applies to service members on the Temporary Disability Retired List, and on convalescent leave, to service academy cadets, to members of visiting forces in the United States under the SOFA between the parties to the North Atlantic Treaty or similar international agreements, and to service members on the extended enlistment program.

(ii) The incident to service doctrine has been extended to derivative claims where the directly injured party is a service member. Third party indemnity claims are barred.

(2) Claims for the personal injury or death of a Government employee for whom benefits are provided by the Federal Employees Compensation Act (5 U.S.C. 8101–8150). This Act provides that benefits paid under the Act are exclusive and instead of all other liability of the United States, including that under a Federal tort liability statute (5 U.S.C. 8116(c)). It extends to derivative claims, to subsequent malpractice for treatment of covered injury, to injuries for which there is no scheduled compensation, and to employee harassment claims for which other remedies are available (42 U.S.C. 2000e). The exception does not bar third party indemnity claims. When there is doubt as to whether or not this exception applies, the claim should be forwarded through claims channels to the Commander, USARCS, for an opinion.

(3) Claims for the personal injury or death of an employee, including nonappropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901–950). An employee of a nonappropriated fund instrumentality is covered by that Act (5 U.S.C. 8171). This is the exclusive remedy for covered employees, similar to the exclusivity of the FECA.

(4) Claims for the personal injury or death of any employee for whom benefits are provided under any workmen's compensation law, if the premiums of the workmen's compensation insurance are retrospectively rated and charged as an allowable, allocable expense to a cost-type contract. If, in the opinion of an approval or settlement authority, the claim should be considered payable, for example, the injuries did not result from a normal risk of employment or adequate compensation is not payable under workmen's compensation laws, the file will be forwarded with recommendations through claims channels to the Commander, USARCS, who may authorize payment of an appropriate award.

(5) Claims for damage from or by flood or flood waters at any place. 33 U.S.C. 702c. This exception is broadly construed and includes multi-purpose projects and all phases of construction and operation.

(6) Claims based solely upon a theory of absolute liability or liability without fault. Either a "negligent" or "wrongful" act is required by the FTCA, and some type of malfeasance or nonfeasance is required. *Dalehite v. United States*, 346 U.S. 15 (1953); *Laird v. Nelms*, 406 U.S. 797 (1972). Thus, liability does not arise by virtue either of United States ownership of an inherently dangerous commodity or of engaging in extra-hazardous activity.

(k) *Procedures*—(1) *General.* Unless inconsistent with the provisions of this section, the procedures for the investigation and processing of claims set forth in §§ 536.1 through 536.13 will be followed.

(2) *Claims arising out of tortious conduct by ARNG personnel as defined in subparagraph (d)(1)(iii) of this section.* (i) Notification. The procedures prescribed in § 536.75, will be followed in ARNG claims arising under the FTCA.

(ii) Claims against the U.S. Government received by agencies of the State. These claims will be expeditiously forwarded through the state adjutant general to the appropriate U.S. Army area claims office in whose geographic area the incident occurred.

(3) *Statute of limitations.* (i) To be settled under this section, a claim against the United States must be presented in writing to the appropriate Federal agency within 2 years of its accrual.

(ii) For statute of limitations purposes, a claim will be deemed to have been presented when the appropriate Federal agency as defined in § 536.3(m) receives from a claimant, his or her duly authorized agent, or legal representative an executed SF 95 or written notification of an incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury or death. For Federal tort claims arising out of activities of the ARNG, receipt of a written claim by any full-time officer or employee of the ARNG will be considered proper receipt.

(iii) A claim received by an official of the DOD will be transmitted without delay to the nearest Army claims processing office or area claims office. Inquiries concerning applicability of the statute of limitations to claims filed with the wrong Federal agency will be referred to USARCS for resolution.

(4) *Claims within settlement authority of USARCS or the Attorney General.* A copy of each claim which appears to be of a type that must be brought to the attention of the Attorney General in accordance with his or her regulations (28 CFR 14.6), or one in which the demand exceeds $15,000 or the total amount of all claims, actual or potential, from a single incident exceeds $25,000, will be forwarded immediately to the Commander, USARCS. Subsequent documents should be forwarded or added in accordance with § 536.5(h)(2). The USARCS is responsible for the monitoring and settlement of such claims and will be kept informed of the status of the investigation and processing thereof. Direct liaison and correspondence between the USARCS and the field claims authority or investigator is authorized on all claims matters, and assistance will be furnished as required.

(5) *Non-Army claims.* Claims based on acts or omissions of employees of the United States, other than military and civilian personnel of the DA, civilian personnel of the DOD, and employees of nonappropriated fund activities of the DA, will be transmitted forthwith to the nearest official of the employing agency, and the claimant will be advised of the referral.

(6) *Acknowledgment of claim.* (i) The claimant and his or her attorney will be kept informed by personal contact, telephonic contact, or mail of the receipt of his or her claim and the status of the claim. Formal acknowledgment of the claim in writing is required only where the claim is likely to result in litigation or is presented in an amount exceeding $15,000. In this event, the letter of acknowledgment will state the date of receipt of the claim by the first agency of the Army receiving the claim.

(ii) If it is reasonably clear to the office acknowledging receipt that a claim filed under the FTCA is not cognizable thereunder, for example, it is a maritime claim under § 536.60, or it falls under §§ 536.20 through 536.35 or 536.70 through 536.81, the acknowledgment will contain a statement advising the claimant of the statute under which his or her claim will be processed. If it is not clear which statute applies, a statement to that effect will be made, and the claimant will be promptly advised on his or her remedy when a decision is made. However, all potential maritime claims will be handled in accordance with § 536.5(h)(5).

(iii) When a claim has been amended as set forth in § 536.5(f)(4), the amendment will be acknowledge in all cases. Additionally, the claimant will be informed that the amendment constitutes a new claim insofar as concerns the 6 months in which the DA is granted the authority to make a final disposition under 28 U.S.C. 2675(a) and the claimant's option thereunder will not accrue until 6 months after the filing of amendment.

(iv) When a claim is improperly presented, is incomplete or otherwise does not meet the requirements set forth in § 536.5(d), the claimant or his or her representative will be promptly infomed in writing of the deficiencies and advised that a proper claim must be filed within the 2 year statute of limitations.

(7) *Investigation.* Claims cognizable under this section will be investigated and processed on a priority basis in order that settlement if indicated may be accomplished within the 6 months prescribed by statute.

(8) *Advice to claimant.* (i) A full explanation of claims procedures and of the rights of the claimant will be made to the extent necessitated by the amount and nature of the claim.

(ii) In a case where litigation is likely, or where this course of action is preferred by the claimant, and it appears to be a proper case for administrative settlement, the claimant will be advised as to the advantages of administrative settlement. If the claim is within the jurisdiction of a higher settlement authority the claim will be discussed with such authority prior to the furnishing of such advice. The claimant should be familarized with all aspects of administrative settlement procedures including the administrative channels through which the claim must be processed for approval. He or she may be advised that administrative processing can result in more expeditious processing, whereas litigation may take considerable time, particularly in jurisdictions with crowded dockets.

(iii) If appropriate, he or she may be informed that a tentative settlement can be reached for any amount above $25,000, subject to approval by the Attorney General. He or she should be advised that administrative filing of the claim protects him under the statute of limitations for purpose of litigation; suit can be filed within 6 months after the date of mailing of notice of final denial by the DA, thus potentially allowing negotiations to continue indefintely. An attorney, representing a claimant should be advised of the limitations on fees for purposes of administrative settlement (20 persent) and litigation (25 percent). The attorney may also be advised that there is no jury trial under the FTCA.

(9) *Notification of claimant of action of claim.* (i) The filing of an administrative claim and its denial are prerequisite to filing suit. Any suit must be filed not later than 6 months after notification by certified or registered mail of the denial of the administrative claim. Failure of a settlement authority to take final action on a properly filed claim within 6 months may be treated by the claimant as a final denial for the purposes of filing suit. If the claimant has provided insufficient documentation to permit evaluation of the claim, written notice should be given to this effect. Since administrative settlements are a voluntary process, the preferred method of negotiating is to attempt to exchange information on an open basis.

(ii) Upon final denial of a claim, or upon rejection by claimant of a partial allowance, and further efforts to reach a settlement are not considered feasible (§ 536.5(h)(1), the settlement authority will inform the claimant of the action on his claim by certified or registered mail. Notification will be made as set forth in § 536.11(b). A copy of this notification will be furnished to Litigation Division, Office of TJAG, and the Commander, USARCS. In all medical malpractice cases, a copy will be furnished to the Department of Legal Medicine, Armed Forces Institute of Pathology and the SJA, Health Services Command.

(iii) If a claim has been presented to the DA and, also to other Federal agencies, without any notification to the DA of this fact, final action taken by the DA prior to that of any other agency is conclusive on a claim presented to other agenices, unless another agency decides to take further action to settle the claim. Such agency may treat the matter as a reconsideration under 28 CFR 14.9(b), unless suit has been filed. The foregoing applies likewise to DA claims in which another Federal Agency has already taken final action.

(iv) If, after final denial by another agency, a claim is filed with the DA, the new submission will not toll the 6 months limitation for filing suit, unless the DA treats the second submission as a request for reconsideration under paragraph (l) of this section.

(l) *Reconsideration.* (1) While there is no appeal from the action of an approving or settlement authority under the FTCA and this section, an approving or settlement authority may reconsider a claim upon request of the claimant or someone acting in his behalf. Even in the absence of such a request, an approving or settlement authority may on his own initiative reconsider a claim. He may reconsider a claim which he previously disapproved in whole or in part (even where a settlement agreement has been executed) when it appear that his original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he determines that his original action was incorrect, he will modify the action and, if appropriate, make a supplemental payment. The basis for a change in action will be stated in a memorandum included in the file.

(2) A successor approving or administrative authority may also reconsider the original action on a claim but only on the basis of fraud or collusion, new and material evidence, or manifest error of fact such as errors in calculation or factual misinterpretation of applicable law.

(3) A request for reconsideration must be submitted prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b). Upon timely filing, the appropriate authority shall have 6 months from the date of filing in which to make a final disposition of the request, and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the request.

(4) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approving or settlement authority will reconsider the claim and attempt to settle it by granting such relief as may appear warranted. When further settlement efforts appear unwarranted, the entire file with a memorandum of opinion will be referred through claims channels to the Commander, USARCS, and the claimant informed of such referral.

§ 536.60 Maritime claims.

(a) *Statutory authority.* Administrative settlement or compromise of admiralty and maritime claims in favor of and against the United States by the Secretary of the Army or his designee is authorized by the Army Maritime Claims Settlement Act (10 U.S.C. 4801–04, 4806, as amended).

(b) *Related statutes.* The Army Maritime Claims Settlement Act is supplemented by the following statutes under which suits in admiralty may be brought: The Suits in Admiralty Act of 1920 (41 Stat. 525, 46 U.S.C. 741–752); the Public Vessels Act of 1925 (43 Stat. 1112, 46 U.S.C. 781–790); the Act of 1948

Extending the Admiralty and Maritime Jurisdiction (62 Stat. 496, 46 U.S.C. 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under 10 U.S.C. 7365, 7621–23 and by the Department of the Air Force under 10 U.S.C. 9801–9804, 9806.

(c) *Scope.* 10 U.S.C. 4802 provides for the settlement or compromise of claims for—(1) Damage caused by a vessel of, or in the service of, the DA or by other property under the jurisdiction of the DA;

(2) Compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the DA or to other property under the jurisdiction of the DA; or

(3) Damage caused by a maritime tort committed by any agent or employee of the DA or by property under the jurisdiction of the DA.

(d) *Claims exceeding $500,000.* Claims against the United States settled or compromised in a net amount exceeding $500,000 are not payable hereunder, but will be investigated and processed under this section, and, if approved by the Secretary of the Army, will be certified by him to Congress.

(e) *Claims not payable.* A claim is not allowable under this section which:

(1) Is for damage to, or loss or destruction of, property, or for personal injury or death, resulting directly or indirectly from action by the enemy, or by U.S. Armed Forces engaged in armed combat, or in immediate preparation for impending armed combat.

(2) Is for personal injury or death of a member of the Armed Forces of the United States or a civilian employee incurred incident to his service.

(3) Is for personal injury or death of a Government employee for whom benefits are provided by the FECA (5 U.S.C. 8101–8150).

(4) Is for personal injury or death of an employee, including non-appropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 901).

(5) Has been made the subject of a suit by or against the United States, except as provided in paragraph (h)(2) of this section.

(6) Arises in a foreign country and was considered by the authorities of a foreign country and final action taken thereon under Article VIII of the NATO Status of Forces Agreement, Article XVIII of the Japanese Administrative Agreement, or other similar treaty or agreement, if reasonable disposition was made of the claim.

(f) *Claims under other laws and regulations.* (1) Claims of military personnel and civilian employees of the DOD and the DA, including military and civilian officers and crews of Army vessels, for damage to or loss of personal property occurring incident to their service will be processed under the provisions of the Military Personnel and Civilian Employees' Claims Act (31 U.S.C. 3721).

(2) Claims which are within the scope of this section and also within the scope of the FCA (10 U.S.C. 2734) may be processed under that statute when specific authority to do so has been obtained from the Commander, USARCS. The request for such authority should be accompanied by a copy of the report of the incident by the Marine Casualty Investigating Officer, or other claims investigator.

(g) *Subrogation.* (1) An assurer will be recognized as a claimant under this section to the extent that it has become subrogated by payment to, or on behalf of, its assured, pursuant to a contract of insurance in force at the time of the incident from which the claim arose. An assurer and its assured may file a claim either jointly or separately. Joint claims must be asserted in the names of, and must be signed by, or on behalf of, all parties; payment then will be made jointly. If separate claims are filed, payment to each party will be limited to the extent of such party's undisputed interest.

(2) For the purpose of determining authority to settle or compromise a claim, the payable interests of an assurer (or assurers) and the assured represent merely spearable interests, which interests in the aggregate must not exceed the amount authorized for administrative settlement or compromise.

(3) The policies set forth in paragraph (g) (1) and (2) of this section with respect to subrogation arising from insurance contracts are applicable to all other types of subrogation.

(h) *Limitation of settlement.* The period for affecting an administrative settlement under the Army Maritime Claims Settlement Act is subject to the same limitation as that for beginning an action under the Suits in Admiralty Act, that is, a 2-year period from the date of the origin of the cause of action. The claimant must have agreed to accept the settlement, and it must be approved for payment by the Secretary of the Army or his designee prior to the end of such period; otherwise, thereafter the cause of action ceases to exist, except under the circumstances set forth in paragraph (h)(2) of this section. The presentation of a claim, or its consideration by the DA, neither waives nor extends the 2-year limitation period.

(2) In the event that an action has been filed in a U.S. district court before the end of the 2-year statutory period, an administrative settlement may be negotiated by the Commander, USARCS, with the claimant, even though the 2-year period has elapsed since the cause of action accrued, provided the claimant obtains the written consent of the appropriate office of the Department of Justice charged with the defense of the complaint. Payment may be made upon dismissal of the libel.

(3) When a claim under this section, notice of damage, invitation to a damage survey, or other written notice of an intention to hold the United States liable is received , the receiving installation, office, or person immediately will forward such document to the USARCS. The USARCS will promptly advise the claimant or potential claimant in writing of the comprehensive application of the time limit.

(4) When a claim under this section for less than $10,000 is presented to a Corps of Engineers office and thus may be appropriate for action by the Corps of Engineers pursuant to the delegation of authority set forth in paragraph (i)(2) of this section, the receiving Corps of Engineers office will promplty advise the claimant in writing of the comprehensive application of the time limit (unless such has already been done by the USARCS).

(i) *Delegation of authority.* (1) Where the amount to be paid is not more than $10,000, claims under this section may be settled or compromised by the Commander, USARCS, or his designee.

(2) When a claim under this section arises from a civil works activity of the Corps of Engineers, engineer area claims offices are delegated authority to approve and pay in full, or in part, subject to the execution of an appropriate settlement agreement, claims presented for $10,000 or less, and compromise and pay claims regardless of the amount claimed, provided an award of $10,000 or less is accepted by the claimant in full satisfaction and final settlement of the claim, subject to such limitations as may be imposed by the Chief of Engineers. Meritorious claims arising from civil work activities of the Corps of Engineers will be paid from Corps of Engineers funds.

Claims Arising From Activities of National Guard Personnel While Engaged in Duty or Training

§ 536.70 Statutory Authority.

The statutory authority for this chapter is contained in the Act of 13 September 1960 (74 Stat. 878, 32 U.S.C. 715), commonly referred to as the National Guard Claims Act (NGCA), as amended by Pub. L. 90–486, 13 August 1968 (82 Stat. 756), Pub. L. 90–525, 26 September 1968 (82 Stat. 877), Pub. L. 91–312, 8 July 1970 (84 Stat. 412), and Pub. L. 93–336, 8 July 1974, (88 Stat. 291); and the Act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736) as amended by Pub. L. 90–521, 26 September 1968 (82 Stat. 874), Pub. L. 97–124, 29 December 1981 (95 Stat. 1666), and Pub. L. 98–564, 30 October 1984 (98 Stat. 2918).

§ 536.71 Definitions.

For purposes of §§ 536.70 to 536.81 the following terminology applies:

(a) *ARNG personnel.* A member of the ARNG engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709.

(b) *Claimant.* An individual, partnership, association, corporation, country, State, Commonwealth, territory or a political subdivision thereof, or the District of Columbia, presenting a claim and meeting the conditions set forth in § 536.5. The term does not include the U.S. Government, any of its instrumentalities, except as prescribed by statute, or a State, Commonwealth, territory or the District of Columbia which maintains the unit to which the ARNG personnel causing the injury or damage are assigned. This exclusion does not ordinarily apply to a unit of local government which does not control the ARNG organization involved. As a general rule, a claim by a unit of local government other than a State, Commonwealth or territory will be entertained unless the intem claimed to be damaged or lost was procured or maintained by State, Commonwealth or territorial funds.

§ 536. 72 Scope.

(a) Sections 536.70 through 536.81 apply in all places and set forth the procedures to be followed in the settlement and payment of claims for death, personal injury, or damage to or loss or destruction of property caused by members or employees of the ARNG, or arising out of the noncombat activities of the ARNG when engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709, provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard, or a civilian officer or employee whose injury or death is incident to service.

(b) A claimant dissatisfied with an administrative settlement under §§ 536.70 through 536.81 as the result of activities of the ARNG of a State, Commonwealth, or territory is not entitled to judicial relief in an action against the United States. Whether he or she has a legal cause of action or may file an administrative claim against such a political entity depends upon controlling local law.

(c) Claims arising out of activities of the ARNG when performing duties at the call of the governor of a State maintaining the unit are not cognizable under §§ 536.70 through 536.81 or any other law, regulation or appropriation available to the Army for the payment of claims. Such claims should be returned or referred to the authorities of the State for whatever action they choose to take, and claimants should be informed of the return or referral. Care should be taken to determine the status of the unit and members at the time the claims incident occurred particularly in civil emergencies as units called by the governor are sometimes "federalized" during the call-up. If the unit was "federalized" at the time the claim incident occurred, the claim will be cognizable under §§ 536.20 through 536.35, 536.50, or 536.90 through 536.97 or other sections pertaining to the Active Army.

§ 536.73 Claims payable.

(a) *Tort claims.* All claims for personal injuries, death, or damage to or loss of real or personal property, arising out of incidents occurring on or after 29 December 1981, based on negligent or wrongful acts or omissions of ARNG personnel acting within the scope of employment, within the United States while engaged in training or duty under 32 U.S.C. 316, 502, 503, 505, or 709 will be processed under the FTCA, § 536.50. Such claims arising before 29 December 1981 will, except as modified herein, be processed and settled in accordance with the provisions of §§ 536.20 through 536.35.

(b) *Noncombat activities.* A claim incident to the noncombat activities of the ARNG while engaged in duty or training under 32 U.S.C. 316, 502, 503, 504, 505, or 709 may be settled under §§ 536.70 through 536.81 if it arises from authorized activities essentially military in nature, having little parallel in civilian pursuits and which historically have been considered as furnishing a proper basis for payment of claims, such as practice firing of missiles and weapons, training and field exercises, and maneuvers, including, in connection therewith, the operation of aircraft and vehicles, and use and occupancy of real estate, and movement of combat or other vehicles designed especially for military use. Activities incident to combat, whether in time or war or not, and use of military personnel and civilian employees in connection with civil disturbances, are excluded.

(c) *Subrogated claims.* Subrogated claims will be processed as prescribed in § 536.5(b).

(d) *Advance payments.* Advance payments in partial settlement of meritorious claims to alleviate immediate hardship are authorized as provided in § 536.13.

§ 536.74 Claims not payable.

The type of claims listed in § 536.24 as not payable are also not payable under §§ 536.70 through 536.81.

§ 536.75 Notification of incident.

Except where claims are regularly paid from State sources, for example, insurance, court of claims, legislative committee, etc., the appropriate adjutant general will ensure that each incident which may give rise to a claims cognizable under §§ 536.70 through 536.81 is reported immediately by the most expeditious means to the area claims office in whose geographic area the incident occurs or to a claim processing office designated by the area claims office. The report will contain the following information:

(a) Date of incident.

(b) Place of incident.

(c) Nature of incident.

(d) Names and organizations of ARNG personnel involved.

(e) Names of potential claimant(s).

(f) A brief description of any damage, loss, or destruction of private property, and any injuries or death of potential claimants.

§ 536.76 Claims in which there is a state source of recovery.

Where there is a remedy against the State, as a result of either waiver of sovereign immunity or where there is liability insurance coverage, the following procedures are applicable:

(a) Where the State is insured, direct contact with State or ARNG officials rather than the insurer is desirable. Regular procedures will be established and followed wherever possible. Such procedures should be agreed on by both local authorities and the appropriate claims authorities subject to concurrence by Commander, USARCS. Such procedures will be designed to ensure that local authorities and U.S. authorities do not issue conflicting

instructions for processing claims and whenever possible and in accordance with governing local and Federal law a mutual arrangement for disposition of such claims as in paragraph (c) of this section is worked out. Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(b) If there is a remedy against the State or its insurer, the claimant may be advised of that remedy. If the payment by the State or its insurer does not fully compensate claimant, an additional payment may be made under §§ 536.70 through 536.81. If liability is clear and claimant settles with the State or its insurer for less than the maximum amount recoverable, the difference between the maximum amount recoverable from the State or its insurer and the settlement normally will be also deducted from the payment by the United States.

(c) If the State or its insurer desires to pay less than their maximum jurisdiction or policy limit on a basis of 50 percent or more of the actual value of the entire claim, any payment made by the United States must be made directly to the claimant. This can be accomplished by either having the United States pay the entire claim and have the State or its insurer reimburse its portion to the United States, or by having each party pay its agreed share directly to the claimant. If the State or its insurer desires to pay less than 50 percent of the actual value of the claim, the procedure set forth in paragraph (d) of this section will be followed.

(d) If there is a remedy against the State and the State refuses to make payment, or there is insurance coverage and the claimant has filed an administrative claim against the United States, forward file with seven-paragraph memorandum to the Commander, USARCS, including information as to the status of any judicial or administrative action the claimant has taken against the State or its insurer. The Commander, USARCS, will determine whether the claimant will be required to exhaust his remedy against the State or its insurer, or whether the claim against the United States can be settled without such requirement. If he determines to follow the latter course of action, he will also determine whether an assignment of the claim against the State or its insurer will be obtained and whether recovery action will be taken. The State or its insurer will be given appropriate notification in accordance with State law necessary to obtain contribution of indemnification.

§ 536.77 Claims against the ARNG tortfeasor individually.

The procedures set forth in § 536.9(f) are applicable. With respect to claims arising before 29 December 1981, an ARNG driver acting pursuant to the authorities cited in § 536.73(a) is not protected by the provisions of the Drivers Act (28 U.S.C. 2670(b)) and the driver may be sued individually in State court. When this situation occurs, it should be monitored closely by ARNG authorities. If possible an early determination will be made as to whether any private insurance of the ARNG tortfeasor is applicable. Where such insurance is applicable and the claim against the United States is of doubtful validity, final actions will be withheld pending resolution of the demand against the ARNG tortfeasor. If, in the opinion of the claims approving or settlement authority, such insurance is applicable and the claim against the United States is payable in full or in a reduced amount, settlement efforts will be made either together with the insurer or singly by the United States. Any settlement will not include amounts recovered or recoverable as in § 536.9. If the insurance is not applicable, settlement or disapproval action will proceed without further delay.

§ 536.78 When claim must be presented.

A claim may be settled under §§ 536.70 through 536.81 only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated. As used in this section, a war or armed conflict is one in which any Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict must be established by concurrent resolution of Congress or by determination of the President.

§ 536.79 Where claim must be presented.

A claim must be presented to the appropriate Federal agency. Receipt of a written claim by any full time officer or employee of the National Guard will be considered receipt. However, the statute of limitations is tolled if a claim is filed with a State agency, the claim purports to be under the NGCA and it is forwarded to the DA within 6 months, or the claimant makes inquiry of the DA concerning the claim within 6 months. If a claim is received by a DA official who is not a claims approval or settlement authority, the claim will be transmitted without delay to the nearest approval or settlement authority.

§ 536.80 Procedures.

(a) The form of a claim under §§ 536.70 through 536.81 will be as described in § 536.5 (d) and (e).

(b) So far as they are not inconsistent with §§ 536.70 through 536.81, the guidance set forth in §§ 536.10 through 536.12 will be followed in processing a claim under §§ 536.70 through 536.81.

(c) The following provisions are applicable to claims under §§ 536.70 through 536.81 and are hereby incorporated by reference:

(1) § 533.28 (applicable law);

(2) § 533.29 (determination of quantum);

(3) § 533.31 (claims over $100,000);

(4) § 533.32 (settlement procedures);

(5) § 533.33 (reconsideration);

(6) § 533.34 (attorney fees).

§ 536.81 Settlement agreement.

Procedures concerning settlement agreements will be in accordance with § 536.10, except that the agreement will be modified to include a State and its National Guard in most cases. A copy of the agreement will be furnished to State authorities and the individual tortfeasor.

Claims Incident to Use of Government Vehicles and Other Property of the United States not Cognizable Under Other Law

§ 536.90 Statutory authority.

The statutory authority for §§ 536.90 through 536.97 is contained in the act of 9 October 1962 (76 Stat. 767, 10 U.S.C. 2737). This statute is commonly called the "Nonscope Claims Act." For the purposes of §§ 536.90 through 536.97, a Government installation is a facility having fixed boundaries owned or controlled by the Government, and a vehicle includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 U.S.C. 4).

§ 536.91 Scope.

(a) Sections 536.90 through 536.97 prescribe the substantive bases and special procedural requirements for the administrative settlement and payment, in an amount not more than $1,000, of any claim against the United States not cognizable under any other provision of law for damage to or loss of property, or for personal injury or death, caused by military personnel or civilian employees of the DA or by civilian employees of

the DoD incident to the use of a United States vehicle at any place or incident to the use of other United States property on a Government installation.

(b) Any claim in which there appears to be a disputed issue relating to whether the employee was acting within the scope of employment will be considered under §§ 536.20 through 536.35, 536.50, or 536.70 through 536.81 as applicable. Only when all parties, to include an insurer, agree that there is no "in scope" issue will §§ 536.90 through 536.97 be used.

§ 536.92 Claims payable.

(a) *General.* A claim for personal injury, death, or damage to or loss of property, real or personal, is payable under §§ 536.90 through 536.97 when—

(1) Caused by the act or omission, negligent, wrongful, or otherwise involving fault, of military personnel of the DA or the ARNG, or civilian employees of the DA or the ARNG—

(i) Incident to the use of a vehicle of the United States at any place.

(ii) Incident to the use of any other property of the United States on a Government installation.

(2) The claim may not be settled under any other claims statute and claims regulation available to the DA for the administrative settlement of claims.

(3) The claim has been determined to be meritorious, and the approval or settlement authority has obtained a settlement agreement in an amount not in excess of $1,000 in full satisfaction of the claim prior to approval of the claim for payment.

(b) *Personal injury or death.* A claim for personal injury or death is allowable only for the cost of reasonable medical, hospital, or burial expenses actually incurred and not otherwise furnished or paid by the United States.

(c) *Property loss or damage.* A claim for damage to or less of property is allowable only for the cost of reasonable repairs or value at time of loss, whichever is less.

§ 536.93 Claims not payable.

A claim is not allowable under §§ 536.90 through 536.97 that—

(a) Results wholly or partly from the negligent or wrongful act of the claimant, his agent, or his employee. The doctrine of comparative negligence is not applicable.

(b) Is for medical, hospital, and burial expenses furnished or paid by the United States.

(c) Is for any element of damage pertaining to personal injuries or death other than provided in § 536.92(b). All other items of damage, for example, compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering, are not payable.

(d) Is for loss of use of property or for the cost of a substitute property, for example, a rental.

(e) Is legally recoverable by the claimant under an indemnifying law or indemnity contract. If the claim is legally recoverable in part, that part recoverable by the claimant is not payable.

(f) Is a subrogated claim.

§ 536.94 When claim must be presented.

A claim may be settled under §§ 536.90 through 536.97 only if it is presented in writing within 2 years after it accrues.

§ 536.95 Procedures.

So far as not inconsistent with §§ 536.90 through 536.97, the procedures for the investigation and processing of claims contained in §§ 536.1 through 536.13 will be followed.

§ 536.96 Settlement agreement.

A claim may not be paid under §§ 536.90 through 536.97 unless the amount tendered is accepted by the claimant in full satisfaction. A settlement agreement (§ 536.10) is required before payment.

§ 536.97 Reconsideration.

(a) An approval or settlement authority may reconsider the quantum of a claim upon request of the claimant or someone acting in his behalf. In the absence of such a request, an approval or settlement authority may on his own initiative reconsider the quantum of a claim. Reconsideration may occur even in a claim which was previously disapproved in whole or in part (even though a settlement agreement has been executed) when it appears that his or her original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he or she determines that the original action was incorrect, he or she will modify the action and, if appropriate, make a supplemental payment. If the original action is determined correct, the claimant will be so notified. The basis for either action will be stated in a memorandum included in the file.

(b) An approval or settlement authority may reconsider the applicability of §§ 536.90 through 536.97 to a claim upon request of the claimant or someone acting in his behalf, or on his own initiative. Such reconsideration may occur even though all parties had previously agreed per § 536.91(b) when it appears that this agreement was incorrect in law or fact based on the evidence of record at the time of the agreement or subsequently received. If he or she determines the agreement to be incorrect, the claim will be reprocessed under the applicable sections of this regulation. If he or she determines the agreement to have been correct, that is, that §§ 536.90 through 536.97 are applicable, he or she will so advise the claimant. This advice will include reference to any appeal or judicial remedies available under the section which the claimant alleges the claim should be processed under.

(c) A successor or higher approval or settlement authority may also reconsider the original action on a claim as in paragraph (a) or (b) of this section, but only on the basis of fraud or collusion, new and material evidence, or manifest error of fact such as errors in calculation or factual misinterpretation of applicable law.

(d) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief.

[FR Doc. 87-27311 Filed 12-2-87; 8:45 am]
BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3297-6; KY-049]

Approval and Promulgation of Implementation Plans, Kentucky; Revisions to the Carbon Monoxide and Ozone Plans for Jefferson County

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 20, 1987, the Kentucky Natural Resources and Environmental Protection Cabinet submitted minor revisions to the Jefferson County carbon monoxide (CO) and ozone State Implementation Plans (SIPs). These consisted of revisions to the emission standards contained in Regulation 8 of the Air Pollution Control District of Jefferson County's rules, which cover the District's Vehicle Exhaust Testing (VET) program. These revisions were intended by the District to adjust the failure rates for each model year of vehicles covered by the program. Such adjustments have been made annually. Because they represent only minor changes to, and are consistent with, the VET rules already approved by EPA as part of the CO and ozone SIPs

for Jefferson County, EPA approves these revisions.

DATES: This action is effective February 1, 1988, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Copies of Kentucky's submittal can be obtained from:

Thomas P. Lyttle, Air Programs Branch, EPA, Region 4, 345 Courtland Street, Atlanta, Georgia 30365.

Kentucky Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.

Copies may also be examined at the following locations: Public Information Reference Unit, Library System Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lyttle, (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On October 9, 1984 (49 FR 39547), EPA approved the 1982 CO and ozone SIP revisions for Jefferson County. As part of the control strategy in the SIPs, the District adopted Regulation 8, which provided for the VET program. The program has been in operation since January 2, 1984. Based on EPA's audit of the program in March 1986, the Agency has found that the program is operating effectively and is producing the emissions reductions expected as part of the SIP control strategy. Each year, the District has made various minor changes to the program's emisson standards, based on the previous year's data. These changes are made to maintain the program failure rate at the design rate of 20%, and to assure that the failure rates would be equal for each model year. These changes are minor and are consistent with the original design of the program as approved by EPA.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, the action will be withdrawn before the effective date by publishing two subsequent notices. One will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective February 1, 1988.

Final Action

EPA today approves as part of the Jefferson County CO and ozone SIPs, the revisions submitted by Kentucky on March 20, 1987. This action is being taken because these revisions are only minor changes to the SIPs already approved by EPA, are consistent with the approved SIPs, and meet the requirements of the Clean Air Act and EPA policy.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 1988. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air polltion control, Ozone, Carbon monoxide, Hydrocarbon, and Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Kentucky was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 27, 1987.

Lee M. Thomas,

Administration.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart S—Kentucky

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.920 is amended by adding paragraph (c)(51) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(51) Revisions to the I/M portions of the carbon monoxide and ozone Part D plans for Jefferson County, submitted by the Kentucky Natural Resources and Environmental Protection Cabinet on March 20, 1987.

(i) Incorporation by reference.

(A) A revised Regulation 8, Vehicle Exhaust Testing Requirements; of the rules of the Air Pollution Control District of Jefferson County which was adopted on December 17, 1986.

(B) March 2, 1987 letter to EPA from Jefferson County.

(ii) Additional Materials—none.

[FR Doc. 87–27652 Filed 12–2–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3297–7; TN–051; 053]

Approval and Promulgation of Implementation Plans; Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today, EPA approves as State Implementation Plan (SIP) revisions Tennessee Air Pollution Control Board Orders 35–86, a one-year variance from opacity control for the No. 1 cyclone at Hassell and Hughes Lumber Company, Inc., in Collinwood, Tennessee and 5–87, a one-year variance for Texas Gas Transmission Corporation in Kenton, Tennessee from source testing and continuous monitoring requirements on its regenerative cycle natural gas fired turbine.

DATES: This action will be effective on February 1, 1988, unless notice is received by January 4, 1988, that someone wishes to submit adverse or critical elements.

ADDRESSES: Copies of the materials submitted by the state may be examined during normal business hours at the following locations:.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta Georgia 30365

Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Board Order 35–86 is a one-year variance for the Hassell and Hughes Lumber Company's Collinwood, Tennessee facility from opacity control (Tennessee Rule 1200–3–5.01(1)) for the No. 1

cyclone. In May 1986, personnel of the Tennessee Division of Air Pollution Control conducted particulate emissions source tests on nine cyclone collectors at the Collinwood facility. The results of the testing indicated that all process emission sources served by these cyclones were in compliance with the applicable particulate emission limitations set forth in the Tennessee Air Pollution Control Regulations.

In conjunction with the mass emission tests, visable emission evaluations were also conducted. All the observations recorded indicated that the cyclones were in compliance with the applicable visible emission regulation except for Cyclone No. 1 when the large abrasive cutter was operating. Cyclone No. 1 met the mass emission limitation, which equates to the total suspended particulate (TSP) ambient standard, when the abrasive cutter was in operation but not the visible emission standard, which does not always relate to the TSP ambient standards. Consequently, the State granted a one-year variance for the No. 1 Cyclone. During this time the State will review the existing opacity regulation to determine a remedy for the situation. Also, with this variance the State has a right to rescind this variance if the TSP ambient standards are not being met in the vicinity of the Collinwood facility.

Since this revision was submitted to EPA, EPA has revised the particulate matter standard (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM10). EPA will continue to process revisions in hand at the time the new PM10 standard was promulgated, however, at the option of the State. EPA has determined a correlation between PM10 and TSP. The concentration of PM10 would be smaller than the concentration of TSP. Using this correlation, the concentration of PM10 would be below the National Ambient Air Quality Standard for PM10. Tennessee is a Group III area for PM10, which means the existing particulate matter SIP is believed adequate to attain and maintain the PM10 standards. It is the judgment of EPA that the variance would not increase PM10 emissions and the PM10 standard would be met. Thus, EPA is approving this TSP SIP revision.

Board Order 5–87 is a renewal of a variance from the Tennessee Air Pollution Control Regulations granted on January 15, 1986 (See 51 FR 47239) as it pertains to the modifications of a regenerative cycle natural gas fired turbine at the Texas Gas Transmission Corporation's Kenton, Tennessee facility. The purpose of this request is to allow the Corporation to modify and operate this turbine without the expense of source testing and continuous monitoring for nitrogen oxides. Rule 1200–3–16–.31, which gave the State authority for NSPS Gas Turbines, was adopted on May 15, 1981. The federal NSPS was revised on January 27, 1982, to exempt from source testing or continuous monitoring for nitrogen oxides sources with a heat input of the turbine at ISO standard conditions of 107.2 gigajoules per hour or less. Revisions to Tennessee's rule are not yet State-effective, therefore the variance was granted to accord with the federal standard.

Final Action

Since Board Order 35–86 and 5–87 are consistent with EPA policy and requirements, they are hereby approved. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions of judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that these SIP revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter.

Note.—Incorporation by reference of the State Implementation Plan for the State of Tennessee wasd approved by the Director of the Federal Register on July 1, 1982.

Dated: November 27, 1987.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, of the Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart RR—Tennessee

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2220 is amended by adding paragraph (c)(77) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(77) Board Orders 35–86 and 5–87 were submitted on February 17, 1987, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(A) Board Order 35–86, Opacity variance for Hassel and Hughes Lumber Company, which was approved on November 19, 1986.

(B) Board Order 5–87, variance for Texas Gas Transmission Corporation which was approved on January 21, 1987.

(ii) Other material—none.

[FR Doc 87–27654 Filed 12–2–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 560

[Dockets 85–10 and 87–9]

Marine Terminal Agreements; Filing of Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Final rules; technical amendment.

SUMMARY: This amends 46 CFR Part 560 to reflect clearance by Office of Management and Budget (OMB) of the reporting and recordkeeping requirements of final rules adopted by the Commission in Dockets 85–10 and 87–9 concerning filing of agreements pertaining to the domestic offshore trades.

EFFECTIVE DATE: Section 560.307 is effective on December 3, 1987. The remainder of Part 560 is effective on December 17, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001, (202) 523–5725.

SUPPLEMENTARY INFORMATION: The Commission, by final rule in Docket 85–10, published on May 19, 1987; 52 FR 18692, adopted an exemption of marine terminal agreements from the approval requirements of section 15 of the Shipping Act, 1916, 46 U.S.C. app. 814. The exemption was codified in 46 CFR 559.7. OMB clearance for this amendment was sought and now has been obtained under OMB clearance number 3072–0039.

Prior to receipt of OMB clearance in this matter, however, the Commission had forwarded to OMB a proposed rulemaking in Docket 87–9 (April 29, 1987; 52 FR 16282) to incorporate into a single CFR Part (46 CFR 560) all rules pertaining to the filing of agreements under the Shipping Act, 1916. The Commission on November 17, 1987; 52 FR 43906, published a final rule in Docket 87–9, which simultaneously (1) removed Part 559 from the CFR; and (2) included at § 560.307 the former 46 CFR 559.7.

The Commission has now received OMB clearance of the reporting and recordkeeping requirements in Docket 87–9, and it is necessary that this be reflected in the revised Part 560.

List of Subjects in 46 CFR Part 560

Reporting and recordkeeping requirement.

Accordingly, 46 CFR Part 560 is amended as follows:

PART 560—[AMENDED]

1. The authority citation for Part 560 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a.

2. Section 560.991 is amended by adding the following table of OMB control numbers at the end thereof to read as follows:

§ 560.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

Section	Current OMB control No.
560.307	3072-0039
560.1 through 560.306 and 560.308 through 560.903	3072-0040

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87–27778 Filed 12–2–87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 76

[General Docket No. 87–107; FCC 87–357]

Input Selector Switches Used in Conjunction With Cable Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The action taken herein amends our rules to extend technical regulations to all transfer switches used to alternate between over-the-air and cable television service. In particular, we are requiring that external, stand-alone switches and switches that are built into television receivers provide at least 80 dB of isolation in the frequency range 54 to 216 MHz inclusive and 60 dB of isolation in the frequency range 216 to 550 MHz between the input antenna and cable signals. The new rules also subject external, stand-alone switches to the verification procedures of Part 2, Subpart J of our rules and impose certain other requirements that are intended to ensure that use of broadcast/cable switches does not result in harmful interference. We also address two related concerns that commenters have raised pertaining to proper antenna connection and cable operators' responsibility for interference under Part 76 of our rules.

EFFECTIVE DATE: January 28, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in General Docket No. 87–107 adopted November 19, 1987, and released November 20, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be preferred from the Commission's copy contractor, International Transcription Service, (202) 857–3000, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Report and Order

1. The Commission issued a *Notice of Proposed Rule Making (Notice)* on April 8, 1987 (published in the **Federal Register**, May 11, 1987, 52 FR 17612), seeking comment and information on the issue of technical standards for broadcast/cable input selector switches. The Commission indicated that it believed its initial determination concerning the necessary switch isolation of 60 dB essentially was correct. It therefore proposed to require that all input selector switches used to alternate between off-the-air and cable service provide 60 dB of isolation between their antenna and cable input terminals.

2. The majority of the commenting parties opposed the 60 dB standard proposed in the *Notice* and urged adoption of a more stringent standard. The staff found that 60 dB of isolation is adequate in theory to prevent harmful interference resulting from use of broadcast/cable switches at frequencies in the range 54 to 550 MHz. However, the record showed that higher levels of isolation may be necessary below 217 MHz to take into account the isolation losses due to switches aging and manufacturing tolerances. In addition, the Commission found no reason to differentiate the isolation standard for switches incorporated into television receivers from that for stand-alone switches. Accordingly, the Commission will require that all broadcast/cable switches, both stand-alone devices and those incorporated into television receivers, must provide at least 80 dB of isolation over the frequency range 54 to 216 MHz inclusive and 60 dB from 216 to 550 MHz. With respect to the issue, brought up by commenters, of coupling of cable signals across unshielded wiring, the Commission will require cable operators to inform subscribers fully of the potential for coupling of cable signals across the switch to cause interference and measures to take to avoid such effects. In this regard, we are requiring that cable operators include a section of coaxial cable of at least four feet in length between the switch terminal and lead wires in all switch installations they perform.

3. The Commission also recognized that there is a need to require that electronic switches maintain the required isolation in the event of power failures. Therefore, the Commission will require that all input selector switches that use a power source, both stand-alone and built-in units, must maintain the required isolation in the event no power is supplied. The method to achieve this mandate will be left to the manufacturers of the switches. In addition, all stand-alone switches will be subject to the equipment verification procedures of Part 2, Subpart J. These devices are relatively simple and their

interference potential is fairly well defined. Thus, they appear well suited to the verification procedures. Finally, the Commission has adopted an implementation plan that will allow existing broadcast/cable switches not requiring an external power source to be manufactured or imported for nine months and existing switches requiring an external power source to be manufactured or imported for fifteen months. At the end of those time periods only switches that comply with the 80/60 dB isolation requirement or that were is existing inventories prior to the effective date of the Report and Order will be allowed to be sold for use in switching between broadcast and cable service.

4. The input selector switch rules also require that where a cable operator installs a switch and an existing antenna is present, the cable operator must connect that antenna to the switch. These rules also provide that a cable operator may not charge new subscribers a separate fee for switch installation. We recognize NCTA's concerns for the risks associated with lightning strikes on antennas that are not effectively grounded. To address such situations, cable operators may advise the subscriber of the grounding problem and advise him/her that it may be desirable to install an effective ground system if one is not present. Cable operators may, of course, offer to inspect and/or install an effective ground system for their subscribers and separately charge for that service and related materials. In order to avoid any ambiguity concerning our policy on this point, we are amending our rules to clarify that cable operators are permitted to charge for installation of ground systems in all cases, including installations for new subscribers.

5. In this *Order*, the Commission clarifies cable operators' responsibility with regard to leakage of signal from input selector switches. The staff believes that § 76.617 adequately and clearly assigns responsibility for switch related interference to the operator of the device. However, clarification of the cable operators' monitoring responsibility with respect to switch related leakage is desirable, especially in view of our action in the cable terminal device proceeding. There, the Commission specifically provided in § 76.617(a) that cable operators are responsible for detecting and eliminating any leakage that would cause interference outside the cable subscriber's premises and/or would cause the cable system to exceed the Part 76 leakage standards. This rule also states that where such leakage occurs, the cable operator is required only to discontinue service to the subscriber until the problem is resolved. The Commission herein applies the same approach adopted for cable operators monitoring of interference caused by cable terminal devices to input selector switches. Accordingly, this *Order* amends the rules to apply the cable terminal device interference monitoring rule to broadcast/cable input selector switches.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that rules adopted herein are expected to impact on manufacturers of broadcast/cable input selector switches in that some switches in existing inventories may not meet the new standards. The Commission believes it is necessary to protect safety related services such as the aeronautical radionavigational service and, therefore, the higher standard is justified even though some switches will be deemed obsolete. However, the nine-month or fifteen-month period to comply with the new standards will allow switch manufacturers sufficient time to upgrade their inventories thus reducing the burden on switch manufacturers. The self-testing procedure to verify compliance with the technical standards adopted herein is expected to have minimal impact on switch manufacturers. The requirement that cable subscribers be provided with information on how to install switches in a manner that will maintain the required isolation provided by the switch itself is not expected to pose a significant new burden for cable operators, as this information is to be included with the consumer information they already are required to provide to subscribers.

7. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of these new/modified requirements and burdens will be subject to approval by the Office of Management and Budget as prescribed by the Act.

8. Accordingly, it is ordered that under the authority contained in section 4(i) and 303 of the Communications Act of 1934, as amended, Parts 15 and 76 of the Commission's Rules and Regulations are amended as set forth below. These rules and regulations are effective January 28, 1988.

9. It is further ordered that the Motion for Stay filed by Gill Industries, Inc. and Western Communications, Inc. is denied.

10. It is further ordered that this proceeding is terminated.

List of Subjects in 47 CFR Parts 15 and 76

Radio frequency devices, Cable television service.

Rule Changes

Part 15 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 15—[AMENDED]

1. The authority citation for Part 15 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Part 15 is amended by adding a new § 15.64 as follows:

§ 15.64 Television receiver transfer switch.

Where a television receiver is equipped with a transfer switch for selectively connecting the receiver either to an antenna or a cable service, that switch shall provide isolation between the antenna and cable input terminals of at least 80 dB over the frequency range 54 to 216 MHz inclusive and at least 60 dB over the frequency range 216 to 550 MHz in any of its set positions. In the case of a switch requiring a power source, the required isolation shall be maintained in the event the device is not connected to a power source or power is interrupted. The provisions of this paragraph shall not apply to such devices that:

(a) Were manufactured or imported prior to January 28, 1988;

(b) Do not require an external power source and that are manufactured or imported on or after January 28, 1988, and are sold or otherwise distributed to final users, i.e. consumers, prior to October 28, 1988, or,

(c) Require an external power source and that are manufactured or imported on or after January 28, 1988, and are sold or otherwise distributed to final users prior to April 28, 1989.

3. Section 15.606 is amended by revising the heading and adding a new paragraph (d) to read as follows:

§ 15.606 Transfer switches.

* * * * *

(d) An external transfer switch used with a TV receiver or TV interface device and in conjunction with cable service shall provide isolation between the antenna and cable terminals of at least 80 dB of isolation over the frequency range 54 to 216 MHz inclusive and at least 60 dB over the frequency range 216 to 550 MHz in any set position

of the switch. In the case of a switch requiring a power source, the required isolation shall be maintained in the event the device is not connected to a power source or power is interrupted.

Note to paragraph (d): The 80 dB limit shall apply at the edge between the two frequency bands.

4. Section 15.616 is amended by revising the heading and adding a new paragraph (e) to read as follows:

§ 15.616 Equipment authorization requirements for TV interface devices, TV antenna/cable service transfer switches, and attachments thereto.

* * * * *

(e) An external transfer switch intended as a means to alternate between connection of an antenna for reception of broadcast signals and a cable service shall be verified pursuant to Subpart J of Part 2 to show compliance with the technical specifications provided in § 15.606(d). The provisions of this paragraph shall not apply to such devices that: (1) Were manufactured or imported prior to January 28, 1988; (2) Do not require an external power source and that are manufactured or imported on or after January 28, 1988, and are sold or otherwise distributed to final users, i.e. consumers, prior to October 28, 1988; or

(3) Require an external power source and that are manufactured or imported on or after January 28, 1988, and are sold or otherwise distributed to final users prior to April 28, 1989.

5. Section 15.622 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 15.622 Labelling requirements.

(a) * * *

(b) An external transfer switch used with a TV receiver or TV interface device and in conjunction with cable service shall be identified pursuant to the requirements of Subpart J of Part 2 of this chapter. In addition, the name plate or label shall include the following statement:

This device is verified to comply with FCC rule Part 15 for use with cable television service.

The provisions of this paragraph shall not apply to such devices that:

(1) Were manufactured or imported prior to January 28, 1988;

(2) Do not require an external power source and that are manufactured or imported on or after January 28, 1988, and are sold or otherwise distributed to final users, i.e. consumers, prior to October 28, 1988; or

(3) Require an external power source and that are manufactured or imported on or after January 28, 1988, and are sold or otherwise distributed to final users prior to April 28, 1989.

II. Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—[AMENDED]

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 76.66 is amended by revising paragraph (a)(2) introductory text and adding new paragraphs (a)(2)(i) and (a)(5)(iv) to read as follows:

§ 76.66 Input selector switches and consumer education.

(a) * * *

(2) A cable operator may charge for purchase or lease of switches and associated hardware and may separately charge for installation of switches for existing subscribers. A cable operator may not charge new subscribers a separate fee for switch installation.

(i) A cable operator may offer to inspect and/or install antenna grounding systems for outdoor antennas and shall separately charge for such services.

* * * * *

(5) * * *

(iv) Cable operators must provide to subscribers information on the potential for interference related to the input selector switch and the associated connections and suggest measures to take to avoid such problems. Such suggestions must include the recommendations that shielded coaxial cable be used between the receiver and the switch terminals and that at least four feet of shielded coaxial cable be used for connecting switch terminals to any unshielded antenna leads.

* * * * *

2. Section 76.617 is amended by revising paragraph (b) to read as follows:

§ 76.617 Responsibility for interference.

* * * * *

(b) Interference resulting from use of an input selector switch shall be the responsibility of the switch operator in accordance with the transfer switch provisions of Part 15 of this chapter: Provided, however, That the operator of a cable system to which the switch is connected shall be responsible for detecting and eliminating any signal leakage where that leakage would cause interference outside the subscriber's premises and/or would cause the cable system to exceed the Part 76 signal leakage standards. In cases where signal leakage occurs, the cable operator shall be required only to discontinue service to the subscriber until the problem is corrected.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-27734 Filed 12-2-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-419; RM-5430]

Radio Broadcasting Services; Centre, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290A to Centre, Alabama, as that community's first local FM service, in response to a petition filed by Cherokee Broadcasting Corporation. With this action, the proceeding is terminated.

DATES: Effective January 8, 1988. The window period for filing applications on Channel 290A at Centre, Alabama, will open on January 11, 1988, and close on February 10, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530, regarding the allocation. For information related to the application process, contact the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-6908.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-419, adopted November 4, 1987, and released November 24, 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 St, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Centre, Channel 290A, under Alabama.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-27735 Filed 12-2-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-310; RM-5329]

Radio Broadcasting Services; Tuskegee, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A to Tuskegee, Alabama, as that community's second local FM service, in response to a petition filed by L. Lynn Henley. With this action the proceeding is terminated.

DATES: Effective January 8, 1988. The window period for filing applications on Channel 260A at Tuskegee, Alabama, will open on January 11, 1988, and close on February 10, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530, concerning the allotment. Questions related to the application filing process should be addressed to Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order MM Docket No. 86-310, adopted November 4, 1987, and released November 24, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Channel 260A to the entry Tuskegee, Alabama.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-27736 Filed 12-2-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-471; RM-5580]

Radio Broadcasting Services; Douglas, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 243A to Douglas, AZ, as that community's second local FM service, in response to a petition for rule making filed on behalf of KDAP, Inc. With this action, the proceeding is terminated.

DATES: Effective January 11, 1988. The window period for filing applications on Channel 243A at Douglas, Arizona, will open on January 12, 1988, and close on February 11, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530, concerning the allotment. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-471, adopted November 4, 1987, and released November 25, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Channel 243A to the entry Douglas, Arizona.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-27737 Filed 12-2-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-409; RM-5387]

Radio Broadcasting Services; Panama City, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 290C2 for Channel 292A at Panama City, Florida, and modifies the construction permit for Station WLVV(FM), to specify the new channel, at the request of the permittee, Bay Media, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 8, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-409, adopted November 6, 1987, and released November 24, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended in the entry for Panama City, Florida, by adding Channel 290C2 and removing Channel 292A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-27739 Filed 12-2-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-200; RM-5718]

Radio Broadcasting Services; Altus, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Altus Radio, Inc., substitutes Channel 228C2 for Channel 228A at Altus, Oklahoma, and modifies the license of Station KRKZ to specify operation on the higher powered channel. Channel 228C2 can be allocated to Altus in compliance with the Commission's minimum distance separation requirements with a site restriction of 26.7 kilometers (16.4 miles) southwest to avoid a short-spacing to unused but applied for Channel 228A at Watonga, Oklahoma, and to unused and unapplied for Channel 229A at Cordell, Oklahoma. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 11, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-200, adopted November 4, 1987, and released November 25, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Altus, Oklahoma, is amended by adding Channel 228C2 and removing Channel 228A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-27740 Filed 12-2-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-235; RM-5734]

Radio Broadcasting Services; Childress, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 241C2 for Channel 240A at Childress, Texas, and modifies the license of Station KSRW(FM) to specify operation on the new frequency, at the request of White Communications. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 8, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-235, adopted November 6, 1987, and released November 24, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by removing Channel 240A and adding Channel 241C2 at Childress.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-27741 Filed 12-2-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-106; RM-5444]

Television Broadcasting Services; Lake Havasu City, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 34 to Lake Havasu City, AZ, as that community's first local commercial television service, in response to a petition for rule making filed on behalf of London Bridge Broadcasting, Inc.

Although the Commission has imposed a freeze on TV allotments, or applications therefor in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 8, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-106, adopted November 4, 1987, and released November 24, 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 St., NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments, is amended by adding Lake Havasu City, Arizona, Channel 34+.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-27742 Filed 12-2-87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1052

[Ex Parte No. MC-42]

Handling of C.O.D. Shipments

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is reopening this matter and revising 49 CFR 1052.3. The previous recordkeeping requirements were burdensome, time consuming and costly, and may have discouraged carriers from providing c.o.d. service. The new rules allow each motor common carrier of property offering collect-on-delivery (c.o.d.) service to publish its own nondiscriminatory tariff provisions governing the collection and remittance of such funds. Alternatively, carriers may adopt a 15-day remittance period. Regulations adopted by decision served April 13, 1987 (52 FR 11991) are modified.

The earlier repeal of the separate recordkeeping requirements for c.o.d. shipments (previously at 49 CFR 1052.4) is not affected by this change.

EFFECTIVE DATE: January 2, 1988.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Barry, (202) 275-7540

or

Mark S. Shaffer, (202) 275-7291, TDD for hearing impaired: (202) 275-1721

SUPPLEMENTARY INFORMATION: The new rules are set forth below. Additional information is contained in the Commission's decision. To purchase a copy of the decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area) (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

This action will not affect significantly the quality of the human environment or the conservation of energy resources.

The Commission certifies that adoption of the amendments will not have a significant economic impact on a substantial number of small entities because the amendments do not mandate that any action be taken, but they allow more flexible and individualized procedures.

List of Subjects for 49 CFR Part 1052

Motor carriers.

Decided: November 23, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre concurred. Chairman Gradison concurred with a separate expression.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations, Part 1052, is amended as follows:

PART 1052—[AMENDED]

1. The authority citation for 49 CFR Part 1052 continues to read:

Authority: 49 U.S.C. 10101, 10321, 10922, 10762, 11101, and 5 U.S.C. 553.

2. The heading and text of § 1052.3 are revised to read as follows:

§ 1052.3 Collection and remittance.

Every common carrier of property subject to the Interstate Commerce Act, except as otherwise provided in § 1052.1, which chooses to provide c.o.d. service may publish and maintain, or cause to be published and maintained for its account, a tariff or tariffs which set forth nondiscriminatory rules governing c.o.d. service and the collection and remittance of c.o.d. funds. Alternatively, any carrier that provides c.o.d. service, but does not wish to publish and maintain, or cause to be published and maintained, its own nondiscriminatory tariff, may adopt a rule requiring remittance of each c.o.d. collection directly to the consignor or other person designated by the consignor as payee within fifteen (15) days after delivery of the c.o.d. shipment to the consignee.

[FR Doc. 87-27772 Filed 12-2-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atomospheric Administration

50 CFR Parts 611 and 675

[Docket No. 70878-7250]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Island Area

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

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 11 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). Amendment 11 will: (1) Establish a split season apportionment of pollock for U.S. vessels working in joint ventures with foreign processing vessels (JVP), and (2) change the definition of prohibited species. These measures are intended to respond to biological, economic and administrative problems identified by the North Pacific Fishery Management Council (Council).

In addition, NOAA is making a regulatory amendment to change the definition of directed fishing in the foreign fishing regulations.

The regulatory changes implementing Amendment 11 and NOAA's additional regulatory change are necessary for conservation and management of the groundfish resources in the Bering Sea and Aleutian Islands (BSAI) area and for the orderly conduct of the groundfish fisheries.

EFFECTIVE DATES: This rule is effective January 4, 1988. Section 675.20(b)(3) (i), (ii) and (iii) will expire December 31, 1989.

ADDRESS: Individual copies of the amendment, the environmental assessment, and regulatory impact review/final regulatory flexibility analysis may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter (Fishery Management Biologist, NMFS), at 907-586-7230, or the Council at 907-274-4563.

SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI area are managed in accordance with the FMP. The FMP was developed by the Council under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations appearing at 50 CFR 611.93 and Part 675.

The Council approved Amendment 11 to the FMP for submission to the Secretary of Commerce at the May 20-22, 1987 meeting of the Council. The Magnuson Act provides for this amendment to take effect at the close of the 95th day after its receipt by the Secretary unless he previously notifies the Council of his disapproval, or partial disapproval, of the amendment (16 U.S.C. 1954(b)). The Secretary received Amendment 11 on August 9, 1987, and immediately began a review of it to determine its consistency with the Magnuson Act and other applicable law. The Director, Alaska Region, NMFS (Regional Director), had determined that Amendment 11 is consistent with the Magnuson Act and other applicable law and has approved Amendment 11 under his delegated authority to approve

fishery management plans and plan amendments submitted by the Council.

A notice of the Amendment's availability was published in the **Federal Register** on August 13, 1987 (52 FR 30212) and proposed implementing regulations were published on September 1, 1987 (52 FR 32942). Both notices invited public review and comment on the amendment and proposed rule through October 15, 1987. Two letters of public comment and two letters of comment from other Federal agencies were received and considered in developing this final rule. A summary of, and response to, all comments received in given below.

Description

A description of, and reasons for, each part of Amendment 11, and NOAA's regulatory amendment, are given in the preamble of the proposed rule. A summary follows of what is accomplished by this rule implementing Amendment 11 and NOAA's regulatory amendment.

1. Split-season Apportionment of Pollock for JVP in the BSAI Management Area

Under this rule, the amount of the total allowable catch (TAC) of pollock apportioned to JVP will be divided into two parts. Part one will be equivalent to 40 percent of the sum of the initial JVP for pollock plus 15 percent of the TAC for pollock. Part one will be made available to the JVP fishery for pollock during the period January 15 through April 15. Part two will be equivalent to the remaining JVP for pollock and will be available during the period April 16 through December 31. This part of Amendment 11 and its implementing regulation will be effective only for the 1988 and 1989 fishing years.

This split-season apportionment rule provides interim biological protection to the BSAI area pollock resource from intensive harvesting pressure during the primary spawning period for this species. Roughly half of the initial amount of pollock apportioned to JVP will be made available to those fisheries during the first period of January 15 through April 15. Without this rule, it is likely that the entire pollock JVP, probably in excess of one million metric tons in 1988, would be harvested during the first three months of 1988. At this time of the year, and particularly during February and March, pollock are aggregated for spawning purposes. Fishing and spawning aggregations provides certain economic advantages such as increased catch-per-unit of effort and highly valued pollock roe. For competitive reasons, in recent years the JVP pollock fishery has become highly intensive and can remove 80 to 90 percent off the pollock TAC from the pollock spawning population. This may have long-term harmful effects on future pollock productions.

Assuming that the 1988 pollock fishery will progress at least at the same rate as in 1987, the first part of the 1988 JVP will be taken and the fishery closed during the first week in March under this rule. This will allow the pollock resource a respite from JVP fishing pressure for about six weeks before JVP fishing resumes on the second part of the 1988 JVP on April 16. If JVP fishing effort in 1988 is greater than in 1987, as anticipated, then the first period hiatus in the JVP fishery will be longer than six weeks. This six-week or longer hiatus will occur during a significant part of the primary pollock spawning period.

The biological significance of reducing the harvest from spawning aggregations is unknown. However, conventional conservation wisdom suggests that limiting the harvest of spawning fish is helpful in protecting the future reproductive potential of the stock. At least there can be no biological harm from such a limit. This rule will provide two years of relative protection during which the biological risk of an intensive fishery or spawning pollock can be further assessed.

In addition to this interim biological protection, the split-season rule will provide for some economic benefits to domestic fishermen processing their catch on board or delivering it to U.S. shore-based processors (DAP). The current DAP fishery for pollock in the BSAI area is small relative to the JVP fishery. The 1987 current pollock DAP accounts for about 15 percent of the pollock TAC. During the first period hiatus in JVP fishing for pollock, the DAP industries will have virtually exclusive access to the pollock resource. This will provide these industries with the same economic benefits from fishing spawning aggregations as have been realized by the JVP fishery in recent years. These benefits include high catch-per-unit of effort and the opportunity to produce high valued pollock roe. The potential biological risk of allowing continued DAP harvesting on spawning aggregations is insignificant due to the small scale of the DAP fishery relative to the JVP fishery.

2. Definition of Prohibited Species

This rule will change the prohibited species definition in the FMP and its implementing regulations to list those species or species groups which must be avoided while fishing for groundfish and, if caught incidentally, must be immediately returned to the sea with minimum injury. Listed species will include the traditional prohibited species of salmon, steelhead, halibut, herring, king and Tanner crabs for domestic and foreign groundfish fisheries plus other non-groundfish species for the foreign fishery only. Retention of any of these species would not be allowed unless authorized by other applicable law. Such authorization would allow, for example, domestic groundfish fishermen to retain halibut caught with hook and line gear during an open season for halibut specified by the International Pacific Halibut Commission.

The current definition of prohibited species in the FMP is flawed. Regulations implementing it suffer from confusing and imprecise language that may not be legally enforceable against every vessel fishing for groundfish in the EEZ off Alaska. The principal reason for this flaw is that the original FMP anticipated other fishery management plans for king crab, Tanner crab, and Pacific herring. However, these management plans ultimately failed to be implemented or were subsequently withdrawn. The rule implementing this part of Amendment 11 will correct this flaw. This is especially important for the protection of Tanner and king crab species which have significant incidental catches in the groundfish fisheries.

3. NOAA Regulatory Amendment to the Definition of Directed Fishing in the Foreign Fishing Regulations

This regulatory change is in addition to and does not implement Amendment 11. This change is a modification of regulations under existing authority in the FMP. Under Amendment 10 to the FMP, a definition of directed fishing was added to the regulations governing foreign fisheries at 50 CFR 611.93(b)(1)(iii). The intention of that definition (originally proposed at 51 FR 45349), was to enable enforcement of directed fishing prohibitions after a prohibited species catch limit had been reached. In addition, NOAA intended that the definition of directed fishing governing foreign fisheries be consistent with that governing domestic fisheries. However, the first occurrence of the phrase, "20 percent or more of the catch, take or harvest or to," was inadvertently omitted from both the proposed and final rules for Amendment 10. Hence, NOAA proposed, and now makes final a change in the definition in the foreign fisheries regulations to indicate that this 20 percent or more of the catch, take, or harvest at any time also will be

considered in determining whether directed fishing is occurring. This change will make the BSAI area foreign fishery regulations consistent with the domestic fishery regulations pertaining to the BSAI area and the Gulf of Alaska.

Comments Received

Two letters of comment were received from fishing industry representatives and two additional letters of comment were received from other Federal agencies. A summary of both industry comments is given under Comment 1 while the government comments are summarized under Comments 2 and 3 below. A response to each comment follows.

Comment 1: The beginning of the second period under the proposed split-season apportionment of pollock for the JVP fishery should be changed from April 16 to June 15. Under the current open access system, the JVP quota is allocated on a first-come-first-served basis. Competitive pressure under this system will force JVP operations to harvest and process the available pollock as quickly as possible after the second period begins. The proposed April 16 beginning of the second period will cause intensive JVP fishing to occur when pollock may not have fully dispersed from their spawning aggregations. In addition, the quality of pollock flesh, for purposes of producing fillets and surimi, deteriorates during the spawning season and does not recover until about the middle of June. Again, because of competitive pressure in an open access fishery, U.S. harvesters will not have the option of waiting until the quality of the pollock flesh has improved. Changing the beginning of the second period to June 15 would solve both of these problems.

Response: NOAA recognizes the possibility that JVP fishing in the second period of the split seasons may begin promptly on April 16 while spawning aggregations of pollock remain susceptible to harvest. However, the amount of spawning activity that occurs in late April and May is significantly reduced from that which occurs in March and early April when the JVP fishing hiatus is expected. Nevertheless, NOAA will carefully monitor all pollock fishing effort and the condition of the pollock stocks over the two-year effective period of the split-season rule.

With respect to reduced product quality because of the April 16 start of the second period, NOAA notes that this split-season apportionment was proposed by industry and is supported by both DAP and JVP components. In addition, under this FMP, the determination of when to go fishing during an opening in order to maximize product quality is a matter of choice for individual fishermen and the processors buying their catch.

Comment 2: Maintenance of pollock stocks is extremely important for healthy populations of seabirds in the Bering Sea. One of the stated purposes of Amendment 11 is to address the concern that increased exploitation of spawning pollock may adversely affect the biological viability of the Bering Sea pollock stock. Scientific work indicates that spawning by pollock is greatly protracted in the Bering Sea with spawning observed in June near the Pribilof Islands and as late as August further north. Splitting of the JVP quota is reasonable to conserve spawning pollock, but to be effective, the second part should not be made available to the fishery until July 1. Delay of the second fishing period until this date better insures that commercial fishing does not deplete stocks below their present levels, thereby jeopardizing seabird populations.

Response: NOAA agrees that pollock stocks are an important element in the Bering Sea ecosystem. The split season rule implementing Amendment 11 does address the concern of intensive exploitation of spawning pollock by providing for an anticipated hiatus in JVP fishing for pollock during which its spawning activity is at or near its peak. Later spawning activity in May and June by comparison is significantly reduced. Nevertheless, NOAA will carefully monitor all pollock fishing effort and the condition of the pollock stocks over the two-year effective period of the split-season rule.

Comment 3: The definition of directed fishing in § 611.93(b)(1)(iii) should clearly state that the quantities of fish are determined by weight to avoid possible confusion over how the directed fishing percentage is determined.

Response: NOAA agrees that in current practice the term "amount" in the definition refers to the amount by weight, usually in metric tons. However, the term "by weight" is not added to the definition because it may be appropriate to interpret "amount" in other ways, such as by volume of fish in some instances. For example, it may be appropriate to determine "amount" by visual estimates of quantity during preliminary inspections at sea. Formal weights will be taken before a violation is charged. In addition, Council and NMFS staff recently have been reviewing the directed fishing definition and further changes to it may be recommended. This comment will be reconsidered in this event.

Classification

The Regional Director determined that this amendment is necessary for the conservation and management of the BSAI area groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for this amendment. The Assistant Administrator for Fisheries concluded that no significant impact on the human environment will occur as a result of this rule. A copy of the EA may be obtained from the Council at the address above.

The Administrator of NOAA determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) prepared by the Council. A copy of the RIR/FRFA may be obtained from the Council at the address above.

The RIR/FRFA prepared by the Council describes the effects this rule will have on small entities. The analysis contained in the RIR/FRFA is largely the same as that contained in the RIR/initial regulatory flexibility analysis which was summarized for each of the measures in the proposed rule. The Assistant Administrator of NOAA concluded that this final rule will have significant effects on small entities. A copy of the RIR/FRFA may be obtained from the Council at the address above.

This rule contains no collection of information requirements subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination was submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: November 27, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR Parts 611 and 675 are amended as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Section 611.93 is amended by removing paragraph (b)(1)(ii)(E) and revising paragraphs (b)(1)(ii) introductory text, (b)(1)(ii)(A), and (b)(1)(iii) to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(1) * * *

(ii) Categories of species. Four categories of species are recognized for regulatory purposes and they are set forth in Table 1. The term "groundfish" means species in all categories except the "prohibited species" category.

* * * * *

(A) The term "prohibited species" means for purposes of this section: Pacific herring (*Clupea harengus pallasi*); salmonids (Salmonidae); Pacific halibut *(Hippoglossus stenolepis);* king crab (*Paralithodes* spp. and *Lithodes* spp.); and Tanner crab (*Chionoecetes* spp.). Except to the extent that their harvest is authorized under other applicable law, the catch or receipt of these species must be minimized and, if caught or received, they must be returned to the sea immediately in accordance with § 611.11 of this part. Records must be maintained as required by §§ 611.9, 611.90(e)(2), and this section. Any species of fish for which there is no foreign allocation must be treated in the same manner as "prohibited species" and records must be maintained of any catches or receipts of these species except for "non-specified species". Catches or receipts of "non-specified species" must be treated in the same manner as "prohibited species" but records are not required of catches or receipts of these species.

* * * * *

(iii) Directed fishing, with respect to any species, stock or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take or harvest, or to 20 percent or more of the total amount of fish or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock or other aggregation of fish comprises 20 percent or more of the catch, take or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed fishing for such fish.

* * * * *

3. Section 611.93(b)(1)(ii), is amended by revising, in Table 1, in the first column heading the word "Unallocated" to read "Prohibited", revising the list of species in the same column to read: "Pacific halibut, Pacific herring, salmonids, king crab, Tanner crab, and other species for which there is no allocation, except 'non-specified species.' " and by removing the column headed by "Groundfish", and revising footnote 4 to read as follows:

[4] Must be treated in the same manner as "prohibited species" but no records are required.

PART 675—[AMENDED]

5. The authority citation for 50 CFR Part 675 continues to read as follows:

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

6. Section 675.20 is amended by revising the heading of paragraph (b), adding a new paragraph (b)(3), and revising paragraph (c)(1) to read as follows:

§ 675.20 General limitations.

* * * * *

(b) Apportioning the reserve, surplus DAH, and JVP.

* * * * *

(3) Seasonal apportionment of JVP pollock. The initial amount of pollock apportioned to JVP for each subarea in accordance with paragraph (a)(4) of this section will be divided into two parts.

(i) Part One will be 40 percent of the following sum: initial JVP plus 15 percent of the TAC for pollock. The JVP pollock harvest during the first period (defined in paragraph (b)(3)(iii) of this section) resulting from directed fishing and bycatch in fisheries for other groundfish species will be counted against Part One. When the Regional Director determines that the unharvested amount of Part One is necessary for bycatch in JVP fisheries for other groundfish species during the first period, the Secretary will publish a notice in the **Federal Register** prohibiting directed JVP fishing for pollock for the remainder of the first period. Any amount of pollock in addition to Part One necessary for bycatch in JVP fisheries for other groundfish species during the first period will be counted against Part Two.

(ii) Part Two will be any unharvested portion of Part One plus the pollock JVP remaining after the first period and as adjusted by reapportionments from reserve and DAP in accordance with paragraphs (b) (1) and (2) of this section. When the Regional Director determines that the unharvested amount of Part Two is necessary for bycatch in JVP fisheries for other groundfish species during the second period, the Secretary will publish a notice in the **Federal Register** prohibiting JVP directed fishing for pollock for the remainder of the second period.

(iii) JVP pollock season. For purposes of this paragraph, the first period is that portion of the fishing year beginning January 15 and ending April 15. The second period is that portion of the fishing year beginning April 16 and ending December 31.

(c) * * *

(1) Prohibited species, for the purpose of this part, means any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Salmo gairdneri* or *Parasalmo mykiss*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasi*), king crab (*Paralithodes* spp. and *Lithodes* spp.), and Tanner crab (*Chionoecetes* spp.) caught by a vessel regulated under this Part while fishing for groundfish in the Bering Sea and Aleutian Islands management area, unless retention is authorized by other applicable law, including the regulations of the International Pacific Halibut Commission.

* * * * *

[FR Doc. 87-27787 Filed 11-30-87; 4:15 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 232
Thursday, December 3, 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.

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 861 0014]

Preferred Physicians, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an association of doctors in Tulsa, Okla., from conspiring to restrain competition and from fixing or increasing the prices they charge third-party payers for their services. In addition, the respondent would be prohibited, for five years, from advising its members on the desirability or appropriateness of any price to be paid for physicians' services by any third-party payers.

DATE: Comments must be received on or before February 1, 1988.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/S–3115, Toby Singer, Washington, DC 20580. (202) 326–2762.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice 916 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Physicians, Doctors, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Preferred Physicians, Inc., a corporation, and it now appears that Preferred Physicians, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Preferred Physicians, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Preferred Physicians, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 6161 South Yale Avenue, Tulsa, Oklahoma, 74136.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules of Practice, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint attached hereto may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I.

It is ordered that for purposes of this Order the following definitions shall apply:

A. "PPI" means Preferred Physicians, Inc. and its Board of Directors, committees, officers, representatives, agents, employees, successors, and assigns.

B. "Third-party payer" means any person or entity that reimburses for, purchases, or pays for health care services provided to any other person, and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Shield and Blue Cross plans; health maintenance organizations; preferred provider organizations; government health benefits programs; administrators of self-insured health benefits programs; and employers or other entities providing self-insured health benefits programs.

C. "Integrated joint venture" means a joint arrangement to provide pre-paid health care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share substantial risk of adverse financial results caused by unexpectedly high utilization or costs of health care services.

II.

It is further ordered that PPI, directly, indirectly, or through any corporate or other device, in connection with the provision of health care services by its members in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, shall forthwith cease and desist from:

A. Entering into, attempting to enter into, organizing, implementing, or continuing any agreement or understanding, express or implied, with any PPI member or among any PPI members, to deal with any third-party payer on collectively determined terms by, for example:

1. acting on behalf of any PPI member or members to negotiate with any third-party payer; or

2. communicating that PPI members will refuse to enter into or withdraw from any agreement, actual or proposed, with any third-party payer if any term or condition is not acceptable to PPI or to PPI members collectively.

B. For a period of five (5) years after the date the Order is served, providing comments or advice to any PPI member on the desirability or appropriateness of any price to be paid for physicians' services by any third party payer, including, but not limited to, advice that any PPI member refuse to enter into or withdraw from any agreement, actual or proposed, with any third-party payer because of the price to be paid for physicians' services.

Provided that nothing in this Order shall prevent PPI from:

(1) forming or becoming an integrated joint venture and dealing with any third-party payer on collectively determined terms in that capacity, as long as the physicians participating in the joint venture remain free to deal with any third-party payer other than through the joint venture; or

(2) Upon the request of a third-party payer, performing utilization review or credentialing activities in connection with the provision of services by PPI members to subscribers of the third-party payer.

III.

It is further ordered that PPI:

A. Distribute by first-class mail a copy of this Order to each of its members within thirty (30) days after the date the Order is served.

B. For a period of five (5) years after the date the Order is served, provide each new PPI member with a copy of this Order at the time the member is accepted into membership.

IV.

It is further ordered that PPI:

A. File a written report with the Commission within ninety (90) days after the date the Order is served, and annually for three (3) years on the anniversary of the date the Order was served, and at such other times as the Commission may by written notice to PPI require, setting forth in detail the manner and form in which it has complied and is complying with the Order.

B. For a period of five (5) years after the date the Order is served, maintain and make available to Commission staff, for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts II and III of this Order, including, but not limited to, all documents generated by PPI or that come into PPI's possession, custody, or control, regardless of source, that discuss, refer, or relate to any price, term, or condition of any agreement, actual or proposed, with any third-party payer.

It is further ordered that PPI shall notify the Commission at least thirty (30) days prior to any proposed change to itself, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change with may affect compliance with this Order.

Concurring Statement of Chairman Daniel Oliver, Preferred Physicians, Inc.

I have voted to issue the consent order in this matter for public comment. However, I would have preferred an order that included a provision of automatic termination after ten years. In my view, an antitrust conduct order should be preserved only so long as its benefits outweigh its costs. Maintaining an order such as this in perpetuity is not ordinarily appropriate. Its procompetitive remedial benefits can be expected to decline over time, and it may also begin to have adverse effects on certain procompetitive practices.

With respect to orders in merger cases, the Commission has already concluded that "order provisions requiring prior Commission approval of future acquisitions generally should not have terms exceeding ten years." The Commission determined that such provisions will in most cases have served their remedial purposes after ten years, and "the findings upon which such provisions are based should not be presumed to continue to exist for a longer period of time."[1] For similar reasons, I believe that the consent order at issue here should automatically terminate after ten years.

Preferred Physicians, Inc., Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Preferred Physicians, Inc. ("PPI") of Tulsa, Oklahoma. The agreement would settle charges by the Federal Trade Commission that PPI violated Section 5 of the Federal Trade Commission Act by conspiring to fix or increase the price of physicians' services by dealing with third-party payers only on collectively determined terms.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days,

[1] *Hercules, Inc.*, 100 F.T.C. 531 (1982) (modifying order); *see also., e.g., MidCon Corp.*, 107 F.T.C. 48, 58 (1986) (consent order) (ten years); *Hospital Corp. of America*, 106 F.T.C. 361, 524 (1985) (ten years), *aff'd*, 807 F.2d 1381 (7th Cir. 1986), *cert. denied* U.S. , No. 86-1492 (May 3, 1987); *Columbian Enterprises, Inc.*, 106 F.T.C. 551, 554 (1985) (consent order) (five years).

the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint has been prepared for issuance by the Commission along with the proposed order. It alleges that prior to PPI's formation, physicians in Tulsa, Oklahoma, decided independently whether and on what terms to accept offers from third-party payers to participate in health benefits plans. In 1984, however, some of the physicians agreed not to compete with each other in this manner, and they formed PPI to negotiate on their collective behalf. The complaint alleges that the physicians' purposes in forming PPI were to resist competitive pressures to discount fees and to avoid accepting reimbursement on any basis other than the traditional fee-for-service system of payment for physicians' services.

According to the complaint, PPI's members agreed to negotiate with third-party payers only through PPI, and further agreed to take a uniform position on the prices to be sought from third-party payers. Accordingly, PPI negotiated on behalf of its members over contract terms, including the prices to be paid for its members' services, with a number of third-party payers such as health maintenance organizations ("HMOs") and preferred provider organizations ("PPOs"), and PPI sought agreements from third-party payers to pay PPI members in accordance with the "Red Book" price list that had been developed for St. Francis Hospital's PPO. Inherent in the negotiations, the complaint alleges, was the threat that if the third-party payers did not agree to the terms acceptable to PPI, the third-party payers would be unable to obtain agreements with PPI members.

The physicians who formed PPI constitute a substantial majority of the active medical staff of St. Francis Hospital, which is generally regarded as the leading hospital in Tulsa. Therefore, according to the complaint, PPI has substantial leverage with third-party payers in the Tulsa area.

According to the complaint, several HMOs attempted to negotiate with individual PPI members, but, in accordance with the agreement described above, those physicians would negotiate only through PPI. Those HMOs that were unwilling to negotiate with PPI were unable to obtain, or were hindered in obtaining, contracts with a sufficient number of PPI members to be able to offer access to St. Francis Hospital to their subscribers. Other HMOs, which agreed to negotiate the terms of contracts with PPI, were successful in contracting with a sufficient number of physicians, but were denied the benefits of competition among PPI members.

The complaint alleges that PPI and its members have conspired to fix or increase the prices charged by, or otherwise to restrain competition among, physicians in the Tulsa area. The complaint further alleges that PPI's actions have had, or have the tendency and capacity to have, the following effects, among others:

A. Restraining competition among physicians in the area of Tulsa, Oklahoma;

B. Fixing or increasing the prices that physicians in the Tulsa area charge for their services; and

C. Depriving third-party payers and their subscribers of the benefits of competition among physicians in the Tulsa area.

The Proposed Consent Order

The proposed order would prohibit PPI from entering into or organizing any agreement among its members, in connection with the provision of health care services by PPI members, to deal with third-party payers on collectively determined terms. Examples of the conduct that would be prohibited are: (1) negotiating on behalf of PPI members with third-party payers, and (2) communicating to third-party payers that PPI members will refuse to enter into an agreement if any term of the agreement is unacceptable to PPI. This provision of the order would not prohibit PPI or its members from merely providing information to third-party payers, as long as providing the information were not part of an agreement to deal on collectively determined terms.

The proposed order also contains a "fencing-in" provision that would prohibit PPI, for a period of five years, from providing comments or advice to any PPI member on the desirability or appropriateness of any price to be paid for physicians' services by any third-party payer.

The proposed order would not apply to two specified stiuations. First, if a third-party payer requests PPI to perform utilization review credentialing activities, PPI would be permitted to do so. Second, if PPI forms an integrated joint venture, it may deal with third-party payers on collectively determined terms as long as the physicians participating in the joint venture remained free to deal other than through the joint venture. An integrated joint venture is defined in the proposed order as a joint arrangement to provide pre-paid health care services in which physicians pool their capital to finance the venture, and share substantial risk of adverse financial results if utilization or costs are unexpectedly high.

Under the proposed order, PPI would also be required to distribute a copy of the order to each of its members, and, for a period of five years, to provide each new member of PPI with a copy of the order. The order also would require PPI to file compliance reports with the Commission sixty (60) days after service of the order, annually for three (3) years, and at such other times as the Commission may require. PPI would also be required to notify the Commission prior to any proposed change to itself, such as dissolution or sale, which may affect compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by PPI that the law has been violated as alleged in he conplaint.

Emily H. Rock,

Secretary.

[FR Doc. 87-27790 Filed 12-2-87; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. 9074]

Request for Modification of a Consent Order; General Motors Corp. et al.

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen the proceeding and modify the order.

SUMMARY: General Motors Corporation and General Motors Acceptance Corporation, corporate respondents in the order in Docket No. 9074, have requested the Federal Trade Commission to modify in material respects a 1980 consent order against the companies concerning the repossession accounting practices of General Motors' Buick, Cadillac, Chevrolet, Oldsmobile, Pontiac, and GMC Truck dealers using repurchase financing. This document announces the public comment period on the petition.

DATE: Deadline for filing comments in this matter is December 23, 1987.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Requests for copies of the request should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Thomas D. Massie, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2982.

SUPPLEMENTARY INFORMATION: The order in Docket No. 9074 was published at 45 FR 44920 on July 2, 1980. The petitioner, General Motors Corporation, manufacturers motor vehicles which are sold through franchised dealers. The petitioner, General Motors Acceptance Corporation, provides financing to franchised dealers to finance inventory and through dealers to consumers to finance the purchase of General Motors vehicles. The order requires General Motors to make a repossession accounting procedure a part of its uniform accounting system for dealers; that General Motors train dealers in the use of the repossession accounting procedure; that General Motors conduct audits of its dealers repossession accounting practices; that General Motors Acceptance amend its financing plans for Buick, Cadillac, Chevrolet, Oldsmobile, Pontiac, and GMC Truck dealers to require dealers to honor redemption rights; that General Motors Acceptance notify defaulting customers of redemption rights, of their rights to surpluses, if any, and liability for deficiencies, and the name and address of the dealer to whom the repossessed vehicle has been returned. The petition to modify was placed on the public record on November 5, 1987.

List of Subjects in 16 CFR Part 13

Motor vehicles.

Emily H. Rock,

Secretary.

[FR Doc. 87–27788 Filed 12–2–87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Cleveland REG 87–02]

Safety Zone; Old River and Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard in considering a proposal which would make permanent the seven temporary safety zones established September 3, 1987 in the Cuyahoga River and the adjoining shore area, would add three new zones, and would extend the zone at Shooters for an additional 275 feet up Old River. The zones are needed to protect life and property associated with moored, standing, or anchored small vessels from a safety hazard arising from the transit of vessels over 1600 gross tons. Entry into these zones would be generally prohibited unless authorized by the Coast Guard Captain of the Port, Cleveland, OH. However, vessels would be permitted to transit, but not moor, stand, or anchor in, these zones as necessary to comply with the Inland Navigation Rules or otherwise facilitate safe navigation.

DATES: Comments must be received on or before January 22, 1988.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office, 1055 East Ninth Street, Cleveland, Ohio 44114. The comments and other materials referenced in this notice will be available for inspection and copying at that address. Normal office hours are between 8:00 am and 4:00 pm, Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: CDR John H. Distin, Captain of the Port, Cleveland (212) 522–4406.

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 (COTP Cleveland REG 87–02) and the specific section of the proposal to which the comments apply, and give reasons for each comment.

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

Drafting information: The drafters of this notice are CDR John H. Distin, the Captain of the Port, Cleveland, project officer, and LCDR Carl V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The circumstances requiring these regulations result from large vessels (lakers) transiting the Cuyahoga River an average of twice daily through areas used by a large number of small, mainly recreational, vessels. Because of the narrow, winding nature of the river and the large size of lakers which operate on it, small errors in handling the laker can easily result in the laker coming into contract with relatively fragile recreational vessels which are against or near the dock of shore. A pattern of collisions between large, underway vessels and small vessels located on the insides of bends in the river has been identified. On August 31, 1987 one such collision resulted in severe damage to three recreational boats, one of which had persons aboard.

The areas are considered to present the greatest danger to life and property based on collisions that have occurred or are likely to occur. Those areas are in the vicinity of the river bends by Ontario Stone, Shooters, Nautica Stage, Columbus Road bridge, Upriver Marina, Alpha Precast Products (United Ready Mix), and Riverfront Yacht Services. The area between Shooters and Nicky's, while not located on the inside of a bend, is considered the most dangerous turn in the Old River. Large lakers making the transit to or from the LaFarge Cement plant regularly come within ten feet of shore on both sides of the river while navigating the turn. This problem was recognized in 1985 and an agreement between Nicky's and the Captain of the Port, Cleveland provided for a voluntary system of relocation of moored recreational vessels prior to lakers making the transit.

Preventing mooring, standard, or anchoring of vessels in the ten areas will decrease danger to lives and property associated with small vessels. This has been borne out by the positive results of the agreement with Nicky's and the temporary safety zones established in seven of the areas established earlier this fall.

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

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation

is unnecessary. Of the ten affected areas, only five have existing dock space which would be capable of providing the owner with income from dock fees. The other five have no established mooring facilities for small boats although small boats have moored there in the past. The dock space at one entity, formerly used for fueling boats, is no longer used. Of the five affected entities with existing dock space, only one currently charges a fee for its use. This entity applied for and received a waiver under the temporary regulations. Additionally, the Captain of the Port, Cleveland has researched the long range plans for riverfront development, both with individual companies and with the Flats Oxbow Association, and has found that the proposed regulations would not adversely affect income-generating capabilities of any entities now planned. Moreover, the same waiver procedures provided under § 165.T0901 for all affected entities would again be available under this rule making.

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

List of Subjects in 33 CFR Part 165

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

Proposed Regulations

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

PART 165—[AMENDED]

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

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

2. Section 165.903 is added to read as follows:

§ 165.903 Safety zones: Cuyahoga River and Old River, Cleveland, OH.

(a) *Location:* The waters of the Cuyahoga River and Old River extending ten (10) feet into the river at the following ten (10) locations, including the adjacent shorelines, are safety zones:

(1) One hundred (100) feet downriver to one hundred (100) feet upriver from 41 degrees 29'53.5" N., 81 degrees 42'33.5" W. which is the knuckle on the north side of Old River entrance at Ontario Stone.

(2) Fifty (50) feet downriver and fifty (50) feet upriver from 41 degrees 29'48.4" N., 81 degrees 42'44" W. which is the knuckle adjacent to the Ontario Stone warehouse on the south side of Old River.

(3) From 41 degrees 29'51.1" N., 81 degrees 42'32.0" W. which is the corner of Nicky's Pier at Sycamore Slip on the Old River, to fifty (50) feet east of 41 degrees 29'55.1" N., 81 degrees 42'27.6" W. which is the north point of the pier at Shooter's Restaurant on the Cuyahoga River.

(4) Twenty-five (25) feet downriver to twenty-five (25) feet upriver of 41 degrees 29'48.9" N., 81 degrees 42'10.7" W. which is the knuckle toward the downriver corner of the Nautica Stage.

(5) Ten (10) feet downriver to ten (10) feet upriver of 41 degrees 29'45.5" N., 81 degrees 42'9.7" W. which is the knuckle toward the upriver corner of the Nautica Stage.

(6) The fender on the west bank of the river at 41 degrees 29'45.2" N., 81 degrees 42.10" W. which is the knuckler at Bascule Bridge (railroad).

(7) The two hundred seventy (270) foot area on the east bank of the river between the Columbus Road bridge (41 degrees 29'18.8" N., 81 degrees 42'02.3" W.) to the chain link fence at the upriver end of Commodore's Club Marina.

(8) Fifty (50) feet downriver to twenty-five (25) feet upriver from 41 degrees 29'24.5" N., 81 degrees 41'57.2" W. which is the knuckle at the Upriver Marina fuel pump.

(9) Seventy-five (75) feet downriver and seventy-five (75) feet upriver from 41 degrees 29'33.7" N., 81 degrees 41'57.5" W. which is the knuckle adjacent to the warehouse at Alpha Precast Products (United Ready Mix).

(10) Twenty-five (25) feet downriver to twenty-five (25) feet upriver from 41 degrees 29'41" N., 81 degrees 41'38.6" W. which is the end of the chain link fence between Jim's Steak House and Riverfront Yacht Services.

(b) *Regulations:* (1) *General Rule.* Except as provided below, entry of any kind or for any purpose into the foregoing zones is strictly prohibited in accordance with the general regulations in § 165.23 of this part.

(2) *Exception.* Vessels may transit, but not moor, stand or anchor in, the foregoing zones as necessary to comply with the Inland Navigation Rules or to otherwise facilitate safe navigation.

(3) *Waivers.* Owners or operators of docks wishing a partial waiver of these regulations may apply to the Captain of the Port, Cleveland, Ohio. Partial waivers will only be considered to allow for the mooring of vessels in a safety zone when vessels of 1600 gross tons (GT) or greater are not navigating in the proximate area. Any requests for a waiver must include a plan to ensure immediate removal of any vessels moored in a safety zone upon the approach of a vessel(s) 1600 GT or greater.

Dated: November 30, 1987.

J.J. Smith,

Captain, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

[FR Doc. 87–27815 Filed 12–2–87; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–521, RM–6006]

Radio Broadcasting Services; Ocean Springs, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Wes Yeager, proposing the allocation of FM Channel 223A to Ocean Springs, Mississippi, as that community's second FM broadcast service.

DATES: Comments must be filed on or before January 19, 1988, and reply comments on or before February 3, 1988.

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:

Mr. Wes Yeager, Rt. 1, Box 868–1, Springtown, Texas 76082 (Petitioner)

Dan Winn & Associates, P.O. Box 214, Little Rock, Arkansas 72203 (Consultant to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–521, adopted November 4, 1987, and released November 25, 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* contracts 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. 87-27743 Filed 12-2-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-522, RM-5971]

Radio Broadcasting Services; Red Lodge, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by C. R. Crisler, proposing the substitution of Channel 258C2 for Channel 257A at Red Lodge, Montana, and modification of the construction permit held by C.R. Crisler to specify operation on Channel 258C2.

DATES: Comments must be filed on or before January 19, 1988, and reply comments on or before February 3, 1988.

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: C.R. Crisler, Double Eagle Broadcasting, Post Office Box 6324, Fort Smith, Arkansas 72906.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-522, adopted November 4, 1987, and released November 25, 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 test 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 1080 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 more 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. 87-27744 Filed 12-2-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-523, RM-6027]

Radio Broadcasting Services; Vancouver, WA; Coos Bay and Corvallis, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by P-N-P Broadcasting, Inc., proposing the allotment of Channel 290C2 to Vancouver, Washington, as that community's first FM service. In order to accomplish the allotment, substitutions must be made at Corvallis, Oregon, Station KFAT(FM), Channel 292C for 291C, and at Coos Bay, Oregon, Station KYNG-FM, Channel 290C2 for 293C2. In addition, concurrence by the Canadian government is required.

DATES: Comments must be filed on or before January 19, 1988, and reply comments on or before February 3, 1988.

ADDRESSES: 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, President P-N-P Broadcasting, Inc., 9235 N.E. 175th, Bothell, Washington 98011 (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. 87-523, adopted November 4, 1987, and released November 25, 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. 87-27745 Filed 12-2-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-524, RM-6020]

Radio Broadcasting Services; Verona, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document comments on a petition by Son Ministries proposing the allocation of Channel 288A to Verona, Wisconsin, as that community's first local FM service.

DATES: Comments must be filed on or before January 19, 1988, and reply comments on or before February 3, 1988.

ADDRESSES: 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: Terry Peters, General Manager, Son Ministries, 5511 Brandt Place, Monona, WI 53716 (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. 87–524, adopted November 4, 1987, and released November 25, 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. 87–27746 Filed 12–2–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Proposed Endangered Status for the Independence Valley Speckled Dace and Clover Valley Speckled Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period will be reopened for the proposed determination of endangered status for the Clover Valley speckled dace (*Rhinichthys osculus oligoporus*) and Independence Valley speckled dace (*Rhinichthys osculus lethoporus*). The former is known from only two small springs in northwestern Nevada and the latter from only one spring in the same area. The extension of the comment period will allow comments on this proposal and any public hearing request to be submitted from all interested parties.

DATES: The comment period, which originally closed on November 17, 1987, is reopened for 60 days, and will now close February 1, 1988. Public hearing requests must be received by January 19, 1988.

ADDRESSES: Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Regional Endangered Species Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503–231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The Independence Valley and Clover Valley speckled daces are very limited in distribution in northwestern Nevada. Both are in jeopardy because of their extremely limited distribution, the vulnerability of their habitats to perturbation by human irrigation practices, and the introduction of non-native aquatic species. A proposal of endangered status for both fish was published in the **Federal Register** on September 18, 1987 (52 FR 35282). Public notices in newspapers and letters soliciting comments from all interested parties are still needed. In order to accomplish solicitation of public comment, the comment period is now reopened for 60 days. Written comments may now be submitted until February 1, 1988 and a request for a public hearing must be submitted by January 19, 1988, to the Service Office in the Addresses section.

Author

The primary author of this notice is Ms. Robyn Thorson, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503–231–6131 or FTS 429–6131).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: November 26, 1987.

Wally Steucke,

Acting Regional Director.

[FR Doc. 87–27777 Filed 12–2–87; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 52, No. 232
Thursday, December 3, 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

Commodity Credit Corporation

1987 Wheat, Feed Grains (Corn, Sorghum, Barley, Oats, and Rye), Rice and Cotton Programs; Determination Regarding the Proclamation of 1987-Crop Program Provisions for Wheat, Feed Grains, Rice and Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determination of 1987-Crop Program Provisions for Wheat, Feed Grains, Rice and Cotton.

SUMMARY: The purpose of this notice is to affirm the determinations previously mady by the Secretary of Agriculture in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), and the Commodity Credit Corporation Charter Act, as amended (the "Charter Act") with respect to the 1987 price support and production adjustment programs for wheat, feed grains (corn, sorghum, barley, oats, and rye), rice, and cotton (upland and ELS).

EFFECTIVE DATE: December 3, 1987.

ADDRESS: Dr. Orval Kerchner, Acting Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Bruce R. Weber, Food Grains Group Leader, Commodity Analysis Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013 or call (202) 447-4146. The Final Regulatory Impact Analysis describing the options considered in developing this notice of determination is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052
Feed Grains Production Stabilization	10.055
Wheat Production Stabilization	10.058
Rice Production Stabilization	10.065

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

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

General Information

General descriptions of the statutory basis for the determinations which are set forth in this notice are set forth in the **Federal Register** Vol. 51, No. 92, Page 17601; No. 141, Page 26452; No. 163, Page 30083; No. 168, Page 30886; and No. 168, Page 30889.

This notice affirms the following deteminations previously made and announced by the Secretary, beginning May 30, 1986, with respect to the 1987-crops of wheat, feed grains, rice and cotton (upland and ELS).

Determinations

1. *Loan and Purchase Level.* In accordance with sections 107D(a)(1), 105(a)(1), 101A(a)(1) and 103(h)(2) of the 1949 Act, the price support loan and purchase level per bushel, unless otherwise indicated, shall be $2.28 for wheat, $1.82 for corn, $1.74 ($3.11 per cwt.) for sorghum, $1.49 for barley, $0.94 for oats, and $1.55 for rye, $6.84 per cwt. for rice, $0.5225 per pound for upland cotton, and $0.8140 per pound for ELS cotton.

2. *Established (Target) Price.* In accordance with sections 107D(b)(1)(G), 105C(b)(1)(E), 101A(c)(1)(D) and 103(h)(3)(B) of the 1949 Act, the established (target) price per bushel, unless otherwise indicated, shall be $4.38 for wheat, $3.03 for corn, $2.88 ($5.14 per cwt.) for sorghum, $2.60 for barley, and $1.60 for oats, $11.66 per cwt. for rice, $0.794 per pound for upland cotton, and $0.977 per pound for ELS cotton.

3. *Acreage Reduction/Paid Land Diversion Program.* In accordance with sections 107D(f)(1)(B), 105C(f)(1)(B), 103A(f)(2)(A) and 103(h)(8)(A) of the 1949 Act, acreage reduction programs of 27-½, 20, 35, 25, and 15 percent have been established with respect to the 1987 crops of wheat, feed grains, rice, upland cotton and ELS cotton, respectively.

Accordingly, producers will be required to reduce their 1987 acreages of these commodities for harvest from the respective crop acreage bases established for a farm by at least these established percentages for each commodity in order to be eligible for price support loans, purchases, and payments for each such commodity. Feed grain producers are eligible in accordance with section 105c(f)(5) of the 1949 Act to receive diversion payments on an acreage equivalent to 15 percent of the feed grain crop acreage base established for the farm if the acreage planted to feed grains on the farm for harvest does not exceed 65 percent of such crop acreage base. The diversion payment rates per bushel shall be: $2.00 for corn; $1.90 for sorghum, $1.60 for barley and $0.80 for oats.

4. *Set-Aside Program.* In accordance with sections 107D(f)(1) and (3) and 105C(f)(1) and (3) of the 1949 Act, it has been determined that there will be no set-aside program for the 1987 crops of wheat and feed grains.

5. *Haying and Grazing/Production of Approved Nonprogram Crops.*

A. *Fifty Percent Planting (50/92) Provision.* In accordance with sections 107D(c)(1), 105C(c)(1), 103A(c)(1) and 101A(c)(1) of the 1949 Act, it has been determined that haying and grazing will be permitted on acreage devoted to

conservation uses considered to be planted to the program crop for purposes of determining the individual farm program acreage at the request of individual State ASC committees (STC's). The Secretary has determined that haying and grazing would not have an adverse economic effect. However, STC's must counsel with interested parties before making the request for haying and grazing of 50/92 conservation use acreage. The Secretary has further determined that the production of nonprogram crops on acreage considered to be planted to the program crop for payment purposes will not be permitted.

B. *Designated Acreage Conservation Reserve (ACR) Provision.* In accordance with sections 107D(f), 105C(f) 101A(f) and 103A(f), it has been determined that grazing will be permitted on acreage required to be designated as ACR at the request of individual State ASC committees. However, grazing of ACR will not be permitted during any five-consecutive month period that is established for a State by the State committee, except in emergency situations as determined by the Secretary. The Secretary has further determined that the production of alternate crops on ACR will not be permitted. Haying of cover crops may be approved by the Secretary in emergency situations.

6. *Advance Deficiency and Land Diversion Payments.* In accordance with section 107C of the 1949 Act the Secretary will make available to producers: (1) Advance deficiency payments for the 1987 crops of wheat, feed grains, upland cotton, and rice, (2) and advance land diversion payments for the 1987 crop of feed grains. When they enroll in the 1987 wheat, feed grain, upland cotton and rice programs, wheat and feed grain producers may request 40 percent of their projected deficiency payments while rice and upland cotton producers may request 30 percent of their projected deficiency payments. Fifty percent of the advance deficiency payments will be paid in cash and the balance of the advanced amount will be paid in generic commodity certificates. At the time of enrollment, feed grain producers may request 50 percent of their diversion payments of which one-half will be paid in commodity certificates and the balance in cash. No advance deficiency payments will be offered to ELS cotton producers.

7. *Binding Contracts.* Contracts signed by program participants will be considered binding at the end of the sign-up period and will provide for liquidated damages if producers do not comply with contractual arrangements. It has been determined that binding contracts will ensure a high level of compliance by those producers enrolling in the program and will also result in a more effective program.

8. *Cross and Offsetting Compliance.* In accordance with sections 107D(n)(2), 105C(n)(2), 103A(n)(2), 103(h)(16)(c) and 101A(n)(2) of the 1949 Act, it has been determined that limited cross compliance will be required as a condition of eligibility for program benefits for wheat, feed grains (excluding oats), rice and upland cotton but not for ELS cotton. In accordance with sections 107D(i), 105C(i) and 103(h)(13) of the 1949 Act, it has been determined that offsetting compliance by wheat, feed grain and ELS cotton program participants will not be required as a condition of eligibility for program benefits.

9. *Establishment of Acreage Bases And Adjustments.* In accordance with section 503 of the 1949 Act, farm acreage bases will be established for the 1987 crop year. Adjustments in crop acreage bases for the 1987 program as provided in section 505 will not be allowed. In accordance with section 504 of the 1949 Act, it has been determined that crop acreage base adjustments will be allowed to reflect crop rotation practices and other factors in determining fair and equitable crop acreage bases.

10. *Establishment of Program Payment Yields.* In accordance with section 506 of the 1949 Act it has been determined that the actual yield per harvested acre for the 1987 crop and subsequent crop years of wheat, feed grains, rice and upland cotton will not be considered in establishing subsequent year farm program payment yields.

11. *Marketing Loan*—A. *Wheat and Feed Grains.* In accordance with sections 107D(a)(5), and 105C(a)(4) of the 1949 Act, it has been determined that marketing loans will not be implemented for the 1987 crops of wheat or feed grains. The price support loan and purchase levels applicable to such crops have been lowered to the maximum extent possible and it has been determined that this action is sufficient to maintain a competitive market position. The implementation of a marketing loan program for such crops would greatly increase program costs while program benefits would be minimal.

B. *Upland Cotton.* In accordance with section 103A(a)(5), the Secretary determined on October 30, 1986 that the prevailing adjusted world price for upland cotton was below the upland cotton price support loan rate. Accordingly, the Secretary will implement Plan B of the upland cotton program. The loan repayment rate shall be equal to the lesser of the loan level or the adjusted world market price.

C. *Rice.* In accordance with section 101A(a)(5) of the 1949 Act, it has been determined that a producer of 1987 crop rice may repay a price support loan for the 1987 crop of rice at a level that is the lesser of (1) the price support loan level or (2) the higher of (i) 50 percent of the rice price support loan rate or (ii) the prevailing world market price for rice. It has been determined that a producer shall not be required to purchase a negotiable marketing certificate as a condition of repaying the rice price support loan at a lower level.

12. *Loan Deficiency Payments.* In accordance with sections 107D(b), 105C(b), 101A(b) and 103A(b) of the 1949 Act, it has been determined that, with respect to the 1987 price support and production adjustment programs, loan deficiency payments will not be available for wheat, feed grains, or rice but will be available for upland cotton. It has been determined that offering producers loan deficiency payments in lieu of obtaining a price support loan or purchase agreement will reduce the quantity of upland cotton pledged as collateral for price support loans when a marketing loan is in effect but would not significantly reduce such quantities of rice pledged as collateral. Since, for the 1987 crops, marketing loans are available only with respect to upland cotton and rice, loan deficiency payments will not be available for feed grains and wheat producers.

13. *Inventory Reduction.* In accordance with sections 107D(g), 105C(g), 101A(g), and 103A(g) of the 1949 Act, it has been determined that the inventory reduction program will not be implemented for the 1987 crops of wheat, feed grains, rice, and upland cotton since such a program would encourage producers to plant non-program crops on available crop acreage and thereby adversely affect producers of such non-program crops.

14. *Advance Recourse Commodity Loans.* In accordance with section 424 of the 1949 Act, it has been determined that advance recourse price support loans shall not be made available to producers since advance deficiency payments for wheat, feed grains, rice and cotton and advance diversion payments for feed grains will substantially augment private lending to producers and therefore ease farm credit problems of producers. Further, implementing this program could

encourage producers to place additional encumbrances upon crops yet to be produced which could result in increased financial stress for producers after harvest.

15. *Farmer-Owned Reserve Program.* In accordance with section 110 of the 1949 Act, it has been determined that there will be no direct entry into the farmer-owned reserve (FOR) program for the 1987 crop of wheat and feed grains. It has been further determined that upper limits on the total quantity of wheat and feed grains stored under the FOR will be established at 17 percent for wheat and 7 percent for feed grains of the total estimated use for the 1987–88 marketing year. It has also been determined that if reserve quantities exceed the established upper limits at the time that 1987-crop wheat and feed grain loans mature, no entry into the reserve will be permitted.

16. *Inclusion of Barley.* In accordance with section 105(c)(1)(F) of the 1949 Act, it has been determined that barley is eligible for 1987 feed grains program payments since inclusion of barley in the feed grain acreage reduction program permits the alignment of barley stocks with barley demand.

17. *Exemption of Malting Barley.* In accordance with section 105C(e)(2) of the 1949 Act, it has been determined that malting barley shall not be exempt from the feed grain acreage reduction program since a large portion of barley production is planted to malting barley varieties and exclusion of such varieties from any production adjustment requirements would greatly reduce the effectiveness of the feed grain program.

18. *Non-Recourse Loans and Purchases for Corn Silage Grain Equivalent.* In accordance with section 105C(a) of the 1949 Act, it has been determined that corn silage grain equivalent will not be eligible for non-recourse loans and purchases since an increase in program costs would result in only marginal increases in program benefits.

19. *ELS and Upland Seed Cotton Loan.* In accordance with section 103(h)(17) of the 1949 Act and section 5 of the Charter Act it has been determined that recourse loans will be made available to producers for ELS and upland seed cotton under the same provisions that were applicable to the 1986 crops of ELS and upland cotton.

20. *Cost Reduction Options.* In accordance with section 1009 of the 1985 Act it has been determined that the Secretary will reserve the right to initiate cost reduction options if subsequent changes occur in supply and demand conditions.

Authority: Sec. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (7 U.S.C. 714b and 714c); Secs. 101, 101A, 103(h), 105B, 107C, 107D, 107E, 109, 110, 401, 424, 504, and 505 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 1446, 1383, as amended, 1448, 91 Stat. 950, as amended, 951, as amended 63 Stat. 1054, as amended, 99 Stat. 1461, as amended, 1462 (7 U.S.C. 1433c, 1441, 1441–1, 1444–1, 1444–b, 1445b–2, 1445b–3, 1445b–4, 1445d, 1445e, 1421, 1464 and 1465). Section 1009 of the Food Security Act of 1985, as amended, 49 Stat. 1453, as amended (7 U.S.C. 1308a)

Signed at Washington, DC on November 20, 1987.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–27774 Filed 12–2–87; 8:45 am]

BILLING CODE 3410–05–M

Food Safety and Inspection Service

[Docket No. 87–021N]

SLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists and makes available to the public memoranda issued by the Standards and Labeling Division (SLD), Technical Services, Food Safety and Inspection Service (FSIS), which contain significant new applications or interpretations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy concerning labeling.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC. 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION: FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132, and 381.134) to be used on federally inspected meat and poultry products. Pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the regulations promulgated thereunder, meat and poultry products which do not bear approved labels may not be distributed in commerce.

FSIS's prior label approval program is conducted by label review experts within SLD. A variety of factors, such as continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which SLD must resolve as part of the prior label approval process. In interpreting the Acts of regulations to resolve these issues, SLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by SLD are issued in writing in memorandum form. This document lists those SLD policy memoranda issued from April 1, 1987, through September 30, 1987.

Persons interests in obtaining copies of any of the following SLD policy memoranda, or in being included on a list for automatic distribution of future SLD policy memoranda, may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Memo No.	Title and date	Issue	Reference
105	Labeling Requirements for Pump-Cured Bacon Products Treated with d-or dl-alpha-tocopherol in Surface Applications, April 13, 1987.	What are the labeling requirements for pump-cured bacon which has been surface treated with d-or dl-alpha-tocopherol?	9 CFR 317.2(f)(1).
106	Poultry Bacon, May 4, 1987	Can bacon products be prepared from poultry and, if so, how are they labeled and controlled?	N/A.
019A	Negative Ingredient Labeling, May 4, 1987	Appropriate policy for the approval or denial of meat and poultry product labels bearing negative ingredient statements.	Replaces Policy Memo 019.
107	Use of "New" and Similar Terms, August 18, 1987	Under what conditions may the terms "New," "Now," and similar declarations be used on approved labeling?	N/A.
108	Water-Misted and Ice-Glazed Meat and Poultry Products, September 22, 1987.	What is the appropriate labeling for meat and poultry products that are protected with a thin layer of water or ice?	N/A.

The SLD policies specified in these memoranda will be uniformly applied to all relevant labeling applications unless modified by future memoranda or more formal Agency action. Applicants retain all rights of appeal regarding decisions based upon these memoranda.

Done at Washington, DC, on November 30, 1987.

Margaret O'K. Glavin,

Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service.

[FR Doc. 87-27846 Filed 12-2-87; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Pacific Northwest Region; Delegation of Authority

AGENCY: Forest Service, USDA.

ACTION: Notice of delegation.

SUMMARY: The Regional Forester of the Pacific Northwest Region of the Forest Service has delegated authority to the Regional Director of Lands and Minerals to issue all easements and reservations for construction and use of roads under authority of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1761). The delegation is being issued in a Regional supplement to chapter 2730 of the Forest Service Manual, the principal source of internal direction to Forest Service line and staff officers.

EFFECTIVE DATE: This delegation was effective on November 17, 1987, the date the directive was signed.

FOR FURTHER INFORMATION CONTACT: Questions about the exercise of this delegation may be addressed to Eugene Fontenot, Leader Rights-of-Way, Pacific Northwest Region, Forest Service, USDA, 319 SW. Pine Street, P.O. Box 3623, Portland, Oregon 97208, Telephone: (503) 221-2921.

Dated: November 24, 1987.

Richard A. Ferraro,

Acting Regional Forester.

[FR Doc. 87-27722 Filed 12-2-87; 8:45 am]

BILLING CODE 3410-11-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting Rescheduling

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces that the previously announced 2-4 December 1987 meeting of the President's General Advisory Committee on Armd Control and Disarmament has been rescheduled to 12-14 January 1988.

The previously announced purpose, authority, and agenda items for this closed meeting are unchanged.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 87-27760 Filed 12-2-87; 8:45 am]

BILLING CODE 6820-32-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Art's next scheduled meeting is Thursday, December 19, 1987 at 10:00 am in the Commission's office at 708 Jackson Place NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquires regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC November 23, 1987.

Charles H. Atherton,

Secretary.

[FR Doc. 87-27720 Filed 12-2-87; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 38-87]

Foreign-Trade Zone 100, Dayton, OH; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Dayton Foreign-Trade Zone, Inc. (GDFTZ), grantee of Foreign-Trade Zone 100, requesting authority to expand the zone to include a 39-acre site in Dayton, within the Dayton Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 25, 1987.

The existing zone (452 acres), approved in May 1984, is located at the Dayton International Airport, 10 miles north of downtown Dayton in Vandalia, Ohio.

The expansion would involve the addition of a 39-acre site, located 1.5 miles southwest of downtown Dayton. The site is situated within the City's Western Area Enterprise Zone, designated under Ohio law. It is being developed for industrial/commercial uses and includes the old Dayton Press Building located in the 2300 block of McCall Avenue. The owner/developer is MetroWest Partners, an Ohio general partnership and affiliate of the Brunner Companies. No requests for manufacturing approvals were sought in the application.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chariman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Building, 55 Erieview Plaza, Cleveland, Ohio 44114; and Colonel Robert L. Oliver, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, Kentucky 40201-0059.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 22, 1988.

A copy of the application is available for pubic inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Dayton International Airport, International Arrivals Area, Vandalia, Ohio 45377

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Room 1529, Washington, DC 20230

Dated: November 25, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-27710 Filed 12-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 37-87]

Proposed Foreign-Trade Zone El Paso, TX; Application for Additional General-Purpose Zone

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Westport Economic Development Corporation (WEDC), a Texas not-for-profit corporation, requesting authority to establish an additional general-purpose foreign-trade zone in El Paso, Texas, within the El Paso Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 23, 1987. WEDC is authorized to make the proposal under Bill No. SB1206, 70th Texas State Legislature, Regular Session (May 27, 1987).

The proposed WEDC zone would be the second zone for the El Paso area. The city of El Paso is the grantee of the existing zone, which was established in 1981 (FTZ 68, Board Order 175, 46 FR 22929). The zone is located at the City-owned Butterfield Trail Industrial Park (589 acres), adjacent to the El Paso International Airport.

WEDC proposes to establish an additional general-purpose foreign-trade zone at a new industrial park (2,274 acres) in northwest El Paso at Transmountain Road and Interstate-10, some 20 miles northwest of the existing zone. The site is owned by Westside Joint Venture, Surgikos, Inc. and the Rock-Tenn Company, and is being developed by KASCO Ventures, Inc.

The application contains evidence of the need for additional zone services in the El Paso area, indicating that the existing zone does not have space for new large-scale zone activity. The application contains a letter from the City of El Paso indicating the need for a second site, and that it wishes to limit its involvement as grantee to the existing zone site. The applicant indicates there is user-interest in the new site for large-scale warehousing and manufacturing of products such as computer keyboards, home appliances, food processing, hospital supplies and packaging materials. Specific manufacturing approvals are not being sought at this time. Such request will be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chariman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Don Gough, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057–3012; and Lt. Colonel Kent R. Gonser, District Engineer, U.S. Army Engineer District Albuquerque, P.O. Box 1580, Albuquerque, New Mexico 87103–1580.

Comments concerning the proposal are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 22, 1988

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Office of the District Director, U.S. Customs Service, P.O. Box 9516, El Paso, TX 79985

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: November 25, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-27711 Filed 12-2-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

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

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background:

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

Opportunity to Request a Review:

Not later than December 31, 1987, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

Antidumping Duty Proceeding and Period

Porcelain-On-Steel Cooking Ware from Mexico
05/20/86–11/30/87

Porcelain-On-Steel Cooking Ware from Taiwan
05/20/86–11/30/87

Low-Fuming Brazing Copper Wire and Rod from New Zealand
12/01/86–11/30/87

Steel Wire Strand for Prestressed Concrete from Japan
12/01/86–11/30/87

Polychloroprene Rubber from Japan
12/01/86–11/30/87

Clear Sheet Glass from Italy
12/01/86–11/30/87

Tuners (of the type used in consumer electronic products from Japan)
12/01/86–11/30/87

Photo Albums and Filler Pages from the Republic of Korea
12/01/86–11/30/87

Photo Albums and Filler Pages from Hong Kong
12/01/86–11/30/87

Porcelain-On-Steel Cooking Ware from the People's Republic of China
05/20/86–11/30/87

Certain Carbon Steel Butt-Weld Pipe Fittings from Brazil
08/11/86–11/30/87

Certain Carbon Steel Butt-Weld Pipe Fittings from Taiwan
08/11/86–11/30/87

Elemental Sulfur from Canada
12/01/86–11/30/87

Cellular Mobile Telephones and Subassemblies from Japan
12/01/86–11/30/87

Certain Carton Closing Staples and Staple Machines from Sweden
12/01/86–11/30/87

Animal Glue and Inedible Gelatin from the Netherlands
12/01/86–11/30/87

Animal Glue and Inedible Gelatin from West Germany
12/01/86–11/30/87

Animal Glue and Inedible Gelatin from Sweden
12/01/86–11/30/87

Animal Glue and Inediable Gelatin from Yugoslavia
12/01/86–11/30/87

Large Electric Motors from Japan
12/01/86–11/30/87

Countervailing Duty Proceeding and Period

Litharge, Red Lead & Lead Stabilizers from Mexico
01/01/86–12/31/86
Toy Balloons and Playballs from Mexico
01/01/86–12/31/86
Cement from Costa Rica
10/01/86–09/30/87
Pectin from Mexico
01/01/86–12/31/86
Polypropylene Film from Mexico
01/01/86–12/31/86
Porcelain-on-Steel Cooking Ware from Mexico
03/07/86–12/31/86

Seven copies of the request should be submitted to the Acting Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by December 31, 1987.

If the Department does not receive by December 31, 1987 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

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

Dated: November 24, 1987.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 87–27713 Filed 12–2–87; 8:45 am]

BILLING CODE 3510–DS–M

[C–274–002]

Carbon Steel Wire Rod From Trinidad and Tobago; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of changed circumstances administrative review and revocation of countervailing duty order.

SUMMARY: On October 9, 1987, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on carbon steel wire rod from Trinidad and Tobago and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment. We received no comments. We determine that domestic interested parties are no longer interested in continuation of the order, and we are revoking the order. In accordance with the domestic parties' notifications, the revocation will apply to all carbon steel wire rod entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1987, the Department of Commerce ("the Department") published in the Federal Register (52 FR 37815) the preliminary results of its changed circumstances administrative review of the countervailing duty order on carbon steel wire rod from Trinidad and Tobago (49 FR 480, January 4, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Imports covered by the review are shipments of Trinidad and Tobagan carbon steel wire rod, currently classifiable under item 607.1700 of the TSUSA. These imports are currently classifiable under HS item numbers 7213.3900, 7213.4900, and 7213.5000. The review covers the period from October 1, 1984.

Final Results of Review and Revocation

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received no comments.

As a result of our review, we determine that domestic interested parties are no longer interested in continuation of the countervailing duty order on carbon steel wire rod from Trinidad and Tobago and that the order should be revoked on this basis.

Therefore, we are revoking the order on carbon steel wire rod from Trinidad and Tobago effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to countervailing duties and to refund with interest any estimated countervailing duties collected with respect to those entries.

This administrative review, revocation, and notice are in accordance with section 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and 19 CFR 355.41, 355.42.

Dated: November 24, 1987.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 87–27712 Filed 12–2–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–703]

Initiation of Antidumping Duty Investigation; Granular Polytetrafluoroethylene Resin From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of granular polytetrafluoroethylene resin (granular PTFE resin) from Italy are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may

determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 21, 1987, and we will make ours on or before April 14, 1988.

EFFECTIVE DATE: December 3, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp or Brian H. Nilsson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 377–1769 or 377–5332.

SUPPLEMENTARY INFORMATION:

The Petition

On November 6, 1987, we received a petition filed in proper form by E.I. Du Pont de Nemours & Co., Inc., on behalf of the U.S. industry producing granular PTFE resin. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleges that imports of granular PTFE resin from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930 (the Act), as amended (19 U.S.C. 1673) (1982), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioner's estimate of United States price was based on an Italian manufacturer's delivered prices to two customers in the United States. Petitioner made adjustments for ocean freight, U.S. inland freight, Italian inland freight, and warehousing, credit and selling expense, U.S. duty, and export packing.

Petitioner cited Italian home market price information based on transactions prices for the same manufacturer's granular PTFE resin. Petitioner made adjustments for credit and selling, freight, and warehousing expenses.

Based on a comparision of United States price and foreign market value, petitioner alleges a dumping margin of 55 percent.

After analysis of petitioner's allegation and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on granular PTFE from Italy and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of granular PTFE resin from Italy are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 14, 1988.

Scope of Investigation

The product in this investigation is granular polytetrafluoroethylene resin, filled and unfilled, provided for in item 445.54 of the *Tariff Schedules of the United States* (TSUS) and currently classifiable under Harmonized System (HS) item number 3904.61.00. Polytetrafluoroethylene dispersions in water and fine powders are not covered by this investigation.

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this harmonized system by January 1, 1988. In view of this, we will be providing both the appropriate TSUS item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUS, the HS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUS item numbers in all new item petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Additionally, all customs offices have references copies, and petitioners may contact the Import Specialist at their local customs office to consult the schedule.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 21, 1987, whether there is a reasonable indication that imports of granular PTFE resin from Italy materially injure, or threaten material injury to, a U.S. industry. If its determination is negative the investigation will terminate; otherwise it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

November 27, 1987.

[FR Doc. 87–27798 Filed 12–2–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–707]

Initiation of Antidumping Duty Investigation; Granular Polytetrafluoroethylene Resin From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of granular polytetrafluoroethylene resin (granular PTFE resin) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 21, 1987, and we will make ours on or before April 14, 1988.

EFFECTIVE DATE: December 3, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp or Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377–1769 or 377–2613.

SUPPLEMENTARY INFORMATION:

The Petition

On November 6, 1987, we received a petition filed in proper form by E.I. Du Pont de Nemours & Co., Inc., on behalf of the U.S. industry producing granular PTFE resin. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleges that imports of granular PTFE resin from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioner's estimate of United States price was based on a Japanese manufacturer's delivered prices to three customers in the United States. Petitioner made adjustments for ocean freight, U.S. inland freight, commission, Japanese inland freight, warehousing, credit expense, U.S. duty, and export packing.

Petitioner cited Japanese home market price information based on transaction prices for the same manufacturer's granular PTFE resin. Petitioner made adjustments for commissions, and credit, freight, and warehousing expenses.

Petitioner also provided information concerning the Japanese manufacturer's cost of production. The cost information is based on the petitioner's costs adjusted for known differences between the petitioner's and the Japanese manufacturer's costs. On this basis, the home market price is below the cost of production.

Therefore, petitioner based foreign market value on constructed value which it calculated by adding the statutory minimum of eight percent profit to the cost of production.

Based on a comparison of United States price and foreign market value, petitioner alleges a dumping margin of 103 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on granular PTFE from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of granular PTFE resin from Japan are being, or are likely to be, sold in the United States as less than fair value. We are also investigating the allegation of sales below the cost of production. If our investigation proceeds normally, we will make our preliminary determination by April 14, 1988.

Scope of Investigation

The product covered by this investigation is granular polytetrafluoroethylene resin, filled and unfilled, provided for in item 445.54 of the *Tariff Schedules of the United States* (TSUS) and currently classifiable under Harmonized System (HS) item number 3904.61.00. Polytetrafluoroethylene dispersions in water and polytetrafluoroethylene fine powders are not covered by this investigation.

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this harmonized system by January 1, 1988. In view of this, we will be providing both the appropriate TSUS item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUS, the HS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUS item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Additionally, all customs offices have reference copies, and petitioners may contact the Import Specialist at their local customs office to consult the schedule.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 21, 1987, whether there is a reasonable indication that imports of granular PTFE resin from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative the investigation will terminate; otherwise it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 87-27799 Filed 12-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-001]

Certain Steel Wire Nails From Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain steel wire nails from Korea that was in effect prior to October 1, 1984. The review covers three manufacturers/exporters of this merchandise and the consecutive periods from February 3, 1982 through September 30, 1984. The review indicates the existence of dumping margins during the period.

One firm provided an inadequate response to our questionnaire. Therefore, for that firm we used the best information available for assessment purposes.

On October 1, 1985, the Department of Commerce published in the **Federal Register** (50 FR 40045) the final results of an administrative review and revocation of the antidumping duty order on certain steel wire nails from Korea, effective October 1, 1984. Therefore, no antidumping duties cash deposits are required on this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 3, 1987.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery,

Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/2923.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 35266) an antidumping duty order on certain steel wire nails from Korea. We began this review of the antidumping duty order under our old regulations. After the promulgation of our new regulations, two respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review in the **Federal Register** on July 9, 1986 (51 FR 24883). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate HS and *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact Import Specialists at their local Customs offices to consult the schedule.

Imports covered by the review are shipments of certain steel wire nails, currently classifiable under items 646.2500 and 646.2600 of the TSUSA. These products are currently classifiable under HS item numbers 7317.00.55.10 and 7317.00.55.20.

The review covers three manufacturers/exporters of Korean nails, Kabul/Dong-A Nails Mfg. Co., Ltd. and Kuk Dong Metal Ind. Co., Ltd., and the consecutive periods from February 3, 1982 through September 30, 1984.

Kuk Dong Metal Ind. Co., Ltd. provided an inadequate response to the Department's questionnaire. Therefore, for this firm the Department used the best information available, which is the margin from the fair value investigation.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed c&f price to unrelated purchasers in the United States. We made deductions, where applicable, for foreign inland freight, ocean freight and fob charges. We did not make a claimed adjustment to the U.S. price for value added tax (VAT) because these taxes were not included in the home market price or the U.S. price of the subject merchandise. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the ex-factory packed price to unrelated purchasers in Korea. We made adjustments, where applicable, for credit, difference in packing costs, and differences in the physical characteristics of the merchandise. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value we preliminarily determine that the following margins exist for the consecutive periods from February 3, 1982 through September 30, 1984:

Manufacturer/Exporter	Margin (Percent)
Kabul/Dong-A Nails Mfg. Co., Ltd.	0.06
Kuk Dong Metal Ind. Co., Ltd.	5.40

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 8 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

The Department revoked the antidumping duty order on certain steel wire nails from Korea, effective October 1, 1984 (50 FR 40045, October 1, 1985). This administrative review, covering the consecutive periods from February 3, 1982 through September 30, 1984, does not affect the revocation of the antidumping duty order. Therefore, we will instruct the Customs Service to continue to liquidate entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: November 24, 1987.

Gilbert B. Kaplan

Acting Assistant Secretary for Import Administration.

[FR Doc. 87-27800 Filed 12-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-603]

Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Stainless Steel Hollow Products From Sweden

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY. As a result of the United States International Trade Commission's (ITC) recent negative injury determination on imports of welded stainless steel hollow products (SSHP) from Sweden and the United States Court of International Trade's decision in *Badger-Powhatan* v. *United States*, Slip Op. 86-38 (April 2, 1986), the Department of Commerce ("the Department") is excluding welded SSHP from the scope of this order.

Suspension of liquidation will remain in effect for all unliquidated entries, or warehouse withdrawals, for consumption of seamless SSHP from Sweden made on or after May 22, 1987, the date on which the Department published its preliminary determination notice in the **Federal Register**. These entries will be liable for the possible assessment of antidumpting duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: December 3, 1987.

FOR FURTHER INFORAMTION CONTACT: Gregory G. Borden, (202) 377–3003, or Mary S. Clapp, (202) 377–1769, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

On October 9, 1987, (52 FR 37810) the Department published a final determination of sales at less than fair value for stainless steel hollow products including pipes, tubes, hollow bars and blanks therefor, of circular cross section, containing over 11.5 percent chronium by weight, as provided for under *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers 610.5130, 610.5202, 610.5229, and 610.5230 (seamless), and 610.3701, 610.3727, 610.3741, 610.3742, and 610.5231 (welded). These products are also provided for under the Harmonized System (HS) of Customs nomenclature item numbers 7304.41.00 and 7304.49.00 (seamless), and 7306.40.10 and 7306.40.50 (welded).

On November 18, 1987, in accordance with section 735(d) of the Tariff Act of 1930, as amended, ("the Act") (19 U.S.C. 1673d(d)), the ITC notified the Department that imports of seamless SSHP are materially injuring a United States industry. The ITC also notified the Department that imports of welded SSHP are not materially injuring, or threatening material injury to, a United States industry. Accordingly, we are excluding welded SSHP from the scope of our order because of the ITC negative determination.

Also, subsequent to the publication of the final determination, we were notified by petitioners and Sandvik, AB (SAB), producers of seamless SSHP, that certain clerical errors were found in our calculations for SAB. The Department conducted a review based on these comments and made the following corrections:

1. We corrected the cash discount variable in order to arrive at the accurate credit expense dollar figure to be deducted for purposes of the net U.S. price;

2. We recalculated the indirect selling expense offsets in making exporter's sales price comparisons;

3. We corrected the total quantities used in calculating the weighted-average margin by ensuring that the correct converted unit quantity figures were used;

We recalculted the U.S. duty figure to be deducted for articles imported for further processing by applying the duty percentage against the transfer price instead of the gross U.S. price of the processed merchandise; and

5. We deleted U.S. sales of resold merchandise from the computer data base.

We hereby amend our final determination to correct these errors and change the weighted-average dumping margin from 26.46 percent to 20.47 percent for the products remaining under the scope of this investigation.

Suspension of Liquidation for Seamless SSHP

In accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of seamless SSHP from Sweden, TSUSA item numbers 610.5130, 610.5202, 610.5229, and 610.5230. These antidumping duties will be assessed on all unliquidated entries of seamless SSHP entered, or withdrawn from warehouse, for consumption on or after May 22, 1987, the date the Department published its preliminary determination.

Termination of Suspension of Liquidation for Welded SSHP

In accordance with section 735(c)(2)(A) of the Act, we are directing the United States Customs Service to terminate the suspension of liquidation for all entries of welded SSHP from Sweden, TSUSA item numbers 610.3701, 610.3727, 610.3741, 610.3742, and 610.5231, that were entered, or withdrawn from warehouse, for consumption on or after May 22, 1987. All bonds should be cancelled and estimated antidumping duties deposited should be refunded.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as follows:

Manufacturers/producers/exporters	Average margin percentage
Sandvik, AB	20.47
All others	20.47

This determination constitutes an amendment to the final determination and an antidumping duty order with respect to seamless stainless steel hollow products from Sweden, pursuant to sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e) and 19 CFR 353.48. We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 19 U.S.C. 1673e(a)) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

November 25, 1987.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 87–27709 Filed 12–2–87; 8:45 am]

BILLING CODE 3510–DS–M

National Bureau of Standards

[Docket No. 71156–7256]

National Voluntary Laboratory Accreditation Program; Defense Department Communications Protocols

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Bureau of Standards (NBS) has received a request to establish a laboratory accreditation program under the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP) (15 CFR Part 7). In a letter dated October 27, 1987, the Defense Communications Agency (DCA) Defense Communications Engineering Center requests NBS to establish a program to accredit laboratories that test the computer

industry's implementations of communications protocols used by the Department of Defense. A copy of the DCA letter is appended to this notice. Announcement of this request and of the NBS request for comments with respect to the need for this program is being made under § 7.13(d) of the referenced procedures.

DATE: Comments should be received at the addresses below on or before February 1, 1988.

ADDRESSES: Persons desiring to comment on the need for such a program are invited to submit their comments in writing to Captain Steven Skipper, DCEC, Code R620, 1860 Wiehle Avenue, Reston, VA 2209. A copy of such comments should be sent to the Associate Director for Industry and Standards, National Bureau of Standards, ADMIN A603, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Harvey W. Berger, Manager Laboratory Accreditation, National Bureau of Standard, ADMIN A527, Gaithersburg, MD 20899; (301) 975–4017.

SUPPLEMENTARY INFORMATION:

NVLAP Accreditation

NVLAP is a voluntary system for accrediting laboratories found competent to perform specific testing operations. Competence is defined as a laboratory's ability to meet NVLAP criteria and technical requirements of the test methods for which it seeks accreditation. NVLAP accreditation does not confer or imply certification of products or test data.

Scope of LAP

The scope of this program is set forth in the appended letter from the Defense Communications Agency (DCA). The program will address (A) Defense Data Network (DDN) X.25 Link and Network Layer Protocols as specified in the DCA DDN X.25 Host Interface Specification; (B) the five DoD packet switching High Level protocols (HLP): (1) Internet Protocol (IP), MIL–STD 1777; (2) Transmission Control Protocol (TCP), MIL–STD 1778; (3) File Transfer Protocol (FTP), MIL–STD 1780; (4) Simple Mail Transfer Protocol, MIL–STD 1782; and (5) TELNET, MIL–STD 1782; and (C) the AUTODIN Mode I protocol testing. Laboratories may be accredited for testing one or more of the three protocol types.

Procedure Following Receipt of Comments

After the 60 days comment period, DCA will evaluate all comments pertaining to the need for the proposed program. Upon completion of that evaluation and further consultation with NBS, interested persons (those who submit comments or request to be placed on the NVLAP mailing list) will be notified of the decision by the Director of NBS whether NBS will proceed with the development of this program. NBS plans to coordinate this matter with DCA.

Documents in Public Record

All comments in response to this notice will be made part of the public record and will be available for inspection and copying at the NBS NVLAP Office, Administration Building, Room A531, Gaithersburg, Maryland.

Date: November 19, 1987.

Ernest Ambler,

Director.

Dr. Ernest Ambler,
Director, National Bureau of Standards, ADMIN A1134, Gaithersburg, MD

Dear Dr. Ambler: The Defense Communications Agency (DCA) requests that the National Bureau of Standards (NBS) establish a new program under the National Voluntary Laboratory Accreditation Program (NVLAP). The purpose of the program would be to accredit laboratories for testing the computer industry's implementations of communications protocols used by the Department of Defense. The DoD suite of protocols is now widely used within DoD and commercial packet switched networks. There is a concurrent need to test the DoD suite of protocols. During the next decade these protocols will be replaced by the International Organization of Standardization (ISO) protocol suite as it becomes standardized and implemented at all levels. There is a resulting requirement to test the ISO suite of protocols in the future. We believe the NVLAP is the proper environment in which to accomplish this testing.

DCA envisions the establishment of a NVLAP program at this time to address the range of current protocol testing needs. This program would address: (1) Defense Data Network (DDN) X.25 Link and Network Layer Protocols as specified in the DCA DDN X.25 Host Interface Specification; (2) the five DoD packet switching High Level Protocols (HLP): Internet Protocol (IP), MIL-STD 1777; Transmission Control Protocol (TCP), MIL-STD 1778; File Transfer Protocol (FTP), MIL-STD 1780; Simple Mail Transfer Protocol, MIL-STD 1781; and TELNET, MIL-STD 1782; and (3) the AUTODIN Mode I protocol testing. Laboratories could be accredited for testing one or more of the three protocol types.

The test capability and test program for the three types of protocol testing are now designed to be accomplished by DCA personnel or their contractors using DCA designated equipment and procedures. Our motive to change from in-house testing to that accomplished by accredited laboratories is related to DCA's decreasing resources to conduct the testing, the growing ability of private industry to accomplish this activity, the proven success of the NBS/NVLAP to address similar requirements, and the need to test the ISO protocols in an NVLAP environment in the near future.

Need for Establishing Laboratory Accreditation Program: a. The purpose of protocol testing is to demonstrate adherence of vendor implementations to the protocol specifications and to promote interoperability of communications services in the DoD environment of computer equipment acquired from multiple vendors. Conducting the above protocol testing using laboratories accredited by NBS/NVLAP would provide benefits to those who are making use of the DoD protocols, both private industry and DoD. At the present time, all new or modified vendor computer equipment must pass DCA administered qualification tests of the applicable DDN X.25 Link and Nework Layer protocols or the AUTODIN Mode I protocol before connection approval to DCA data communication systems is granted. The AUTODIN Mode I protocol test was developed by DCA a number of years ago. The DoD DDN X.25 test is based on a verification method developed by NBS's Institute for Computer Sciences and Technology (ICST) for measuring adherence to the Federal Information Processing Standard (FIPS) 100. Testing for the five DoD packet switching High Level Protocols (IP, TICP, FTP, SMIP, and TELNET) is based on a recently developed test capability and is not yet mandatory. Once the accreditation program is established, successful completion of the appropriate tests by accredited laboratories will be a mandatory requirement for all subscriber interfaces prior to connection to any DoD data communications network. The tests required by a specific product are dependent on the equipment type and intended application.

b. Except for DCA conducted testing, there is currently no independent testing program for vendor products employing these protocols. Vendors seeking DCA approval are now constrained by DCA's ability to meet their testing schedule. DCA has been queried by several non-DoD organizations to provide the higher level protocol test capabilities to them for their own internal use in procuring and implementing large networks employing the DoD protocol suite. Use of these capabilities for pretesting in the development environment is another need that could be met by accredited laboratories.

c. DCA strongly believes there is a need for independent X.25 testing by accredited laboratories, not only because the testing is a requirement for DoD networks, but because there is an economic payoff for public and other dedicated packet switched networks. We also foresee future replacement of the X.25 tests with ISO conformance tests (ISO 8882) once this standard is approved. It will also be necessary for the NVLAP program to transition to a full suite of ISO conformance tests once the upper level ISO standards are approved and testing capabilities become available and implemented. The Government Open Systems Interconnection Profile (GOSIP) already calls for conformance testing of the ISO protocols through an NVLAP. As a matter of information, the non-

profit Corporation for Open Systems (COS) is in the process of developing conformance tests for the ISO suite of protocols, and their suite of tests will naturally receive strong consideration as the source for NVLAP implementation of ISO conformance testing.

Number and Users of Laboratories: a. The immediate customers of the accredited laboratory services will be computer/electronics firms selling equipment to the DoD, and commercial users who also use these packet switch protocols. Once the ISO standards are implemented, all subscriber interface products for a commercial or DoD packet switch network could use such accredited testing services.

b. During the three year period DCA has been conducting conformance tests for DDN interfaces, over 80 computer manufacturer's products have successfully passed the DDN X.25 qualification test. An average of one product per month is qualified for the AUTODIN Mode I protocol. In some cases several testing sessions were necessary to achieve success.

c. This activity and the requirement to test all future products or revised products are an indicator of the level of testing that will be required for both X.25 and the HLP testing.

Development of Technical Details: a. DCA will provide technical support for the development of the laboratory accreditation program. DCA will specify the type of hardware and provide the software and necessary documentation required by the testing laboratories for each of the three types of testing capabilities. A potential NVLAP applicant would have to purchase the hardware required to perform the tests, but DCA would provide the software, documentation and procedures. DCA is prepared to provide life cycle support for the test software to ensure the tests continue to keep pace with changes in national and international testing standards as they might apply. DCA will maintain a reference lab for the three protocol testing capabilities (described on page 1) to provide support to the NBS/NVLAP accredited laboratories.

b. DCA is prepared to offer the services of our technical experts to assist NBS/NVLAP in the development and life cycle support of this program. Please contact Captain Steven Skipper, DCEC, Code R620, 1860 Wiehle Avenue, Reston, VA 22090; (703) 437–2103.

Warren P. Hawrylko,

Director, Defense Communications Engineering Center.

[FR Doc. 87–27802 Filed 12–2–87; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Singapore

November 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 4, 1987. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–6736. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established 1987 restraint limits for cotton and man-made fiber textile products in Categories 338/339, 340, 342, 348 and 639, and to reduce the previously established 1987 restraint limits for man-made fiber textile products in Categories 640 and 648, produced or manufactured in Singapore and exported to the United States.

Background

A CITA directive dated December 16, 1986 was published in the **Federal Register** (51 FR 45797) which established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 338/339, 340, 342, 348, 639, 640 and 648, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

In accordance with the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of May 31 and June 5, 1986, as amended, the 1987 limits for Categories 338/339, 340, 342, 348, 639, 640 and 648, are being adjusted, variously, for swing and carryforward, and for carryforward used in 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

The letter published below and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

November 30, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 16, 1986 concerning certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on December 4, 1987, the directive of December 16, 1986 is hereby amended to include adjustments to the previously established restraint limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of May 31 and June 5, 1987, as amended [1]

Category	Adjusted Twelve-Month Limit.[1]
338/339	829,961 dozen of which not more than 456,479 dozen shall be in Category 338.
340	571,102 dozen.
342	93,240 dozen.
348	375,282 dozen.
639	3,263,253 dozen.
640	72,846 dozen.
648	1,383,918 dozen.

[1] These limits have not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these fall within the foreign affairs exception

[1] The agreement provides, in part, that: (1) specific limits may be increased by not more than seven percent during an agreement year, provided that an equal quantity in square yards equivalent is deducted from another specific limit; (2) these same limits may be adjusted for carryforward up to 6 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

to the rulemaking provisions of 5 U.S.C. 553(a) (1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-27783 Filed 12-2-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Negotiated Settlement on Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

November 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreement (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 4, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6580. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish an import limit for cotton and man-made fiber textile products in Categories 359-C/659-C, produced or manufactured in Sri Lanka and exported to the United States during the period which began on June 1, 1987, and extends through May 31, 1988.

Background

A CITA directive dated June 23, 1987 (52 FR 24047) established an import restraint limit for certain cotton and man-made fiber textile products in Categories 359pt./659pt., produced or manufactured in Sri Lanka and exported during the ninety-day period which began on May 29, 1987, and extended through August 26, 1987.

During consultations held in August 1987 between the Governments of the United States and Sri Lanka, agreement was reached to further amend their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended. The two governments agreed to establish a specific limit for cotton and man-made fiber coveralls, designated as Categories 359-C/659-C, produced or manufactured in Sri Lanka and exported to the United States during the twelve-month period which began on June 1, 1987, and extends through May 31, 1988. The United States Government has decided to control imports of Categories 359-C/659-C at the designated level.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

November 30, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 10, 1983, as amended, between the Governments of the United States and Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 4, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 359-C/659-C [1], produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1987 and extends through May 31, 1988, in excess of 1,400,000 pounds [2].

Textile products in Categories 359-C/659-C which have been exported to the United States prior to June 1, 1987 shall not be subject to this directive.

Textile products in Categories 359-C/659-C which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-27784 Filed 12-2-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 359-C, only TSUSA numbers 381.0822, 381.0510, 384.0928 and 384.5222. In Category 659-C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

[2] The limit has not been adjusted to account for any imports exported after May 31, 1987.

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplement to the McNary Dam Final Environmental Impact Statement for an Improved Smolt Collection and Transportation Project on the Columbia River, OR

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a FEIS Supplement.

SUMMARY: 1. In conjunction with other Snake and Columbia River reservoirs, the McNary Reservoir provides slack-water navigation from the Pacific Ocean to Lewiston, Idaho, providing Idaho with its only water access to ocean commerce. The McNary project also provides power generation, fish and wildlife habitat, recreational opportunities, and food control.

2. The holding facilities for juvenile anadromous fish at McNary Dam are presently nearing capacity. Planned improvements and future expansion or the andromous fish runs are expected to soon require significantly greater holding capacity. The Walla Walla District is conducting a feasibility study to evaluate present and future requirements for the juvenile fish facilities at McNary Dam and to select an overall plan of development that best meets the needs and operational requirements of the project.

3. We have estimated that between 14 and 27 raceways will be required to meet future projected numbers of juvenile spring chinook migrants collected at McNary project, and 11 raceways for fall chinook. We will transport approximately 24 million smolts from Mcnary Dam to below Bonneville Dam. Our program commitment to provide the best conditions for fish handling, collection, and transport can be achieved with this design capacity. We plan to provide for smolt survival past each project.

4. Alternatives to be investigated include:

A—Oregon Raceway Sites
B—Raceway on McNary Dam
C—No Action

5. Significant issues to be addressed in the draft supplement include effects of the alternatives on water quality, wildlife, fisheries, including anadromous fish, endangered species, cultural resources, and socioeconomics. The project will be reviewed under all applicable Federal, state, and local statutes.

6. Affected Federal, state, and local agencies, affected Indian Nations, and other interested organizations and parties are invited to participate in scoping for the draft supplement. A formal scoping meeting is not planned; however, comments should be directed to the address given below.

7. The draft supplement should be available in or about April 1988.

ADDRESS: Comments concerning the project and DEIS should be addressed to Chief, Environmental Resources Branch, Department of the Army, Walla Walla District, Corps of Engineers, Walla Walla, Washington 99362-9265. Comments or questions can be telephoned to W.E. McDonald, 509-522-6627 or FTS 434-6627.

James B. Royce,
Colonel, Corps of Engineers,
District Engineer.

[FR Doc. 87-27718 Filed 12-2-87; 8:45 am]
BILLING CODE 3710-GC-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; European Atomic Energy Community and Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(SW)-75, for the transfer from AB ASEA-ATOM, Sweden to Belgonucleaire, Dessel, Belgium, of 95 kilograms of natural uranium and 200 kilograms of uranium enriched to approximately 2.94 percent in the isotope uranium-235 for fabrication of mixed uranium-plutonium fuel elements for use by Kernkraftwerk Brunsbuttel, and the Federal Republic of Germany.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.
Date: November 27, 1987.

George J. Bradley, Jr.
Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-27825 Filed 12-2-87; 2:30 pm]
BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; European Atomic Energy Community and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the reprocessing of U.S.-supplied fuel at the Tokai reprocessing facility in Japan. This subsequent arrangement would extend the U.S.-Japan Joint Determination that safeguards may be effectively applied to the reprocessing at the Tokai facility of U.S. supplied fuel, from December 31, 1987 to December 31, 1988.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.
Date: November 27, 1987.

George J. Bradley, Jr.,
Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-27826 Filed 12-2-87; 2:30 pm]
BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies; Proposed Subsequent Arrangement; Switzerland and European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/EU(SD)-67, for the transfer of 27.91 kilograms of uraniun, containing 359 grams of uranium-235 and 257 grams of plutonium in PWR fuel rods from the Swiss Federal Office of Energy for Gosgen-Daniken AG, Switzerland to Kraftwerk Union, Karlstein, the Federal Republic of Germany for destructive post-irradiation examination.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

The subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.
Date: November 27, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-27827 Filed 12-2-87; 2:30 pm]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-109-000 et al.]

Commonwealth Edison Co. et al.; Electric Rate and Corporate Regulation Filings

November 25, 1987.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER88-109-000]

Take notice that on November 19, 1987, Commonwealth Edison Company (Edison) tendered for filing a Letter Agreement dated October 1, 1987 between Edison and Wisconsin Public Power, Inc. System (WPPI).

The Letter Agreement provides for Edison to make General Purpose Energy available to WPPI at times and in quantities as mutually agreed upon. Edison requests expedited consideration of the filing and an effective date coincident with the Commission's order accepting the rate for filing. Accordingly, Edison requests waiver of the Commission's notice requirements, to the extent necessary.

Copies of this filing were served upon WPPI, the Illinois Commerce Commission and the Public Service Commission of Wisconsin.

Comment date: December 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Power Company

[Docket No. ER88-111-000]

Take notice that on November 20, 1987, Duke Power Company (Duke) tendered for filing a revision to its Contract with the United States of America, Department of Energy, acting by and through the Southeastern Power Administration (SEPA). The revision is in the form of a Letter Agreement dated November 11, 1987 and designated as "Supplemental Agreement No. 2 to Contract No. 89-00-1501-770." It provides for Duke to sell replacement energy, if available, to meet minimum declarations unable to be supplied by SEPA Projects. The term of the Agreement is from November 7, 1987 until such time as SEPA no longer requires such energy but, in any event, no later than January 1, 1989.

Because of the emergency nature of this service, Duke requests an effective date of November 7, 1987.

Copies of this filing were served on SEPA, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: December 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas City Power & Light Company

[Docket No. ER88-113-000]

Take notice that on November 20, 1987, Kansas City Power & Light Company (KCPL) tendered for filing an Interchange Agreement dated September 27, 1987, between KCPL and Kansas Electric Power Cooperative, Inc. (KEPCo). KCPL requests an effective date of September 27, 1987. KEPCo has requested that KCPL provide System Energy during the Wolf Creek Generating Station outages.

In its filing, KCPL states that the rates included in the above-mentioned Agreement are KCPL's rates and charges based for similar service under schedules previously accepted for filing by the Federal Energy Regulatory Commission.

Comment date: December 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Orange and Rockland Utilities, Inc.

[Docket No. ER88-112-000]

Take notice that on November 20, 1987, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing with the Federal Energy Regulatory Commission (Commission) an initial rate schedule for the purchase of electric capacity and associated incidental energy.

The proposed rate schedule would become effective (available to seller) as of January 20, 1988. Under this rate schedule Orange and Rockland would purchase up to an aggregate of 50 mW of capacity and associated energy from certain independent power producers. Potential sellers are industrial and commercial customers that already have installed electric generating equipment on site. The capacity provided by potential sellers under this rate schedule would be available to Orange and Rockland at its request on ten occasions for a maximum of ten hours per occasion for the four-month period from June 1 through September 30. Sellers would be able to sign contracts with durations of one, three or five years. The proposed rate schedule would not be available to utilities or to qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

Orange and Rockland believes that the proposed rate schedule will permit it to utilize existing generating capacity which would otherwise remain idle to meet its peak load in an economically efficient manner, and to postpone costly capacity additions now planned for mid-1990s.

Comment date: December 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Otter Tail Power Company

[Docket No. ER88-110-000]

Take notice that on November 19, 1987, Otter Tail Power Company (OTP) tendered for filing a revised rate schedule for partial requirements electric service and firm wheeling electric service to its FERC electric tariff—Original Volume No. 4, in voluntary compliance with the Federal Energy Regulatory Commission (FERC) simplified filing procedure to allow Public Utilities to adjust rates to reflect changes in taxes as a result of the Tax Reform Act of 1986. OTP requests the Commission permit the proposed filing to become effective retroactive to July 1, 1987. The proposed changes would decrease OTP's revenue from affected customers, by approximately $64,000 based on 12 months ending June 30, 1987.

OTP states that copies of the rate changes and billing comparisons were mailed to affected municipal and governmental customers. Copies of this filing have been mailed to the jurisdictional commissions.

Comment date: December 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Captiol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27761 Filed 12-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES88-17-000 et al.]

UtiliCorp United, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 27, 1987.

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES88-17-000]

Take notice that on November 19, 1987, UtiliCorp United Inc. (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue a corporate guaranty in support of Series D, Secured Debentures in an amount of $15,000,000 (Cdn) to be issued by West Kootenay Power and Light Company, Limited (WKP&L) and for exemption from competitive bidding and negotiated placement requirements. WKP&L is a wholly-owned subsidiary of UtiliCorp British Columbia Ltd., which in turn is a wholly owned subsidiary of Applicant.

Comment date: December 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Maine Electric Power Company, Inc.

[Docket No. ES88-15-000]

Take notice that on November 12, 1987, Maine Electric Power Company, Inc. tendered for filing an Application pursuant to section 204 of the Federal Power Act, seeking authority to issue and renew on or before December 31, 1989, Bank Notes and Commercial Paper maturing one year or less after the date of issuance in an aggregate face amount not exceeding $15,000,000 at any time.

Comment date: December 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Northern Indiana Public Service Company

[Docket No. ER88-114-000]

Take notice that on November 23, 1987, Northern Indiana Public Service Company (NIPSCO) tendered for filing Seventh Revised Sheet No. 3 to its FERC Electric Service Tariff—Fourth Revised Volume No. 1 which has been revised to include an additional delivery point for Wabash Valley Power Association at Steuben County Rural Electric Membership Corporation. Northern Indiana Public Service Company also tendered for filing the following:

Exhibit A, Fifth Supplemental Agreement dated October 15, 1987, to the Interconnection Agreement between Northern Indiana Public Service Company and the Wabash Valley Power Association, Inc., dated April 16, 1984, covering the establishment of a new delivery point located in the SE¼ of the NE¼ of Sec. 5, T34N R13E, in Grant Township, DeKalb County, Indiana.

An Agreement dated October 19, 1987, between said parties to provide for the financial participation of the Wabash Valley Power Association in the construction of the 69KV line to the new delivery point.

Copies of this filing were served upon all customers receiving electric service under NIPSCO's FERC Electric Service Tariff—Fourth Revised Volume No. 1 and the Indiana Utility Regulatory Commission.

NIPSCO requests an effective date of December 15, 1987 for Exhibit A and, therefore, requests waiver of the Commission's notice requirements.

Comment date: December 14, 1987, in accordance with Standard Paragraph E at the end of this document.

4. Kansas Power and Light Company

[Docket No. ER88-115-000]

Take notice that on November 23, 1987, Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated October 27, 1987, with the City of Alma, Alma, Kansas for wholesale service to that community. KPL states that this contract permits the City of Alma to receive service under rate schedule WSM-12/83 designated Supplement No. 8 to R.S. FERC No. 197. The proposed effective date is February 1, 1988. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KPL states that copies of the contract have been mailed to the City of Alma and the State Corporation Commission.

Comment date: December 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Kansas Power and Light Company

[Docket No. ER88-116-000]

Take notice that on November 23, 1987, Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated November 2, 1987, with the City of Vermillion, Vermillion, Kansas for wholesale service to that community. KPL states that this contract permits the City of Vermillion to receive service under rate schedule WSM-12/83 designated Supplement No. 8 to R.S. FERC No. 196. The proposed effective date is February 1, 1988. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KPL states that copies of the contract have been mailed to the City of Vermillion and the State Corporation Commission.

Comment date: December 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Central Maine Power Company

[Docket No. ES88-13-000]

Take notice that on Norvember 16, 1987 Central Maine Power Company tendered for filing an Application pursuant to section 204 of the Federal Power Act, seeking authority to issue and renew on or before December 31, 1989, Bank Notes and Commercial Paper maturing one year or less after the date of issuance in an aggregate face amount not exceeding $15,000,000 at any time.

Comment date: December 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27762 Filed 12-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-67-000 et al.]

Northwest Pipeline Corporation et al.; Natural Gas Certificate Filings

November 25, 1987.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP88–67–000]

Take notice that on November 9, 1987, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108–0900 filed in Docket No. CP88–67–000 a request pursuant to § 157.205(b) of the Regulations under the Natural Gas Act for authorization to construct and operate certain natural gas facilities and to reallocate volumes of gas to facilitate sale and deliveries of natural gas to Cascade Natural Gas Company (Cascade), an existing customer of Northwest's, under the certificate issued in Docket No. CP82–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Northwest indicates that contingent upon the execution of a service contract between Cascade and Ash Grove Cement West, Inc. (Ash Grove), it proposes to construct and operate a new meter station, the Durkee Meter Station, in Section 10 or 11, Township 12 South, Range 43 East in Baker County, Oregon. Northwest proposes to sell up to 84,000 therms of natural gas per day to Cascade under Rate Schedule ODL–1 by utilizing existing quantities of natural gas heretofore authorized for sale and delivery to Cascade at the Green Circle Farm Meter Station (Benton County, Washington), the Longview-Kelso Meter Station (Cowlitz County, Washington) and the Toppenish, Zillah, Granger and Wapato Meter Station (Yakima County, Washington). The reallocated maximum daily delivery quantity (MDDQ) which Northwest proposes to provide at the affected meter stations is set forth below:

Station	Existing MDDQ (therms)	Proposed MDDQ (therms)
Green Circle Farm	6,000	0
Longview-Kelso	423,000	384,000
Toppenish, Zillah, Granger, and Wapato	134,600	95,600
Durkee	0	84,000
Total	563,600	563,600

Northwest states that Cascade proposes to utilize the volumes reallocated to Durkee for system supply to serve Ash Grove.

Northwest estimates that the total cost of the proposed meter station would be approximately $94,500. Northwest indicates that Cascade has agreed to reimburse it for all direct construction costs associated with the construction of the proposed facilities, excluding any Northwest labor charges.

Northwest states that it does not propose to increase the total daily contract quantity of natural gas it is authorized to deliver to Cascade, and that the proposed reallocation of service would have a minor impact on Northwest's annual and peak day deliveries. Northwest further states that the establishment of the proposed new delivery point is not prohibited by the aforementioned rate schedule, and that Northwest has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of its other customers.

Comment date: January 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Eastern Shore Natural Gas Company

[Docket No. CP88–64–000]

Take notice that on October 16, 1987, Eastern Shore Natural Gas Company (Eastern Shore), Post Office Box 615, Dover, Delaware 19903–0615, filed in Docket No. CP88–64–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain services under the authorization issued in Docket No. CP83–40–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Eastern Shore proposes to abandon firm sales service and interruptible transportation service to the Texaco Refining and Marketing Company (Texaco) refinery and methanol plant facilities located at Delaware City, Delaware. Eastern Shore states that the initial firm direct sales service was to serve Tidewater Oil Company by Commission order issued on November 29, 1957, in Docket No. G–12200 which was subsequently succeeded, first by Getty Oil Company and then by Texaco. Eastern Shore states that it is currently authorized to provide up to 3,700 Mcf per day of firm sales service to Texaco. Eastern Shore indicates that although the primary term of Texaco's firm sales contract will expire on January 3, 1988, the parties have agreed to a 3-month extension of time to April 2, 1988. Therefore, Eastern Shore proposes to abandon the firm sales service upon the expiration of the extended contract on April 3, 1988. Eastern Shore states that the abandonment of this firm sales service would not require abandonment of facilities or of service to any other customer of Eastern Shore.

Eastern Shore states that the interruptible transportation service to be abandoned was provided to Texaco at its methanol plant in Delaware City, Delaware from May 1985 to November 1986. Since the mentanol plant was closed indefinitely in December 1986, and is not expected to resume operational status within the foreseeable future, the interruptible transportation agreement under which the service to Texaco was provided has been terminated effective October 31, 1987, it is stated. Eastern Shore indicates that should Texaco decide to resume operations at the methanol plant, Texaco understands that Eastern Shore would be unable to provide interruptible transportation service unless it requests and is granted authority to provide such service.

Comment date: January 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP88–95–000]

Take notice that on November 24, 1987, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP88–95–000 a request pursuant to § 157.205 of the Commissioner's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to add a new sales delivery point, M&R Station No. 2597, to its existing rate schedule SGS service agreement with Arkansas-Louisiana Gas Company (Arkla), under the certificate issued in Docket No. CP82—535–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Texas Eastern seeks authorization to add a new sales delivery point with Arkla at M&R Station No. 2597. The proposed new point of delivery to Arkla is an existing point of interconnection between the system of Texas Eastern and Arkla at M&R Station No. 2597 near McRae in White County, Arkansas. It is further stated that this interconnection served as a transportation delivery point pursuant to section 311 of the Natural Gas Policy Act and was constructed pursuant to § 284.3(c) of the Commission's Regulations. It is asserted that upon receipt of Commission authorization, Texas Eastern would sell and deliver gas to Arkla at the new delivery point and that no additional facilities would be required to provide gas service to Arkla at M&R Station No. 2597.

It is stated that a superceding service agreement is being executed to provide for the delivery to Arkla of quantities of natural gas presently certificated for sale under Texas Eastern's rate schedule SGS with Arkla which would

establish a maximum daily delivery obligation (MDDO) of 650 dekatherms (dth) of natural gas per day for M&R Station No. 2597. Texas Eastern asserts that there would be no changes in the MDDO at the other existing delivery points in the superceding Service Agreement, nor any increase in the total contract quantities. Texas Eastern further asserts that the natural gas quantities delivered to Arkla would be utilized as general system supply by Arkla.

It is stated that the addition of M&R Station No. 2597 would have no effect on Texas Eastern's peak day or annual deliveries. It is averred that to the extent deliveries are made at M&R Station No. 2597, deliveries may be reduced at the other point of delivery to Arkla on a day-to-day operational basis. Texas Eastern asserts that the total contract quantities deliverable under the Service Agreement would not be changed.

Texas Eastern states that natural gas sales to Arkla would be performed pursuant it's rate schedule SGS, FERC Gas Tariff, Fourth Revised Volume No. 1. Texas Eastern avers that it's existing tariff does not prohibit the addition of M&R Station No. 2597. Texas Eastern further avers that the proposal would be accomplished without detriment or disadvantage to it's other customers.

Comment date: January 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27763 Filed 12-2-87; 8:45 am]

BILLING CODE 6717-01-M

Oil Pipeline; Tentative Valuation

November 30, 1987.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative valuation is under consideration for the common carrier by pipeline listed below:

1983 Annual Report

Valuation Docket No. PV-1451-000

Okie Pipe Line Company, P.O. Box 2256, Wichita, Kansas 67201

On or before January 8, 1988, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 87-27764 Filed 12-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9769-002 et al.]

Twin Lakes Associates, Inc., et al.; Surrender of Preliminary Permits

November 27, 1987.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Twin Lakes Associates, Inc.

[Project No. 9769-002]

Take notice that Twin Lakes Associates, Inc., permittee for the proposed Lost Canyon Project, FERC No. 9796, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9796 was issued on June 25, 1986, and would have expired on May 31, 1989. The project would have been located on Lost Canyon Creek, in Chaffee and Lake Counties, Colorado.

The permittee filed the request on April 7, 1987.

2. Twin Lakes Associates, Inc.

[Project No. 9797-002]

Take notice that Twin Lakes Associates, Inc., permittee for the proposed Flume Creek Project, FERC No. 9797, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9797 was issued on June 24, 1986, and would have expired on May 31, 1989. The project would have been located on Cache Creek Ditch, in Lake County, Colorado.

The permittee filed the request on April 7, 1987.

3. Twin Lakes Associates, Inc.

[Project No. 9798-002]

Take notice that Twin Lakes Associates, Inc., permittee for the proposed Boswell Gulch Project, FERC No. 9798, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9798 was issued on June 26, 1986, and would have expired on May 31, 1989. The project would have been located on Boswell Gulch, in Chaffee and Lake Counties, Colorado.

The permittee filed the request on April 7, 1987.

4. Twin Lakes Associates, Inc.

[Project No. 9800-002]

Take notice that Twin Lakes Associates, Inc., permittee for the proposed Oregon Gulch Project, FERC No. 9800, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9800 was issued on June 27, 1986, and would have expired on May 31, 1989. The project would have been located on Lost Canyon Creek, in Chaffee and Lake Counties, Colorado.

The permittee filed the request on April 7, 1987.

5. Twin Lakes Associates, Inc.

[Project No. 9801-002]

Take notice that Twin Lakes Associates, Inc., permittee for the proposed Little Willis Gulch Project, FERC No. 9801, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9801 was issued on June 27, 1986, and would have expired on May 31, 1989. The project would have been located on Little Willis Gulch, in Chaffee and Lake Counties, Colorado.

The permittee filed the request on April 7, 1987.

6. Twin Lakes Associates, Inc.

[Project No. 9802-002]

Take notice that Twin Lakes Associates, Inc., permittee for the proposed Willis Gulch Project, FERC No. 9802, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9802 was issued on July 2, 1986, and would have expired on June 30, 1989. The project would have been located on Willis Gulch in Chaffee and Lake Counties, Colorado.

The permittee filed the request on April 7, 1987.

Standard Paragraph

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27765 Filed 12-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-63-000 et al.]

Cogenic Energy Systems, Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

November 25, 1987.

Take notice that the following filings have been made with the Commission.

1. Cogenic Energy Systems, Inc.

[Docket No. QF88-63-000]

On November 12, 1987, Cogenic Energy Systems Inc. (Applicant), of 9929 Hibert Street, Suite A, San Diego, California 92131, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Cal Lutheran Homes/Walnut Manor in Anaheim, California. The facility will consist of an internal combustion engine generator and necessary heat recovery equipment. Thermal energy in the form of steam will be used for domestic hot water heating. The electric power production capacity of the facility will be 135 kW. The primary source of energy will be natural gas. Construction of the facility will begin May 1, 1988 and will go into service on or about July 1, 1988.

2. Ultra Cogen Systems, Incorporated

[Docket No. QF88-86-000]

On November 10, 1987, Ultra Cogen Systems, Incorporated (Applicant), c/o Mr. Robert Zulandi, of 12500 Fair Lakes Circle, Suite 260, Fairfax, Virginia 22033, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Hercules, Incorporated plant in Covington, Virginia. The facility will consist of two steam generators and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used in the manufacture of resins, paper chemicals, and organic peroxides. The net electric power production capacity of the facility will be 61,500 kW. The primary source of energy will be coal. Construction of the facility will begin in the latter part of 1988.

3. Ultra Cogen System, Incorporated

[Docket No. QF88-87-000]

On November 10, 1987, Ultra Cogen Systems, Incorporated (Applicant), c/o Mr. Robert Zulandi, of 12500 Fair Lakes Circle, Suite 260, Fairfax, Virginia 22033, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Georgia Bonded Fibers, Inc. plant in Buena Vista, Virginia. The facility will consist of two steam generators and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility in the form of steam will be used in the manufacture of coated and uncoated fibers. The net electric power production capacity of the facility will be 61,500 kW. The primary source of energy will be coal. Construction of the facility will begin in the latter part of 1988.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27766 Filed 12-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-1081-001 et al.]

Northeast Energy Associates et al.; Small Power Production and Cogeneration Facilities; Qualifying Status Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

November 27, 1987.

Take notice that the following filings have been made with the Commission.

1. Northeast Energy Associates

[Docket No. QF88-1081-001]

On November 12, 1987, Northeast Energy Associates (Applicant), of Cohasset, Massachusetts submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle congeneration facility will be located in Bellingham, Massachusetts. The facility as originally filed was to consist of three combustion turbine-generators, three heat recovery steam generators, and three extraction/condensing steam turbine-generators. Steam recovered from the facility will be utilized both in an ammonia absorption refrigeration unit to provide refrigerant for the Arctic Circle Cold Storage Corporation's cold/freezer storage facility and by Cove Machinery for steam cleaning and winter space heating. The primary energy source for the facility will be natural gas or oil. The net electric power production capacity of the facility will be 280 MW. The

installation of the facility will begin in February 1988.

By order issued December 12, 1987, the Director of Office of Electric Power Regulation granted certification of the facility as a cogeneration facility under Docket No. QF86-1081-000 (37 FERC ¶ 62,202).

The recertification is requested due to change in the design and the net electric power production capacity of the facility. The number of combustion turbines and heat recovery steam generators have decreased to two each, and the number of steam turbine generators has decreased to one. The net electric power production capacity has increased to 300 MW. All other facility's characteristics remain unchanged.

2. Exxon Company, U.S.A. Eastern Division

[Docket No. QF88-82-000]

On November 9, 1987, Exxon Company, U.S.A., (Applicant), of P.O. Box 61707, New Orleans, Louisiana 70161-1707 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Baton Rouge Gas Plant in Port Allen, West Baton Rouge Parish, Louisiana. The facility will consist of two combustion turbines driving 4000 HP process gas compressors, a supplementary fired heat recovery steam generator and a back pressure steam turbine generator unit. The heat recovered from the facility will be used in the processing of natural gas by removing ethane and heavier components from pipelined natural gas. The electrical power production capacity of the facility will be 900 kW. The primary energy source will be natural gas. The installation of the facility commenced in April 1987.

3. Hanover Regional Solid Waste Authority

[Docket No. QF88-66-000]

On November 2, 1987, Hanover Regional Solid Waste Authority (Applicant), of 44 Frederick Street, Hanover, Pennsylvania 17331 submitted for filing and application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in York County, Pennsylvania. The facility will consist of a biomass-fired steam generator and a multi-stage condensing steam turbine generator. The net electric power production capacity will be 5 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Approximately 0.5 percent of the total energy input during any calendar year period will be from No. 2 fuel oil which will be used for start-up purposes.

4. Ref-Fuel Corporation—Schenley Power Project

[Docket No. QF88-31-000]

On October 19, 1987, Ref-Fuel Corporation (Applicant) of 2601 Pennsylvania, Suite 746, Philadelphia, Pennsylvania 19130 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the Village of Schenley, Armstrong County, Pennsylvania. The facility will consist of two circulating fluidized bed combustion boilers, two steam turbine generators, and related auxiliary equipment. Applicant states that the primary energy source of the facility will be "waste" in the form of bituminous coal refuse. The net electric power production capacity of the facility will be 80 megawatts.

5. Rubenstein Engineering, P.C.

[Docket No. QF88-36-000]

On October 19, 1987, Rubenstein Engineering, P.C. (Applicant) of Two Penn Plaza, Suite 1500, New York, New York 10001 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at the site of the former U.S. Department of Energy's bi-gas plant in Homer City, Indiana County, Pennsylvania. The facility will consist of a circulating fluidized bed combustion boiler, a steam turbine generator, and related auxilary equipment. Applicant states that the primary energy source of the facility will be "waste" in the form of bituminous coal refuse. The net electric power production capacity of the facility will be 15 megawatts.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27767 Filed 12-2-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3297-9]

Reduced Performance Test Frequency for Determining Fluoride Emissions From the Roof Monitors of Alumax of South Carolina in Mt. Holly, SC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notce.

SUMMARY: On October 5, 1987, EPA granted a reduced performance test frequency for determining fluoride emissions from the roof monitors of the four potroom groups at Alumax of South Carolina in Mt. Holly, South Carolina. Previously, Alumax was required to determine fluoride emissions from the roof minitors on a monthly basis as specified in 40 CFR, Part 60, Subpart S—Standards of Performance for Primary Aluminum Reduction Plants. The reduced testing frequency, essentially performing a fluoride emission test once every four months on each roof monitor, was granted as allowed by 40 CFR 60.8(b)(4) because the probability of exceeding the NSPS standard of 1.9 pounds of fluoride per ton of aluminum was determined to be no more than $1X10^{7}$ (based on seven years of fluoride emission test data). In addition, Alumax will continue to maintain records on maintenance and operating procedures in order to assure that fluoride emissions are kept to a minimum.

ADDRESS: Copies of material submitted by Alumax of South Carolina may be examined during normal business hours at the following addresses: United

States Environmental Protection Agency, Region IV-Air Compliance Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365; Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Reinermann, Air Compliance Branch, EPA Region IV at the above address and by telephone at FTS 257-2904 or (404) 347-2904.

SUPPLEMENTARY INFORMATION: On December 11, 1986 (51 FR 44643), EPA reported the results of the review of the existing standards of performance for primary aluminum reduction plants (40 CFR Part 60, Subpart S). Part of this report addressed the testing requirements and suggested that if a facility demonstrated a low probability of exceeding the fluoride emission standard of Subpart S and instituted an operation and maintenance plan to assure continued compliance, then a reduced testing frequency could be granted. Alumax submitted a document ("Analysis to Support a Request for Reduced Performance Test Frequency for Alumax of South Carolina Primary Aluminum Plant", March 25, 1987, Radian Corporation) through the State of South Carolina to support their request for a reduced testing frequency. The document evaluated seven years of fluoride emissions data which supported the claim that the probability of exceeding the fluoride emission standard of Subpart S was very low. In addition, the document stated that operation and maintenance log books will continue to be maintained in order to assure continuous complaince .

Therefore, EPA granted the reduced testing frequency as allowed by 40 CFR 60.8(b)(4). The reduced testing frequency allows Alumax to perform fluoride emission testing on the four roof monitors once every four months. In addition, the test results from a roof monitor will be combined with the most recent test result from the primary control device associated with the tested roof monitor and the combined test result wil be compared to emission parameters for that potroom group. If an exceedance of these emission parameters for that potroom group. If an exeedance of these emission parameters occurs, then additional testing as specified in the above referenced document will be mandatory.

Authority: 42 U.S.C. 7411.

Dated: November 24, 1987.

Charles H. Sutfin,

Acting Deputy Regional Administrator.

[FR Doc. 87-27781 Filed 12-2-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-400009; FRL-3298-1]

Toxic Chemical Release Reporting; Community Right-to-Know; Denial of Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is denying a petition to delete three metals and metal compounds categories, cobalt and compounds, manganese and compounds, and nickel and compounds, from the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986. Section 313(e) allows any person to petition the Agency to modify the list of toxic chemicals for which toxic chemical release reporting is required.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-779), Office of Toxic Substances, Environmental Protection Agency, Rm. E-542, 401 M St. SW., Washington, DC 20460, (202) 554-1411.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The response to the petition is issued under section 313(e)(1) of Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, "SARA" or "the Act"). Title III of SARA is also referred to as the Emergency Planning and Community Right-to-Know Act of 1986.

B. Background

1. *Toxic chemical release reporting.* Section 313 of Title III requires owners and operators of certain facilities that manufacture, process, or otherwise use a listed toxic chemical to report annually their release of such chemicals to all environmental media. Only facilities that have manufacturing operations (in Standard Industrial Classification Codes 20 through 39) and have 10 or more full-time employees must report. Such reports are to be sent to both EPA and the State in which the facility is located, and such reports will be made available to the public through computer telecommunications and other means.

2. *Toxic chemical list and petitions.* Section 313 establishes an initial list of "toxic chemicals" that is composed of 329 entries, 20 of which are categories of chemicals. This list is a combination of lists of chemicals used by the States of Maryland and New Jersey for release reporting under their individual right-to-know laws. Section 313(d) authorizes EPA to modify by rulemaking the list of chemicals covered either as a result of EPA's self-initiated review or in response to petitions under section 313(e).

Section 313(e)(1) provides that any person may petition the Agency to add chemicals to or delete chemicals from the list of toxic chemicals. EPA issued a statement of policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479). This statement provided guidance to potential petitioners regarding the recommended contents and format for submitting petitions. In particular, the Agency stated that " * * * the Agency's individual decision will be largely based on the quality and quantity of information provided by the petitioner" and " * * * [t]he criteria effects—cancer, for example—specified by the petitioner will be the focus of EPA's review of the chemical in question. EPA will not do a broad-based search for information on all criteria-related effects of the chemical." Thus, EPA's decisions on individual petitions will be based primarily on the evaluation of the chemical as it relates to the information provided by the petitioner on specific criteria effects.

EPA may add chemicals to the list if they meet any one of the three toxicity criteria (acute human health effects, chronic human health effects, or environmental toxicity). EPA may delete substances only if they fail to meet all of the criteria.

II. Description of the Petition

The Hall Chemical Company has petitioned the Agency to delete cobalt and compounds, manganese and compounds, and nickel and compounds from the list of toxic chemicals (Ref. 1). EPA received the petition on May 28, 1987 and, under the statutory deadline, must respond by November 24, 1987. The petitioner bases the petition on the fact that a few compounds within each of these categories are not acutely toxic to humans.

III. EPA's Review of Cobalt, Manganese, and Nickel and Their Compounds

A. Chemistry Profile

1. *Focus of the review.* The petitioner, Hall Chemical Company, requested that EPA remove these broad-based chemical categories from the section 313

list and instead list, individually, metal compounds of high toxicity. However, the petitioner did not identify specific highly toxic compounds for listing, did not provide a methodology for developing a suitable (i.e., "highly toxic") list, or proffer a comprehensive justification for delisting specific chemicals. Because of these omissions, the Agency decided to review each metal and its compounds as a category. The Agency has chosen compounds within each group to portray the types of health effects associated with each category of metal compounds.

2. *Definition of the chemical categories.* The proposed reporting rule for section 313 (52 FR 21151) provides brief definitions which were developed for each chemical category to help clarify the scope of each listing. Cobalt, manganese, and nickel are listed separately as metals subject to the reporting requirements. Each metal is also identified as a category (e.g., nickel compounds) and has the following definition in proposed 40 CFR 372.45: "includes any unique chemical substance that contains * * * cobalt, manganese, or nickel * * * as part of that chemical's infrastructure."

These categories include compound classes such as metal hydroxides and oxides, halides, simple and hydrated salts, organometallic compounds, inorganic complexes, etc.

B. Toxicity Evaluation

Substances on the list of toxic chemicals are evaluated for listing or delisting with regard to human health effects (including acute effects, cancer, teratogenic effects, developmental and reproductive toxicity, neurotoxic effects, heritable genetic mutations, and other chronic health effects) and environmental effects (including considerations of acute and chronic toxicity, persistence in the environment, and bioaccumulation).

The petitioner has not provided the Agency with any competent evidence that would allow EPA to address each category in terms of the above effects. The only data provided in the petition were selected acute oral toxicity values for nickel and cobalt powder and for a very few of their compounds.

In identifying health effects associated with each chemical category, the Agency reviewed several well-known toxicity texts, its own health review documents on nickel and manganese, and studies retrieved from a limited search of the published literature (Ref. 2). A review of each type of health effect for every category was not conducted, since significant areas of toxicological concern were identified for each metal and its compounds. Note that only the most important effects identified in the Agency's evaluation are discussed in the summary below. While environmental effects associated with all three chemical categories also have the potential to be significant, a specific review of these effects was not deemed necessary in view of the adverse human health effects that were identified.

1. *Cobalt and compounds.* Cobalt was found to be the cause of severe lesions in cardiac muscle and of causing hypothyroidism and thyroid hyperplasia in excessive drinkers of beer to which cobalt sulfate had been added as a foam stabilizer at a level of 1 ppm. The myocardiopathy was associated with episodes of acute heart failure that was frequently fatal. Similar myocardiopathies were demonstrated in rabbits given cobalt chloride; these and other data provide convincing evidence that cobalt was the causative agent, although alcohol may have served to potentiate the effect of cobalt at these low concentrations. In addition to the thyroid effects observed in the above individuals, hypothyroidism and thyroid hyperplasia have been reported in patients treated with cobalt chloride for anemia. It is postulated that soluble cobaltous ion markedly interferes with the update of iodine. Epidemiologic studies suggest that the incidence of goiter (enlarged thyroid) is higher in regions containing increased levels of cobalt in water and soil.

2. *Manganese and compounds.* The central nervous system (CNS) effects of manganese compounds have been known for a long time. The disorder, manganism, has been described in workers in industries that typically involve exposure to manganese oxide dust or manganese fumes, including ore crushing and packing dust or manganese fumes, including ore crushing and packing mills, in ferroalloy production, use of manganese alloy in the steel industry, in dry cell battery manufacture, and in welding rod manufacture. Chronic manganese poisoning usually evolves through two stages, an initial maniacal state and a chronic stage characterized by parkinsonism, dystonia, and cerebellar ataxia. Regardless of the onset symptoms, once the chronic stage has developed, the neurologic dysfunction is irreversible. The full clinical picture of chronic manganese poisoning most often occurs at exposures to levels above 5 mg/m^3 for periods of 2 to 3 years, but it has been reported to occur at lower levels or after only a few months. The spectrum of neurologic dysfunction observed in chronic manganese neurotoxicity effects in humans can be reproduced, in part, in different animal species, including rats, rabbits, and monkeys (characteristic CNS signs were produced in monkeys exposed to manganese dioxide).

3. *Nickel and compounds.* There is evidence both in humans and animals for the carcinogenicity of nickel, at least in some forms. The strongest evidence of a human cancer risk is for nickel refinery dust from pyrometallurgical sulfide nickel matte refineries, which is classified as a Group A (known human) carcinogen under the Agency's Carcinogen Assessment Guidelines. (51 FR 33992). The fact that nickel subsulfide is a major component of this refinery dust, along with evidence on this particular compound from animal and *in vitro* studies, is sufficient to conclude that nickel subsulfide is also in Group A. For nickel carbonyl, there is sufficient evidence from animal studies to classify it as a group B2 (probable human) carcinogen.

Some biochemical and *in vitro* toxicological studies indicate that nickel ion is the potential carcinogenic form of nickel and its compounds. If this is true, all nickel compounds might be potentially carcinogenic, with potency differences being related to their ability to enter and make the carcinogenic form of nickel available to a susceptible cell.

IV. Summary of Technical Review

Only the most significant human health effects were discussed for each metal and its compounds; these are chronic heart and thyroid effects for cobalt and compounds, neurotoxic effects for manganese and compounds, and carcinogenicity for nickel and compounds. Each of these effects is of sufficient concern to meet the criterial for listing as toxic chemicals. Other toxic effects of concern (health and environmental) were also identified for each category and are discussed in the hazard analysis prepared in response to this petition (Ref. 2).

V. Explanation of Denial

EPA is denying the petition to delete cobalt and compounds, manganese and compounds, and nickel and compounds from the list of toxic chemicals for the following reasons.

The basis of this denial is that for each of the chemical categories, EPA finds that the criteria that Congress set out in section 313(d) are met. EPA reviewed the information provided by the petitioner for a rationale or scheme for distinguishing those compounds within a category and evaluated existing Agency data. This data failed to provide an evaluation of all the relevant toxicity

criteria to support an exclusion from reporting for either specific chemicals within a category or an entire category.

Based on this analysis, the Agency does not believe that it is appropriate to initiate rulemaking to exclude any of the metals or compounds in these chemical categories.

VI. Administrative Record

The record supporting this denial is contained in docket control number OPTS-400009. All documents, including an index of the docket, are available to the public in the OTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OTS Reading Room is located at EPA Headquarters, Rm. NE-G004, 401 M St. SW., Washington, DC 20460.

VII. References

(1) Hall Chemical Company, Petition for Deletion of Cobalt and Compounds, Manganese and Compounds, and Nickel and Compounds, May 21, 1987.

(2) Randecker, L.M., Hazard Assessment of Cobalt and Compounds, Nickel and Compounds, and Manganese and Compounds. USEPA, Office of Toxic Substances, Health and Environmental Review Division. 1987.

Dated: November 24, 1987.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87-27782 Filed 12-2-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1694]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

November 27, 1987.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject:
Establishment of a Program to Monitor the Impact of Joint Board Decisions. (CC Docket No. 87-339)
Number of petitions received: 1

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-27747 Filed 12-2-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1692]

Petitions for Reconsideration and Applications for Review of Actions in Rulemaking Proceedings

November 25, 1987.

Petitions for reconsideration and applications for review have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions and applications must be filed.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Cookesville and Spencer, Tennessee and Burkesville, Kentucky)
Number of petitions received: 1
Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Hilton Head Island, and Bluffton, South Carolina, and Darien, Georgia) (MM Docket No. 86-469, RM's 5485, 5759, 5760 & 5761)
Number of petitions received: 1
Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Mesquite, Nevada) (MM Docket No. 87-94, RM-5584)
Number of petitions received: 1
Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Monterey, Tennessee) (MM Docket No. 86-512, RM's 5563 & 5862)

Number of petitions received: 1

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-27748 Filed 12-2-87; 8:45 am]

BILLING CODE 6712-01-M

Executive Resources and Performance Review Board; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Pub. L. 95-454), Chairman Dennis R. Patrick has appointed Ms. Diane S. Killory, General Counsel, to the Executive Resources and Performance Review Board.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-27749 Filed 12-2-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Silver Broadcasting Limited Partnership 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. Silver Broadcasting Limited Partnership	Irondequoit, NY	BPH-861125MJ	87-517
B. Benjamin Macwan	Irondequoit, NY	BPH-861126MC	
C. Philip and Anne Okun	Irondequoit, NY	BPH-861126MJ	
D. Abacus/Irondequoit Broadcasting	Irondequoit, NY	BPH-861126ML	
E. Genesee Broadcasting, Inc.	Irondequoit, NY	BPH-861126MR	
F. FM Irondequoit Limited Partnership	Irondequoit, NY	BPH-861126MW	
G. Liberty Pole Communications Limited Partnership	Irondequoit, NY	BPH-861126MX	
H. Brian D. Warner and Mark D. Humphrey d.b.a. Brimark Broacasting	Irondequoit, NY	BPH-861126NA	
I. Florence J. Mance	Irondequoit, NY	BPH-861126NB	
J. Emmy Hahn Limited Partnership	Irondequoit, NY	BPH-861126MS	(Dismissed)

2. Pursuant to 47 U.S.C. 309(e), 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 that particular applicant.

Issue Heading and Applicants

1(a). Financial Qualifications, F
1(b). Misrepresentation, F
1(c). Qualifications, F
2. City Coverage, H
3. Air Hazard, H
4. Comparative, A–I
5. Ultimate, A–I

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it 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 87–27750 Filed 12–2–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Timothy Paul Woodward et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Timothy Paul Woodward	Pearl City, HI	BPH–841214MJ	98–516
B. Yu Hay-Kong, d.b.a. Chinese Radio Service	Pearl City, HI	BPH–850415MR	
C. Mamala Bay Broadcasting	Pearl City, HI	BPH–850531MJ	
D. The Pleiades Group	Pearl City, HI	BPH–850531MT	
E. K.A.R.E.—Hawaii	Pearl City, HI	BPH–850531MU	
F. Carmen Dwight	Pearl City, HI	BPH–85031NX	

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 entirely 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 that particular applicant.

Issue heading	Applicants
1. Environmental	A,B,C,E,F.
2. Comparative	All.
3. Ultimate	All.

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 Docket Branch (Room 23), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 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. 87–27751 Filed 12–2–87; 8:45 am]

BILLING CODE 6712–01–MN

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Existing collection in use without OMB control number
Title: Behavorial Analysis: In support of Atlantic, Gulf, and Hawaiian Coastal Area Hurricane Evacuation Studies
Abstract: The information collected will be used to develop reliable data concerning the expected evacuation response of the public vulnerable to hurricane hazards. This data is needed in order to estimate the time necessary to evacuate the public in the face of various hurricane scenarios.
Type of Respondents: Individuals or households
Number of Respondents: 3,600
Burden Hours: 600
Frequency of Recordkeeping or Reporting: Other—once per areas

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3225 NEOB, Washington, DC 20503 within two weeks of this notice.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 87–27759 Filed 12–2–87; 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.: 202–010268–009

Title: Australia Eastern U.S.A. Shipping Conference.

Parties:

Columbus Line Pacific America Container Express (PAGE Line)

Synopsis: The proposed amendment would permit the parties to engage in alternate port service at the expense of the cargo interest. The parties have requested a shortened review period.

Agreement No.: 202–010776–022

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Barber Blue Sea
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller—Maersk Lines
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would permit the parties to increase the agreement's security deposit requirements from $40,000 to $100,000. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: November 30, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–27779 Filed 12–2–87; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200061.

Title: Galveston Wharves Terminal Agreement.

Parties:

Board (Galveston) of Trustees of the Galveston Wharves
Del Monte Fresh Fruit Company (Del Monte)

Synopsis: Under the proposed agreement, Galveston leases to Del Monte transit sheds, a track and rail unloading dock, and an office building; and guarantees parking spaces for 50 chassis.

Agreement No.: 224–200062.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland
Compagnie Maritime Belge (CMB)

Synopsis: The proposed agreement provides that CMB shall have the nonexclusive right to certain assigned premises at the Port's 7th Street Public Container Terminal or the Charles P. Howard Terminal for berthing, loading and discharging of its vessels and related operations.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 30, 1987.

[FR Doc. 87–27780 Filed 12–2–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

November 27, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR § 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before December 24, 1987.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR §261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer, Nancy Steele, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washigton, DC 20551, (202–452–3822).

Proposal to approve under OMB delegated authority the extension with revision of the following reports:

1. *Report Title:* Quarterly Report of Repurchase Agreements on U.S. Government and Federal Agency Securities with Specified Holders and the Annual Report of Repurchase Agreements on U.S. Government and Federal Agency Securities with Specified Holders

Agency Form Number: FR 2090a, 2090q
OMB Docket Number: 7100–0205
Frequency: Annually and quarterly
Reporters: Commercial banks, S&L's, MSB's, FSB's and U.S. agencies and branches of foreign banks
Annual Reporting Hours: 2355

Small businesses are not affected.

General Description of Report: This information collection is voluntary (12 U.S.C. 248(a) and 3105 (b)) and is given

confidential treatment (5 U.S.C. 552(b)(4)).

These reports provide data used in the computation of the repurchase agreement (RP) component of the monetary aggregates. The revised selection criteria for the annual and quarterly panels reduce the number of respondents in each case with only a small reduction in RP coverage.

Board of Governors of the Federal Reserve System, November 27, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-27752 Filed 12-2-87; 8:45 am]

BILLING CODE 6710-01-M

Bank of Boston Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The 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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 24, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation,* Boston, Massachusetts; to acquire First Trust Company of Florida, National Association, Sarasota, Florida; and thereby engage in trust company activities pursuant to § 225.25(b)(3) of the Board Regulation Y. Following a merger of Company into Bank of Boston—Florida, N.A., Palm Beach, Florida, the merged entity would engage in all activities permissible for national banks except commercial lending.

Board of Governors of the Federal Reserve System, November 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27753 Filed 12-2-87; 8:45 am]

BILLING CODE 6210-01-M

First Commerce Bancshares, Inc., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each 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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting could be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 18, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Commerce Bancshares, Inc.*, Lincoln, Nebraska; to engage *de novo* through its subsidiary First Commerce Investors, Inc., Lincoln, Nebraska, in investment advisory activities pursuant to § 225.25(b)(4)(ii) and (iv) of the Board's Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia; to engage *de novo* in acting as investment or financial advisor to nonaffiliated financial and nonfinancial institutions; providing advice regarding the structuring of and arranging for loan syndications, interest rate "swaps," interest rate "caps," and similar transactions; providing advice in connection with financing transactions for nonaffiliated financial and nonfinancial institutions; providing valuation services for nonaffiliated financial and nonfinancial institutions; advising nonaffiliated financial and nonfinancial institutions in connection with merger, acquisition, and divestiture considerations; rendering fairness opinions in connection with merger, acquisition and similar transactions for nonaffiliated financial and nonfinancial institutions; and conducting feasibility studies for corporations. These activities are pursuant to §§ 225.25(b)(4) and 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27754 Filed 12-2-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Edward J. Geoghegan et al.

The notificants listed below have 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 the 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 December 18, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Edward J. Geoghegan*, Clearwater, Florida; to acquire 15.8 percent of the voting shares of Florida BanCorporation, Inc., Clearwater, Florida, and thereby indirectly acquire Florida Bank of Commerce, Clearwater, Florida.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Kennis H. and Charlene L. Wallace (jointly)*, Harrisburg, Illinois; to acquire 49.57 percent of the voting shares of Saline Bancorp, Inc., Harrisburg, Illinois, and thereby indirectly acquire First Bank and Trust, Harrisburg, Illinois.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *James Aubrey Cardwell*, El Paso, Texas; to acquire 35.10 percent of the voting shares of Continental National Bancshar, El Paso, Texas, and thereby indirectly acquire Continental National Bank, El Paso, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Richard V. Campana*, Scottsdale, Arizona; to acquire 1.33 percent of the voting shares of Scottscom Bancorp, Inc., Scottsdale, Arizona, and thereby indirectly acquire Scottscom Bank, Scottsdale, Arizona.

2. *Von E. Dix*, Paradise Valley, Arizona; to acquire 1.33 percent of the voting shares of Socttscom Bancorp, Inc., Scottsdale, Arizona, and thereby indirectly acquire Scottscom Bank, Scottsdale, Arizona.

3. *Larry A. Gunning*, Paradise Valley, Arizona; to acquire 1.33 percent of the voting shares of Scottscom Bancorp, Inc., Scottsdale, Arizona, and thereby indirectly acquire Scottscom Bank, Scottsdale, Arizona.

4. *Robert J. Schaefer*, Scottsdale, Arizona; to acquire 1.33 percent of the voting shares of Scottscom Bancorp, Inc., Scottsdale, Arizona, and thereby indirectly acquire Scottscom Bank, Scottsdale, Arizona.

5. *Estate of Samuel Mills Damon*, Honolulu, Hawaii; to acquire 25.05 percent of the voting shares of First Hawaiian, Inc., Honolulu, Hawaii, and thereby indirectly acquire First Hawaiian Bank, Honolulu, Hawaii, and First Hawaiian Creditcorp, Inc., Honolulu, Hawaii (an industrial bank/thrift and loan company).

Board of Governors of the Federal Reserve System, November 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27755 Filed 12-2-87; 8:45 am]

BILLING CODE 6210-01-M

Midland Bank, PLC; Proposal To Issue Variably Denominated Payment Instruments Payable in Foreign Currencies With Unlimited Face Values

Midland Bank, PLC, London, England, ("Midland"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through its wholly owned subsidiary, Thomas Cook, Inc., Princeton, New Jersey ("TCI"), in the issuance and sale of foreign drafts and wire transfers that are payable in foreign currencies and are without limitation as to their face amount. Midland proposes to conduct the proposed activities through TCI as well as to market them through a nationwide network of unaffiliated selling agents including commercial banks, thrift institutions and other appointed agents. Midland has also proposed to engage in data processing activities related to the payment instrument activities in accordance with 12 CFR 225.25(b)(7)(ii).

TCI currently issues and sells travelers checks in various foreign currencies with a maximum denomination of $1,000 pursuant to 12 CFR 225.25(b)(12).

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board previously has approved the issuance of certain payment instruments with no maximum limitation on their face amount, subject to a number of operational restrictions and reporting requirements similar to those proposed in the instant application. *Wells Fargo & Company*, 72 Federal Reserve Bulletin 148 (1986).

In its *Wells Fargo* order, the Board conditioned its approval of the proposal on a commitment that *Wells Fargo* cause to be deposited into a demand deposit account at its bank subsidiary all of the proceeds of any official check having a face value in excess of $10,000, thereby rendering the proceeds subject to reserve requirements. The Board also made its approval subject to its own continued evaluation of the activity's effects on monetary policy.

In order to guard against such potential adverse effects, Midland has committed that the proceeds of the sale of any payment instrument with a face value greater than $10,000 will be deposited in a demand deposit account at a U.S. depository institution. Such proceeds will then be used to purchase foreign currency for each particular payment instrument at the time of the transaction. Midland states that its purchases of foreign currency are typically value-dated two days hence, at which time the demand deposit account will be debited and the U.S. dollar funds will leave the U.S. monetary system. Midland has committed that the U.S. dollar funds will not be swept out overnight while in demand deposit accounts, and thus will be reservable. Midland has also committed to submit to the Board weekly reports of TCI's daily gross receipts for its payment instruments sales.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 28, 1987. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3 (e)), be accompanied by a statement in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27756 Filed 12-2-87; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bancorp of Worcester, Inc., 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 C.F.R. 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 December 24, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Peoples Bancorp of Worcester, Inc.*, Worcester, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of People Savings Bank, Worcester, Massachusetts.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Southold Bancorp, Inc.*, Southold, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Southold Savings Bank, Southold, New York.

C. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fulton Financial Corporation*, Lancaster, Pennsylvania; to acquire 100 percent of the voting shares of Lafayette Trust Bank, Easton, Pennsylvania.

D. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Huntington Bancshares Kentucky, Inc.*, Covington, Kentucky; to acquire 84.6 percent of the voting shares of State Bank, Inc., Dayton, Kentucky.

E. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Commercial Bank Shares, Inc.*, Honea Path, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of The Commercial Bank, Honea Path, South Carolina.

F. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Hodco, Inc.*, Martin, South Dakota; to become a bank holding company by acquiring 86.3 percent of the voting shares of Blackpipe State Bank, Martin, South Dakota.

G. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Blue Rapids Bancshares, Inc.*, Blue Rapids, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Blue Rapids, Blue Rapids, Kansas.

2. *Union State Bancshares, Inc.*, Clinton, Missouri; to acquire 100 percent of the voting shares of Boatmen's Bank of Clinton, Clinton, Missouri.

3. *Wells Bancshares, Inc.*, Platte City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Wells Bank of Platte City, Platte City, Missouri.

H. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Willow Bend Bancshares, Inc.*, Piano, Texas; to acquire 100 percent of the voting shares of Preston North National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, November 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27757 Filed 12-2-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

NIOSH Surveillance Evaluation; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: December 14–15, 1987.

Time: 8:30 a.m.–3 p.m.—December 14; 8:30 a.m.–12 noon—December 15.

Place: Lee and Davis Rooms, Stone Mountain Inn, Stone Mountain Park, Highway 78, Stone Mountain, Georgia 30086.

Purpose: To evaluate NIOSH surveillance activities. The results from this effort will ultimately form the basis for a monograph on surveillance. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Melvin L. Myers, Deputy Assistant Director, NIOSH, Building 1, Room 3007, 1600 Clifton Road, NE., Atlanta, Georgia 30333; Telephones: FTS: 236–3773; Commercial: 404/329–3773.

Dated: November 27, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-27733 Filed 12-2-87; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is cancelling the meeting of the Immunology Devices Panel scheduled for December 14 and 15, 1987. The meeting was announced by notice in the **Federal Register** of November 17, 1987 (52 FR 43947).

FOR FURTHER INFORMATION CONTACT: Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

Dated: November 27, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-27809 Filed 12-2-87; 3:02 pm]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of Dental Research; Amended Notice of Meeting of Dental Research Programs Advisory Committee

Notice is hereby given of a change in the meeting of the Dental Research Programs Advisory Committee originally

scheduled for November 12–13, 1987, 9:00 a.m., in Building 30, Room 117, National Institutes of Health, which was published in the **Federal Register** on October 13, 1987, 52 FR 38021.

This Dental Research Programs Advisory Committee was to have convened at 9:00 a.m. on November 12–13, 1987, but was cancelled due to inclement weather. The meeting has been rescheduled for January 27–28, 1988, in Building 30, Room 117, National Institutes of Health, Bethesda, Maryland from 8:30 a.m. to recess on January 27 and from 8:30 a.m. to adjournment on January 28, 1988.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs. Attendance by the public will be limited to space available.

Dr. Marie Nylen, Director for Extramural Programs, NIDR, NIH, Westwood Building, Room 503, Bethesda, MD 20892 (telephone 301/496–7723) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13–845—Dental Research Institutes, National Institutes of Health)

Dated: November 27, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–27804 Filed 12–2–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–08–4212–11 (N–10536)]

Classification Termination; Nevada

November 19, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; classification termination, Nevada.

SUMMARY: This notice terminates Recreation and Public Purposes classification N–10536.

FOR FURTHER INFORMATION CONTACT: James W. Elliott, District Manager, 1535 Hot Springs Road, Suite 300, Carson City, NV 89701, (702) 882–1631.

EFFECTIVE DATE: December 3, 1987.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2450.6, the Bureau of Land Management hereby terminates Recreation and Public Purposes classification N–10536 which involves the following described lands:

Mount Diablo Meridian, Nevada

T. 19 N., R. 29 E.,
Sec. 23, SE¼SE¼SE¼.

The area described contains 10.00 acres in Churchill County, Nevada.

In 1975, the lands were classified as suitable for disposal under the Recreation and Public Purposes Act (43 U.S.C. 869, 869–1 to 869–4). The classification provided for segregation of the lands against all forms of appropriation under the public land laws, including location under the mining laws, but not the Recreation and Public Purposes Act or the mineral leasing laws. A lease, authorizing development of recreational facilities on the lands, was subsequently issued to the Churchill County Board of County Commissioners. Said lands were never developed in accordance with the approved plan of development and the lease expired on January 9, 1986. A determination has been made that the recreation and public purposes classification and segregation are no longer appropriate and are hereby terminated.

The subject lands, which are included in a reclamation project, have been and continue to be withdrawn from other disposition and reserved for community center purposes pursuant to the Acts of July 2, 1902 (32 Stat. 388) and October 5, 1914 (38 Stat. 727).

Fred E. Wolf,

Associate State Director, Nevada.

[FR Doc. 87–27794 Filed 12–2–87; 8:45 am]

BILLING CODE 4310–HC–M

[NM–943–07–4111–13; NM NM 54322]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87504. Under the provisions of 43 CFR 3108.2–3, Marie A. Feil, petitioned for reinstatement of oil and gas lease NM NM 54322 covering the following described lands located in Lea County, New Mexico:

T. 19 S., R. 36 E., NMPM, New Mexico
Sec. 29: N½NW¼.

Containing 80.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, February 1, 1987.

Dated: November 24, 1987.

Tessie R. Anchondo,

Chief, Adjudication Section.

[FR Doc. 87–27793 Filed 12–2–87; 8:45 am]

BILLING CODE 4310–FB–M

[WY–920–08–4111–15; C–077271]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

November 25, 1987.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease C–077271 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has 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), and the Bureau of Land Management is proposing to reinstate lease C–077271 effective November 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87–27724 Filed 12–2–87; 8:45 am]

BILLING CODE 4310–22–M

[CA–010–08–4212–13; Casefile # CA 20050]

Realty Action; Exchange of Public and Private Lands in San Luis Obispo County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—CA 20050.

SUMMARY: The following described lands have been determined to be

suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Mt. Diablo Meridian, California

T. 25 S., R. 7 E.
Sec. 2 Lot 4
Sec. 3 Lots 2, 3, 4, SW¼NE¼, S½NW¼, N½SW¼, NW¼SE¼
Sec. 4 Lot 1, S½NE¼, N½SE¼, SE¼SE¼
T. 25 S., R. 8 E.
Sec. 4 Lots 3, 4, 5, 8, W½ Lot 7, SW¼, W½SE¼
Sec. 5 Lots 1, 2, 3, 5, 6, 11, 13, 14, E½ Lot 4, NE¼SE¼
Sec. 6 Lot 16
Sec. 8 W½NE¼, E½NW¼, NW¼NW¼, NE¼SW¼
Sec. 9 SE¼NE¼, NE¼SE¼
Sec. 10 S½NE¼, SE¼
Sec. 15 NE¼
Sec. 17 SW¼, SW¼SE¼
Sec. 18 N½SE¼, SE¼SE¼
Sec. 23 NW¼NE¼, S½NE¼, NE¼NW¼, N½SE¼
Sec. 26 S½SW¼
Sec. 28 S½SE¼
Sec. 35 NE¼NW¼
T. 25 S., R. 9 E.
Sec. 1 NE¼SE¼
Sec. 10 S½NE¼, NE¼SW¼, N½SE¼
Sec. 11 SW¼NE¼, SE¼NW¼, NW¼SW¼
Sec. 19 SE¼NE¼
Sec. 28 NW¼NW¼, E½SW¼
Sec. 29 NE¼NE¼, SW¼NE¼
Sec. 31 Lots 3, 4, SE¼NW¼, NE¼SW¼
T. 25S., R. 10E.
Sec. 7 Lots 2, 3, 4, E½SW¼
Sec. 8 S½
Sec. 17 N½, NE¼SW¼, W½SE¼
Sec. 32 SE¼SW¼, SW¼SE¼
Sec. 33 E½SE¼
Sec. 34 SW¼
T. 25S., R. 11E.
Sec. 31 Lots 2, 3, 6
Sec. 32 E½SW¼
T. 26S., R. 8E.
Sec. 3 Lots 2, 3, 5
Sec. 14 SW¼SE¼
Sec. 16 Lot 1
T. 26S., R. 9E
Sec. 5 SW¼SW¼
Sec. 6 lots 3, 4, 5, 6, E½SW¼, S½SE¼
Sec. 7 Lots 1, 2, 3, NE¼, E½NW¼, NE¼SW¼, N½SE¼, SE¼SE¼
Sec. 8 W½NW¼
Sec. 20 E½SE¼
Sec. 21 SW¼NW¼, SW¼, S½SE¼
Sec. 27 NW¼NE¼, S½NE¼, W½NW¼, N½SE¼, SE¼SE¼
Sec. 28 NE¼, N½NW¼, NE¼SW¼, NE¼SE¼
Sec. 33 N½SW¼, NW¼SE¼, SE¼SE¼
Sec. 34 NW¼NW¼, SW¼SW¼
T. 26S., R. 10E.
Sec. 1 Lots 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16
Sec. 2 Lots 1, 2, 3, S½NE¼
Sec. 5 Lots 1, 2, SW¼NW¼
Sec. 12 Lots 1, 8
T. 26S., R. 11E.
Sec. 7 N½ Lot of SW¼, Lot 2 of NW¼
Sec. 17 S½SW¼
Sec. 18 S½SE¼
Sec. 19 N½NE¼
Sec. 20 NW¼NE¼, S½NE¼, N½NW¼
T. 26S., R. 13E.
Sec. 19 E½SE¼
Sec. 29 NW¼SW¼
Sec. 30 NE¼SE¼
T. 31S., R. 11E.
Sec. 8 NE¼NE¼, SE¼SE¼
Sec. 9 NW¼NW¼
Sec. 17 Lots 1, 2, 3, 4, 5, 6, W½NE¼, NW¼
Sec. 18 Lots 1, 2, 3, 4, 5, 6, 7, E½NE¼
Sec. 20 Lots 1, 2, 3, N½NE¼
Sec. 21 Lots 1, 2, 3, 4, N½NE¼, SW¼NE¼, N½NW¼

Containing 10,536.92 acres of public land, more or less. All mineral rights owned by the United States on the above parcels will be exchanged, subject to the term of existing oil and gas leases.

In exchange for these land, the United States will acquire the following described lands from The Nature Conservancy:

Mt. Diablo Meridian, California

T. 30S., R. 19E.
Sec. 31 NW¼NE¼, S½NE¼, E½N½ Lot 1 of NW¼, SE¼
Sec. 32 Portion S½NW¼, S½
Sec. 33 SW¼SW¼
T. 31S., R. 19E.
Sec. 1 W½ Lots 1 & 2 of NW¼
Sec. 2 W½SW¼, SE¼SW¼
Sec. 3 N½, SW¼, N½SE¼, SE¼SE¼
Sec. 4 All
Sec. 8 NE¼
Sec. 9 NE¼, W½NW¼, NW¼SE¼, SE¼SE¼
Sec. 10 E½, E½NW¼, NW¼NW¼, SW¼
Sec. 11 SW¼NE¼, W½, W½SE¼
Sec. 14 W½NE¼, SE¼NE¼, W½, SE¼
Sec. 15 E½E½, NW¼NE¼
Sec. 24 All
T. 31S., R. 20E.
Sec. 1 Lot 2 of NE¼, Lot 2 of NW¼, E½E½ Lot 1 of NE¼
Sec. 19 SW¼NE¼, S½NW¼
Sec. 20 W½NE¼, E½NW¼

Containing 5,597.11 acres of public land, more or less.

Of the above land, the United States would receive the surface and mineral estates, except for the following parcels in which some or all of the mineral estate would remain privately owned.

T. 31S., R. 19E.
Sec. 2 W½SW¼, SE¼SW¼
Sec. 3 N½NE¼, SE¼NE¼, W½NW¼, N½SW¼
Sec. 4 E½NE¼, NE¼SE¼
Sec. 11 SW¼NE¼, NW¼SE¼
Sec. 14 S½
T. 31S., R. 20E.
Sec. 19 SW¼, NE¼, S½NW¼

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire a portion of the non-federal lands within the proposed Carrizo Natural Heritage Reserve. This Reserve would promote the conservation of threatened and endangered species and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna.

The ultimate goal of the Bureau of Land Management is to acquire approximately 155,000 acres within the Reserve. A secondary purpose of the exchange is to consolidate the Bureau lands in San Luis Obispo County and reduce the number of scattered, isolated Bureau parcels that are difficult for the Bureau to manage. The public interest will be well served by completing the exchange.

Publication of this notice in the **Federal Register** segregates the public lands from the operaton of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first.

The exchange will be on an equal value basis. Full equalization of value will be achieved by a cash payment to the United States by The Nature Conservancy in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership. These lands will then be offered for sale on the private market to interested buyers by The Nature Conservancy.

Lands transferred from the United States will retain the following reservations:

1. A right-of-way for ditches and canals contstructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All oil and gas together with the right to explore, prospect for, mine, and remove the same under all applicable laws and regulations.

Lands transferred from the United States will be subject to:

1. *The following rights-of-way issued under the Act of October 21, 1976 (43 U.S.C. 1761) and the Act of February 20, 1920, as amended (30 U.S.C. 185):*

S 066800 Electric Line; PG&E Sec. 31, T.25S., R.11E., MDM
S 044367 Oil Line and Phone Line, Mobil Oil Co. Sec. 31, T.26S., R.11E. Sec. 1, T.25S., R.10E., MDM
CA 9110 Road; Jimmy Joyce Sec. 31, T.25S., R.11E., MDM
CA 14719 Road & Communication Site; Sonic Cable TV Sec. 1, T.26S., R.10E., MDM
S 1377 Electric Lines & Road; PG&E Secs. 8, 9, 17, 18 T.31S., R.11E., MDM
CA 20751 Water Reservoir; Monterey County Parks
Sec. 28, T.25S., R.9E., MDM
Sec. 8, 17 T.25S., R.10E., MDM
Sec. 23, T.25S., R.8E., MDM

2. *The following grazing authorizations issued under the Act of*

June 28, 1934, as amended (43 U.S.C. 315):

GAR# 1025 The Hearst Corporation Secs. 5, 6, 8, 9, 10, 15, 17, 18, 23, 26, 35 T.25S., R.8E., MDM
GR# 1058 Donn Bonheim Secs. 32, 33, 34 T.25S., R.10E., MDM Sec. 5 T.26S., R.10E., MDM
GR# 1042 Hy Blythe Secs. 31, 32 T.25S., R.11E., MDM
Secs. 1, 2, 12 T.26S., R.10E., MDM
Secs. 7, 17, 18, 19, 20 T.26S., R.11E., MDM
GR# 1068 Walter Warren Secs. 20, 21, 28, 33, 34 T.26S., R.9E., MDM
GR# 1093 Stewart Warren Estate Secs. 21, 27, 28, 33, 34 T.26S., R.9E., MDM

The United States will transfer administration of the above rights-of-way and grazing authorizations to the new titleholder upon exchange. Upon expiration, the holder may negotiate a new agreement with the current titleholder of the lands.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management Caliente Resource Area Office, 520 Butte Street, Bakersfield, California 93305; (805) 861-4236.

DATE: 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 Area Manager, Caliente Resource Area Office, Bureau of Land Management, at the above address. 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 determiantion of the Department of the Interior.

Dated: November 23, 1987.

Robert D. Watts,

Acting Caliente Resource Area Manager.

[FR Doc. 87-27725 Filed 12-2-87; 8:45 am]

BILLING CODE 4310-40-M

[OR-42996; OR-080-08-4212-11: GP8-031]

Realty Action; Conveyance of Land for Recreation and Public Purposes; Tillamook County, OR

November 23, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

The following described public land has been examined and determined to be suitable and will be classified for conveyance out of Federal ownership under the authority of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.):

Willamette Meridian, Oregon

T. 3 S., R. 11 W.,
Sec. 1, NE¼SE¼.

Containing 40.00 acres in Tillamook County, Oregon.

The above-described land will be conveyed without monetary consideration to the State of Oregon, by and through its Department of Transportation, Parks and Recreation Division, as an addition to Cape Lookout State Park.

The land will be conveyed subject to:

1. A reservation to the United States for rights-of-way for ditches or canals under the Act of August 20, 1890 (26 Stat. 391; 43 U.S.C. 945);

2. A reservation to the United States of all mineral deposits;

3. The proceeds from the sale or disposal of timber.

4. The reversionary requirements of 43 CFR 2741.9 for:

a. Title transfers by the patentee,

b. Uses other than for which the land was conveyed,

c. Non use,

d. Failure to follow the approved development/management plan, and

e. Civil rights violations.

5. Rights for public road purposes (Netarts—Sand Lake County Road).

Detailed information concerning the conveyance is available for review at the Salem District Office.

Upon publication of this notice in the **Federal Register**, the above-described land will be segregated from appropriation under the public land laws, including the mining laws, except the mineral leasing laws and for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this notice, interested parties may submit comments regarding the proposed conveyance or classification of the land of the Tillamook Area Manager, 6615 Officer's Row, Tillamook, OR 97141. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Upon the effective date of classification, the land will be open to the filing of an application under the Recreation and Public Purposes Act by any interested, qualified applicant. If, after 18 months following the effective date of classification, an application has not been filed, the segregative effect of the classification shall automatically expire and the land classified shall return to its former status without further action by the authorized officer.

Randall L. Herrin,

Acting Tillamook Area Manager.

[FR Doc. 87-27726 Filed 12-2-87; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-08-4212-22]

Nevada; Filing of Plats of Survey

November 19, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

DATES: Filings were effective at 10 a.m. on November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Nevada State Office, Bureau of Land Management, 850 Harvard Street, P.O. Box 12000, Reno, Nevada 89520, (702) 784-5484.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada.

Mount Diablo Meridian, Nevada

T. 13 N., R. 28 E.—Dependent Resurvey and Section Subdivisions
T. 12 N., R. 29 E.—Dependent Resurvey and Section Subdivisions
T. 13 N., R. 29 E.—Subdivision of Section 31

These surveys were accepted on September 22, 1987, and were executed to meet certain administrative needs of the Bureau of Indian Affairs.

All of the above-listed plats are now the basic record of describing the lands for all authorized purposes. The plats will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the plats and related field notes may be furnished to the public upon payment of the appropriate fee.

Fred E. Wolf,

Associate State Director, Nevada.

[FR Doc. 87-27795 Filed 12-2-87; 8:45 am]

BILLING CODE 4310-HC-M

[CO-940-08-4220-10; C-46833]

Proposed Withdrawal and Opportunity for Public Meeting; Colorado

November 25, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw approximately 4,222 acres of National Forest System land for protection of planned and existing recreational facilities at Beaver Creek Ski Area near Eagle, Colorado. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all uses other than the mining laws.

DATE: Comments and requests for meeting should be received on or before March 2, 1988.

ADDRESS: Comments and meeting requests should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–236–1768.

The U.S. Department of Agriculture filed application on November 16, 1987, to withdraw the following identified National Forest System land from location and entry under the mining laws, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

Sixth Principal Meridian, White River National Forest

T. 5 S., R. 81 W.,
Sec. 19, SE¼NW¼, E½SW¼, and SW¼SE¼;
Sec. 30, all;
Sec. 31, lots 1 thru 4, W½NE¼, E½W½, and NW¼SE¼.
T. 5 S., R. 82 W.,
Sec. 22, SE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 23, SW¼NW¼ and S½;
Sec. 24, SW¼SW¼ and SW¼SE¼;
Sec. 25, E½, NW¼NW¼, S½NW¼, and SW¼, excluding patented lands;
Sec. 26, all, excluding patented lands;
Sec. 27, E½, SE¼NW¼, and NE¼SW¼;
Sec. 36, all, excluding patented lands.
T. 6 S., R. 82 W.,
Sec. 1, N½N½.

The area described aggregates approximately 4,222.00 acres in Eagle County.

The purpose of the proposed withdrawal is to protect planned and existing recreational facilities within the Beaver Creek Ski Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal may present their views in writing to the Colorado State Director.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director within 90 days of the date of publication of this notice. If the authorized officer determiens that a meeting should be held, the meeting will be scheduled and conducted in accordance with Bureau of Land Mangement Manual, Section 2351.16B.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

James D. Crisp,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-27723 Filed 12-2-87; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

[PRT-723222, et al.]

Receipt of Applications for Permits; Myron Makarewicz, et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-723222

Applicant: Makarewicz, Myron, Clio, MI.

The applicant requests a permit to import one pair of turquoise parakeets (Neophema pulchella) from Zephyr Aviaries, Ontario, Canada, for enhancement of the propagation of the species.

PRT-723223

Applicant: Robert Moore, New Baltimore, MI.

The applicant requests a permit to purchase in interstate commerce from Southwicks Wild Animal Farm, Inc. Blackstone, MA, and export and reimport one female Asian elephant (Elephas maximus) for enhancement of propagation and survival of the species.

PRT-723053

Applicant: Missouri Southern State College, Joplin, MO.

The applicant requests a permit to collect Missouri bladder-pod (Lesquerella filiformis) seeds for the purpose of scientific research.

PRT-723138

Applicant: Ginger Rickards, Mickleton, NJ.

The applicant requests a permit to purchase three male and three female Hawaiian geese (Nesochen (-Branta) sandvicensis) born in captivity from Walter B. Sturgeon, Durham, New Hampshire, for enhancement of propagation and survival of the species.

PRT-723373

Applicant: Stevens G. Herbst, Corpus Christi, TX.

The applicant requests a permit to import the sport-hunted trophy of a bontebok (Damaliscus dorcas dorcas) culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., of Grahamstown, Republic of South Africa, for the enhancement of survival of the species.

PRT-723369

Applicant: Hawthorn Circus Corp., Grayslake, IL.

The applicant requests a permit to purchase two female Asian elephants (Elephas maximus) from Bensen's Animal Park, Hudson, New Hampshrie, for conservation education purposes. The applicant intends to export and reimport these elephants and travel within the U.S. for performances that will serve to educate the public with regard to the species' ecological rule and conservation needs.

PRT-721650

Applicant: Douglas Bush, North Portal, Saskatchewan, Canada.

The applicant requests a permit to import a captive-bred peregrine falcon (Falcon peregrinus anatum) for the hunting of small game. He will then return with the bird to Canada. This bird will eventually be released in the wild after it learns to hunt prey effectively.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW. Washington DC, 2005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or

data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Dated: November 30, 1987.

R. K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 87-27803 Filed 12-2-87; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-267]

Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: ACIC Canada, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 27, 1987.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: November 27, 1987.

[FR Doc. 87-27708 Filed 12-2-87; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; Marine Power and Equipment Co., Inc., et al.

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that on November 5, 1987, a proposed consent decree in *United States and State of Washington v. Marine Power and Equipment Co., Inc. and WFI Industries, Inc.*, Civil Action No. C85-382R, was lodged with the United States District Court for the Western District of Washington. The complaint filed by the United States and the State of Washington alleged violations of the Clean Water Act and the Refuse Act for illegally discharging pollutants and refuse from ship repair facilities into the Duwamish River and Lake Union in Seattle. The complaint sought injunctive relief to require the defendant to comply with the Clean Water Act and civil penalties for past violations. The decree requires defendants to achieve compliance with the Clean Water Act by operating in compliance with the applicable permits and by removing pollutants and debris from the bottom of Lake Union.

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 *United States v. Marine Power and Equipment, Inc.*, D.J. Ref. 90-5-1-1-2361.

The proposed consent decree may be examined at the office of the United States Attorney, Western District of Washington, 3600 Seafirst Fifth Avenue Plaza, Seattle, Washington and at the Region X office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. P.O. Box 7611, Washington, DC 20044. When requesting a copy, please refer to *United States v. Marine Power and Equipment, Inc.*, D.J. Ref. 90-5-1-1-2361, and enclose a check in the amount of $1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-27719 Filed 12-2-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-87-246-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 4 Mine (I.D. No. 01-01247) located in Tuscaloosa County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes to use high-voltage (2,300 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific

equipment and conditions as outlined in the petition.

3. In order to safely and efficiently mine the coal seam, a 500 horsepower shearing machine, an approximately 1,000 horsepower face conveyor and a stage loader with a crusher unit driven by 150 horsepower motors will be used.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Person interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 4, 1988. Copies of the petition are available for inspection at that address.

Date: November 27, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-27729 Filed 12-2-87; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that: (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before January 19, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Air Force (N1-AFU-87-23). Records relating to individuals applying for duty with the Air Force Office of Special Investigations.

2. Department of the Air Force (N1-AFU-87-25). Records relating to the preparation of **Federal Register** statements.

3. Department of the Air Force (N1-AFU-88-9). Copies of messages and automation equipment use and maintenance forms.

4. Army and Air Force Exchange Service (N1-334-88-1). Records concerning individual accounts receivable and credit card retrieval requests.

5. Defense Intelligence Agency (1-373-88-1). Orientation and training files.

6. Department of Health and Human Services, Social Security Administration (N11-47-88-1). Central and regional offices records relating to service delivery reviews.

7. Department of Justice, Federal Bureau of Investigation (N1-65-88-1 and -3). Whole or partial files whose destruction has been mandated by court order or whose continued maintenance may conflict with the Privacy Act.

8. Peace Corps, Office of Medical Services (N1-362-88-1). Reduction in retention periods for chest X-rays of volunteers and trainees.

9. Peace Corps (N1-362-88-2) Descriptions of Peace Corps service.

10. Tennessee Valley Authority, Office of Natural Resources and Development (N1-142-87-11). Progress reports of land transactions, 1934-79.

Dated: November 24, 1987.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 87-27714 Filed 12-2-87; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL COMMUNICATIONS SYSTEM

Meeting; Industry Executive Subcommittee of the National Security Telecommunication Advisory Committee

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held Tuesday, Janaury 26, 1988. The meeting will be held at the MITRE Corporation, 7525 Colshire Drive, McLean, Virginia. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The agenda is as follows:

A. Opening remarks.

B. Administrative remarks.

C. Briefings on industry and government activities.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person

desiring information about the meeting may telephone (202) 692-9274 or write the Manager, National Communications System, Washington, DC 20305-2010.

Robert V. Downey,

Captain, USN Assistant Manager, NCS Joint Secretariat.

[FR Doc. 87-27791 Filed 12-2-87; 8:45 am]

BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50-530]

Palo Verde Nuclear Generating Station, Unit 3; Arizona Public Service Co., et al.; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF-74 (License) to Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority. This license authorizes operation of the Palo Verde Nuclear Generating Station, Unit 3 (facility) at reactor core power levels not in excess of 3800 megawatts thermal in accordance with the provisions of the License, the Technical Specifications, and the Environmental Protection Plan. On March 25, 1987, the Commission issued Facility Operating License No. NPF-65, which authorized operation of Palo Verde Nuclear Generating Station, Unit 3 at power levels not in excess of 190 megawatts thermal. Facility Operating License No. NPF-74 supersedes Facility Operating License No. NPF-65.

Palo Verde Nuclear Generating Station, Unit 3 is a pressurized water reactor that utilizes a CESSAR standard plant design; it is located at the licensees' site in Maricopa County, Arizona approximately 36 miles west of the city of Phoenix.

The application for the license, as amended, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The issuance of this License has been authorized by the Atomic Safety and Licensing Board in its Initial Decision and Order dated December 30, 1982 and July 22, 1985, respectively; the Decision issued by the Atomic Safety and Licensing Appeal Board, dated February 15, 1983; and by the Commission at its meeting on November 25, 1987. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on July 11, 1980 (45 FR 46941), as clarified in a notice published July 25, 1980 (45 FR 49732).

The Commission has determined that the issuance of this License will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the License is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF-74, with Technical Specifications (NUREG-1287) and Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards dated December 15, 1981; (3) the Commission's Safety Evaluation Report on Palo Verde dated November 1981, and Supplements 1 through 12, dated February 1982, May 1982, September 1982, March 1983, November 1983, October 1984, December 1984, May 1985, December 1985, April 1986, and March 1987, and November 1987, respectively; (4) the Commission's related Safety Evaluation Report on CESSAR dated November 1981, and Supplements 1 and 2, dated March and September 1983, respectively; (5) the Palo Verde Final Safety Analysis Report and amendments thereto; (6) the Environmental Report and supplements; (7) the NRC Draft Environmental Statement, dated October 1981; (8) the Final Environmental Statement, dated March 1982; and (9) the Initial Decision and Order Dismissing Proceeding issued by the Atomic Safety and Licensing Board, dated December 30, 1982, and July 22, 1985, respectively and the Decision issued by the Atomic Safety and Licensing Appeal Board, dated February 15, 1983.

These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, DC, and the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004. A copy of Facility Operating License No. NPF-74 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects. Copies of the Safety Evaluation Report and its Supplements 1 through 12 (NUREG-0857), the Final Environmental Statement (NUREG-0841), and the Technical Specifications (NUREG-1287) may be purchased by calling (202) 275-2060 or (202) 275-2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. NUREG-0857 may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, the 25th day of November, 1987.

For The Nuclear Regulatory Comission.

George W. Knighton,

Director, Project Directorate 5, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 87-27805 Filed 12-2-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Presidential Disapproval of a Section 337 Determination

AGENCY: Office of the United States Trade Representative.

ACTION: On November 27, 1987, the President notified the Chairman of the U.S. International Trade Commission (USITC) of his disapproval of the USITC's determination in *Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same*, Inv. No. 337-TA-242, and his views on a remedy in this case. A statement of the President's reasons for his decision, which was included with the notice to the USITC, is printed in an annex to this notice.

Judith Hippler Bello,

Acting General Counsel.

Annex—Disapproval of the Determination of the United States International Trade Commission in Investigation No. 337-TA-242, Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same

The United States International Trade Commission (USITC) has determined that there is a violation of section 337 of the Tariff Act of 1930, in the unauthorized importation into the United States, and in their sale, of certain dynamic random access memories (DRAMs) which infringe claims of patents owned by Texas Instruments, Inc. of Dallas, Texas.

Following this determination, the USITC issued a limited exclusion order prohibiting the unlicensed importation of infringing DRAMs of 64 and 256 kilobits (and any combination thereof, such as 128 kilobits) manufactured by Samsung Co., Ltd., and/or Samsung Semiconductor & Telecommunications Co., Ltd., (Samsung), whether assembled or unassembled. The limited exclusion order also prohibits the entry, except under license, of the specified DRAMs incorporated into a carrier or any form, including Single-Inline-Packages and Single-Inline-Modules, or assembled onto circuit boards of any configuration including memory expansion boards.

Computers, facsimile machines, telecommunications switching equipment, and printers, whether manufacutered by Samsung or any other firm, that contain any 64 or 256 kilobit (or any combination thereof, such as 128 kilobits) DRAMs manufactured by Samsung are also excluded from entry into the United States except under license from Texas Instruments.

Finally, the USITC order provides that the U.S. Customs Service may specify procedures to be used by persons seeking to import products identified in the paragraphs 2 through 6 of the order to certify that importers "have made appropriate inquiry and thereupon state that to the best of their knowledge and belief any DRAMs incorporated into, assembled onto, or contained in such products are not covered by this Order."

Although Texas Instruments and Samsung have entered into a patent licensing agreement, I am required under section 337(g) to make a policy evaluation of the USITC's exclusion order, and I am authorized to disapprove USITC determinations for policy reasons. I have disapproved the USITC determination in this case for policy reasons.

The USITC determined that a limited exclusion order was warranted in this case. If the USITC's order becomes final, however, the effect of the order on U.S. firms and trade will extend far beyond Samsung and importers of Samsung's infringing products. The certification procedure as enforced by the U.S. Customs Service would require all importers of computers, facsimile machines, telecommunications switching equipment, and printers that contain DRAMs to determine the type and source of DRAMs contained in their machines and certify this for each import of these products. Currently, there is no evidence of imports of 64K and 256K DRAMs manufactured by Samsung contained in the categories of machines covered in the order. Thus, the USITC's order could result in an unnecessary disruption of trade in computers, facsimile machines, telecommunications switching equipment, and printers.

My decision does not mean that the patent owner in this case is not entitled to a remedy in the event that the licensing agreement should become inoperative. On the contrary, I am strongly committed to effective enforcement of patent rights and preventing entry of unfairly traded imports into U.S. commerce. Although I do not have statutory authority to revise or modify the USITC's order, I believe that a remedy is justified in this case.

An exclusion order prohibiting unlicensed imports of: (1) Infringing 64K and 256K (and any combination thereof, such as 128 kilobits) DRAMs manufactured by Samsung, whether assembled or unassembled,

(2) 64K and 256K (and any combination thereof, such as 128 kilobits) DRAMs incorporated into a carrier of any form, including Single-Inline-Packages and Single-Inline-Modules, or assembled onto circuit boards of any configuration including memory expansion boards, and

(3) Computers, facsimile machines, telecommunications switching equipment, and printers, manufactured by Samsung that contain any 64K or 256K DRAMs manufactured by Samsung would reach all imports of infringing products and would prevent circumvention of relief by Samsung. In addition, requiring certification by importers of these products appears warranted and should not require unnecessarily difficult inquiry into the origin of particular DRAMs. Such relief would minimize any disruptive effect of the order on legitimate trade. If the USITC decides to issue an exclusion order covering this narrower range of products and evidence of circumvention becomes apparent, the USITC has the statutory authority to modify its order to prevent circumvention.

I strongly urge the USITC to take action expeditiously on its own motion to provide relief in this case.

[FR Doc. 87-27824 Filed 12-2-87; 8:45 am]
BILLING CODE 3190-01-M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold a public meeting on Thursday December 17 in Room 138 and Friday, December 18 in Room 628 of the Senate Dirksen Building, First and C Streets, NE., Washington, DC 20510, from 9:00 a.m. to 5:30 p.m. each day.

The two-day meeting will consist of panel presentations and discusions outlining aspects of the HIV Epidemic relating to IV Drug Abuse. Experts on the HIV Epidemic and Drug Abuse from the Federal, State, and local levels will make presentations along with physicians and researchers from the private sector. Agenda items subject to change as priorities dictate.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 655-15th Street, NW., Suite 901, Washington, DC 20005. For further information, please call 245-AIDS

Polly L. Gault,

Executive Director, Presidential Commission on the HIV Epidemic.

[FR Doc. 27919 Filed 12-2-87; 9:20 am]
BILLING CODE 4160-15-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection Title:* Nonresident Questionnaire.

(2) *Form(s) Submitted:* RRB-1001.

(3) *Type of Request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) *Frequency of Use:* On occasion.

(5) *Respondents:* Individuals or households.

(6) *Annual Responses;* 1,000.

(7) *Annual Reporting Hours:* 83.

(8) *Collection Description:* The benefits payable to an annuitant under the Railroad Retirement Act living outside the United States may be subject to withholding under Public Laws 98-21 and 98-76. The form obtains the information needed to determine the amount to be withheld.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692).

Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202–395–7316, Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 87–27716 Filed 12–2–87; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection Title:* Lag Service Reports.

(2) *Form(s) Submitted:* AA–12, G–88a.

(3) *Type of Request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) *Frequency of Use:* On occasion.

(5) *Respondents:* Businesses or other for-profit.

(6) *Annual Responses:* 30,500.

(7) *Annual Reporting Hours:* 3,304.

(8) *Collection Description:* The reports obtain the current service and compensation of an employee not yet reported to the Board. This lag information is used to determine entitlement to and amount of annuity applied for and to pay benefits due on a deceased employee's earnings records.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 87–27717 Filed 12–2–87; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25157; File No. SR–NASD–87–48]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

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 October 2, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change interprets Article VII, Section 1 of the NASD By-Laws to delegate to the Chairman of the NASD's Board of Governors (or the Vice Chairman in his absence) and the President of the Corporation, jointly, the authority, in pertinent part, to take such actions as they deem necessary or appropriate with respect to trading in or the operation of the NASD systems.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

This proposed rule change constitutes an interpretation of Article VII, Section 1(a)(2) of the NASD By-Laws. The NASD has determined, in pertinent part, that in the current market environment, it is necessary in order to facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, to delegate to the Chairman of the NASD Board of Governors (or the Vice Chairman in his absence) and the President of the Corporation, jointly, the authority to take such action as they deem necessary or appropriate regarding trading in or operation of any of the NASD systems,[2] the participation of any person or the trading of any security therein, and the operation of any member firms' offices or systems, provided that such authority shall be exercised only if the President of the Corporation concludes that it is not practical or appropriate to convene a meeting or conduct a poll of the Executive Committee to consider a particular action; and provided further that the President shall promptly report any such action to the Executive Committee. Further, the NASD has determined that the directives of this Resolution shall remain in effect until November 13, 1987.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule amendment does not impose any burden on competition not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such

[1] The term NASD systems includes the over-the-counter market, the NASDAQ system, the Small Order Execution System and any other automated system operated by the NASD or any subsidiary thereof.

[2] Because this proposed rule change is of an emergency nature and expired on November 13, 1987, the Commission is not considering, among other things, whether pursuant to the terms of this proposed rule change, the NASD would have been effectively empowered to halt trading. In this connection, the Commission would note that the NASD has filed a proposed rule change (SR–NASD–87–13) to obtain authority to halt trading in NASDAQ securities. This proposed rule change will be addressed in the near future.

proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, 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 Room, 450 Fifth Street N.W., Washington DC. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–87–48 and should be submitted by December 24, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: November 27, 1987.

[FR Doc. 87–27797 Filed 12–2–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region III Advisory Council Meeting; Maryland

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Baltimore, will hold a public meeting at 8:00 a.m. to 11:00 a.m., on Friday, December 4, 1987, at Blue Cross and Blue Shield of Maryland, 6th Floor, 700 Joppa Road, Towson, Maryland 21204, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles J. Gaston, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202, (301) 962–2054.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 25, 1987.

[FR Doc. 87–27771 Filed 12–2–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[CM–8/1135]

U.N. Sales Contract Convention (Multilateral Treaty) Enters Into Force on January 1, 1988

The 1980 U.N. Convention of Contracts for the International Sale of Goods, which establishes uniform law for international sales, will enter into force between the United States and ten other countries (listed below) on January 1, 1988. The Convention will apply to all contracts for the sale of goods concluded on or after that date between parties with their places of business in different countries for which the Convention has entered into force. However, by the terms of their contract the buyer and seller may exclude application of the Convention or derogate from its provisions. The Convention sets out many provisions of the substantive law that will govern the formation of the sales contract and the rights and obligations of the buyer and seller. It will apply if the contract is silent on applicable law, whether that silence is by inadvertence, design, or because the parties could not agree on applicable law. The Convention may apply even if the sales contract is not in writing.

As of January 1, 1988 the Convention's provisions will govern sales contracts between a party with its place of business in the United States and a party in one of the following countries party to the Convention: Argentina, China, Egypt, France, Hungary, Italy, Lesotho, Syria, Yugoslavia, and Zambia. Numerous other countries are expected to become parties to the Convention during the next few years. The United States ratified the Convention on December 11, 1986 (with the declaration that the United States would not be bound by Article 1(1)(b), which declaration has a narrowing effect on the Convention's scope of application) after the U.S. Senate on October 9, 1986 gave its advice and consent to U.S. ratification.

The UN-certified English text of the Convention and useful information is contained in the notice of the Department of State in the **Federal Register** of March 2, 1987 at pages 6262–80. That notice constitutes the only official U.S. Government publication of the Convention text until the Convention in all its language versions is published by the Department of State in the pamphlet on the Convention in the Treaties and Other International Acts Series (TIAS) and a subsequent volume of United States Treaties (UST). For references to readily available unofficial publications reproducing the English text of the Convention, see the above-mentioned notice. Information about present and future countries party to the Convention and any reservations subject to which they may have become a party may be obtained from the Treaty Section of the United Nations, New York, NY. 10017 (telephone: (212) 963–7958/5048), which serves as the depositary for the Convention. A Convention bibliography was published in the Spring, 1987 issue of the *The International Lawyer.* A Handbook of Basic Materials on the Convention, including its six authentic language versions, the State Department legal analysis that discusses the Convention's provisions in relation to the corresponding provisions of the Sales Article of the Uniform Commercial Code, and the above-mentioned bibliography, may be obtained from the American Bar Association, Order Fulfillment Department, 750 North Lake Shore Drive, Chicago, IL 60611 (telephone: (312) 988–5555).

Peter H. Pfund,

Assistant Legal Adviser for Private International Law.

[FR Doc. 87–27769 Filed 12–2–87; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Howard County, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement is being prepared for the proposed relocation of Maryland Route 32 in Howard County between MD Route 108 in Clarksville and Pindell School Road in Simpsonville.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., Field Operations Engineer, Federal Highway Administration, The Rotunda, Suite 220, 711 W. 40th Street, Baltimore, Maryland

21211, telephone 301/962–4010, and/or Mr. Louis Ege, Jr., Deputy Director, Project Development Division, Maryland State Highway Administration, 707 North Calvert Street, Room 310, Baltimore, Maryland 21202, telephone 301/333–1130.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration, is preparing a supplemental draft environmental impact statement (SDEIS) to develop an acceptable alternate to relocate a portion of Maryland Route 32 as a four-lane divided freeway. This improvement was previously addressed in a Final Environmental Impact Statement approved July 7, 1977. Because of the amount of development which has occurred in the intervening years, a supplemental environmental impact statement will be prepared.

In addition to the No-Build alternate, an alternate is proposed which would provide a four-lane divided freeway with full control of access, having interchanges at Maryland Route 108 and Pindell School Road, and an optional interchange at Trotter Road. Service roads are proposed to maintain existing access to old Maryland Route 32.

A public hearing will be held after circulation of the DSEIS. A public notice will give the time and place of the public hearing, and individual notices will be sent to those agencies, groups, and individuals on the mailing list. The DSEIS will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues relating to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, 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.)

Emil Elinsky,

Division Administrator, Baltimore, Maryland.

[FR Doc. 87–27770 Filed 12–2–87; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 25, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0710
Form Number: 5500, 5500–C, 5500–R, Schedule B (5500), and Schedule P (5500)
Type of Review: Revision
Title: Annual Return/Report of Employee Benefit Plan, Return/Report of Employee Benefit Plan and Associated Schedules
Description: Forms listed in item 4 are annual information returns filed by employee benefit plans. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 914,488 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

U.S. Customs Service

OMB Number: 1515–0154
Form Number: 339
Type of Review: Extension
Title: User Fees, Customs Regulation
Description: The collection of information is necessary in order for Customs to effectively collect fees from private and commercial vessels, private aircraft, operations of commercial trucks, and passengers and freight railroad cars entering the U.S., and recipients of certain dutiable mail entries for certain official services.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 50,877

OMB Number: 1515–0138
Form Number: None
Type of Review: Extension
Title: Permit to Transfer Containers to a Container Station
Description: In order for a container station operator to receive a permit to transfer a container or containers to a container station, he/she must furnish a list of names, addresses, etc., of the persons employed by him/her upon demand by the district director.
Respondents: Businesses or other for-profit
Estimated Burden: 400 hours
Clearance Officer: B.J. Simpson (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 87–27727 Filed 12–2–87; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 23, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0034
Form Number: 942/942 PR
Type of Review: Resubmission
Title: Employer's Quarterly Tax Return for Household Employees
Description: Household employers must prepare and file Form 942 or Form 942PR (Puerto Rico only) to report and pay social security tax and (942 only) income tax voluntarily withheld. The information is used to verify that the correct tax has been paid.
Respondents: Individuals or households
Estimated Burden: 699,789 hours

OMB Number: 1545–0128
Form Number: 1120–L
Type of Review: Resubmission
Title: U.S. Life Insurance Company Income Tax Return
Description: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported

taxable income and paid the correct tax.

Respondents: Businesses or other for-profit

Estimated Burden: 37,865 hours

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 87–27728 Filed 12–2–87; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 25, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtaianed by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0051

Form Number: 7523

Type of Review: Reinstatement

Title: Entry and Manifest of Merchandise Free of Duty

Description: This form is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain conditions and by Customs to authorize the entry of such merchandise. It is also used by the carrier to show that the articles being imported are to be released to the importer or consignee.

Respondents: Businesses or other for-profit

Estimated Burden: 8,247 hours

Clearance Officer: B.J. Simpson (202) 566–7529, U.S Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229

Clearance Officer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–27758 Filed 12–2–87; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 25, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0480

Form Number: 5120/6

Type of Review: Extension

Title: Lables and Marks on Bottles, Cases, and Containers of Wine, and Identification of Wine Being Aged in Bottles Without Lables

Description: ATF requires that wine on wine premises be identified by statements of information on lables or contained in marks. ATF uses this information to validate the receipts of excise tax revenue by the Federal Government. Consumers are provided with adequate identifying information.

Respondents: Farms, Businesses or other for-profit, Small Businesses or organizations

Estimated Burden: 1 hour

Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–27730 Filed 12–2–87; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 25, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220. Comptroller of the Currency

OMB Number: 1557–0124

Form Number: TA–1

Type of Review: Extension

Title: Uniform Form for Registration and Amendment to Registration as a Transfer Agent

Description: This form is used by national banks and national bank subsidiaries for registration and amendment to registration as a transfer agent.

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated Burden: 80 hours

Clearance Officer: Eric Thompson, (202) 447–1632, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Robert Fishman, (202) 395–7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–2773 Filed 12–2–87; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 25, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0018
Form Number: 1133 'C'
Type of Review: Extension
Title: Claim Against the United States for the Proceeds of Government Check or Checks

Description: This form is sent to payees when an original check and its substitute issued in lieu thereof, have been negotiated bearing dissimilar endorsements. Adjudication Division must get a statement from the payee that they did not cash both checks. Adjudication Division may then take steps to collect the overpayment.

Respondents: Individuals or households
Estimated Burden: 290 hours

Clearance Officer: Hector Leyva, (301) 436–5300, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–27732 Filed 12–2–87; 8:45 am]

BILLING CODE 4810–25–M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 34–87]

Treasury Notes, Series J–1993

Washington, November 25, 1987.

The Secretary announced on November 24, 1987, that the interest rate on the notes designated Series J–1993, described in Department Circular—Public Debt Series—No. 34–87 dated November 18, 1987, will be 8¼ percent. Interest on the notes will be payable at the rate of 8¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87–27785 Filed 12–2–87; 8:45 am]

BILLING CODE 4810–40–M

UNITED STATES INFORMATION AGENCY

Initiation of a New Project in Cote D'Ivoire Sponsored by a Special African Programming Initiative; Teacher, Text, Technology (TTT)

The Bureau of Educational and Cultural Affairs of the United States Information Agency plans to award a grant to a U.S. academic institution of higher education for the purpose of assisting in the development of secondary school English teachers in Cote D'Ivoire. The grantee will work with the Ministry of Education's English Teaching Division in its efforts to develop academic staff and strengthen its English teaching capabilities.

The program will be a component of the Agency's Teacher-Text-Technology (TTT) Initiative which is an element of the Fulbright Exchange Program. TTT is designed to upgrade secondary education and related teacher training in English, math, science and other fields.

Proposals will be reviewed consistent with Bureau guidelines. A twelve-month grant will be awarded on or about May 1, 1988. Deadline for receipt of proposals is COB January 15, 1988. For details, interested institutions should contact the Agency's Cote D'Ivoire TTT Coordinator, John Niland, E/AEA—Room 234, U.S. Information Agency, 301 Fourth Street SW., Washington, DC 20547. Telephone: (202) 485–7357.

Dated: November 19, 1987.

Mark Blitz,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 87–27715 Filed 12–2–87; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 232
Thursday, December 3, 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).

COMMISSION ON CIVIL RIGHTS

December 1, 1987.

PLACE: 1121 Vermont Avenue NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, December 11, 1987, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Panels: Employer Sanctions, Discrimination and Implementation of the Immigration Reform and Control Act of 1986
IV. Project Proposals
V. SAC Recharters
VI. Presentations by SAC Chairs
VII. Staff Director's Report
A. Status of Earmarks
B. Personnel Report
C. Activity Report

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division (202) 376–8105.

William H. Gillers,

Solicitor.

[FR Doc. 87–27861 Filed 12–1–87; 1:23 pm]

BILLING CODE 6335-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., December 8, 1987.

PLACE: 2033 K Street NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Off-Exchange Issues—Advanced Notice of Proposed Rulemaking
Application of the New York Mercantile Exchange for designation as a contract market in options on N.Y. Harbor Unleaded Gasoline Futures

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–27806 Filed 12–1–87; 9:20 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., December 22, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Rule 1.59—final rules

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–27807 Filed 12–1–87; 9:20 am]

BILLING CODE 6351-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, December 8, 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.

* * * * *

The open meeting of Thursday, December 10, 1987, has been cancelled.

* * * * *

PERSON TO CONTACT FOR INFORMAITON: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 87–27874 Filed 12–1–87; 3:12 pm]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

DATE AND TIME: 10:00 a.m.—December 8, 1987.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Docket No. 85–19—Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged with Shippers and Their Agents—Consideration of the Record.
2. Docket No. 86–16—Conference Service Contract Authority—Consideration of Comments.
3. Petition of Bi-State Harbor Carriers Conference of the New Jersey Motor Truck Association for Institution of Investigation and Rulemaking Regarding Payment of Inland Divisions.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary (202) 524–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 87–27873 Filed 12–1–87; 3:12 pm]

BILLING CODE 6730-01-M

Corrections

Federal Register
Vol. 52, No. 232
Thursday, December 3, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F3070/R922; FRL-3288-5]

Pesticide Tolerance for Fluazifop-Butyl

Correction

In rule document 87-25732 beginning on page 42651 in the issue of Friday, November 6, 1987, make the following corrections:

1. On page 42651, in the third column, in the **SUMMARY**, in the second line, "or" should read "of".

2. On page 42652, in the first column, in the 16th line, capital "P" should be lower cased.

3. On the same page, in the same column, in paragraph number 4., in the first line, the first word should read "A".

4. On the same page, in the same column, in paragraph number 8., in the first line, "rate" should read "rat"; and in the second line, "(mg/kg/" should read "4 mg/kg/".

5. On the same page, in the same column, in paragraph number 12., in the first line, "rate" should read "rat".

6. On the same page, in the second column, in the fifth paragraph, in the fifth line, "director" should read "detector".

7. On the same page, in the same column, in the last paragraph, in the third line, "State." should read "Stat.".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140090; FRL-3293-5]

Access to Confidential Business Information by Unisys Corp.

Correction

In notice document 87-26883 appearing on page 44633 in the issue of Friday, November 20, 1987, make the following corrections:

1. In the second column, in the second complete paragraph, in the third line, "69-01-7437," should read "68-01-7437,".

2. In the same column, in the third complete paragraph, in the first line, "EAP" should read "EPA".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

Humane and Healthful Transport of Wild Mammals and Birds to the United States

Correction

In rule document 87-25931 beginning on page 43274 in the issue of Tuesday, November 10, 1987, make the following corrections:

1. On page 43274, in the second column, in the third complete paragraph, in the 17th line, "of CITES" should read "to CITES".

2. On the same page, in the third column, in the second complete paragraph, in the sixth line, "representative" should read "representatives".

3. On page 43276, in the first column, in the fourth complete paragraph, in the 13th line, "system" should read "systems".

4. On the same page, in the third column, in the third complete paragraph, in the first line, "require a" should read "require that a".

5. On page 43278, in the first column, in the first paragraph, in the second line from the bottom, "domestic" was misspelled.

§ 14.103 [Corrected]

6. On page 43279, in the second column, in § 14.103, in the third line, "not" should read "met".

§ 14.105 [Corrected]

7. On page 43279, in the second column, in § 14.105(a), in the second line, "animals" should read "mammals".

BILLING CODE 1505-01-D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability

Correction

In notice document 87-26523 appearing on page 44237 in the issue of Wednesday, November 18, 1987, make the following correction:

In the first column, under **DATE**, in the third line, the date for requesting copies should read "January 4, 1988."

BILLING CODE 1505-01-D

federal register

Thursday
December 3, 1987

Part II

Department of Health and Human Services

Public Health Service

42 CFR Part 124

Medical Facility Construction and Modernization; Requirements for Provision of Services to Persons Unable To Pay; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 124

Medical Facility Construction and Modernization; Requirements for Provision of Services to Persons Unable To Pay

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The final rule below amends the existing regulations governing how certain public and private nonprofit health care facilities assisted under Titles VI and XVI of the Public Health Service (PHS) Act may fulfill the assurance, given in their application for assistance, that they would provide a reasonable volume of services to persons unable to pay. This final rule enhances the interest of the intended beneficiaries of the assurance by: (1) Increasing facility incentives for compliance by reducing administrative burdens; and (2) permitting facilities to receive credit for substantial compliance, thus enabling the Department to focus its enforcement resources on facilities which are not in substantial compliance.

DATE: These regulations are effective February 1, 1988, except for §§ 124.509(c), 124.514(c), 124.515(b)(2)(ii), and 124.515(b)(3)(ii)(B). For additional information concerning this effective date, see the discussion of the Information Collection Requirements below.

ADDRESS: Richard R. Ashbaugh, Assistant Surgeon General, Associate Director for Health Facilities, Bureau of Resources Development, 5600 Fishers Lane, Room 11-03, Rockville, Maryland, 20857, Att'n.: Martin J. Frankel.

FOR FURTHER INFORMATION CONTACT: Martin J. Frankel, 301 443-5656.

SUPPLEMENTARY INFORMATION: On August 29, 1986, the Secretary of Health and Human Services proposed amendments to the rules governing what is popularly known as the Hill-Burton Uncompensated Services Program. 51 FR 31000. Health care facilities covered by the program received construction assistance under two titles of the PHS Act—Title VI (the "Hill-Burton Act," 42 U.S.C. 291, *et seq.*) and Title XVI (42 U.S.C. 300q, *et seq.*). As a condition of such assistance, facilities assisted under Title VI were required to give what is now known as the "uncompensated services" assurance. Under section 603(e) of the Act (42 U.S.C. 291c(e)), the Secretary was authorized to issue regulations requiring assurance that—

> there will be available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint.[1]

Regulations requiring the assurance were issued shortly after enactment of Title VI in 1946. *See,* 12 FR 6176 (September 16, 1947). This initial regulatory standard for compliance with the assurance was general. Beginning in 1972, however, a series of regulatory and statutory developments occurred which culminated in the detailed requirements of the present regulations, which were issued in 1979. The objective of the amendments below is to simplify and increase the flexibility of the regulations, while increasing the incentives for compliance. Because the significance of the amendments can be understood only in the context of the requirements of the 1979 regulations, the pertinent sections of the 1979 regulations are summarized below, followed by a discussion of the public comments on the proposed rule and the Department's response thereto.

I. Summary of the 1979 Regulations

Following extensive public comment, in 1979 the Secretary issued the rules which are codified at 42 CFR Part 124, Subpart F. 44 FR 29372 (May 18, 1979). These regulations established a fixed dollar annual compliance standard—the lesser of 3% of the facility's operating costs (less Medicare and Medicaid reimbursement) or 10% of the Federal financial assistance it received. 42 CFR 124.503(a). A facility that did not meet its annual quota was required to make up the deficit in the amount of uncompensated services provided in later years. 42 CFR 124.503(b). In addition, the facility was required to institute an affirmative action plan designed to prevent recurrence of the deficit. 42 CFR 124.504. A facility could also get credit for "excess"—that is, uncompensated services provided over and above its annual quota—and credit that excess against its quota in a future year. 42 CFR 124.503(c). The 10% compliance level, and the deficits and excesses, were required to be adjusted by a factor that reflects inflation, the so-called "inflation factor." 42 CFR 124.503(d). In each case, however, the facility could only count a portion of the cost of the service provided toward the quota, the so-called "allowable credit." 42 CFR 124.502. Facilities were required to exclude third party payments (including payments from Medicare and Medicaid) from the quota, and also could not count towards the quota the differential between the amount of third party reimbursement and allowable credit where required by the third party program to accept the reimbursement as payment in full for service. In addition, the regulations provided that services disallowed as unnecessary by a Professional Standards Review Organization (PSRO) must also be excluded. 42 CFR 124.509.

The 1979 regulations established national eligibility criteria, based on the poverty income guidelines presently issued by the Department. 42 CFR 124.506. The criteria considered only income, not assets, and a mandatory procedure for calculating income was provided. *Id.* Facilities were given limited discretion to decide how to allocate their quota of uncompensated services among eligible persons. 42 CFR 124.507. Facilities could credit services toward their quota only if they made an eligibility determination within two working days of a request for uncompensated services and met certain other requirements. 42 CFR 124.508.

The 1979 regulations contained explicit requirements for notice, including that written notice be given to each person seeking service in the facility. 42 CFR 124.505(d). In addition, facilities were required to publish and post notices and under certain circumstances to provide notice to the local health systems agency (HSA). 42 (CFR 124.505. The regulations contained a number of reporting and recordkeeping requirements. 42 CFR 124.510.

On September 18, 1986, the Department issued final rules amending Subpart F to establish a compliance alternative for certain publicly-owned facilities. 51 FR 33208. The provisions of the September 18, 1986, rule have been incorporated, with a few minor editorial changes, in the rules below.

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[1] The assurance required by statute of title XVI assisted facilities, of which there are only 38, was as follows:

> * * * reasonable assurance that at all times after such application (for Title XVI assistance) is approved * * * (ii) there will be made available in the facility or portion thereof to be constructed, modernized or converted a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from a financial viewpoint.

Section 1621(b)(1)(K), 42 U.S.C. 300s-1 (b)(1)(K), as redesignated by Pub. L. 96-79.

II. Background and Summary of Public Comments and Policies of the Final Rule

A. Proposed Rule

The basic objective of the 1979 regulations was to assure that recipients of Titles VI and XVI funds who gave the uncompensated services assurance provide services free or below cost to persons who cannot afford to pay for them within the context of sound planning for and management of the delivery of health care services. The proposed rules retained the basic policies of the 1979 rules, but refined some provisions in order to lessen the administrative burden of compliance for facilities, while increasing the incentive for compliance by facilities in order to protect the interests of the intended beneficiaries of the assurance. The proposed rules thus sought to establish balance among the basic principles inherent in the proper operation of an uncompensated services program: (1) The provision of a "reasonable volume" of free or below cost health services to eligible persons; (2) the provision of reasonable and equal opportunity to such persons to apply for and receive those services; and (3) the documentation by facilities that a "reasonable volume" of services and opportunity to apply were provided.

Th 1979 regulations relied on strict adherence to the procedural requirements to establish whether or not each patient's uncompensated services account is creditable toward a facility's obligation. They provided no basis for obtaining credit on other grounds, such as a facility's substantial compliance with the three basic principles above. This skewed the incentive for compliance toward some regulatory requirements and away from others. It also consumed the Department's limited resources in account-by-account audits of individual facilities, lessening its ability to monitor the universe of Hill-Burton facilities for systemic problems of compliance.

The proposed rules addressed this problem by eliminating or relaxing a number of the more technical requirements of the 1979 rule, such as the requirements relating to publication of allocation plans, timing of determinations, timing of deficit make-up, and reporting and recordkeeping. In addition, they departed from the account-based approach of the current rules as the benchmark of compliance. Instead, under the proposed rules, a facility in substantial compliance with the requirements necessary for the proper operation of an uncompensated services program would be given credit for its compliance, while a facility showing a pattern of substantial noncompliance with major substantive provisions of the rule would be subject to receiving no credit for the period in which noncompliance was found. *See,* proposed § 124.511(b)(1) and § 124.512(c). A certification of substantial compliance would be based on procedures determined by the Secretary to be sufficient to establish compliance, including examination of the systems that facilities put in place to comply with the notice, recordkeeping and determination of eligibility requirements, as well as their compliance with the reporting requirements. The proposed rules also restructured and simplified the regulatory language of the 1979 rules in certain respects in order to help achieve compliance by facilities through promoting a better understanding of the regulatory requirements. *See,* for example, proposed § 124.505(a)(1) (relating to eligibility criteria), § 124.507 (a) and (b) (relating to eligibility determinations), §124.503(b) (relating to deficits), and § 124.508 (relating to cessation of uncompensated services).

The proposed rules also proposed a more flexible compliance standard for facilities with small ($10,000 or less) annual compliance obligations and which routinely provide free or below cost services to persons determined by the facility, under a program based on objective criteria, to be unable to pay for them. Facilities that qualify would be eligible for certification by the Secretary, pursuant to which they would be required only to comply with the requirements of the program of discounted services upon which the certification was based, along with ancillary reporting and recordkeeping requirements, as long as the certification was in effect. *See,* proposed § 124.514. In addition, it was proposed to exempt certain federally funded centers that are required by Federal law to provide free and below cost services, from the procedural requirements of the rules. *See* proposed § 124.503(d). Finally, a method of determining credit for facilities whose compliance had not been previously completely assessed prior to the effective date of the new rules was proposed. *See,* proposed § 124.511(b)(1)(ii).

B. Public Comments and the Department's Responses

The Department received 80 public comments on the proposed rules from health care facilities, legal services organizations, consumer groups, State officials and consumers. About 60% of these supported the proposed rules. The substantive concerns raised in the public comments, and the Department's responses to the comments are set out below.

1. *Qualifying Services*

Proposed § 124.503(a)(2) established criteria, implicit in the 1979 regulations, for services that qualify as uncompensated services. This section elicited no substantive comment. In light of the revisions relating to the standards for substantial compliance and substantial noncompliance, discussed in section 11 below, proposed § 124.503(a)(2) has been deleted as unnecessary. For the same reason, the reference in proposed §124.502(l)(1) to the determination of the amount of uncompensated services has been deleted. *See,* § 124.511(b) and § 124.512(c).

2. Deficits

The proposed rules made explicit the dichotomy present in the 1979 rules between types of deficits; in the proposed rules, they were termed "justifiable deficits" and "noncompliance deficits". *See,* proposed § 124.503(b)(1). While the proposed rules continued the policy that justifiable deficits could be made up at any time during or immediately following the facility's period of obligation (*see,* proposed § 124.503(b)(2)(i)), they provided that make-up of noncompliance deficits had to begin immediately. However, in contrast to the 1979 rules (which provided that the deficit must be made up in the next year, if the facility is financially able to do so), the proposed rules provided for spreading make-up of the deficit amount over the remaining period of obligation.

The main criticism of this section was that it permitted make-up of deficits to be postponed indefinitely; the commenters argued that the policies of the 1979 rules should be retained, as there is an immediate need for uncompensated services. Several nursing home organizations argued that the proposed rules did nothing to alleviate what they termed the problem of "compounding deficits." A State agency argued that the deficit calculation should be simplified so that a provider could do it, while a public interest group questioned whether failure to read the providers' manual constituted "justifiable" noncompliance.

The Department has revised the affirmative action plan requirement to provide for accelerated make-up where the facility fails to comply with that requirement. *See,* § 124.503(b)(4) below. Otherwise, the final rule remains as proposed. The comments criticizing the

proposed rule as permitting indefinite postponement of the deficit make-up mischaracterize both the 1979 and the proposed rules. The proposed rule was identical to the 1979 rules with respect to justifiable deficits. *Compare,* § 124.503(b)(1) of the 1979 rules and proposed § 124.503(b)(2)(i). Nor does the final rule permit indefinite postponement of deficit make-up; to the contrary, deficit make-up must begin immediately. *See,* § 124.503(b)(2)(ii) below. Under § 124.503(b)(4) below, a facility that incurs a deficit is required to institute an affirmative action plan designed to enable it to meet its annual compliance level which, under § 124.503(b)(3)(iii), includes a portion of the deficit. Thus, the affirmative action plan requirement further promotes the make-up of noncompliance deficits, as does the change to § 124.503(b)(4) providing for the potential for accelerated make-up where there is a failure to comply with the plan requirement. With respect to the remaining comments, the Department believes that the changes elsewhere in the rule should help nursing homes avoid deficits. We disagree with the comment regarding the need to simplify calculation of the deficit make-up, as the calculation of the deficit under § 124.503(b)(3) requires only one additional, simple airthmetic calculation compared to the 1979 rules. Finally, what constitutes a "justifiable deficit" is made clear by § 124.503(b)(1)(i), which also clarifies that a deficit due to failure to follow the applicable procedures is not justifiable.

3. Excesses

The proposed rules proposed a new method for calculating the amount of excess (*i.e.,* uncompensated services in excess of a facility's annual compliance level) a facility needs to "buy out" of its uncompensated services obligation. The buy out formula proposed sought to remedy two anomalies that had become apparent under the buy out formula of the 1979 rules. First, it proposed that a three-year average of a facility's annual compliance levels constitute the basis of the formula, to remedy the problem occasioned by abnormal swings in compliance levels due to unusually large Medicaid or Medicare reimbursements in a particular year. *See,* proposed § 124.503(c)(3)(i). Second, it was proposed to change the formula for recipients of loan assistance to take into account subsidies received after the buy out year. *See,* proposed § 124.503(c)(3)(ii). In addition, it was proposed to require that any claims of excess over 100% of a facility's annual compliance level be substantiated by an independent audit. *See,* proposed § 124.503(c)(4).

The proposed changes to the buy out formula received little comment, with one legal services organization commending it and a hospital criticizing it on the ground that it penalized facilities with multiple grants where the 20-year period of one or more grants had recently expired. The proposed independent audit requirement, however, received extensive comment. In general, facilities claimed that it was an unfair and costly requirement, with no logical basis. Consumer groups, on the other hand, argued that the requirement should be extended to the entire claim of excess, on the ground that facilities usually overstate their excess.

The Department agrees with the comment relating to the multiple grant situation, and has revised the buy out provisions in the Final Rule. It establishes a buy out formula pegged to the number of years remaining under obligation for each grant. *See,* § 124.503(c)(3)(i)(A) below. Further, the buy out section has been reorganized to accommodate this change. The buy out formulas retain the differentiation between grant and loan assistance, as in the proposed rule, but are now limited to the method of calculating the annual compliance level in the buy out year. This linkage is similar to that in the existing rule, except that the buy out formula which is linked to the three percent method in the rule below provides for using a three-year average. *See* § 124.503(c)(3)(ii) below. This provision parallels the proposed rule. The Department has also excepted facilities certified under §§ 124.513, 124.514, and 124.515 from the provisions relating to excess. In the Department's view, an early buy out should be available only under the conditions of the main regulations.

The Department has deleted the proposed requirement for an independent audit for claims of excess. The Department's new assessment approach, described more fully below, will be applied to such claims, which makes the proposed requirement unnecessary. This resolution of the issue also responds to the consumer concern that the entire claim of excess should be audited.

4. Notices

The proposed rules proposed to continue the notice requirements of the 1979 rules with only minor changes. The requirement that health systems agencies (HSAs) be notified was deleted, in light of the phasing out of such agencies in many areas. (Since publication of the proposed rules, Title XV of the PHS Act has in fact been repealed.) The requirement that notice of the facility's allocation plan be published 60 days prior to its fiscal year was modified to require publication at any time before the beginning of the fiscal year. *See,* proposed § 124.504(a). Similarly, proposed § 124.506(c) permitted revision of a facility's allocation plan effective upon publication. Finally, the individual written notice requirement was modified to be consistent with the proposed changes to the eligibility determination requirements. *See,* proposed § 124.504(c)(1)(iv).

A couple of facilities objected to the individual written notice requirement as burdensome, one suggesting that the notice should be distributed only to persons claiming to be no-pay or self-pay. A nursing home argued that it was futile, since their uncompensated services are committed on the first day of the fiscal year. The majority of the comments on the notice provision, however, objected to the elimination of the requirement that facilities publish notice 60 days prior to the beginning of their fiscal year. In general, the commenters argued that this change deprived them of an opportunity to comment, since the plan (and any revisions) was effective upon publication. To remedy this problem, a couple of commenters suggested that the plans have a delayed effective date. Other commenters objected to the proposed rule on the ground that it would require them to search the legal notices section every day, which they claimed was impractical.

The Department agrees that the commenters have raised a valid concern regarding the elimination of the 60-day notice requirement. It has accordingly accepted the suggestion for a delay in effective date as the most reasonable means of accommodating both the consumers groups' need for the opportunity to comment on allocation plans and the facilities' need for flexibility in issuing and revising them. Thus, the publication requirements in § 124.506 have been revised to provide that allocation plans (initial and revised) may not become effective until at least 60 days following publication. *See,* § 124.506 (a)(2), (b)(2) and (c). It should be noted that the publication requirement has been changed slightly ("no earlier than") from the requirement in the 1979 regulations. The purpose of this is to give facilities flexibility to publish more than 60 days in advance of a fiscal year or other date and still have a new plan effective on the date

specified. The Department disagrees that such a requirement imposes an unfair burden on consumer groups to check the newspaper. Such an effect is minimal and in any event does not outweigh facilities' need for flexibility in the publication requirements, which has been demonstrated in many assessments. Moreover, the consumer groups' assertion of increased burden derives from a misunderstanding of the 1979 rules; under the 1979 rules, there is no date certain for publication of the allocation plan, as the present 60-day requirement is simply a minimum.

The Department has not accepted the comments urging restriction of the individual written notice requirements. Restricting provision of the individual written notice to only those persons who declared themselves to be self-pay or no-pay would leave uninformed persons who might later become eligible due to an intervening change in circumstances. Nor does the fact that the notice requirement may be inappropriate for one or a few nursing homes made it inappropriate for the universe of regulated facilities. Thus, the individual written notice provision remains as proposed. *See*, § 124.504(c) below.

5. Eligibility Criteria

The proposed rules proposed to revise the eligibility criteria to clarify that the existence of third party coverage for medical services eliminates eligibility for uncompensated services. *See*, proposed § 124.505(a)(1). This policy is consistent with longstanding practice and the Federal view of the uncompensated services program as a program of "last resort." *See*, for example, the discussion at 44 FR 29394, May 18, 1979. In addition, proposed § 124.505 slightly modified the methods of computing income by requiring the use of income preceding the request for uncompensated services, rather than preceding the determination of eligibility. Proposed § 124.505(a)(2) and proposed § 124.505(b) also updated the current requirements, by referencing the "poverty line" issued by the Department, in accordance with section 683(c)(1) of Pub. L. 97–35. Consistent with the current administrative practice, proposed § 124.505(b) established in the regulations that revisions of the poverty line would be effective 60 days following publication in the **Federal Register.**

These provisions generated only a couple of comments, one favorable and one suggesting that loopholes in the eligibility criteria be closed. The Department has not accepted the latter suggestion, as it is of the view that the reasons supporting the adoption of the eligibility criteria in 1979 remain valid, particularly for monitoring purposes. However, the Department believes that the eligibility criteria should be clarified to make explicit what was implicit in the 1979 and the proposed rules, *i.e.*, that a facility's allocation plan also affects eligibility. This condition is now reflected in § 124.505(a)(3) below. Otherwise, § 124.505 remains as proposed.

6. Allocation Plans

The proposed rules retained the allocation plan requirement of the 1979 rules. Facilities would retain their discretion to determine certain specified elements of the allocation plan, including determining which services to make available as uncompensated services, and whether to offer these services to Category B patients. Proposed § 124.506(b)(2) modified the 1979 rule by providing that a facility would be required to operate under its old allocation plan until it published a revised allocation plan.

Aside from the timing issue, discussed in section 3 above, these changes received no comment. The Department has accordingly retained them essentially as proposed, except for the timing changes and a clarification of the presumptive plan requirement which reflects current practice and the restructuring of the regulations. *See*, § 124.506(b)(2) below.

7. Determinations of Eligibility

Proposed § 124.507 retained the basic policies of the 1979 rules in most respects, but clarified serveral points that have proved confusing. Proposed § 124.507(a) clarified that determinations must be written, while proposed § 124.507(b) clarified that denials are a form of determination and spelled out the requirements for conditional determinations. The major change to the determination requirement was proposed § 124.507(c), relating to the timing of determinations. The proposed rule kept for hospitals and most other facilities the requirement of a two-day determination of eligibility in the case of requests for service made before admission or treatment, but eliminated the two-day requirement in situations where liability for the cost of the services has already been assumed. Thus, proposed § 124.507(c)(2) provided that were the request for uncompensated services is made during or after receipt of services, the determination must be made before the close of the first full billing period following the request. Proposed § 124.507(c) contained parallel provisions for nursing homes; however, it required nursing homes to make determinations of eligibility within 10 working days, but no later than the date of admission for requests made prior to admission.

Proposed § 124.507 elicited numerous comments. Providers generally objected that the two-day requirement of the 1979 rules was unfair and unworkable and advocated even greater relaxation of the timing requirements. Consumer groups, on the other hand, objected to the proposed relaxation of the timing requirements, on various grounds. Some objected that loosening of the requirements was unnecessary, as the existing requirements were not burdensome, with determinations being encompassed in the pre-admission screening process or taking "2–3 minutes." Others were concerned that lengthening the interval in which eligibility determinations could be made would lead to increased collection activity by facilities or would cause poor people to be discharged or to check out of hospitals prematurely. A legal services organization commented that the proposed language relating to denials was an improvement. Commenters on both sides requested clarification of the term "first full billing period." A consumer group also requested that the provision for conditional determinations be changed to provide that conditional determinations must be finalized within two days of when the verifying information is received. With respect to the proposed provisions for nursing homes, a long-term care association supported the proposals. A long-term care provider, however, suggested that 10 days was too short a period in which to receive verification, as Medicaid eligibility is not usually verified in less than 30 days; another pointed out that the requirement that pre-service determinations be made no later than the date of admission might require same or next-day determinations where the request is made just before admission.

The rule below is changed very little from the proposed rule. In response to the requests for clarification of the term "first full billing period," the term has been changed to "first full billing cycle." *See*, § 124.507(c)(2) below. It is our understanding that the latter term reflects general useage and is commonly understood by providers. In any event, it is the intent of this language to preclude collection for the services in question prior to the eligibility determination. In its use of the term "first full billing cycle," the rule recognizes that a bill may be issued where a request for

services is made close to the end of a billing cycle with little opportunity for the facility to stop the billing process. Once a request is made, however, it must be acted upon in a time frame designed to preclude collection activities or any additional billing, *i.e.*, the close of the next billing period. Otherwise, the facility will be out of compliance with § 124.507(c)(2) with respect to that account. Accordingly, these changes respond to the consumer concerns that the change in the determination requirements will lead to a substantial increase in collection activities.

The word "admission" in proposed § 124.507(c)(1)(i) has also been changed to "discharge," to be consistent with longstanding program practice, which regards any request made prior to discharge as pre-service. A parallel change has been made to § 124.507(c)(2) with respect to inpatient hospital services. Sections 124.507(c)(1)(ii) and 124.507(c)(2) continue to peg the timing of determinations to the date of admission for nursing home services as the long-term nature of most admissions would make futile a policy tied to discharge. Finally, in response to the concern raised regarding the timing of nursing home determinations, the words "two days following" have been inserted in § 124.507(c)(1)(ii) below. Otherwise, § 124.507 below remains as proposed.

The Department believes that the balance struck in the rules below is a reasonable accommodation between providers' need for increased flexibility and patients' need for timely determinations prior to service. From a facility standpoint, tying the determination requirement to the facility's billing cycle should mesh with facilities' internal accounting and bookkeeping processes. The Department accordingly rejects the providers' requests for further relaxation of the timing requirements. It also rejects the consumer requests that the two-day requirements of the 1979 rules be retained. The Department's experience in numerous facility assessments has shown that, contrary to the commenters' claims, the two-day requirement has been a major compliance problem for many facilities. In the Department's judgment, these compliance problems typically are due to the incompatibility of the requirement with facilities' usual internal accounting and management requirements, rather than willful refusal to comply with the law. With respect to the concern regarding premature discharges, the change in § 124.507(c)(1)(i) and (2) from "admission" to "discharge" preserves the two-day requirement intact for all requests made during hospitalization. The comment criticizing the timing requirement regarding conditional determinations is likewise rejected. The proposed requirement merely brings forward the requirement of the 1979 rules; since, in our experience, that requirement has not been a major source of complaints or compliance problems, we are retaining it unchanged. Finally, we note that the criticism of the 10-day requirement for long-term care facilities as insufficient to permit verification of third party coverage is misplaced. The proper procedure, where the existence of third party coverage is in question, is to make a conditional determination within the 10-day determination period; the determination should then be finalized when the information about third party coverage is provided to the facility.

8. Cessation of Uncompensated Services

Proposed § 124.508 sets forth the conditions under which a facility may cease providing uncompensated services. The conditions simply made explicit and drew together the same requirements in the 1979 rules. This section received no substantive public comment. It has accordingly been retained essentially as proposed. There is only a minor change reflecting reorganization of a portion of the posted notice requirement. *See*, § 124.508(a)(4). In addition, parallel provisions have been added for facilities certified under § 124.514, to reflect the addition in § 124.514(d) of a compliance level for such facilities. *See*, § 124.508(b).

9. Reporting

The proposed rules proposed elimination of the requirements of the 1979 rules that facilities provide copies of their allocation plans, published notices and reporting forms to the HSAs for their areas. Ancillary reductions in reporting were also proposed in the community and migrant health centers and small facility compliance alternatives.

The changes in the reporting requirements attracted little comment. One public health department remarked that the reporting requirements of the 1979 rules were onerous and sought exemption for public facilities while a private nonprofit facility suggested that reporting would be easier if it were required annually instead of triennially.

Section 124.509 below remains as proposed, except for editorial changes necessary to integrate provisions relating to the public facility compliance alternative, adopted on September 18, 1986, into the general regulation and a change to clarify the reporting obligations of facilities certified under §§ 124.514 and 124.515. *See*, § 124.509(b), (c), and (d). The Department notes that the existence of the public facility compliance alternative responds to the concern of the public health department described above. The Department has not accepted the suggestion that it require reports on an annual, rather than triennial, basis, as it is of the view that for most facilities such a change would increase the burden of compliance.

10. Record Maintenance

The 1979 rules required facilities to retain their uncompensated services records for 180 days following the close of the Secretary's investigation under 42 CFR 124.511(a) (which covered both complaint investigations and assessments). The proposed rules would have modified this requirement to require facilities to retain records for three years following submission of their compliance report or 180 days following the Secretary's certification of compliance or close of the Secretary's investigation, whichever is less. *See*, proposed § 124.510(b). The community and migrant health center provisions likewise represented a major reduction in recordkeeping requirements for such centers.

The proposed modification of the record retention requirements elicited numerous comments. The comments of provider organizations were generally favorable, although one provider urged that the rule be modified to make clear that patient advocates could not see individual patient records, as it is too expensive to delete identifying information. Consumer groups, however, uniformly opposed the proposed changes. They argued that the proposed change would permit facilities to, in some cases, retain records for less than a year. This shortening of the record-retention period would, it was argued, permit facilities to avoid monitoring by legal services organizations and others and erect insurmountable problems of proof where a patient seeks to use the Hill-Burton uncompensated services obligation as an affirmative defense to a collection action. One organization asked whether, where a facility has destroyed its records as permitted by the regulation, the Department would accept its triennial report at face value.

The Department views the consumer concerns as largely misplaced, in that they proceed from a misunderstanding of the 1979 rules, as well as from a misconception of how the record retention requirements well interface with the substantial compliance

approach of the rules below and the increased efficiency in the audit process that it projects. Under the 1979 rules, facilities were permitted to destroy their records relating to an assessment or a complaint 180 days following the close of the assessment or complaint investigation. *See*, the last sentence of § 124.510(b)(1) of the 1979 rules. The rules below modify this provision only slightly to require facilities to maintain their records for the lesser of 180 days following the close of an assessment investigation or three years after submission of the report covering that period required under § 124.509, unless the Secretary asks that the records be retained for a longer period. *See*, § 124.510(a)(2). The rules below delete the reference to a complaint investigation because all records, including those related to a complaint, must be retained in accordance with § 124.510(a)(2).

Based on its new audit methods and the efficiencies it expects to realize under the substantial compliance approach, the Department expects to investigate most facilities within the three-year period, so that the former date should control, not the latter. Thus, for the majority of facilities, the period of time which records are actually required to be kept should decrease substantially. It is true that under this system, as one commenter noted, records will in many cases be required to be retained for less than three years, but this will occur only because there has been an assessment investigation which has been closed by the Secretary. The same result is possible, although less likely, under the 1979 rules. Finally, as noted above, the rule below has been modified to provide that the facility retain its records beyond the three-year period if so requested by the Secretary. This provision has been added in part in response to the consumer concerns described above. Thus, where the Secretary has not assessed a facility within the three-year period or a complaint investigation is pending when the three-year period ends, the Secretary may require the facility to retain the relevant records for an additional period of time. This provision also makes the record retention requirements applicable to general facilities parallel more closely those applicable to facilities certified under the compliance alternatives for public facilities and facilities with small annual obligations. *Compare*, §§ 124.510(a)(2) and 124.510(b) below. For these reasons, the Department is of the view that the changes to the record retention requirements are not inconsistent with the consumer concerns regarding monitoring.

The Department disputes the contention that the new provisions will present problems of proof where a facility has been investigated and subsequently discards its records relating to the investigation. If the denial of uncompensated services at issue relates to a request made during the period which is to be investigated, it must, under current and contemplated procedures, be addressed in the course of the investigation, either by means of corrective action or by a determination that the denial was merited, and the investigation will not be "closed" (for purposes of the 180 day requirement) until appropriate action is taken. If, on the other hand, the request is made for services rendered during the period investigated, but the request itself is made *following* the period investigated, that request must be reviewed in terms of the facility's uncompensated services obligation and program as it exists *at the time of the request*, not as it existed at the time services were provided. To the extent legal services organizations and others have assumed the contrary, such an assumption proceeds from a misinterpretation of the 1979 rules, as well as the proposed rules. The belated requests that are apparently the focus of this consumer concern will thus be unaffected by the changes in the rules below.

The record retention requirements for facilities certified under § 124.514 have been revised to parallel those for facilities certified under § 124.513. *See*, § 124.510(b) below. A new provision has been added to make clear the requirements applicable to facilities certified under § 124.515. *See*, § 124.510(c). The reference to subsection (a) of § 124.511 in the current rules with respect to § 124.513 facilities has been deleted in § 124.510(b) below to reflect the reorganization of § 124.511 in the rules below. Finally, the Department has not accepted the provider suggestion that consumers be prohibited from reviewing individual patient accounts to determine compliance. In the Department's view, the policies of the 1979 rules have worked well in this regard and it does not think a case has been made for change.

11. Substantial Compliance

Under the proposed rules, a facility which substantially complied with the most important requirements of the rules could receive full credit for the uncompensated services it claimed, despite failure to comply in particular cases. Concomitantly, if it systematically failed to comply with one of the crucial regulatory requirements—such as the individual written notice requirement—it was subject to losing credit for the entire year, despite the presence of otherwise creditable accounts. *See*, proposed §§ 124.51(b)(l)(i) and 124.512(c). As noted in the preamble to the proposed rules, these provisions were designed to give facilities a strong incentive to comply with the rules across the board "thereby enhancing the provision of services to persons unable to pay while lessening the burden of compliance for facilities that make a good faith effort to comply." 51 FR 31004.

These provisions of the proposed rule evoked widespread comment, both for and against the proposals. Generally, the providers favored the substantial compliance concept, although several stated that the concept of a total disallowance was grossly unfair. Consumers were uniformly opposed to the concept of substantial compliance. These concerns are described more specifically below.

While facilities and provider groups generally favored relaxing the technical requirements that have occasioned disallowances, they expressed a number of reservations about the "substantial compliance" and "substantial noncompliance" concepts. A number of facilities stated that the concept was too vague. Their concerns about vagueness had two aspects: first, they sought clarification of which provisions of the rules would form the basis for the substantial compliance determination; second, they sought clarification of how many instances of noncompliance would produce a finding of substantial noncompliance. Several facilities suggested that there should be an appeal process for those facilities that receive a total disallowance. One facility asked what the impact of these tests would be on previously unassessed years, while another suggested that facilities that are awaiting assessment not be "penalized" by having the inflation factor applied to any deficits thay have to make up.

Many of the consumer comments expressed concerns similar to those of the facilities. The most common criticism of the substantial compliance concept was that it was too vague. The specific consumer concern was that the standard was so general that it would not permit monitoring by consumer groups; several asked how many violations of the regulations a facility could commit and still be in compliance. A related, very common objection was that compliance cannot be determined without audits of individual accounts. A number of commenters also objected

that the substantial compliance concept violated 42 U.S.C. 300s–6, which requires the Secretary to "investigate and ascertain * * * the extent of compliance" of facilities with their uncompensated services assurance. Several other commenters argued that a compliance standard that is not based on audits of individual accounts violates the nonwaivable reporting requirement of 42 U.S.C. 300s, which requires the periodic submission by facilities of "data and information which reasonably supports * * * (their) compliance with (their) assurances." One consumer organization argued that facilities that are out of compliance with the notice requirements should not be found in substantial compliance, while another asked what recourse patients who were "aberrations" would have. Another commenter argued that the concept of "substantial compliance" was not legal in the Sixth Circuit under *Newsom v. Vanderbilt University*, 653 F. 2d 1100 (6th Cir., 1981). Another consumer group argued that the concept of substantial compliance was illegal, as the government has no record showing that facilities have complied in the past.

The Department has attempted to accommodate many of these concerns in the rules below. It has done this by substantially revising the provisions relating to the standards for substantial compliance and substantial noncompliance. *See*, §§ 124.511(b)(3) and 124.512(c) below. In addition, § 124.511(b) has been revised to make clear what many commenters apparently misunderstood about the proposed rule, that substantial compliance determinations will be based on audits of individual accounts. *See*, § 124.511(b)(2) below.

As set forth below, § 124.511(b)(1)(iii) now provides that the standard for determining whether a facility is in substantial compliance with its assurance is result-oriented: whether the facility provided uncompensated services to eligible persons who had equal opportunity to apply for those services. The specific factors that will be considered in making this determination are three, in descending order of importance: (1) Whether any corrective action previously prescribed has been implemented; (2) whether any violations found can be remedied by corrective action; and (3) whether the facility had in place procedures that complied with the basic components of an uncompensated services program and systematically followed them. If the services are in fact provided to eligible persons at no or a reduced charge, the facility will receive credit for them towards its obligation. Conversely, if the facility fails to remedy prior noncompliance where corrective action is prescribed, it is subject to losing credit for *all* uncompensated services it provided in the period covered by the corrective action. *See*, § 124.512(c)(4).

The purpose of these provisions is to minimize harm, both to eligible persons and to facilities. In the context of the uncompensated services assurance, the issue to be addressed is financial: Who will bear the cost of the medical services that are provided? [2] And, generally speaking, an error in resolving that issue produces harm that can be remedied. For example, where a facility erroneously requests full payment from a person who was eligible for discounted services under its allocation plan, it can remedy that error by ceasing collection on the amount erroneously charged, refunding any erroneous payments, and so on. Similarly, where a facility provides uncompensated services to persons whose care is covered by third party payors and charges those amounts to its uncompensated services obligation, the error can be remedied by reducing the uncompensated services claimed by the amount of the ineligible accounts. In such situations, where a remedy is available and is provided, it is the Department's view that the intent of the statute has been met—uncompensated services have been provided to those who qualify for them—and the facility should receive appropriate credit therefor.

Other failures however, are not so easily remedied, and the regulation treats them differently. The most important of these is where eligible persons do not request uncompensated services because of basic deficiencies in a facility's uncompensated services program, such as failure to provide individual written notice or make determinations. Because such situations do not leave a paper trail, they are inherently impossible to monitor or remedy adequately with respect to the people who were affected by the deficiency. Also, in the Department's view, the individual written notice requirement of § 124.504(c) is the primary vehicle for ensuring that eligible persons are able to seek uncompensated services on a timely and equitable basis, while the requirement that the facility document its determinations ensures that it will make eligibility determinations where requested. Thus, if a facility shows a systematic failure to comply with either the individual written notice requirement of § 124.504(c) with respect to persons eligible under its allocation plan or systematically fails to maintain the documentation required by § 124.510, it is presumed to have routinely denied equal opportunity to request and receive uncompensated services to all eligible persons for the period in question. It is accordingly treated as totally out of compliance with its assurance for the period in question, and receives *no* credit towards its uncompensated services obligation. *See*, § 124.512(c) (1) and (3). While these provisions do not directly remedy the injury to persons who would have sought uncompensated services but for for the deficiencies in the facility's program, they do ensure that the class of persons eligible for such services does not lose them through inappropriate crediting where such basic deficiencies in a facility's uncompensated services program exist. Finally, the regulations provide for total disallowance where a facility fails to report as required by § 124.509. *See*, § 124.512(c)(2). The starting point for any finding of substantial compliance is the facility's claim regarding the amount of uncompensated services provided. If the facility claims no services, in the form of a § 124.509 report, there is no basis for a finding of substantial compliance

Another type of noncompliance may also exist—that is, where the facility has failed to comply with a procedural requirement, but the harm is minimal or difficult to ascertain. One example would be where a facility distributes the individual written notice only to persons within its allocation plan, not to all persons seeking service in the facility as required by § 124.504(c). In such a case, eligible individuals have by definition received uncompensated services equitably, so that no individual remedies (such as refund, cessation of collection actions) are called for. Nonetheless, the regulatory requirements have not been complied with, and there is likely to have been harm to persons who later become eligible through, for example, a change in circumstances. Such cases, as noted above, are intrinsically incapable of identification or, even if identified, subject to questions of causation and evidence, and thus not susceptible to individual remedy. Thus, the regulatory approach is to prescribe remedial action on a prospective basis *(e.g.*, distribute the individual written notice to all persons seeking service in the facility).

[2] Commenters frequently assumed that the uncompensated services assurance raises issues of access to medical care. In the usual case, however, the problem of denial of access is one covered by the community service assurance of 42 U.S.C. 291c(e)(l), not the uncompensated services assurance.

to protect the class of eligible persons served by the facility. If the facility thereafter fails to make the prescribed corrective action, it is subject to having *all* accounts for the period covered by the corrective action disallowed. *See,* § 124.512(c)(4); *see also,* § 124.511(b)(l)(iii)(A). Thus, the approach to situations where the likelihood of harm is either small or difficult to assess is to require prospective compliance, but not to disallow for past noncompliance. This will provide a reasonable remedy to the class of eligible persons served by the facility, while at the same time ensuring that the facility is clearly on notice of what procedures are required. If the facility thereafter fails to implement the prescribed corrective action, the regulations assume that the resultant noncompliance is not due to ignorance or mistake, and that a total disallowance is therefore warranted.

The foregoing discussion makes clear that substantial compliance and noncompliance assessments will be based on audits of facility claims, with respect both to their uncompensated services systems generally and individual accounts. In this regard, the Department has developed and tested an audit method based on this approach and is convinced that the above regulatory approach is workable from an administrative standpoint. Thus, it believes that it can undertake the assessments the regulations call for in a time frame which will assure appropriate feedback to both consumers and facilities. This audit methodology (provided for in § 124.511(b)(1)(ii) below) renders irrelevant the various consumer criticisms of the proposed rule based on the perceived lack of provision for audits of individual accounts.

In the Department's view, the changes above also respond to most of the commenters' other concerns. The basis for a substantial compliance (or noncompliance) determination is principally the availability and implementation of corrective action which, by definition, will be very specific. *See,* § 124.512(b). Not only will the corrective action itself be tailored to the uncompensated services program of the facility in question, but it will be based on the underlying regulatory compliance standards (*e.g.,* §§ 124.505, 124,506, 124,507), which all commenters appear to agree are sufficiently specific. This approach thus responds to the vagueness concerns of both facilities and consumers. More important, the stress on corrective action ensures both groups that a finding of substantial compliance is made only where past noncompliance is appropriately remedied for consumers and that it reflects and appropriately treats such remedial action in terms of a facility's uncompensated servcies obligation as a whole. The same considerations respond to the consumer concerns with monitoring. The compliance standards remain very similar to those of the 1979 rules, and should present no qualitatively different monitoring problem. What is different under the approach below is the relative availability of a remedy for consumers who believe that they have been denied uncompensated services to which they are entitled. A consumer who can establish an improper denial to the Secretary's satisfaction will now have greater leverage in the administrative process, pursuant to § 124.511(b)(1)(iii)(A). The Department agrees with the consumer argument that facilities that are out of compliance with the notice requirements should not be found in substantial compliance, and the regulations below reflect this. *See, e.g.,* § 124.512(c)(1). With respect to the issue of an appeal faor a total disallowance, it notes that an administrative review is available for facilities under current procedures, and there is no plan to eliminate this.

The Department has not accepted the remaining comments regarding the substantial compliance and noncompliance concepts. The Department is not persuaded that the cited holding in the *Newsom* litigation (which it notes appeared in the district court opinion only) is of any relevance to the instant regulations, as the *Newsom* case pertained solely to the regulatory compliance standards issued in 1972. The Department likewise disagrees with the commenter who implied that it lacks the legal authority to adopt a substantial compliance standard absent a showing of past compliance by Hill-Burton facilities. Aside from the factual fallacy underlying this contention, the Secretary's discretion to determine the standards of compliance with the assurance is not limited by the presence (or absence) of past compliance. Finally, the Department has not accepted the provider suggestion relating to delay in the application of the inflation factor. It notes in this regard that the inflation factor is intended only to ensure that the value of uncompensated services remains constant, and does not operate as a "penalty."

12. Audits of Prior Unassessed Years of Compliance

A problem exists with respect to how to treat facilities whose compliance with the 1979 rules has not been assessed by the Secretary for some or all of the period between 1979 and the effective date of these rules. The proposed rules addressed this issue by proposing two options. Each facility could be credited with an amount of creditable services calculated by the Department based on the facility's reported data concerning compliance, adjusted by a factor derived from a review of all assessments conducted to date. Alternatively, they could hire an independent auditor to certify the amount of uncompensated services provided to supply a basis for adjusting the Department's calculation. *See,* proposed § 124.511(b)(1)(ii).

This proposal elicited widespread criticism. Many facilities and consumer groups alike contended that the proposed approach lacked an statistical validity. Facilities argued that it would penalize facilities with better-than-average compliance, as the sample would contain assessments of a large number of noncomplying facilities. Consumer groups, on the other hand, argued that the approach would unduly benefit noncomplying facilities. A number of consumer groups argued that the proposal was also unfair in that it permitted credit to be increased without any parallel provision for decreasing credit.

The Department is persuaded by the comments received and has abandoned the approach proposed. Instead, it will conduct assessments of prior unassessed years for each facility to determine a facility-specific credit. *See,* § 124.511(b)(2) below. This approach accommodates the concerns of both providers and consumers with crediting facilities with amounts based on assessments of other facilities. It likewise responds to the consumer concern with the one-sided nature of the proposed rule, as, under the rule below, there is no longer any provision for facilities to obtain an adjustment through an independent audit.

13. Small Obligation Compliance Alternative

Based on a recent study of Hill-Burton associated administrative costs conducted by A.D. Little, Inc., "Evaluation oif the Hill-Burton Program Administrative Compliance Costs", the proposed rules proposed a compliance alternative very similar to that available to public facilities, for facilities with small annual obligations. Under the proposed rules, facilities with annual obligations of $10,000 or under (in the year the rules become effective) could be exempted from the procedural and administrative requirements of the

regulations if the Secretary certified that they conducted a program of providing health services at no or a substantially reduced charge to persons who are unable to pay therefor. A facility would apply for certification by submitting a description of its program of discounted health services. Once granted, the certification would remain in effect until withdrawn by the Secretary. The Secretary could withdraw certification where the Secretary determined that there had been a material change in the factors upon which the certification was based or a material failure by the facility to comply with its continuing obligations under the certification.

A number of consumer organizations objected to the proposed compliance alternative. Several opposed the proposed alternative on the ground that it constituted an exemption for the statutory requirement, for which there is no statutory basis. Others opposed the alternative on the ground that the asserted basis for the requirement was not sound. In this regard, commenters argued that the findings of the cited report applied to the whole universe of Hill-Burton assisted facilities, and the administrative costs of facilities with small obligations were in fact substantially lower. Others argued that the administrative costs findings of the report were misleading, as approximately 90% of all Hill-Burton costs are consumed in routine admissions screenings, so that the actual annual incremental costs to facilities were in the $780 range, rather than the $7,800 range. A State agency argued that the alternative violated the equal protection clause, as it was not justified by any administrative cost differential.

Still other commenters objected to the proposed alternative on the ground that it was unfair to small communities, where a $10,000 obligation may be quite significant. One commenter objected to the proposed test for "programs of discounted health services" on the ground that even "objective" eligibility tests may be arbitrary. Another commenter sought clarification of the means for calculating the $10,000 qualification level, questioning whether, in calculating if a facilities met the $10,000 annual compliance level test, it could apply previously earned excesses to reduce its annual compliance level for the year. A couple of commenters objected to the proposed policy on the ground that the compliance history of facilities with small obligations is poor. Another objected that the alternative was illegal because it required no record-keeping.

The rules below retain the compliance alternative for facilities with small annual obligations, although several major changes have been made in response to the public comments. The Department agrees that the provisions relating to the qualification level needed refinement. Accordingly, the rule below provides that the qualification level is to be determined, for Title VI-assisted facilities, by computing the facility's average annual compliance level over the remainder of its obligations, factoring in any past deficits. *See,* § 124.514(b)(1)(i). At the same time, since the "buy out" formula, which provides the basis for the calculation, has no application to facilities assisted under Title XVI, a new qualification level has been added to permit such facilities to qualify for the compliance alternative. *See,* § 124.514(b)(1)(ii). The level for Title XVI-assisted facilities is biased heavily against permitting facilities with large outstanding deficits to qualify. *Id.* The qualification level is also, under the rules below, a performance level; *see* § 124.514(d). Moreover, since the performance level under the rules below is pegged to a formula that takes into account outstanding deficits, it means that a complying facility will be making up its deficit as it complies with its certification. To facilitate this, the period of obligation for certified facilities is concomitantly extended. *See,* § 124.514(e)(1) below. This feature of the rules below eliminates the need for deficit make-up provisions analogous to those applicable to public facilities certified under § 124.513. Rather, the rules below provide only that certified facilities must make up any outstanding deficit in accordance with § 124.503(b) following withdrawal of certification. *See,* § 124.514(e)(2) below.

The Department disagrees with the comments objecting to the compliance alternative as unsupported by the A.D. Little study. The charge that 90% of the $7,800 average administrative costs identified in the study were attributable to routine pre-admission screening costs is wrong. The study considered only those costs directly attributable to Hill-Burton regulatory requirements in arriving at the $7,800 figure. The contention that the study fails to support the policy because the average compliance costs of facilities with small obligations is proportionately less than that of facilities with large obligations is likewise in error. The study found that the average administrative compliance costs for hospitals were $9,510, for long-term care facilities (nursing homes, TB hospitals, chronic disease hospitals, and rehabilitation centers), $4,268, and for all other facilities (public health centers, community mental health/retardation centers, State health laboratories and independent outpatient centers) $5,009. However, these compliance costs become more significant when compared to base levels. For Fiscal Year 1984 base compliance levels averaged $155,000 for hospitals, $49,000 for long-term care facilities, and $33,000 for all other facilities. Thus, Hill-Burton administrative costs were on average about 6% of the base compliance level for hospitals, 12% of the base compliance level for long-term care facilities and 21% of the base compliance level for "other" facilities, which, on average, have the smallest obligations. Thus, in the Department's view, the study establishes that the compliance costs associated with the regulations weigh disproportionately heavily on facilities with small annual obligations.

The Department disagrees with and has not accepted the remainder of the comments. With regard to the question of whether it has the legal authority to "exempt" these facilities from their assurance obligation, it would agree that it lacks such authority, but it disputes that § 124.514 constitutes an exemption. Rather, it constitutes an alternative compliance standard. It cannot be disputed that the Secretary has discretion, under 42 U.S.C. 300s(3), to prescribed standards of compliance; it likewise cannot be argued that the compliance standards of the 1979 rules are immutable or are the only ones that can effect the statutory purpose. Rather, the Secretary has discretion, under section 300s(3), to determine, based on experience, what those standards should be and to change them as circumstances change. For the reasons discussed above, the Secretary remains convinced that a compliance alternative is needed for facilities with small annual obligations and that the Secretary has the legal authority to establish such an alternative. The Department rejects as completely unfounded the criticism of the compliance obligation on the grounds that it requires no reporting or record-keeping; *see,* §124.509(b), § 124.510(b), § 124.511(a)(3), § 124.512(c)(3). One commenter noted that "objective" eligibility criteria may be arbitrary. The Department, however, notes that the term "objective" must be construed in terms of the related term "financial criteria," and this is not arbitrary. The Department's experience with the related provision in § 124.513 has indicated little problem in this area. Finally, although the Department agrees

that in a small, often rural community, a $10,000 Hill-Burton obligation may be significant, it disputes the premise of this criticism, *i.e.*, that certification under this section will deprive the community of uncompensated services. Rather, the compliance alternative is available only to facilities that have a program of "discounted health services." Furthermore, the facilities that are certified under this section continue to be held to a dollar volume of uncompensated (or "discounted") services which they provide, and they must make up deficits if they fail to meet this level. *See*, § 124.514(d) below. Thus, the compliance alternative is structured so that the communities served by such facilities will not lose uncompensated services.

14. Community and Migrant Health Centers Compliance Alternative

Under proposed § 124.503(d), a center funded under either section 329 or section 330 of the PHS Act would be considered to have met its uncompensated services obligation in each year in which it was in compliance with the conditions of its grant relating to provision of services at a discount.

This proposal elicited very little comment. One community health center asked that the provision be made retroactive. Another provider asked that the provision be extended to so-called freestanding National Health Service Corps (NHSC) clinic sites, on the ground that they are likewise required by Federal regulations to provide discounted services. A consumer group objected that the provision was illegal, on the ground that there is no statutory basis for exempting any class of facilities from the obligation.

The Department agrees that the rationale supporting the policy for community and migrant health centers applies equally to certain NHSC sites, at least where such sites are functionally the same as a community or migrant health center, as is the case where the entire medical services of the site are provided by the Corps professionals. It has thus revised the proposed rule to cover certain NHSC clinic sites, but only to the extent the services provided by the NHSC health professional(s) constitute the entirety of the services provided by the facility. While the Department has not accepted the suggestion that the provision be made retroactive, it recognizes that the commenter has raised a valid concern. It has thus revised the provision to include deficit make-up provisions that parallel those applicable under § 124.513. *See*, § 124.515(b) below.

The Department disagrees with the consumer contention that the proposed § 124.503(d) is illegal. As stated in the preamble to the proposed rules, it believes that facilities which are in compliance with the terms of a grant under section 330 or 329 (or an agreement under section 334) of the PHS Act are, in fact, providing a reasonable volume of services to persons unable to pay, and thus should not be required to comply with the conflicting procedural requirements of Subpart F. However, it recognizes that the placement of this provision in § 124.503 in the proposed rules was confusing in this regard. It has thus placed the provisions relating to community and migrant health centers following the other compliance alternatives in a new § 124.515, to make clear that these provisions in fact simply amount to an alternative means of complying with the statutory assurance.

15. State Agencies

Proposed § 124.513 proposed to broaden the types of State agencies with which the Secretary could contract to carry out the assurances program. This proposal attracted no substantive comment and is retained as proposed in the rules below. *See*, § 124.516.

III. Regulatory Flexibility Act and Executive Order 12291

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. The Secretary certifies that this rule will not have significant economic effect on a substantial number of small entities. Therefore, it does not require a Regulatory Flexibility Analysis.

The Secretary has also determined that this final rule is not a "major rule" as defined under E.O. 12291, because it will not have an annual effect on the economy of $100 million or more, or otherwise meet the criteria for which a regulatory impact analysis is required.

IV. Information Collection Requirements

Sections 124.504 (a) and (c), 124.507, 124.509 (a) and (b), 124.510 (a) and (b), 124.511(a) 124.513(c), 124.513(d)(2)(ii)(B), and 124.513(d)(2)(iii)(B)(*2*) of this rule contain information collection requirements which have been approved, under control number 0915–0077 by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

Sections 124.509(c), 124.514(c), 124.515(b)(2)(ii), and 124.515(b)(3)(ii)(B) of this rule contain new information collection requirements subject to approval by the OMB. We will be submitting an information collection request to the OMB for approval of these requirements under section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). These requirements will not be effective until the Department obtains OMB approval. When approval is obtained, a notice will be published in **Federal Register** announcing the effective date of these requirements.

V. List of Subjects in 42 CFR Part 124

Grant programs—health, Health facilities, Loan programs—health, Low income persons, Reporting and record-keeping requirements.

Accordingly, the Department of Health and Human Services hereby amends Part 124 of 42 Code of Federal Regulations by revising Subpart F to read as follows:

Dated: August 4, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: October 22, 1987.

Otis R. Bowen,

Secretary.

PART 124—[AMENDED]

Subpart F—Reasonable Volume of Uncompensated Services to Persons Unable to Pay

Sec.

Authority: 42 U.S.C. 216; 42 U.S.C. 300s(3).

Subpart F—Reasonable Volume of Uncompensated Services to Persons Unable to Pay

§ 124.501 Applicability.

(a) The provisions of this subpart apply to any recipient of Federal assistance under Title VI or XVI of the Public Health Service Act that gave an

assurance that it would make available, in the facility or portion of the facility constructed, modernized or converted with that assistance, a reasonable volume of services to persons unable to pay for the services.

(b) The provisions of this subpart apply to facilities for the following periods:

(1) *Facilities assisted under Title VI.* Except as otherwise herein provided, a facility assisted under Title VI of the Act shall provide uncompensated services at the annual compliance level required by § 124.503(a) for:

(i) Twenty years after the completion of construction, in the case of a facility for which the Secretary provided grant assistance under section 606 of the Act; or

(ii) The period from completion of construction until the amount of a direct loan under sections 610 and 623 of the Act, or the amount of a loan with respect to which the Secretary provided a guarantee and interest subsidy under section 623 of the Act, is repaid, in the case of a facility for which such a loan was made.

(iii) "Completion of construction" means:

(A) The date on which the Secretary determines the facility was opened for service;

(B) If the opening date is not available, it means the date on which the Secretary approved the final part of the facility's application for assistance under Title VI of the Act;

(C) If the date of final approval is not available, it means whatever date the Secretary determines most reasonably approximates the date of final approval.

(2) *Facilities assisted under Title XVI.* The provisions of this subpart apply to a facility assisted under Title XVI of the Act at all times following the Secretary's approval of the facility's application for assistance under Title XVI, except that if the facility does not at the time of that approval provide health services, the assurance applies at all times following the facility's initial provision of health services to patients, as determined by the Secretary.

§ 124.502 Definitions.

As used in this subpart—

(a) "Act" means the Public Health Service Act, as amended.

(b) "Allowable credit" for services provided to a specific patient means the lesser of the facility's usual charge for those services, or the usual charge multiplied by the percentage which the total allowable cost as reported by the facility in the facility's preceding fiscal year under Title XVIII of the Social Security Act (42 U.S.C. 1395, *et seq.*) and the implementing regulations (42 CFR Part 413) bears to the facility's total patient revenues for the year.

(c) "Applicant" means a person who requests uncompensated services or on whose behalf uncompensated services are requested.

(d) "CPI" means the National Consumer Price Index for medical care.

(e) "Facility" means an entity that received assistance under Title VI or XVI of the Act and provided an assurance that it would provide a reasonable volume of services to persons unable to pay for the services.

(f) "Federal assistance" means assistance received by the facility under Title VI or Title XVI of the Act and any assistance supplementary to that Title VI or Title XVI assistance received by the facility under any of the following acts: the District of Columbia Medical Facilities Construction Act of 1968, 82 Stat. 631 (Pub. L. 90–457); the Public Works Acceleration Act of 1962 (42 U.S.C. 2641, *et seq.*); the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121, *et seq.*); the Appalachian Regional Development Act of 1965, as amended (40 U.S.C. App.); the Local Public Works Capital Development and Investment Act of 1976 (Pub. L. 94–369). In the case of a loan guaranteed by the Secretary with an interest subsidy, the amount of Federal assistance under Title VI or Title XVI for a fiscal year is the total amount of the interest subsidy that the Secretary will have paid by the close of that fiscal year, as well as any other payments which the Secretary has made as of the beginning of the fiscal year on behalf of the facility in connection with the loan guarantee or the direct loan which has been sold.

(g) "Fiscal year" means the facility's fiscal year.

(h) "Nursing home" means a facility which received Federal assistance for and operates as a "facility for long-term care" as defined at, as applicable, section 645(h) or section 1624(6) of the Act.

(i) "Operating costs" for any fiscal year means the total operating expenses of a facility as set forth in an audited financial statement, minus the amount of reimbursement, if any, received (or if not received, claimed) in that year under Titles XVIII and XIX of the Social Security Act.

(j) "Persons unable to pay" means persons who meet the eligibility criteria set out in § 124.505.

(k) "Request for uncompensated services" means any indication by or on behalf of an individual seeking services of the facility of the individual's inability to pay for services. A request for uncompensated services may be made at any time, including following institution of a collection action against the individual.

(l) "Secretary" means the Secretary of Health and Human Services or [his or her] delegatee.

(m) "Uncompensated services" means:

(1) For facilities other than those certified under § 124.513, § 124.514, or § 124.515, health services that are made available to persons unable to pay for them without charge or at a charge which is less than the allowable credit for those services. The amount of uncompensated services provided in a fiscal year is the total allowable credit for services less the amount charged for the services following an eligibility determination. Excluded are services provided more than 96 hours following notification to the facility by a peer review organization that it disapproved the services under section 1155(a)(1) or section 1154(a)(1) of the Social Security Act.

(2) For facilities certified under § 124.513, § 124.514, or § 124.515, services as defined in paragraph (m)(1) of this section and services that are made available to persons unable to pay for them under programs described by the documentation provided under § 124.513(c)(2) or § 124.514(c)(2), as applicable, or pursuant to the terms of the applicable grant or agreement as provided in § 124.515. Excluded are services reimbursed by Medicare, Medicaid or other third party programs, including services for which reimbursement was provided as payment in full, and services provided more than 96 hours following notification to the facility by a peer review organization that it disapproved the services under section 1155(a)(1) of section 1154(a)(1) of the Social Security Act.

§ 124.503 Compliance level.

(a) *Annual compliance level.* Subject to the provisions of this subpart, a facility is in compliance with its assurance to provide a reasonable volume of services to persons unable to pay if it provides for the fiscal year uncompensated services at a level not less than the lesser of—

(1) Three percent of its operating costs for the most recent fiscal year for which an audited financial statement is available;

(2) Ten percent of all Federal assistance provided to or on behalf of the facility, adjusted by a percentage equal to the percentage change in the CPI between the year in which the facility received assistance or 1979,

whichever is later, and the most recent year for which a published index is available.

(b) *Deficits.* If in any fiscal year a facility fails to meet its annual compliance level, it shall provide uncompensated services in an amount sufficient to make up that deficit in subsequent years, and its period of obligation shall be extended until the deficit is made up.

(1) *Types of deficits.* For purposes of determining the timing and amount of any deficit make-up, there are two types of deficits:

(i) *Justifiable deficits.* A justifiable deficit is one in which the facility did not meet its annual compliance level due to either financial inability (as determined under § 124.511(c)) or, although otherwise in compliance with this subpart, a lack of eligible applicants for uncompensated services during the fiscal year.

(ii) *Noncompliance deficits.* A noncompliance deficit is one in which the facility failed to meet its annual compliance level due to noncompliance with this subpart.

(2) *Timing of deficit make-up*—(i) *Justifiable deficits.* (A) A facility assisted under Title VI of the Act may make up a justifiable deficit at any time during its period of obligation or in the year (or years, if necessary) immediately following its period of obligation.

(B) A facility assisted under Title XVI of the Act is not required to make up a justifiable deficit.

(ii) *Noncompliance deficits.* (A) A facility must begin to make up a noncompliance deficit in the fiscal year following the finding of noncompliance by the Secretary.

(B) A facility which claimed financial inability under § 124.509(a)(2)(iii) and is found by the Secretary, pursuant to § 124.511(c), to have been financially able to provide uncompensated services in the year in which the deficit was incurred shall begin to make up the deficit beginning in the fiscal year following the Secretary's finding.

(C) A facility required to make up a noncompliance deficit but which is determined by the Secretary, pursuant to § 124.511(c), to be financially unable to do so in the year following the Secretary's finding of noncompliance shall make up the deficit in accordance with a schedule set by the Secretary.

(3) *Deficit make-up amount.* (i) The amount of a deficit in any fiscal year is the difference between the facility's annual compliance level for that year and the amount of uncompensated services provided in that year.

(ii) The amount of justifiable deficit must be adjusted by a percentage equal to the percentage change in the CPI between the CPI available in the fiscal year in which the deficit was incurred and the CPI available in the fiscal year in which it was made up.

(iii) An amount equal to the result of dividing the amount of any noncompliance deficit for a fiscal year by the number of years of obligation remaining and adjusting it by a percentage equal to the percentage change in the CPI between the CPI available in the fiscal year in which the deficit was incurred and the CPI available in the fiscal year in which it was made up shall be added to a facility's annual compliance level for each fiscal year following the fiscal year of the finding of noncompliance.

(4) *Affirmative action plan for precluding future deficits.* Except where a facility reports to the Secretary in accordance with § 124.509(a)(2)(iii) that it was financially unable to provide uncompensated services at the annual compliance level, a facility that fails to meet its annual compliance level in any fiscal year shall, in the following year, develop and implement a plan of action that can reasonably be expected to enable the facility to meet its annual compliance level. Such actions may include special notice to the community through newspaper, radio, and television, or expansion of service to Category B persons. The Secretary may require changes to the plan. Where a facility fails to comply with this section, the Secretary may require it to make up the deficit in the fiscal year following the year in which it was required to institute the plan.

(c) *Excesses.* (1) Except for facilities certified under § 124.513, § 124.514, or § 124.515, if a facility provides in a fiscal year uncompensated services in an amount exceeding its annual compliance level, it may apply the amount of excess to reduce its annual compliance level in any subsequent fiscal year. The facility may use any excess amount to reduce its annual compliance level only if the services in excess of the annual compliance level are provided in accordance with the requirements of this subpart.

(2) *Calculation and adjustment of excess.* (i) The amount of an excess in uncompensated services in any fiscal year is the difference between the amount of uncompensated services the facility provided in that year and the facility's annual compliance level for that year.

(ii) The amount of any excess compliance applied to reduce a facility's annual compliance level must be adjusted by a percentage equal to the percentage change in the CPI between the CPI available in the fiscal year in which the facility provided the excess, and the CPI available in the fiscal year in which the facility applies the excess to reduce its annual compliance level or satisfy its remaining obligation.

(3) Except as provided in subparagraph (1) of this paragraph, a facility assisted under Title VI may in any fiscal year apply the amount of excess credited under this paragraph to satisfy the remainder of its obligation to provide uncompensated services. A facility's remaining obligation is determined as follows:

(i) Where the annual compliance level in such fiscal year is established under paragraph (a)(2) of this section, the remaining obligation is:

(A) For grant assistance, 10 percent of each grant under obligation, multiplied by the number of years remaining in its period of obligation, adjusted as provided for in paragraph (a)(2) of this section, plus any deficits required to be made up and less any unused excesses accrued in prior years; and

(B) For loan assistance, the facility's annual compliance level multiplied by the number of years remaining in the scheduled life of the loan, plus the sum of 10 percent of each yearly cumulative total of additional interest subsidy or other payments (which the Secretary will have made in connection with the guaranteed loan or a direct loan which has been sold) in each subsequent year remaining in the scheduled life of the loan, plus any deficits required to be made up, and less any unused excesses accrued in prior years; or

(ii) Where the annual compliance level in such fiscal year is established under paragraph (a)(1) of this section, the remaining obligation is the average of the facility's annual compliance levels in the previous three years, multiplied by the number of years remaining in its period of obligation, plus any deficits required to be made up under this section, and less any unused excesses accrued in prior years.

§ 124.504 Notice of availability of uncompensated services.

(a) *Published notice.* A facility shall publish in a newspaper of general circulation in its area notice of its uncompensated services obligation before the beginning of its fiscal year. The notice shall include:

(1) The plan of allocation the facility proposes to adopt;

(2) The amount of uncompensated services the facility intends to make available in the fiscal year or a statement that the facility will provide uncompensated services to all persons

unable to pay who request uncompensated services;

(3) An explanation, if the amount of uncompensated services the facility intends to make available in a fiscal year is less than the annual compliance level. If a facility has satisfied its remaining uncompensated services obligation since the last published notice under this paragraph, or will satisfy the remaining obligation during the fiscal year, the explanation must include this information; and

(4) A statement inviting interested parties to comment on the allocation plan.

(b) *Posted notice.* (1) The facility shall post notices, which the Secretary supplies in English and Spanish, in appropriate areas in the facility, including but not limited to the admissions areas, the business office, and the emergency room.

(2) If in the service area of the facility the "usual language of households" of ten percent or more of the population according to the most recent figures published by the Bureau of the Census is other than English or Spanish, the facility shall translate the notice into that language and post the translated notice on signs substantially similar in size and legibility to and posted with those supplied under paragraph (b)(1) of this section.

(3) The facility shall make reasonable efforts to communicate the contents of the posted notice to persons who it has reason to believe cannot read the notice.

(c) *Individual written notice.* (1) In any period during a fiscal year in which uncompensated services are available in the facility, the facility shall provide individual written notice of the availability of uncompensated services to each person who seeks services in the facility on behalf of himself or another. The individual written notice must:

(i) State that the facility is required by law to provide a reasonable amount of care without or below charge to people who cannot afford care;

(ii) Set forth the criteria the facility uses for determining eligibility for uncompensated services (in accordance with the financial eligibility criteria and the allocation plan);

(iii) State the location in the facility where anyone seeking uncompensated services may request them; and

(iv) State that the facility will make a written determination of whether the person will receive uncompensated services, and the date by or period within which the determination will be made.

(2) The facility shall provide the individual written notice before providing services, except where the emergency nature of the services provided makes prior notice impractical. If this exception applies, the facility shall provide the individual written notice to the next of kin or to the patient as soon as practical, but not later than when first presenting a bill for services.

(3) The facility shall make reasonable efforts to communicate the contents of the individual written notice to persons who it has reason to believe cannot read the notice.

§ 124.505 Eligibility criteria.

(a) A person unable to pay for health services is a person who—

(1) Is not covered, or receives services not covered, under a third-party insurer or governmental program, except where the person is not covered because the facility fails to participate in a program in which it is required to participate by § 124.603(c);

(2) Falls into one of the following categories:

(i) *Category A*—A person whose annual individual or family income, as applicable, is not greater than the current poverty line issued by the Secretary pursuant to 42 U.S.C. 9902 that applies to the individual or family. The facility shall provide uncompensated services to persons in Category A without charge.

(ii) *Category B*—A person whose annual individual or family income, as applicable, is greater than but not more than twice the poverty line issued by the Secretary pursuant to 42 U.S.C. 9902 that applies to the individual or family. If persons in Category B are included in the allocation plan, the facility shall provide uncompensated services to these persons without charge, or in accordance with a schedule of charges as specified in the allocation plan; and

(3) Requests services within the facility's allocation plan in effect at the time of the request.

(b) For purposes of determining eligibility for uncompensated services, revisions of the poverty line are effective 60 days from the date of their publication in the **Federal Register.**

(c) A person is eligible for uncompensated services if the person's individual or family annual income, as applicable, is at or below the level established under paragraph (a)(2) when calculated by either of the following methods:

(1) Multiplying by four the person's or family's income, as applicable, for the three months preceding the request for uncompensated services;

(2) Using the person's or family's income, as applicable, for the twelve months preceding the request for uncompensated services.

§ 124.506 Allocation of services; plan requirement.

(a)(1) A facility shall provide its uncompensated services in accordance with a plan that sets out the method by which the facility will distribute its uncompensated services among persons unable to pay. The plan must:

(i) State the type of services that will be made available;

(ii) Specify the method, if any, for distributing those services in different periods of the year;

(iii) State whether Category B persons will be provided uncompensated services, and if so, whether the services will be available without charge or at a reduced charge;

(iv) If services will be made available to Category B persons at a reduced charge, specify the method used for reducing charges, and provide that this method is applicable to all persons in Category B; and

(v) Provide that the facility provides uncompensated services to all persons eligible under the plan who request uncompensated services.

(2) A facility must adopt an allocation plan that meets the requirements of paragraph (a) by publishing the plan in a newspaper of general circulation in its area. The plan may take effect no earlier than 60 days following the date of publication.

(b)(1) If in any fiscal year a facility fails to adopt and publish a plan in accordance with paragraph (a), it shall provide uncompensated services in accordance with the last plan it published in a newspaper of general circulation in its area.

(2) If no plan was previously published in accordance with paragraph (a)(2), the facility must provide uncompensated services without charge to all applicants in Category A and Category B who request service in the facility. This requirement applies until the facility ceases to provide uncompensated services under § 124.508 or until an allocation plan published in accordance with paragraph (a)(2) of this section becomes effective.

(c) A facility may revise its allocation plan during the fiscal year by publishing the revised plan in a newspaper of general circulation in the area it serves. A revised plan may take effect no earlier than 60 days following the date of publication.

§ 124.507 Written determinations of eligibility.

(a) Determinations of eligibility must be in writing, be made in accordance with this section, and a copy of the

determination must be provided to the applicant promptly.

(b) *Content of determinations*—(1) *Favorable determinations.* A determination that an applicant is eligible must indicate:

(i) That the facility will provide uncompensated services at no charge or at a specified charge less than the allowable credit for the services;

(ii) The date on which services were requested;

(iii) The date on which the determination was made;

(iv) The applicant's individual or family income, as applicable, and family size; and

(v) The date on which services were or will be first provided to the applicant.

(2) *Conditional determinations.* (i) As a condition to providing uncompensated services, a facility may:

(A) Require the applicant to furnish any information that is reasonably necessary to substantiate eligibility; and

(B) Require the applicant to appy for any benefits under third party insurer or governmental programs to which he/she is or could be entitled upon application.

(ii) A conditional determination must:

(A) Comply with paragraph (b)(1) of this section; and

(B) State the condition(s) under which the applicant will be found eligible.

(iii) When a facility determines that the condition(s) upon which a conditional determination was made has been met, or will be met, it shall make a favorable determination or denial on the request, as appropriate, in accordance with this section.

(3) *Denials.* A facility must provide to each applicant denied the uncompensated services requested, in whole or in part, a dated statement of the reasons for the denial.

(c) *Timing of determinations*—(1) *Preservice determinations.* (i) Facilities other than nursing homes shall make a determination of eligibility within two working days following a request for uncompensated services which is made before receipt of outpatient services or before discharge for inpatient services;

(ii) Nursing homes shall make a determination of eligibility within ten working days, but no later than two working days following the date of admission, following a request for uncompensated services made prior to admission.

(2) *Preservice determinations.* All facilities shall make a determination of eligibility not later than the end of the first full billing cycle following a request for uncompensated services which is made after receipt of outpatient services, discharge for inpatient services, or admission for nursing home services.

§ 124.508 Cessation of uncompensated services.

(a) *Facilities not certified under § 124.513, 124.514, or § 124.515.* Where a facility, other than a facility certified under § 124.513, § 124.514, or § 124.515, has maintained the records required by § 124.510(a) and determines based thereon that it has met its annual compliance level for the fiscal year or the appropriate level for the period specified in its allocation plan, it may, for the remainder of that year or period:

(1) Cease providing uncompensated services;

(2) Cease providing individual notices in accordance with § 124.504(c);

(3) Remove the posted notices required by § 124.504(b); and

(4) Post an additional notice stating that it has satisfied its obligation for the fiscal year or appropriate period and when additional uncompensated services will be available.

(b) *Facilities certified under § 124.514.* Where a facility certified under § 124.514 has maintained the records required by § 124.510(c) and determines based thereon that it has met its compliance level, under § 124.514(d), for the fiscal year, it may, for the remainder of the fiscal year:

(1) Cease providing uncompensated services; and

(2) Discontinue providing notice pursuant to § 124.514(b)(2).

§ 124.509 Reporting requirements.

(a) *Facilities not certified under § 124.513, § 124.514, or § 124.515*—(1) *Timing of reports.* (i) A facility shall submit to the Secretary a report to assist the Secretary in determining compliance with this subpart once every three fiscal years, on a schedule to be prescribed by the Secretary.

(ii) A facility shall submit the required report more frequently than once every three years under the following circumstances:

(A) If the facility determines that in the preceding fiscal year it did not provide uncompensated services at the annual compliance level, it shall submit a report.

(B) If the Secretary determines, and notifies the facility in writing that a report is needed for proper administration of the program, the facility shall submit a report within 90 days after receiving notice from the Secretary, or within 90 days after the close of the fiscal year, whichever is later.

(iii) Except as specified in paragraph (a)(1)(ii)(B) of this section, the reports required by this section shall be submitted within 90 days after the close of the fiscal year, unless a longer period is approved by the Secretary for good cause.

(2) *Content of report.* The report must include the following information in a form prescribed by the Secretary:

(i) Information that the Secretary prescribes to permit a determination of whether a facility has met the annual compliance level for the fiscal years covered by the report;

(ii) The date on which the notice required by § 124.504(a) was published, and the name of the newspaper that printed the notice;

(iii) If the amount of uncompensated services provided by the facility in the preceding fiscal year was lower than the annual compliance level, an explanation of why the facility did not meet the required level. If the facility claims that it failed to meet the required compliance level because it was financially unable to do so, it shall explain and provide documentation prescribed by the Secretary;

(iv) If the facility is required to submit an affirmative action plan, a copy of the plan.

(v) Other information that the Secretary prescribes.

(3) *Institution of suit.* Not later than 10 days after being served with a summons or complaint the facility shall notify the HHS Regional Health Administrator [1] for the Region in which it is located of any legal action brought against it alleging that it has failed to comply with the requirements of this subpart.

(b) *Facilities certified under § 124.513.* A facility certified under § 124.513 shall comply with paragraph (a)(3) of this section and shall submit within 90 days after the close of its fiscal year, as appropriate:

(1) A certification, signed by the responsible official of the facility, that there has been no material change in the factors upon which the certification was based; or

(2) A certification, signed by the responsible official of the facility and supported by appropriate documentation, that there has been a material change in the factors upon which the certification was based.

(c) *Facilities certified under § 124.514.* A facility certified under § 124.514 shall comply with paragraph (a)(3) of this section and shall submit within 90 days after the close of its fiscal year, as appropriate:

[1] The addresses of the HHS Regional Offices are set out in 45 CFR 5.31.

(1)(i) A certification, signed by the responsible official of the facility, that there has been no material change in the factors upon which the certification was based; or

(ii) A certification, signed by the responsible official of the facility and supported by appropriate documentation, that there has been a material change in the factors upon which the certification was based; and

(2) A certification, signed by the responsible official of the facility, of the amount of uncompensated services provided in the previous fiscal year.

(d) *Facilities certified under § 124.515.* A facility certified under § 124.514 shall submit such reports as are required by the terms of its grant under section 329 or 330 or by its agreement under section 334 of the Act, as applicable, at such intervals as the Secretary may require.

§ 124.510 Record maintenance requirements.

(a) *Facilities not certified under § 124.513, § 124.514, or § 124.515.* (1) A facility shall maintain, make available for public inspection consistent with personal privacy, and provide to the Secretary on request, any records necessary to document its compliance with the requirements of this subpart in any fiscal year, including:

(i) Any documents from which the information required to be reported under § 124.509(a) was obtained;

(ii) Accounts which clearly segregate uncompensated services from other accounts; and

(iii) Copies of written determinations of eligibility under § 124.507.

(2) A facility shall retain the records maintained pursuant to paragraph (a)(1) for three years after submission of the report required by § 124.509(a)(1), except where a longer period is required by the Secretary, or until 180 days following the close of the Secretary's assessment investigation under § 124.511(b), whichever is less.

(3) A facility shall, within 60 days of the end of each fiscal year, determine the amount of uncompensated services it provided in that fiscal year. Documents that support the facility's determination shall be made available to the public on request. If a report is or will be filed under § 124.509(a)(1), a facility may respond to a request by providing a copy of the report to the requester.

(b) *Facilities certified under § 124.513 or § 124.514.* A facility certified under § 124.513 or § 124.514 shall maintain, make available for public inspection consistent with personal privacy, and provide to the Secretary on request, any records necessary to document its compliance with the applicable requirements of this subpart in any fiscal year, including those documents submitted to the Secretary under § 124.513(c) or § 124.514(c). A facility shall maintain these records for three years, except where a longer period is required as a result of an investigation by the Secretary. In such cases, records must be kept until 180 days following the close of the Secretary's assessment investigation under § 124.511(b).

(Approved by the Office of Management and Budget under OMB control number 0195-0103 with respect to § 124.513.)

(c) *Facilities certified under § 124.515.* A facility certified under § 124.515 shall maintain the records required by its grant under section 329 or section 330 or its agreement under section 334 of the Act, as applicable, for such period of time as the grant agreement may require.

§ 124.511 Investigation and determination of compliance.

(a) *Complaints.* A complaint that facility is out of compliance with the requirements of this subpart may be filed with the Secretary by any person.

(1) A complaint is considered to be filed with the Secretary on the date the following information is received in the Office of the HHS Regional Health Administrator for the Region in which the facility is located:

(i) The name and address of the person making the complaint or on whose behalf the complaint is made;

(ii) The name and location of the facility;

(iii) The date or approximate date on which the event occurred; and

(iv) A statement of what actions the complainants considers to violate the requirements of this subpart.

(2) The Secretary promptly provides a copy of the complaint to the facility named in the complaint.

(3) When the Secretary investigates a facility, the facility, including a facility certified under § 124.513, § 124.514, or § 124.515, shall provide to the Secretary on request any documents, records and other imformation concerning its operation that relate to the requirements of this subpart. A facility will be presumed to be out of compliance with its assurances unless it supplies documentation sufficient to show compliance with applicable provisions of this subpart.

(4) Section 1627 of the Act provides that if the Secretary dimisses a complaint or the Attorney General has not brought an action for compliance within six months from the date on which the compliant is filed, the person filing it may bring a private action to effecutate compliance with the assurance. If the Secretary determines that he/she will be unable to issue a decision on a complaint or otherwise take appropriate action within the six month period, the Secretary may, based on priorities for the disposition of complaints that are established to promote the most effective use of enforcement resources, or on the request of the applicant, dismiss the complaint without a finding as to compliance prior to the end of the six month period, but no earlier than 45 days after the compliant is filed.

(b) *Assessments.* The Secretary periodically investigates and assesses facilities to ascertain compliance with the requirements of this subpart, including certification of the amount of uncompensated services provided in a fiscal year or years, and provides guidance and prescribes corrective action to correct noncompliance.

(1) *Compliance after February 1, 1988.*

(i) The Secretary may certify that a facility has substantially complied with its assurance for a fiscal year or years, and such certification shall establish that the facility provided the amount of uncompensated services certified for the period covered by the certification.

(ii) A certification of substantial compliance shall be based on the amount properly claimed by the facility pursuant to § 124.509(a), utilizing procedures determined by the Secretary to be sufficient to establish that the facility has substantially complied with its assurance for the period covered by the certification. The procedures will include examination of individual account data to the extent deemed necessary by the Secretary.

(iii) A certification of substantial compliance will be made where the Secretary determines that, for the period covered by the certification, the facility provided uncompensated services to establish persons who had equal opportunity to apply therefor. In making this determination, the Secretary will consider, in descending order of importance, whether—

(A) Corrective action prescribed pursuant to § 124.512(b) has been taken by the facility;

(B) Any compliance with the requirements of this subpart may be remedied by corrective action under § 124.512(b);

(C) The facility had procedures in place that complied with the requirements of §§ 124.504(c), 124.505, 124.507, 124.509, 124.510, 124.513(b)(2), 124.514(b)(2), and 124.515, as applicable,

and systematically correctly followed such procedures.

(2) *Compliance prior to February 1, 1988.* The Secretary will determine the amount of creditable services provided prior to the effective date of these rules using the compliance standards applicable under the rules as promulgated on May 18, 1979, based on procedures determined by the Secretary to be sufficient to establish that the facility provided such amounts of uncompensated services in the period(s) being assessed.

(c) *Determinations of Financial inability.* In determining whether a facility was or is financially able to meet its annual compliance level, the Secretary will consider any comments submitted by interested parties. In making this determination, the Secretary will consider factors such as:

(1) The ratio of revenues to expenses;

(2) The occupancy rate;

(3) The ratio of current assets to current liabilities;

(4) The average cost per patient day;

(5) The number of days of operating expenses in accounts payable;

(6) The number of days of revenues in accounts receivable;

(7) The sinking fund (or depreciation fund) balance;

(8) The debt coverage ratio; and

(9) The availability of restricted or unrestricted funds (such as an endowment) available for charitable use.

§ 124.512 Enforcement.

(a) If the Secretary finds, based on his/her investigation under § 124.511, that a facility did not comply with the requirements of this subpart, the Secretary may take any action authorized by law to secure compliance, including but not limited to, voluntary agreement or a request to the Attorney General to bring an action against the facility for specific performance.

(b) A facility, including a facility certified under § 124.513 or § 124.514, that has denied uncompensated services to any person because it failed to comply with the requirements of this supbart will not be in compliance with its assurance until it takes whatever steps are necessary to remedy fully the noncompliance, including:

(1) Provision of uncompensated services to applicants improperly denied;

(2) Repayment of amounts improperly collected from persons eligible to receive uncompensated services; and

(3) Other corrective actions prescribed by the Secretary.

(c) The Secretary may disallow all of the uncompensated services claimed in a fiscal year where the Secretary finds that the facility was in substantial noncompliance with its assurance because it failed to:

(1) Have a system for providing notice to eligible persons as required by § 124.504(c), § 124.513(b)(2) or § 124.514(b)(2), as applicable;

(2) Comply with the applicable reporting requirements of § 124.509;

(3) Have a system for maintaining records of uncompensated services provided in accordance with § 124.510; or

(4) Take corrective action prescribed pursuant to paragraph (b) of this section.

(d) In the absence of a finding of substantial compliance or substantial noncompliance in a fiscal year, the Secretary may disallow uncompensated services claimed by a facility in that fiscal year to the extent that the Secretary finds that such services are not documented as uncompensated services under § 124.510 or are subject to disallowance under § 124.513(d) or § 124.514(d), as applicable.

§ 124.513 Public facility compliance alternative.

(a) *Effect of certification.* The Secretary may certify a facility which meets the requirements of paragraphs (b) and (c) of this section as a "public facility". A facility which is so certified is not required to comply with this subpart except as otherwise herein provided.

(b) *Criteria for qualification.* A public facility may qualify for certification under this section if all of the following criteria are met:

(1) It is a facility which is owned and operated by a unit of State or local government or a quasi-public corporation as defined at 42 CFR 124.2(m).

(2) It provides health services without charge or at a substantially reduced rate to persons who are determined by the facility to qualify therefore under a program of discounted health services. A "program of discounted health services" must provide for financial and other objective eligibility criteria and procedures, including notice prior to nonemergency service, that assure effective opportunity for all persons to apply for and obtain a determination of eligibility for such services, including a determination prior to service where requested; *provided that,* such criteria and procedures are not required where the facility makes all services available to all persons at no or nominal charge.

(3)(i) It received, for the three most recent fiscal years, at least 10 percent of its total operating revenue (net patient revenue plus other operating revenue, exclusive of any amounts received, or if not received, claimed, as reimbursement under Titles XVIII and XIX of the Social Security Act) from State and local tax appropriations or other State and local government revenues, or from a quasi-public corporation as defined at 42 CFR 124.2(m), to cover operating deficits attributable to the provision of discounted services; or

(ii) If provided, in each of the three most recent fiscal years, uncompensated services under this subpart or under programs described by the documentation provided under § 124.513(c)(2) in an amount not less than twice the annual compliance level computed under § 124.503(a).

(c) *Procedures for certification.* To be certified under this section, a facility must submit to the Secretary, in addition to other materials that the Secretary may from time to time require, copies of the following:

(1) Audited financial statements or official State or local government documents (such as annual reports or budget documents), for the three most recent fiscal years, sufficient to show that the facility meets the criteria in paragraph (b)(3)(i) or (ii).

(2) A complete description of its program(s) of discounted health services, including charging and collection policies of the facility, and eligibility criteria and notice and determination procedures used under its program(s) of discounted services.

(Approved by the Office of Management and Budget under OMB control number 0915-0103.)

(d) *Period of effectiveness.* (1) A certification by the Secretary under this section remains in effect until withdrawn. The Secretary may disallow credit under this subpart when the Secretary determines that there has been a material change in any factor upon which certification was based or substantial noncompliance with this subpart. The Secretary may withdraw certification where the change or noncompliance has not been adequately remedied or otherwise continues.

(2) *Deficits*—(i) *Title VI-assisted facilities with assessed deficits.* Where a facility assisted under Title VI of the Act has been assessed as having a deficit under § 124.503(b) that has not been made up prior to certification under this section, the facility may make up that deficit by either—

(A) Demonstrating to the Secretary's satisfaction, that it met the requirements of paragraph (b) of this section for each year in which a deficit was assessed; or

(B) Providing an additional period of service under this section on the basis of one (or portion of a) year of certification of each year (or portion of a year) of deficit assessed. The period of obligation applicable to the facility under § 124.501(b) shall be extended until the deficit is made up in accordance with the preceding sentence.

(ii) *Title VI-assisted facilities which have not been assessed.* Where any period of compliance under this subpart of a facility assisted under Title VI of the Act has not been assessed, the facility will be presumed to have no allowable credit for such period. The facility may either—

(A) Make up such deficit in accordance with paragraph (d)(2)(i) of this section; or

(B) Submit an independent certified audit, conducted in accordance with procedures specified by the Secretary, of the facility's records maintained pursuant to § 124.510. If the audit establishes to the Secretary's satisfaction that no, or a lesser, deficit exists for the period in question, the facility will receive credit for the period so justified. Any deficit which the Secretary determines still remains must be made up in accordance with paragraph (d)(2)(i) of this section.

(iii) *Title XVI-assisted facilities.* (A) A facility assisted under Title XVI of the Act which has an assessed deficit which was not made up prior to certification under this section shall make up that deficit in accordance with paragraph (d)(2)(i)(A) of this section. If it cannot make the showing required by that paragraph, it shall make up the deficit when its certification under this section is withdrawn.

(B) A facility assisted under Title XVI of the Act whose compliance with this subpart has not been completely assessed will be presumed to have no allowable credit for the unassessed period. The facility may make up the deficit by—

(*1*) Following the procedure of subparagraph (d)(2)(iii)(A) of this section; or

(*2*) Submitting an independent certified audit, conducted in accordance with procedures specified by the Secretary, of the facility's records maintained pursuant to § 124.510. If the audit establishes to the Secretary's satisfaction that no, or a lesser, deficit exists for the period in question, the facility will receive credit for the period so justified. Any deficit which the Secretary determines still remains must be made up in accordance with paragraph (d)(2)(iii)(A) of this section.

§ 124.514 Compliance alternative for facilities with small annual obligations.

(a) *Effect of certification.* The Secretary may certify a facility which meets the requirements of paragraphs (b) and (c) of this section as a "facility with a small annual obligation." A facility which is so certified is not required to comply with this subpart except as otherwise herein provided.

(b) *Criteria for qualification.* A facility may qualify for certifcation under this section if all of the following criteria are met:

(1)(i) Title VI-assisted facilities. (A) For the facility's fiscal year in which this section becomes effective, the level, computed under § 124.503(c) (3), divided by the number of years remaining in its period of obligation (including an additional year or portion of a year for each year or portion of a year in which a deficit was incurred and has not been made up), is not more than $10,000;

(B) For a subsequent fiscal year, the level computed under subparagraph (A) of this paragraph, is at or less than $10,000, adjusted by a percentage equal to the percentage change in the CPI available in the year in which this section becomes effective and the most recent year for which a published index is available.

(ii) *Title XVI-assisted facilities.* (A) For the facility's fiscal year in which this section becomes effective, the level under § 124.503(a), plus the amount of any noncompliance deficits which have not been made up, is at or less than $10,000.

(B) For a subequent fiscal year, the level, computed under subparagraph (A) of this paragraph, is at or less than $10,000, adjusted as provided in paragraph (b) (i) (B) of this section.

(2) It provides health services without charge or at a substantially reduced rate to persons who are determined by the facility to qualify threrefor under a program of discounted health services. A "program of discounted health services" must provide for financial and other objective eligibility criteria and procedures, including notice prior to nonemergency service, that assure effective opportunity for all persons to apply for and obtain a determination of eligibility for such services, including a determination prior to service where requested; *provided that,* such criteria and procedures are not required where the facility makes all services available to all persons at no or nominal charge.

(c) *Procedures for certification.* To be certified under this section, a facility must submit to the Secretary, in addition to other materials that the Secretary may from time to time require, a complete description of its program(s) of discounted health services, including charging and collection policies of the facility, and eligibility creteria and notice and determination precedures used under its program(s) of discounted services.

(d) *Period of effectiveness.* A certification by the Secretary under this section remains in effect until withdrawn. During the period in which such certification is in effect, the facility must provide uncompensated services in an amount not less then the level applicable under paragraph (b)(1) of this section for each fiscal year. The Secretary may disallow credit under this subpart when the Secretary determines that there has been a material change in any factor upon which certification was based or substantial noncompliance with this subpart. The Secretary may withdraw certification where the change or noncompliance cannot be or has not been adequately remedied on noncompliance otherwise continues.

(e) *Deficits.* (1) Where the compliance level of a facility assisted under Title VI of the Act is computed under paragraph (b)(1)(i)(A) of this section as including additional year(s) or a portion of a year, the facility's period of obligation under this subpart shall be extended by such additional period, until certification is withdrawn.

(2) Where a facility has been assessed as having a deficit under § 124.503(b) that has not been made up prior to withdrawal of certification under this section or fails to provide services as required by paragraph (d) of this section, the facility must make up the deficit in accordance with § 124.503(b) following withdrawal of certification.

§ 124.515 Compliance alternative for community health centers, migrant health centers and certain National Health Service Corps sites.

(a) *Period of effectiveness.* For each fiscal year for which a facility that receives a grant to operate a community health center under section 330 of the Act or a migrant health center under section 329 of the Act is in substantial compliance with the terms and conditions of such grant relating to the provision of services at a discount, the facility shall be certified as having met its annual compliance level in accordance with requirements of this subpart and shall not be required otherwise to comply with the requirements of this subpart for that fiscal year. This provision also applies to any facility that has signed a memorandum of agreement with the Secretary under section 334 of the Act if the services provided by the National

Health Service Corps professional(s) assigned pursuant to that agreement constitute all of the medical services provided by the facility.

(b) *Deficits*—(1) *Title VI-assisted facilities with assessed deficits.* Where a facility assisted under Title VI of the Act has been assessed as having a deficit under § 124.503(b) that has not been made up prior to certification under this section, the facility may make up that deficit by either—

(i) Demonstrating to the Secretary's satisfaction that it met the requirements of paragraph (a) of this section for each year in which a deficit was assessed; or

(ii) Providing an additional period of service under this section on the basis of one (or portion of a) year of certification for each year (or portion of a year) of deficit assessed. The period of obligation applicable to the facility under § 124.501(b) shall be extended until the deficit is made up in accordance with the preceding sentence.

(2) *Title VI-assisted facilities which have not been assessed.* Where any period of compliance under this subpart of a facility assisted under Title VI of the Act has not been assessed, the facility will be presumed to have no allowable credit for such period. The facility may either—

(i) Make up such deficit in accordance with paragraph (b)(1) of this section; or

(ii) Submit an independent certified audit, conducted in accordance with procedures specified by the Secretary, of the facility's records maintained pursuant to § 124.510. If the audit establishes to the Secretary's satisfaction that no, or a lesser, deficit exists for the period in question, the facility will receive credit for the period so justified. Any deficit which the Secretary determines still remains must be made up in accordance with paragraph (b)(1) of this section.

(3) *Title XVI-assisted facilities.* (i) A facility assisted under Title XVI of the Act which has an assessed deficit which was not made up prior to certification under this section shall make up that deficit in accordance with paragraph (b)(1)(i) of this section. If it cannot make the showing required by that paragraph, it shall make up the deficit when it is no longer certified under this section.

(ii) A facility assisted under Title XVI of the Act whose compliance with this subpart has not been completely assessed will be presumed to have no allowable credit for the unassessed period. The facility may make up the deficit by—

(A) Following the procedure of paragraph (b)(3)(i) of this section; or

(B) Submitting an independent certified audit, conducted in accordance with procedures specified by the Secretary, of the facility's records maintained pursuant to § 124.510. If the audit establishes to the Secretary's satisfaction that no, or a lesser, deficit exists for the period in question, the facility will receive credit for the period so justified. Any deficit which the Secretary determines still remains must be made up in accordance with paragraph (b)(3)(i) of this section.

§ 124.516 Agreements with State agencies.

(a) Where the Secretary finds that it will promote the purposes of this subpart and the State agency is able and willing to do so, the Secretary may enter into an agreement with an agency of a State to assist in administering this subpart in the State. An agreement may be terminated by the Secretary or the State agency on 60 days notice.

(b) Under an agreement the State agency will provide any assistance the Secretary requests in any one or more of the following areas, as set out in the agreement:

(1) Investigation of complaints regarding noncompliance;

(2) Monitoring compliance of facilities with the requirements of this subpart;

(3) Review of reports submitted under § 124.509, including affirmative action plans;

(4) Making initial decisions for the Secretary with respect to compliance, subject to appeal by any party to the Secretary, or review by the Secretary on the Secretary's initiative; and

(5) Application of any sanctions available to it under State law (such as license revocation or termination of State assistance) against facilities determined to be out of compliance with the requirements of this subpart.

(c) Nothing in this subpart precludes any State from taking any action authorized by State law regarding the provision of uncompensated services by facilities in the State as long as the action taken does not prevent the Secretary from enforcing the requirements of this subpart.

[FR Doc. 87-27316 Filed 12-2-87; 8:45 am]

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federal register

Thursday
December 3, 1987

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation (FAR); Promotion of American Aerospace and Defense Exports at Domestic and International Exhibits; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Promotion of American Aerospace and Defense Exports at Domestic and International Exhibits

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing a revision to FAR 31.205–1 dealing with the allowability of costs to promote American aerospace exports at domestic and international exhibits.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 1, 1988, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87–45 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory and Civilian Agency Acquisition Councils made major revisions to FAR 31.205–1, public relations and advertising costs, as a result of Pub. L. 99–145, Defense Procurement Improvement Act of 1985. The revisions were promulgated in Federal Acquisition Circular (FAC 84–15) effective April 7, 1986 (see 51 FR 12296, published in the **Federal Register** on April 9, 1987). Recently, Congress further addressed this matter in Sec. 4, Chap. II, of Title I of the Supplemental Defense Appropriations Act of 1987 (Pub. L. 100–71). Specifically, the Act amended section 2324(e)(1)(H) of Title 10, U.S.C., and section 9061 of the DOD Appropriations Act, 1987, Pub. L. 99–500 and 99–591, to permit the Secretary of Defense to "allow under covered contracts, reasonable costs incurred to promote American aerospace exports at domestic and international exhibits." Accordingly, the Councils propose to amend FAR 31.205–1, Public relations and advertising costs, to reflect the new law.

B. Regulatory Flexibility Act

The proposed change to FAR 31.205–1 is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C., 601 *et seq.)* because most contracts awarded to small entities are awarded on a competitive fixed-price basis and the cost principles do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: November 25, 1987.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

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

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–1 is amended by redesignating the existing paragraph (g) as paragraph (h) and adding a new paragraph (g) to read as follows:

§ 31.205–1 Public relations and advertising costs.

* * * * *

(g) Notwithstanding the provisions of paragraphs (d) and (f)(2) of this subsection, reasonable costs incurred to promote American aerospace exports at domestic and international exhibits, such as air shows, trade shows, and conventions, are allowable. Such reasonable costs include transportation of the aircraft, aerospace parts and equipment, and associated support costs. However, such allowable costs shall not include the cost of entertainment, hospitality suites or chalets, advertising media other than exhibits, and other costs not necessary to establish, operate, or maintain an exhibit, display, or demonstration.

* * * * *

[FR Doc. 87–27721 Filed 12–2–87; 8:45 am]

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Federal Register

Thursday
December 3, 1987

Part IV

Department of the Treasury

Comptroller of the Currency

Guidelines for Compliance With the Federal Bank Bribery Law; Notice

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

[Docket No. 87-12]

Guidelines for Compliance With the Federal Bank Bribery Law

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

ACTION: Final Bank Bribery Act Guidelines.

SUMMARY: Pursuant to the Bank Bribery Amendments Act of 1985, the Office of the Comptroller of the Currency ("OCC") is issuing guidelines to assist officials of financial institutions in complying with the Federal bank bribery law. The guidelines were developed by the Interagency Bank Fraud Working Group ("Working Group"). The OCC encourages all national banks to adopt codes of conduct to guide their employees and to prevent abuses. It is suggested that national banks incorporate these guidelines into their codes of conduct. The guidelines describe the prohibitions of the Federal bank bribery law and also identify some situations which, in the opinion of the OCC, do not constitute violations of the Federal bank bribery law.

EFFECTIVE DATE: December 3, 1987.

ADDRESS: Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Robert B. Serino, Deputy Chief Counsel (Operations), at (202) 447-1847, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

A. Background

The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473, Title 11, October 12, 1984) ("1984 Act") amended the Federal bank bribery law, 18 U.S.C. 215, to prohibit employees, officers, directors, agents and attorneys of financial institutions from seeking or accepting anything of value in connection with any transaction or business of their financial institutions. The 1984 Act also prohibited any person from offering or giving anything of value to employees, officers, directors, agents or attorneys of financial institutions for or in connection with any transaction or business of the financial institution. Because of its broad scope, the 1984 Act raised concerns that it might have made what is acceptable conduct unlawful.

In July 1985, the Department of Justice issued its Policy Concerning Prosecution Under the New Bank Bribery Statute ("Policy"). In the Policy, the Department of Justice discussed the basic elements of the conduct prohibited under 18 U.S.C. 215, and indicated that cases to be considered for prosecution under the new bribery law would entail breaches of fiduciary duty or dishonest efforts to undermine financial institution transactions. Because the 1984 Act was intended to proscribe corruption in the banking industry, the Department of Justice expressed its intent not to prosecute insignificant gift giving or entertaining that did not involve a breach of fiduciary duty or dishonesty.

Congress decided that the broad scope of the 1984 Act provided too much prosecutorial discretion. Consequently, Congress adopted the Bank Bribery Amendments Act of 1985 (Pub. L. 99-370, August 4, 1986) ("1985 Act") to narrow the scope of 18 U.S.C. 215 by adding a new element, namely, an intent to corruptly influence or reward an officer in connection with financial institution business. As amended, the 1985 Act provides in pertinent part:

> Whoever—
> (1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent or attorney of a financial institution in connection with any business or transaction of such institution; or
> (2) as an officer, director, employee, agent, or attorney of a financial institution corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution; shall be [guilty of an offense].

The law now specifically excepts the payment of bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business. This exception is set forth in the 1985 Act at 18 U.S.C. 215(c).

The penalty for a violation remains the same as it was under the 1984 Act. If the value of the thing offered or received exceeds $100, the offense is a felony punishable by a fine of $5,000 or three times the value of the bribe or gratuity, whichever is greater, or by up to five years imprisonment, or both. If the value does not exceed $100, the offense is a misdemeanor punishable by up to one year imprisonment or a maximum fine of $1,000, or both.

The 1985 Act also required that the financial institution regulatory agencies develop public guidelines to assist employees, officers, directors, agents and attorneys of financial institutions in complying with the 1985 Act. The legislative history of the 1985 Act makes it clear that the guidelines would be relevant to but not dispositive of any prosecutive decision the Department of Justice may make in any particular case. (132 Cong. Rec. 944 (daily ed. Feb. 4, 1986).) Therefore, the guidelines developed by the financial regulatory agencies are not a substitute for the legal standards set forth in the statute.

Additionally, in adopting its own prosecution policy under the 1985 Act, the Department of Justice can be expected to take into account the financial institution regulatory agencies' expertise and judgment in defining those activities or practices that the agencies believe do not undermine the duty of an employee, officer, director, agent or attorney to the financial institution. (United States Attorney's Manual section 9-40.439.) The OCC believes that if reasonable codes of conduct are adopted and complied with, the likelihood of criminal prosecution will be diminished.

In response to the 1985 Act, the Working Group developed uniform proposed guidelines for use by each of the financial institution regulatory agencies. These proposed guidelines were presented to the Federal Financial Institutions Examination Council ("FFIEC") by the FFIEC's Task Force on Supervision, on behalf of the Working Group, for its consideration and disposition. On April 21, 1987, the FFIEC recommended to the agencies that they utilize the Working Group's proposed guidelines, as modified by the agencies, and publish them for public comment. The OCC published the proposed guidelines and requested comments on them in the **Federal Register** on May 1, 1987 and in Banking Circular 222 on May 4, 1987. *Request for Comments on Proposed Guidelines Regarding Bank Bribery Law*, 52 FR 16015 (1987). The OCC's comment period closed on June 30, 1987.

B. Discussion of Comments

The OCC received sixteen comments on the proposed guidelines: ten from national banks and bank holding companies, four from bank trade associations, and two from interested law firms. The general response to the guidelines was favorable. Nearly all commenters supported the concept of national banks' adopting internal codes of conduct containing provisions suggested in the guidelines. Only two commenters felt that the guidelines were unnecessary and should be discarded. Four commenters recommended that the guidelines be adopted as proposed; ten commenters expressed their general agreement with the guidelines but

requested some change in or clarification of the guidelines.

The most frequently received comments were as follows: (a) The recommendation that the introductory language in the guidelines refer specifically to the element of "corrupt intent" that Congress added in the 1985 Act; (b) the suggestion that additional specific examples be added to the list of exceptions to the guidelines' general prohibitions as well as the broadening of the exception for the acceptance of meals, refreshments, and entertainment in the course of a meeting; (c) the request that the guidelines retain their flexibility in terms of the avoidance of setting specific dollar limits for violations; (d) the recommendation that the OCC eliminate the provision requiring that bank officials report anticipated gifts and offered but unaccepted gifts; (e) the concern that the provision prohibiting officials from accepting opportunities not generally available to the public was overly broad; and (f) the suggestion that the provision requiring a national bank to obtain from its officials periodic written acknowledgment of the bank's code of conduct be modified.

Corrupt Intent

Several respondents expressed the opinion that the guidelines failed to emphasize sufficiently the new element of corrupt intent that was added by Congress in the 1985 Act. They felt that the guidelines improperly emphasized the value of the item solicited or accepted rather than the corrupt motive behind the solicitation or acceptance. In order to clarify and to emphasize that the guidelines are meant to proscribe corrupt activity in financial institutions, the OCC expanded the phrase, "consistent with the statute" in the introduction to the guidelines to include an express reference to the corrupt intent element added by the 1985 Act.

In addition, the OCC clarified the phrase, "other than normal authorized compensation" contained in provision (2) of the guidelines. One commenter stated that, in its proposed form, this provision appeared to make incentive compensation provided by any employer illegal. The final guidelines identify this exclusion from the prohibitions as "other than bona fide salary, wages, fees or other compensation paid in the usual course of business" referred to in 18 U.S.C. 215(c). This clarification was made to reduce the uncertainty concerning what was meant by normal authorized compensation as well as to promote consistency with the bank bribery statute.

Exceptions to the Guidelines' Prohibitions

Numerous commenters were concerned with the exceptions to the general prohibitions of the guidelines. Several commenters advocated the inclusion of additional exceptions in the guidelines for specific situations such as exceptions for gifts to bank officials from suppliers of products or services, for closing meals or commemorative mementos following financial transactions and for the acceptance of modest honorariums for lectures or other professional appearances. In addition, several respondents requested that exception (b) be broadened to permit the acceptance of hotel accommodations and travel expenses in connection with bank business. Three commenters suggested that this exception be modified to apply to business entertainment and promotional activities in connection with bank business which may not necessarily have business discussions as their primary purpose. They expressed their opinion that the current provision creates doubt as to the propriety of some normal business entertainment practices, such as situations where the business discussions are of a general nature or of a limited duration relative to the time of the activity itself. Another commenter asserted that the acceptance of such items should be permissible as long as the items are not given with the intent to influence a bank official's business activities regardless of whether or not business discussions are the primary purpose of the activity.

In response to these suggestions, the OCC modified exception (b) to include travel arrangements or accommodations in the list of permissible items and expanded the purpose requirement to include the purpose of fostering better business relations. The OCC also added the proviso that the expenses attributed to all the activities referred to in exception (b) be expenses that would have been paid for by the bank as reasonable business expenses if they had not been paid for by another party.

The OCC emphasizes that the guidelines encourage a bank to adopt a code of conduct that is consistent with the 1985 Act. The 1985 Act is intended to proscribe corruption in the banking industry. Therefore, the guidelines are not intended to suggest to national banks that they proscribe activities in their codes of conduct that would otherwise be permissible under the 1985 Act, that is, activities that are undertaken without an intent to influence or reward a bank official in connection with the business of the bank.

The OCC is reluctant to add any other specific exceptions to the guidelines. The OCC believes that the guidelines provide for the identification of specific situations in which the acceptance of something of value is appropriate under circumstances identified as acceptable by the national bank. The guidelines provide that on a case-by-case basis, a national bank may approve of other situations, not identified as specific exceptions in the guidelines, which are consistent with the 1985 Act, provided that such approval is made in writing on the basis of a full written discloure of all relevant facts. The OCC believes that this provision affords national banks the flexibility to identify specific instances of acceptable practices based on individual circumstances while assisting the banks in ensuring compliance with the 1985 Act.

Specific Dollar Limits

Most commenters favored the guidelines' avoidance of establishing rules about what is reasonable or normal in terms of fixed dollar amounts. Most commenters endorsed the OCC's view that it is inadvisable for the OCC to establish specific dollar limits for permissible expenses in recognition of the broad diversity in practices and wide variance in costs associated with banking throughout the country. Some respondents, however, were confused by the guidelines' use of terms such as "nominal," "reasonable" or "modest," stating that they presented vague, ambiguous and inconsistent standards. The OCC, in the final guidelines avoided setting rules about what is reasonable or normal in fixed dollar terms. However, the OCC replaced the words, "nominal" and "modest" in exceptions (d) and (f) with the term, "reasonable" in order to promote consistency in the guidelines. The OCC feels that setting specific dollar limits and defining reasonable value is a matter of discretion that should be exercised by each national bank in view of the goal of embodying the highest ethical standards in its code of conduct.

Anticipated Gifts and Gifts Offered but not Accepted

A number of commenters advocated eliminating the requirement that bank officials disclose items of value they anticipate receiving. These commenters felt that this requirement was confusing and that it would be difficult to interpret, monitor and enforce. The OCC agrees with these commenters and has

deleted this provision from the final guidelines.

In addition, several commenters asserted their belief that the OCC should eliminate the provision that requires bank officials to disclose items of value beyond what is authorized in the bank's code of conduct that they are offered but do not accept. The OCC retained this provision because the bank bribery statute provides that one who offers anything of value with a corrupt intent in connection with bank business shall be guilty of an offense. Therefore, an offer of anything of value beyond the limits stated in a bank's code of conduct, relating to the business of the bank and extended with a corrupt motive, violates the 1985 Act whether or not the item is accepted by the official.

A number of commenters expressed concern regarding the reporting of offers extended without corrupt intent by customers unfamiliar with the 1985 Act. The OCC stresses that the guidelines provide that a bank's code of conduct should be consistent with the 1985 Act's intent to proscribe corrupt activity within financial institutions. The 1985 Act is not intended to proscribe acts performed without intent to influence corruptly or to reward an official in connection with the business of the bank. As discussed above, the OCC also encourages national banks to adopt codes of conduct that contain appropriate exceptions for the acceptance of items by officials that do not amount to a corrupting influence on the bank's business. In addition, the code of conduct may also provide for case-by-case approval of circumstances, consistent with the 1985 Act, made in writing, on the basis of full written disclosure of all relevant facts. In order to indicate that a bank's code of conduct may contain these provisions, the OCC has clarified the phrase, "[t]he code of conduct should provide that, if a bank official is offered, or receives, something of value beyond what is expressly authorized in the bank's code of conduct" by deleting the word, "expressly."

Good Faith Defense

As proposed, the guidelines suggested that a bank official's full disclosure evidences good faith on his or her part, provided that disclosure is made in the contest of properly exercised supervision and control. Department of Justice representatives, who participated in the Working Group's review of the comments, expressed concern that this provision, as written in the proposed guidelines, could be perceived as providing a complete defense to an allegation of a violation of the 1985 Act. For example, an individual could corruptly accept something of value in connection with a business transaction with the intent to be influenced, but the individual could fully disclose such an activity to his or her management in an attempt to avoid prosecution. In order to avoid any inference of establishing a complete defense to a bank bribery charge, the OCC has clarified the language in this part of the guidelines in accordance with suggestions from the Department of Justice.

The OCC stresses that bank officials cannot avoid the prohibitions of the 1985 Act by merely reporting to management the acceptance of gifts. While the bank official's full disclosure may be evidence of good faith, the OCC emphasizes that management should also review the disclosure and determine the reasonableness of the accepted item in light of any threat to the integrity of the national bank which the offer or acceptance may pose.

Outside Business Interests

Several respondents expressed concern about the guideline relating to officials' outside business interests and opportunities. Specifically, they asserted that the provision prohibiting officials from accepting opportunities not generally available to the public was overly broad and prohibited the officials' acceptance of some opportunities which would not otherwise fall within the proscriptions of the 1985 Act. The OCC agrees that there may be opportunities not generally available to the public which do not connote a potential for corrupt activity. Therefore, the OCC has modified this provision so that it applies only to a business opportunity that is not available to other persons or that is available because of the official's position with the bank. The OCC feels that this revision achieves the objective of the 1985 Act without encompassing situations that may not be prohibited by the 1985 Act.

Disclosures and Reports

Most commenters felt that the disclosures and reports recommended by the guidelines were appropriate. Three commenters, however, stated that the suggestion that national banks require contemporaneous, written reports of any disclosures was unduly burdensome and created unnecessary paperwork. In addition, a number of commenters took issue with the suggestion that national banks require from their officials periodic written acknowledgment of their codes of conduct, terming this reporting requirement "overly burdensome," "demeaning" and "offensive" to bank officials.

The OCC has no desire to place unnecessary reporting burdens on national banks, however, it is interested in assisting the banks in complying with the 1985 Act. The OCC feels that the contemporaneous written reports with proper management review provide an effective reporting and reviewing mechanism which should aid the banks in preventing circumstances that might otherwise lead to implications of corrupt activity and should better protect banks from instances of self-dealing or other corrupt transactions covered under the bank bribery statute.

The OCC, however, recognizes that national banks' requiring periodic written acknowledgment of their codes of conduct may be overly burdensome. In light of this recognition, this provision has been modified to suggest that national banks require an initial written acknowledgment of their codes of conduct plus a written acknowledgment of any subsequent material changes to their codes of conduct and the officials' agreement to comply with their codes of conduct.

C. Guidelines for Compliance with the Federal Bank Bribery Law

The OCC encourages all national banks to adopt internal codes of conduct or written policies or to amend their present codes of conduct to include the provisions suggested in the guidelines. The guidelines relate only to the Federal bank bribery law ("1985 Act") and do not address other areas of conduct that a national bank may find advisable to cover in its code of conduct. A national bank's code of conduct or policies should be designed to alert bank officials about the 1985 Act, as well as to establish and enforce written policies on acceptable business practices. Consistent with the intent of the 1985 Act to proscribe corrupt activity within financial institutions, the bank's code of conduct should prohibit any employees, officers, directors, agents or attorneys of a national bank from: (1) Soliciting for themselves or for a third party (other than the bank itself) anything of value from anyone in return for any business, service or confidential information of the bank and (2) accepting anything of value (other than bona fide salary, wages, fees or other compensation paid in the usual course of business referred to in the 1985 Act at 18 U.S.C. 215(c)) from anyone in connection with the business of the bank, either before or after a transaction is discussed or consummated.

In its code of conduct, a national bank may, however, specify appropriate exceptions to the general prohibition of accepting something of value in connection with bank business. There are a number of instances where a bank official, without risk of corruption or breach of trust, may accept something of value from someone doing or seeking to do business with the bank. The most common examples are the business luncheon or the holiday season gift from a customer. In general, there is no threat of a violation of the statute if the acceptance is based on a family or personal relationship existing independent of any business of the institution; if the benefit is available to the general public under the same conditions on which it is available to the bank official; or if the benefit would be paid for by the bank as a reasonable business expense if not paid for by another party.

Other exceptions to the general prohibition regarding acceptance of things of value in connection with bank business may include:

(a) Acceptance of gifts, gratuities, amenities or favors based on obvious family or personal relationships (such as those with the parents, children or spouse of a bank official) when the circumstances make it clear that it is those relationships, rather than the business of the bank concerned, which are the motivating factors;

(b) Acceptance of meals, refreshments, travel arrangements or accommodations, or entertainment, all or reasonable value, in the course of a meeting or other occasion, the purpose of which is to hold bona fide business discussions or to foster better business relations, provided that the expense would be paid for by the bank as a reasonable business expense if not paid for by another party (the bank may establish a specific dollar limit for such occasions);

(c) Acceptance of loans from other banks or financial institutions on customary terms to finance proper and usual activities of bank officials, such as home mortgage loans, except where prohibited by law;

(d) Acceptance of advertising or promotional material of reasonable value such as pens, pencils, note pads, key chains, calendars and similar items;

(e) Acceptance of discounts or rebates on merchandise or services that do not exceed those available to other customers;

(f) Acceptance of gifts of reasonable value related to commonly recognized events or occasions, such as a promotion, new job, wedding, retirement, Christmas or bar or bat mitzvah (the bank may establish a specific dollar limit for such occasions); or

(g) Acceptance of civic, charitable, educational, or religious organizational awards for recognition of service and accomplishment (the bank may establish a specific dollar limit for such occasions).

By adopting a code of conduct with appropriate allowances for such circumstances, a national bank recognizes that acceptance of certain benefits by its officials does not amount to a corrupting influence on the bank's transactions. The policy or code may also provide that, on a case-by-case basis, a national bank may approve of other circumstances, not identified above, in which a bank official accepts something of value in connection with bank business, provided that such approval is made in writing on the basis of a full written disclosure of all relevant facts and is consistent with the bank bribery statute.

In issuing guidance under the statute in the area of business purpose entertainment or gifts, the OCC is not establishing rules about what is reasonable or normal in fixed dollar terms. What is reasonable in one part of the country may appear lavish in another part of the country. A national bank should seek to embody the highest ethical standards in its code of conduct. In doing this, a national bank may establish in its own code of conduct a range of dollar values which cover the various benefits that its officials may receive from those doing or seeking to do business with the bank.

The code of conduct should provide that, if a bank official is offered, or receives something of value beyond what is authorized in the bank's code of conduct or written policy, the official should disclose that fact to an appropriately designated official of the bank. The national bank should keep contemporaneous written reports of such disclosures. An effective reporting and reviewing mechanism should serve to prevent situations that might otherwise lead to implications of corrupt intent or breach of trust and should enable the bank to better protect itself from self-dealing. However, a bank official's full disclosure evidences good faith when such disclosure is made in the context of properly exercised supervision and control. Management should review the disclosures and determine that what has been accepted is reasonable and does not pose a threat to the integrity of the national bank. Thus, individuals cannot avoid the prohibitions of the bank bribery statute by simply reporting to management the acceptance of various gifts.

The OCC recognizes that a serious threat to the integrity of a national bank occurs when its officials become involved in outside business interests or employment that give rise to a conflict of interest. Such conflicts of interest may evolve into corrupt transactions that are covered under the 1985 Act. Accordingly, national banks are encouraged to prohibit, in their codes of conduct or policies, their officials from self-dealing or otherwise trading on their positions with the bank or accepting from someone doing or seeking to do business with the bank a business opportunity not available to other persons or that is made available because of the official's position with the bank. In this regard, a national bank's code of conduct or policy should require that its officials disclose all potential conflicts of interest, including those in which they have been inadvertently placed because of business or personal relationships with customers, suppliers, business associates or competitors of the bank.

D. Disclosures and Reports

To make effective use of these guidelines, the OCC recommends the following additional procedures:

(a) The national bank should maintain a copy of any code of conduct or written policy it establishes for its officials, including any modifications thereof.

(b) The national bank should require from its officials an initial written acknowledgment of its code or policy plus written acknowledgment of any subsequent material changes to the code or policy and the officials' agreement to comply therewith.

(c) The national bank should maintain contemporaneous written reports of any disclosures made by its officials in connection with a code of conduct or written policy.

Dated: November 27, 1987.

Robert L. Clarke,

Comptroller of the Currency.

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