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Briefing on How To Use the Federal Register—
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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 3 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.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: June 15; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street, NW., Washington, DC
RESERVATIONS: 202–523–5240

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
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GENERAL ACCOUNTING OFFICE

4 CFR Parts 27 and 28

Administrative Practice and Procedure

AGENCY: Personnel Appeals Board, GAO.

ACTION: Final rule.

SUMMARY: The language at Parts 27 and 28 is amended to reflect changes in the procedural rule for case processing before the GAO Personnel Appeals Board.

EFFECTIVE DATE: June 6, 1989.

ADDRESSES: GAO Personnel Appeals Board, Academy Building, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: John Davis, Solicitor for the Board, (202) 275–6137.

SUPPLEMENTARY INFORMATION: Notice of proposed changes to 4 CFR Parts 27 and 28, the General Accounting Office Personnel Appeals Board Procedures, was originally disseminated to interested parties within GAO in February 1988. The original comment period was to end March 31, 1988, but it was informally extended to June 30, 1988, at the request of some of the parties. A total of four comments were received from the General Accounting Office, the GAO Career Level Council, the GAO chapter of Blacks in Government, and the PAB General Counsel. Comprehensive comments were received from GAO. The other organizations had comments that related only to a few of the sections of the proposed rule.

For the most part, the new rule makes no significant changes in the overall functions of the Board, but rather deals with procedural matters. Over the years, the Board has developed methods for dealing with a wide variety of procedural issues. These methods were developed based upon the needs of our system and with reference to the Federal Rules of Civil Procedure and the rules of our counterparts in the executive branch, in particular the MSPB and, to some extent, the EEOC. The object of these rule changes is to codify these various procedures in order to provide clear and concise guidance to the parties on procedural issues that we have found by experience are apt to arise in cases before the Board. Thus, for example, some of the major additions proposed here deal with subjects such as discovery, evidence at hearing, motions practice, subpoenas, and interlocutory appeals.

The rule defines the jurisdiction of the Board at § 28.2. This definition distinguishes between actions brought by employees and applicants for employment, on the one hand, and actions brought by the General Counsel, on the other hand. The rule does not change the scope of jurisdiction, but merely states in one section what has been in effect throughout various sections in the past. At § 28.2(b)(1), the words "officer or employee" is inserted to comport with the statutory language of 31 U.S.C. 753(a)(1).

A number of definitions are added at § 28.3. With one exception, the definitions are self-explanatory. In the past, the Board has used the terms "Presiding Member" and "Hearing Officer" to refer to individuals who conduct hearings for the Board. In recent years, the EEOC and the MSPB have adopted the term "administrative judge." In order to use one term that is familiar to practitioners, the Board is adopting the term "administrative judge."

The former rule at § 28.9 required GAO to regularly advise employees of their appeal rights to the Board, particularly when the employee was the object of an adverse action. The proposed rule at § 28.10(a) added a requirement for proof of service "such as a properly signed registered mail receipt or a certificate of service with the employee's signature acknowledging receipt." One comment states that the effect of the language in this subsection is to make the agency's power to take an adverse action dependent upon the agency's ability to show proof of service. However, the Board's intent with this language is merely to insure proof of service of appeal rights when any adverse or performance-based action is taken. Therefore, the proposed language requiring proof of service is retained. However, in response to expressed concern, the proposed language, quoted above, which suggests forms for the proof of service, is deleted from the final rule at § 28.10(a).

The proposed rule at § 28.10(b)(3) required GAO to give employees, who were the objects of an adverse or performance-based action, notice "of any applicable rights such as the right to representation and right to a hearing." One comment noted that this language is vague and ambiguous. The comment is well taken, and the corrections made reflect our agreement with the comment.

In the past, §§ 28.11(b)(4) and 28.47(b)(2) of the Board's rule allowed an employee to file a charge involving an EEO matter with the General Counsel when there was no agency decision and "80" days had passed since the filing of the formal EEO complaint in the agency process. These same rules apply in the executive branch, except that the waiting period for filing prior to an agency decision is 180 days. In drafting the proposed rule, the Board concluded that the 80 day period was unduly short. A comment urged that at GAO most cases should be capable of processing within four months and, likewise, that six months was excessive processing time for most cases. The Board accepts this suggestion and §§ 28.11(b)(4) and 28.98(b)(2) now provide a period of 120 days.

On the other hand, the rule provides that when the agency issues an EEO decision, the complainant has 20 days in which to file with the Board's General Counsel. One comment suggested that that period should be extended to 30 days. We declined that suggestion. This 20 day appeal period is consistent with this Board's other appeal periods for issues such as adverse actions and prohibited personnel practices. It is also consistent with the appeal periods in the executive branch from agency actions to the MSPB and from final agency decisions to the EEOC.

In the past we have followed a particular set of steps for promulgating a rule and changes to a rule. This procedure, however, has never been defined specifically. Therefore, § 28.16 was created to define the process for amending or revoking this rule.

Some years ago the Board established an internal policy for grievances and

complaints which are brought by employees of the Board against the Board or the General Counsel. Section 28.17(a) places that policy in the Board's rule. This procedure provides a mechanism whereby Board employees receive the same right to outside review in their adverse action, performance-based action or EEO complaint as GAO employees receive by appealing to this Board. One comment argued that the Board is not empowered to delegate its authority to arbitrators or other non-Board members. The comment urged that the Board must preserve its "decisionmaking responsibility." However, the Board does not regard this provision as relating to its "decision-making responsibility" at GAO. This provision, dealing as it does with the Board's staff rather than with GAO staff, involves the statutory responsibility of the Chairman of the Board to act as "chief executive and administrative officer of the Board." 31 U.S.C. 752(a). After careful consideration, the Board has concluded that this provision for providing to Board staff the same rights that are enjoyed by GAO employees is consistent with the spirit and intent of the GAO Personnel Act of 1980.

Section 28.18(d) describes the requirements for filing a petition for review with the Board. One comment urged that this section be modified to bring it into accord with the Federal Rules of Civil Procedure and to require a petition for review to be stated in a legal context. The Board rejected these suggestions. The rule already allows the Board to follow the specific guidance of the Federal Rules of Civil Procedure whenever it seems appropriate. As to making the petition for review a more legalistic document, it is the Board's intention to keep the process open to unrepresented employees as much as possible. Furthermore, the discovery process provides ample opportunity for both parties to understand the context of the opposing party's case. Therefore, more legalistic requirements for filing a petition for review seems unnecessary and possibly counterproductive.

The prior rule of the Board provided at § 28.19(f) that either party to a proceeding had a right to a hearing before the Board. The proposed rule, at §§ 28.18(f) and 28.21(c), changed the provision so that the employee/applicant would continue to have a right to a hearing. However, a request by GAO for a hearing could be granted at the discretion of the administrative judge. One comment argued that there was no basis for denying GAO a right to a hearing. The Board rejected this argument. Agencies have no right to a hearing in EEO complaints or in MSPB proceedings in the executive branch. Only employees or, in EEO cases, applicants for employment, have a right to a hearing. The Board's intention is to make the right to a hearing consistent with the executive branch processes. Since the right to a hearing rule is different in unfair labor practice proceedings before the FLRA, the Board added language to this subsection to mirror the FLRA rule. However, in response to the concern expressed by this comment, the Board is requiring in this rule that any time a request for hearing by GAO is denied, there must be a statement of the basis for the denial.

The Board has jurisdiction over class actions that raise EEO issues and class actions that raise non-EEO issues. One comment noted that the language of the proposed rule regarding the standards for certifying EEO class actions was different from the language for certifying non-EEO class actions. It is the Board's intention that the requirements of the Federal Rules of Civil Procedure be used as a guide in both types of class actions. Therefore, the provision for non-EEO class actions at § 28.18(g) and the provision for EEO class actions at § 28.97(e) both make reference to the standards in the Federal Rules of Civil Procedure.

Numerous changes relate to filing time limits. The proposed rule at § 28.20(c) required that responses to all pleadings be filed within 10 days from receipt. In response to arguments presented in two comments, the Board changed this time limit to 20 days. The proposed rule at § 28.53(b) required that motions to correct a transcript be filed within 15 days of receipt of the transcript. Also in response to comments, the Board changed this 15 day period to 30 days. In this final rule, this time limit now appears at § 28.58(b). Finally, the proposed rule at § 28.82(a) required that a party file interlocutory appeals within 5 days after receipt of the administrative judge's determination. In response to comments, this time limit is set at 10 days.

Other time limits set in the proposed rule are unchanged in the final rule. For example, motions to compel discovery must be filed within 10 days after an objection to discovery is filed (§ 28.42(d)(4)); responses to petitions for review must be filed within 20 days after receipt (§ 28.19(a)); and requests for reconsideration must be filed within 30 days from issuance of the initial decision (§ 28.87(b)).

As suggested by one comment, language was added at the end of § 28.21(a) to provide standards for the exercise of the Board's or administrative judge's discretion in allowing amendments to a petition for review.

The proposed rule provided at § 28.21(b) that once a motion and a response to the motion had been filed, no further responses may be filed by either party without permission of the administrative judge. Though one comment urged that a reply to the response should be allowed, the final rule leaves this provision unchanged. Whether replies will be allowed is at the discretion of the administrative judge.

The former rule at § 28.19(g) provided that when the PAB General Counsel was party to a settlement agreement during the General Counsel's investigative phase, the settlement agreement was dispositive of the case. The intent of this provision was to make it clear that the General Counsel was not required to seek Board approval of a settlement that was reached during this investigative stage of the procedures. This provision was carried into the proposed rule at § 28.21(d). One comment suggested changes that would have extended to settlements not involving the PAB General Counsel. These suggestions were rejected because they would have substantially departed from the original, more narrow purpose of the provision.

Section 28.22(b)(6) allows the administrative judge to exclude from the hearing any witness whose later testimony might be colored by testimony of other witnesses or any persons whose presence might have a chilling effect on a testifying witness. One comment sought to modify this provision so as to allow the GAO attorney to designate a management agent who would stand in place of the Comptroller General as respondent and who could attend all sessions of the hearing as a matter of right. The Board rejected this suggestion since it does not appear to be a widely accepted practice in other federal personnel administrative forums. However, in response to the comment, the rule now reflects at § 28.57(b) that four individuals have a right to be present in a hearing: the GAO technical representative, who is not expected to testify, the GAO representative, the petitioner and the petitioner's representative. This, we believe, does conform with practice in administrative proceedings in the executive branch. Otherwise, the decision of who shall be excluded from the hearing is properly left to the discretion of the administrative judge. The language as written does not affect the substantive rights of either party to request that any

particular person or witness be excluded or included at the hearing.

The former rule at § 28.17(f) provided that when the PAB General Counsel was not participating in a case, the General Counsel could request permission to intervene in the case with regard to any issue in which the General Counsel finds a significant public interest with regard to the preservation of the merit system. This provision for permissive intervention by the General Counsel carried over to the proposed rule at § 28.12(f). However, the proposed rule also added language at § 28.27 that would have allowed the PAB General Counsel to intervene in Board proceedings as a matter of right. This provision is based upon the MSPB rule that grants the Special Counsel the right to intervene in proceedings before the MSPB. One comment pointed out that the provision for permissive intervention at § 28.12(f) and the provision for intervention as a matter of right at § 28.27 were in conflict. The comment also argued that, except for the General Counsel's limited intervention under § 28.12(f), the concept of intervention serves no useful purpose in proceedings before the Board. The comment argued that no one other than the General Counsel should be allowed to seek intervention.

The noted conflict between §§ 28.12(f) and 28.27 is well taken. The General Counsel's right to intervene is, therefore, deleted from § 28.27. With the General Counsel's broad scope of authority in our system, permissive intervention is appropriate in those rare circumstances in which the General Counsel may find it appropriate to participate in a case in which the General Counsel is not already participating. As to whether the rule should provide for intervention by other parties, we agree that circumstances warranting such intervention may be rare. However, the MSPB rule provides for such intervention by other persons (see 5 CFR 1201.34) and defining appropriate grounds for granting such intervention is better left to development by case law.

When the Board's rule was amended some years ago, provisions were added to clarify the General Counsel's investigative, disciplinary, and corrective action authority. These provisions now appear at §§ 28.130 through 28.133. Although these provisions made paragraphs (c) and (d) in § 28.33 of the former rule redundant, the two paragraphs were not removed when the rule was last revised. These two paragraphs are now eliminated from the rule.

Section 28.42 of the proposed rule provided guidance on the procedures governing discovery. Comments on this section argued that the time limits for initiating discovery and responding to discovery requests were too short and were not consistent with MSPB practice and that the requirements imposed on a party seeking a subpoena to show the "relevance, scope and materiality of the particular information sought" was not consistent with the requirements in federal civil practice. These comments were all well taken and appropriate changes are made in the final rule.

The subject of discovery from a nonparty is described at § 28.42(b). Nonparty includes anyone who is not an officer or employee of GAO. The rule provides that when voluntary discovery fails, then an order compelling discovery and a subpoena may be issued by the administrative judge. One comment suggested that the rule should be crafted to empower the Board to use sanctions such as not admitting evidence covered by the order as an alternative to proceeding to enforce the subpoena. In response to this comment, the discussion in § 28.42(b) of orders compelling discovery and subpoenas was deleted. Particularly by removing the reference to subpoenas, there should be less opportunity for the discovery process and the subpoena process to be confused. At the same time, by placing the subpoena provisions (see §§ 28.46 through 28.50) immediately after the discovery provisions (see § 28.40 through 28.45), it should be clear that both processes are available as the Board deems appropriate.

The proposed rule provided that once a hearing date was set by the Board or its administrative judge, motions for postponement would have to be in writing and accompanied by an affidavit setting forth the reasons for the request. The motion would be granted only upon a showing of good cause. A comment urged that such written motions be required only when the parties do not agree on the need for a postponement. When the parties agree on the need for postponement, the comment suggested that the motion be made orally and that the motion be granted unless extraordinary circumstances were present. The Board modified the provision at § 28.55 to allow motions to be made orally when the parties are in agreement on the requested postponement. However, the motion can be granted only upon a showing of good cause.

The former rule at § 28.21(g) made Board hearings closed to the public unless the petitioner, usually the employee party in the hearing, requested that the hearing be open. The proposed rule at § 28.57 reversed this position. Hearings would be open unless there was an interest to be served by closing the hearing to the public. One comment urged that the prior rule remain unchanged since such personnel matters should remain confidential. However, since Board decisions are open to the public, Board hearings should normally be open to the public also. Public hearings are also consistent with MSPB practice. See 5 CFR 1201.52.

The proposed rule provided at § 28.53 that a verbatim transcript of the hearing would be made available to the parties upon the payment of costs, except that the PAB General Counsel and the GAO were exempted from paying the costs. In response to comments, this provision, now at § 28.58, provides that each party will receive a copy of the transcript. However, a party requesting additional copies of the transcript will have to pay the costs of the additional copy.

Section 28.56 of the proposed rule, which is § 28.61 in the final rule, discusses burdens of proof. One comment urged that this provision be amended to state that the agency's action in a denial of a within-grade increase must be supported by substantial evidence. The burden of proof in such cases has been established by case law here and in the executive branch. The Board believes that that issue should continue to be governed by case law rather than by its rulemaking authority.

The rules of the Board have always provided a means for non-Board members to conduct hearings. One comment urged that this entire process be abandoned. The argument was that the process effectively delegated the Board's authority to non-Board members. Such delegation of authority, the argument continued, is not permitted by the statute that created the Board.

Though seldom used, this provision has always been deemed necessary primarily because the Board members do serve in a part-time capacity. Therefore, an unusual surge in the case load or other unique circumstances could make case processing by the five part-time Board members so slow and inefficient as to create an injustice to all the parties. The one time this provision has been used to date represents a good example. An extremely complex EEO case required substantially more time to litigate than originally anticipated. The term of the presiding member expired before a decision could be issued. That individual no longer had the authority to issue a decision. Without this provision, the alternative would have involved assigning a new member to rehear the case or to render a decision based solely

on the written record. Using this provision, however, the Board appointed the former member as a hearing officer so that the case could proceed to a decision expeditiously.

The provision in the former rule, § 28.25(a), required that a member or panel of members review the hearing officer's report and the member or panel of members would then issue a decision. The proposed rule, at § 28.86 (a) and (b), retained the basic means by which a non-Board member could hear a case. The proposed rule, however, attempted to further refine the process by which a final Board decision would be produced when a non-Board member originally hears the case.

In response to the comment, the Board does not reach the question of whether it may delegate its statutory decision-making authority, because the purpose and effect of this provision have never been to delegate such authority to a non-Board member. To avoid any suggestion that decision-making authority is being delegated by this provision, the paragraphs that address hearings conducted by non-members are substantially re-written at § 28.86. The section makes it clear that the non-member prepares a "recommended decision" and that, even if the parties take no exception to the recommended decision, the Board will review it with the power to adopt, reverse, remand, modify or vacate the recommended decision, in whole or in part. The section also emphasizes in various ways that the Board's review of the recommended decision is virtually unfettered. In short, the provision in no way represents a delegation of the Board's decision-making authority and the Board need not reach the issue of whether it could delegate any of its decision-making authority.

Section 28.25(c) of the former rule sets forth five grounds upon which the Board could reconsider and reverse an initial decision. The scope of the Board's review was the same as that used by federal courts of appeal in their review of Board decisions, but the scope of review was not as broad as the scope of review used by the MSPB when it reviews an initial decision by one of its administrative judges. The proposed rule at § 28.86(e) made no change in the Board's scope of review. A comment suggested that the Board should not so limit its scope of review. The comment argued that the Board should retain sufficient authority to correct all decisions that are in error, whether the error is factual or legal. The Board concurs and has rewritten § 28.87 accordingly. The final language allows the Board, like the MSPB, to conduct a de novo review of the law and facts for each initial decision that the Board is called upon to reconsider.

The former rule provided at § 28.25(h) that "any person" could seek enforcement of a final decision. The proposed rule offered no change in that provision. One comment argued that the reference to "any person" was vague and should be changed to read "petitioner, counsel or an intervenor, subject to the limitation of his/her intervention, should be allowed to petition for enforcement of a final decision." After considering this comment, the Board decided not to accept the suggested change. The rule at § 28.3 defines "person" as "an employee or applicant for employment, a labor organization or the GAO." In response to the particular comment, any person who has no interest in a final decision would have no standing to petition for enforcement of the decision. However, after further consideration of this enforcement provision, the Board concludes that it is appropriate for the General Counsel to have independent authority to seek enforcement of final Board decisions. Therefore, the final rule at § 28.88(c) provides that "any person and/or the General Counsel" may petition for enforcement.

The former rule provided at § 28.27(c) that the Board could designate the General Counsel or another qualified individual to represent it in any judicial appeals from its decisions taken in accordance with 31 U.S.C. 755. This language suggested that the Board might only have occasion for appearances in proceedings before the court of appeals. However, there are occasions when the Board may find it necessary to appear in a Federal district court. This could occur, for example, when the Board seeks judicial enforcement of its decision or when a case in district court raises issues regarding interpretation of a Board rule or of the GAO Personnel Act. Therefore, the new section, which appears at § 28.90(c), is written to include representation in any judicial proceeding that involves a Board decision or the interpretation of a Board rule or of the GAO Personnel Act.

The description of rights to sue on EEO claims in federal court are substantially rewritten in the final rule at § 28.100. For the most part, the changes were made to more clearly state the rights under various civil rights statutes. However, special comment is necessary regarding the provision in the Age Discrimination in Employment Act (hereinafter, the ADEA). The rights of federal employees and applicants for federal employment to initiate a civil action in federal district court are not clearly stated in the ADEA. As a result, there are numerous interpretations available and there is not as yet clear agreement among the courts of appeal on resolution of the various issues involved. The controversy arises because the enforcement scheme of the ADEA for employees and applicants in the federal sector is not clearly defined.

While the ADEA prohibition against age discrimination in federal employment is patterned after the federal sector provisions of Title VII of the Civil Rights Act of 1964, the enforcement scheme bears no resemblance to the Title VII enforcement scheme. On the other hand, while the ADEA enforcement scheme for the federal sector resembles the ADEA private sector enforcement scheme, it is missing certain important enforcement elements including guidance on the exhaustion of remedies and the statute of limitations for filing a civil action. In short, the hybrid nature of the federal sector ADEA statute has caused the courts to fill in the statute's missing enforcement details with elements of Title VII or of the private sector ADEA statute. The result is often conflicting and confusing case law on such important issues as whether one must exhaust administrative remedies, what exhaustion of administrative remedies means, and whether one has 30 days, two years or six years in which to file a civil action.

The one concept that is generally accepted by all the courts and the Equal Employment Opportunity Commission is that federal employees and applicants for employment have two avenues by which they may raise an ADEA claim: (1) Forego administrative complaint processing and file directly in federal district court or (2) file an EEO administrative complaint and postpone suit in court. See, for example, *Purtill* v. *Harris*, 658 F.2d 134, 138 (3rd Cir. 1981), cert. den., 462 U.S. 1131 (1983); *Paterson* v. *Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981); and 29 CFR 1613.211 in which EEOC recognizes "age" complaints as being covered by the administrative process. However, as suggested above, it is the ramifications of selecting one of these avenues that is not well settled in the case law. For example, the decisions vary as to whether the federal employee or applicant who files an ADEA claim in the administrative process must exhaust administrative remedies before filing in court; whether exhaustion of remedies means waiting 180 days or waiting for an agency decision; whether the court action must be filed within two years

regardless of whether the administrative process is still on-going; and so on. See, for example, *Langford* v. *Army Corps of Engineers*, 839 F.2d 1192 (6th Cir. 1988); *Caraway* v. *The Postmaster General of the United States*, 678 F. Supp. 125 (D.Md. 1988); *Marks* v. *Turnage*, 680 F. Supp. 1241 (N.D.Ill. 1988); *Purtill* v. *Harris*, supra; *Castro* v. *U.S.*, 775 F.2d 399 (1st Cir. 1985); *Tkac* v. *Nimmo*, 603 F. Supp. 1182 (W.D. Mich. 1985); and *Paterson* v. *Weinberger*, 644 F.2d 521 (5th Cir. 1981).

In view of the split by the courts on these issues, this Board has decided to adopt a rule that incorporates both the ADEA private sector model and the Title VII model, depending on whether the claim is first filed in court or in the administrative process. As an administrative body charged with interpretation and enforcement of the federal sector anti-discrimination laws, it is our intention to provide employees and applicants with clear guidance in this difficult and important area and to provide to the courts our suggestion for a comprehensive interpretation of the enforcement scheme for the federal sector provisions of the ADEA. Following is a description of the effect of this rule.

As noted above, it is generally acknowledged that there are two avenues by which a federal employee or applicant may pursue an ADEA claim: (1) By filing an administrative complaint or (2) by filing a notice of intent to sue in court. Where an employee or applicant elects to use the administrative complaints process, we believe that the Title VII enforcement scheme and statute of limitations should apply. Thus, the employee or applicant must initiate a timely EEO complaint with the agency and the employee may pursue that complaint through the agency process and subsequently file with the General Counsel and then with the Board. Pursuant to our rule, the employee or applicant, who files in the administrative process, may file in a federal district court at any time after 180 days have elapsed since the formal complaint was filed with the agency or after 180 days have elapsed since the filing with the General Counsel or within 30 days after the agency or the Board issues a final decision. On the other hand, where the employee or applicant elects to file in federal district court directly, we believe the private sector ADEA enforcement scheme and statute of limitations should apply. Thus, within 180 days after the alleged unlawful practice occurred, the employee or applicant must file with GAO a notice of intent to sue. The employee or applicant must give no less than 30 days notice to GAO of the intent to sue. Suit must actually be filed in court within two years from the date of the alleged discriminatory occurrence or, if the discrimination is willful, within three years of the alleged discriminatory occurrence.

A variety of policy reasons support the above described approach. The use of different enforcement schemes for Title VII and ADEA cases in the federal sector would lead to splitting complaints that allege violations of both statutes or to premature departure from the administrative process in order to timely file a lawsuit on the ADEA issue. For example, if the requirement to exhaust administrative remedies were different for Title VII (i.e., may file in court 180 days after formal administrative complaint) and for ADEA cases (i.e., may not file in court until agency decision issues), then employees or applicants raising both issues in an administrative complaint would be forced to forego their right after 180 days to file the Title VII issue in court or they would be forced to split their case in order to exercise their right to file the Title VII issue in court. Likewise, the statute of limitations is different under the two statutes. In most cases, private sector employees or applicants must file ADEA allegations in court within two years after the alleged discriminatory occurrence. Federal sector employees or applicants under Title VII may wait until 30 days after the final administrative decision. The final administrative decision is often more than 2 years after the alleged discriminatory occurrence. Therefore, federal sector employees or applicants raising a Title VII issue and an ADEA issue together in the administrative complaint process may, after two years in the administrative process, be faced with splitting the case to take the age issue into court in a timely fashion or with abandoning their right to an administrative determination on the Title VII issue in order to file both issues in court. None of these options is reasonable or palatable. Thus, in cases alleging age discrimination, we adopt the entire Title VII scheme—both the exhaustion of remedies concept and the limitations period—when the employee or applicant elects to pursue the administrative complaints process and we adopt the entire private sector ADEA scheme when the employee or applicant elects to bypass the administrative process and go directly to court.

Further support for this approach is found in the Civil Service Reform Act and its legislative history. The Reform Act provides a 30 day limitations period for federal employees to file suit when a claim of age discrimination is based on an action that is appealable to the MSPB (i.e., a "mixed case" involving a claim of age discrimination). See 5 U.S.C. 7703(b)(2). This appears to indicate that Congress intended or understood that the 30 day limitations period from Title VII applied as well to ADEA lawsuits. See S. Rep. No. 969, 95th Cong., 2d. Sess. at 63; reprinted in 1978 U.S. Code Cong. and Admin. News 2723, 2785 ("Under the anti-discrimination laws an employee has 30 days from the final agency action to initiate a de novo court proceeding"). Failure to use the 30 day limitations period for all civil actions under the ADEA would result in some age cases having a 30 day limitations period (i.e., mixed case complaints that raise age discrimination) and others having a 2 or 3 year limitations period (i.e., non-mixed case age complaints).

For all of these reasons, we have chosen to adopt the Title VII enforcement scheme for ADEA cases filed in the administrative complaints process and the private sector ADEA enforcement scheme for cases that initiate in federal court.

One comment suggested that all or part of the statute of limitations for willful violations, which is incorporated from the Fair Labor Standards Act (FLSA) into private sector ADEA provisions, has been held by the courts to be inapplicable to the Federal Government. We find this argument to be based upon a misreading of certain court decisions. Specifically the comment apparently relies on the Supreme Court decision in *Lehman* v. *Nakshian*, 453 U.S. 156, 26 FEP 65 (1981). According to the comment, the *Nakshian* decision holds that none of the private sector ADEA/FLSA enforcement scheme, including the statute of limitations, is incorporated into the federal sector ADEA provisions. The *Nakshian* holding is not that broad.

The issue in *Nakshian* was whether the ADEA provided a right to jury trial in federal sector age discrimination law suits; in other words, whether Congress had waived sovereign immunity on this issue. Like the waiver of immunity itself, it is well settled that "limitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied." *Lehman* v. *Nakshian*, at pages 160–161. Such waivers of immunity must be "unequivocally expressed." *United States* v. *Mitchell*, 445 U.S. 535, 538 (1980). The *Nakshian* court held that in the federal sector

ADEA provisions, Congress did not "affirmatively and unambiguously" waive sovereign immunity and grant a right to a jury trial. Thus, the waiver of sovereign immunity was limited to a right to sue the government in a nonjury trial. Along the way, the *Nakshian* court stated in various ways that Congress did not adopt the FLSA enforcement scheme into the federal sector ADEA provisions. It is such statements that have led some courts, as well as one comment on our proposed rule, to conclude that the FLSA enforcement scheme, including the statute of limitations, does not apply to the federal sector ADEA provisions. This, however, misses the point of the *Nakshian* ruling. Since the issue was waiver of sovereign immunity, the *Nakshian* court's holding was that in the federal sector ADEA provisions Congress did not "affirmatively and unambiguously" express an intent to waive sovereign immunity regarding jury trials by adopting the FLSA enforcement scheme. The "affirmative and unambiguous waiver" standard in the *Nakshian* ruling has no bearing on the question of how certain procedural gaps in the federal sector ADEA enforcement scheme should be filled in.

Frequently in federal civil law, Congress will fail to include procedural details in the enforcement scheme (e.g., identity of the proper party defendant, exhaustion of administrative remedies, statute of limitations). In such circumstances, the Supreme Court teaches that the "task is to 'borrow' the most suitable statute or other rule of timeliness from some other source." *Del Costello* v. *Internat'l Brotherhood of Teamsters*, 462 U.S. 151, 158 (198) and *Wilson* v. *Garcia*, 471 U.S. 261 (1984). Thus, the ruling in *Nakshian* was that Congress had not "unequivocally expressed" its consent to waive sovereign immunity to jury trials in federal sector ADEA law suits and such consent cannot be "implied." On the other hand, when faced with providing a statute of limitations where Congress did not provide one, it is proper, even necessary, to "borrow" from a similar statute or "imply" that a similar statute provides the most reasonable guidance.

Consistent with this approach, many courts, noting that the ADEA does not identify the proper party defendant in federal sector law suits, have "borrowed" the relevant provision from Title VII. See *Ellis* v. *U.S. Postal Service*, 784 F.2d 835, 838 (7th Cir. 1986); *Romain* v. *Shear*, 799 F.2d 1416, 1418 (9th Cir. 1986); and *Healy* v. *U.S. Postal Service*, 677 F. Supp. 1284 (E.D.N.Y. 1987). Likewise, the ADEA does not contain a statute of limitations for Federal sector employee or applicant cases that are initiated in the administrative process. Thus, numerous courts have "borrowed" the relevant provision from Title VII. See *Caraway* v. *Postmaster General of U.S.*, supra, and *Healy* v. *U.S. Postal Service*, supra.

In deciding that a statute of limitations period of one federal law should be applied to another federal law, which is silent on the time for bringing an action, the courts refer to a law that is most analogous in terms of "Federal policy and practicalities." See *Del Costello* v. *Internat'l Brotherhood of Teamsters*, supra, at 171–172. With this in mind, we chose to adopt the Title VII enforcement scheme and statute of limitations for ADEA cases filed in the administrative process and we chose to adopt the private sector ADEA enforcement scheme and statute of limitations for ADEA cases filed first in federal district court. The former choice conforms with the decisions in *Caraway* and *Healy*. With regard to the latter choice, we have found no decisions addressing the question of what statute of limitations to use when a federal sector ADEA complainant goes first to federal district court. However, using the standards enunciated by the *Del Costello* court, the answer seems obvious. The private sector ADEA statute and the federal sector statute are both intended to prohibit age discrimination and both allow the filing of a civil action after notice is given to the EEOC. Although, as the Supreme Court noted in *Nakshian*, the substantive protection of the federal sector ADEA statute is "patterned after" the substantive protection of Title VII, the latter statute requires that considerable administrative processing be completed before suit can be filed in federal district court. There is no provision in Title VII for bypassing the administrative process. Therefore, when the employee or applicant with a federal sector ADEA claim elects to bypass the administrative process, the statute of limitations that is most analogous in terms of federal policy and practicalities is the private sector ADEA statute, which incorporates by reference the statute of limitations from the Fair Labor Standards Act.

In the alternative, we could have reached the exact same result by borrowing from the Civil Service Reform Act statute of limitations (5 U.S.C. 7703(b)(2)), which is discussed above. It can be argued that it is the most analogous limitations period since it applies not only to civil rights actions by federal employees, but more specifically to those alleging age discrimination. It also can be argued that it is at least as analogous as the Title VII limitations period to which it is identical. Thus, the Reform Act supports the use of a 30 day limitations period for ADEA lawsuits either because, as discussed above, its legislative history indicates that Congress intended the Title VII limitations period be applied to ADEA actions or because the Reform Act limitations period is the most analogous statute of limitations or because the limitations periods common to both Title VII and the Reform Act should be borrowed as the most analogous statutes of limitation.

Since the GAO Personnel Act, as amended, makes EEO decisions of the Board appealable to the Court of Appeals for the Federal Circuit and since, in another federal personnel context, the courts have held that the court of appeals will not hear a case that is also before a federal district court on substantially the same issues (i.e., judicial review of mixed cases), we note in the final rule at § 28.100(e) that a Board decision on an EEO case could be appealed to the Court of Appeals for the Federal Circuit in lieu of filing in a federal district court.

In the past, both in the executive branch and at GAO, an employee or applicant for employment could file an EEO complaint and 180 days later file in federal district court. Then both the administrative and judicial proceedings would move forward simultaneously. However, in 1987, the EEOC changed the rule for the executive branch. Under the new rule, filing the lawsuit terminates the processing of the administrative complaint. At § 28.101, we adopt this same rule for EEO cases filed with the Board.

The former rule provided a process by which the Board may grant a request from the General Counsel to stay a GAO personnel action. However, the former rule provided no guidance as to whether a stay that the Board granted could be vacated during the subsequent litigation. When that issue arose in a case, the Board established the rule that a member, subject to interlocutory review by the Board, may vacate the stay of a personnel action when the evidence taken at hearing warrants such action. However, with § 28.133 of the proposed rule, the Board changed that rule. There being no comments in opposition to the provision, the final rule provides that only the Board, rather than a member, may vacate a Board imposed stay of a GAO personnel action.

A comment was received on the stay process in general. In brief, the General Counsel is authorized to ask the Board

to stay a personnel action when there are reasonable grounds to believe that the personnel action will result in a prohibited personnel practice. The comment received on the stay process suggested that the General Counsel also be required to show harm to the affected employee and to show a likelihood of prevailing in the subsequent litigation. Furthermore, when the case involved EEO allegations, it was suggested that the General Counsel defer any possible stay action until GAO completes its investigation. After careful consideration, the Board rejected all of these suggestions. The criteria and processes for stay proceedings before this Board are based upon and derived from the stay authority created by Congress for the Special Counsel and the MSPB. However, the changes suggested in the comment would restrict the General Counsel's authority as compared to that of the Special Counsel and would prevent the General Counsel from requesting a stay in circumstances in which the Special Counsel in the executive branch could successfully seek a stay. This Board is unwilling to modify the stay process in ways that would significantly reduce the authority of the General Counsel as a public prosecutor or that would indirectly diminish the rights of GAO employees.

Finally, § 28.155 is a savings provision. It provides that any case in which the charge was filed before this rule became final will be processed under the former rule.

List of Subjects in 4 CFR Parts 27 and 28

Administrative practice and procedure.

For the reasons set out in the preamble, Title 4 of the Code of Federal Regulations, Parts 27 and 28, are amended as follows.

1. Part 27 is revised to read as follows:

PART 27—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD—ORGANIZATION

Sec.
27.1 The Board.
27.2 The Chairperson.
27.3 The General Counsel.

Authority: 31 U.S.C. 753.

§ 27.1 The Board.

The General Accounting Office Personnel Appeals Board, hereinafter the Board, is composed of five members appointed by the Comptroller General, in accordance with the provisions of 31 U.S.C. 751. The Board may designate a panel of its members or an individual Board member to take any action within the scope of the Board's authority, subject to later reconsideration by the Board.

§ 27.2 The Chairperson, Vice Chairperson.

The members of the Board shall select from among its membership a Chairperson, hereinafter the Chair, who shall serve as the chief executive and administrative officer of the Board. The members of the Board may select from among its membership a Vice Chairperson, hereinafter the Vice Chair, who shall serve in the absence of the Chair and in other matters delegated by the Chair.

§ 27.3 The General Counsel.

The Chairman shall select an individual and the Comptroller General shall appoint the individual selected by the Chair to serve as the General Counsel of the Board. The General Counsel, at the request of the Board, shall investigate matters under the jurisdiction of the Board, and otherwise assist the Board in carrying out its functions, unless to do so would create a conflict of interest for the General Counsel.

2. The table of contents for Part 28 is revised and the authority citation continues to read as follows:

PART 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES

Subpart A—Purpose, General Definitions, and Jurisdiction

Sec.
28.1 Purpose and scope.
28.2 Jurisdiction.
28.3 General definitions.
28.4 Time limits.

Subpart B—Procedures

28.8 Informal procedural advice.
28.9 Procedures—general.
28.10 Notice of appeal rights.
28.11 Filing a charge with the General Counsel.
28.12 General Counsel procedures.

Hearing Procedures for Cases Before the Board—General

28.15 Scope and policy.
28.16 Revocation, amendment or waiver of rules.
28.17 Internal appeals of Board employees.
28.18 Filing a petition for review and request for hearing with the Board.
28.19 Content of agency response.
28.20 Number of pleadings, service, and response.
28.21 Prehearing procedures and motions practice.
28.22 Administrative Judges.
28.23 Disqualification of Administrative Judges.
28.24 Sanctions.

Parties, Practitioners, and Witnesses

28.25 Representation.
28.26 Witness fees.
28.27 Intervenors.
28.28 Substitution.
28.29 Consolidation or joinder.

Discovery

28.40 Statement of purpose.
28.41 Explanation, scope, and methods.
28.42 Voluntary discovery and protective orders.
28.43 Compelling discovery.
28.44 Taking of depositions.
28.45 Admissions of fact and genuineness of documents.

Subpoenas

28.46 Motion for subpoena.
28.47 Motion to quash.
28.48 Service.
28.49 Return of service.
28.50 Enforcement.

Hearings

28.55 Scheduling the hearing.
28.56 Hearing procedures, conduct and copies of exhibits.
28.57 Public hearings.
28.58 Transcript.
28.59 Official record.
28.60 Briefs.
28.61 Burden and degree of proof.
28.62 Closing the record.

Evidence

28.65 Service of documents.
28.66 Admissibility.
28.67 Production of statements.
28.68 Stipulations.
28.69 Judicial notice.

Interlocutory Appeals

28.80 Explanation.
28.81 Criteria for certification.
28.82 Procedure.

Board Decisions, Attorney's Fees, and Judicial Review

28.86 Board procedures—recommended decisions.
28.87 Board procedures—initial decisions.
28.88 Board procedures—enforcement.
28.89 Attorney's fees and costs.
28.90 Board procedures—judicial review.

Subpart C—Oversight Procedures

28.91 General.
28.92 Oversight of GAO EEO program.

Subpart D—Special Procedures-Equal Employment Opportunity (EEO) Cases

28.95 Purpose and scope.
28.96 Applicability of general procedures.
28.97 Class actions in EEO cases.
28.98 Individual charges in EEO cases.
28.99 Petitions for review to the Board in EEO cases.
28.100 Civil action—discrimination complaints.
28.101 Effect on administrative processing.

Subpart E—Special Procedures—Representation Proceedings

28.110 Purpose.
28.111 Scope.
28.112 Who may file petitions.
28.113 Contents of representation petitions.

Authority: 31 U.S.C. 753

§§ 28.31 and 28.33 [Redesignated as §§ 28.91 and 28.92 respectively]

3. Subpart C, consisting of §§ 28.31 and 28.33 are redesignated as Subpart C, §§ 28.91 and 28.92 respectively.

§ 28.92 [Amended]

4. Newly redesignated § 28.92 is amended as follows:

a. In paragraph (a)(1) remove "§ 28.41" and add "§ 28.95".

b. In paragraph (b), remove "§ 28.33(a)" and add "§ 28.92(a)".

5. Section 28.92 is amended by removing paragraphs (c) and (d).

§§ 28.41, 28.43, 28.45, 28.47, 28.49, and 28.51 [Redesignated as §§ 28.95 through 28.100 respectively]

6. Subpart D, consisting of §§ 28.41, 28.43, 28.45, 28.47, 28.49, and 28.51 is redesignated as §§ 28.95 through 28.100 respectively.

7. Newly redesignated § 28.97 is amended by adding paragraph (e) to read as follows:

§ 28.97 Class actions in EEO cases.

* * * * *

(e) *Standards.* For the purpose of determining whether it is appropriate to treat an appeal as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure.

§ 28.98 [Amended]

8. Newly redesignated § 28.98 is amended as follows:

a. Paragraph (b)(2) is amended by removing "80" and adding "120".

b. Paragraph (d) is removed.

c. Paragraph (e) is redesignated as (d); and is amended by removing "§ 28.17" and adding "§ 28.12".

§ 28.99 [Amended]

9. Newly redesignated § 28.99(a) is amended by removing "§ 28.25" and adding "§ 28.90".

10. Newly redesignated § 28.100 is revised to read as follows:

§ 28.100 Civil action; discrimination complaints.

(a) Race, color, religion, sex, or national origin. An employee or applicant alleging violations of 42 U.S.C. 2000e–16 (Title VII of the Civil Rights Act of 1964, as amended) may file suit in Federal District Court—

(1) After 180 days from filing a complaint with GAO if there is no final decision on that complaint or within 30 days of receipt of notice of final action taken by GAO, or

(2) After 180 days from filing a charge with the General Counsel if there is no final decision by the Board on that discrimination appeal or within 30 days of receipt of notice of final action by the Board.

(b) Handicapping condition. An employee or applicant alleging discrimination based upon a handicapping condition (29 U.S.C. 791, 794a, Rehabilitation Act) may file suit in Federal District Court—

(1) After 180 days from filing a complaint with GAO if there is no final decision on that complaint or within 30 days of receipt of notice of final action taken by GAO, or

(2) After 180 days from filing a charge with the General Counsel if there is no final decision by the Board on that discrimination appeal or within 30 days of receipt of notice of final action by the Board.

(c) Age. An employee or applicant alleging discrimination based upon age (29 U.S.C. 631, 633a, Age Discrimination in Employment Act) may forego administrative action altogether and file a civil action in U.S. District Court after giving GAO 30 days Notice of Intent to File such action. The Notice shall be filed within 180 days after the alleged unlawful practice occurred. When such notice is provided and no administrative complaint is filed, a civil action may be filed in the appropriate U.S. District Court within two years or, if the violation is willful, three years of the date of the alleged ADEA violation. An employee or applicant for employment, who has filed an administrative complaint alleging age discrimination, may file suit in Federal District Court—

(1) After 180 days from filing a complaint with GAO if there is no final decision on that complaint or within 30 days of receipt of notice of final action taken by GAO, or

(2) After 180 days from filing a charge with the General Counsel if there is no final decision by the Board on that discrimination appeal or within 30 days of receipt of notice of final action by the Board.

(d) Sex-based salary inequity. An employee or applicant alleging discrimination based upon salary inequity due to sex (29 U.S.C. 206d, Equal Pay Act provisions of the Fair Labor Standards Act) may forego administrative action altogether and file suit in U.S. District Court.

(e) In lieu of filing a civil action in U.S. District Court, a final decision of the Board involving prohibited discrimination (31 U.S.C. 732(f)(1)) may be appealed in accordance with 31 U.S.C. 755, to the United States Court of Appeals for the Federal Circuit within 30 days after the date the petitioner receives notice from the Board of the final decision.

11. Subpart D is amended by adding a new § 28.101 to read as follows:

§ 28.101 Effect on administrative processing.

Any proceeding before the Board shall be terminated when an employee or applicant who is alleging violations of 42 U.S.C. 2000e–16 (Title VII of Civil Rights Act of 1964, as amended) (Rehabilitation Act, 29 U.S.C. 791, 794c) or who is alleging violations based upon a handicapping condition or who is alleging age discrimination (29 U.S.C. 631, 633a), files suit in Federal District Court pursuant to § 28.100 (a), (b) or (c).

§§ 28.61, 28.63, 28.65, 28.67, 28.69, 28.71, and 28.73 [Redesignated as §§ 28.110 through 28.116 respectively]

12. In Subpart E, §§ 28.61, 28.63, 28.65, 28.67, 28.69, 28.71, and 28.73 are redesignated as §§ 28.110 through 28.116 respectively.

§§ 28.81, 28.83, 28.85, 28.87, and 28.89 [Redesignated as §§ 28.120 through 28.124 respectively]

13. In Subpart F, §§ 28.81, 28.83, 28.85, 28.87, and 28.89 are redesignated as §§ 28.120 through 28.124 respectively.

§§ 28.101, 28.103, 28.105, and 28.107 [Redesignated as §§ 28.130 through 28.133 respectively]

14. In Subpart G, §§ 28.101, 28.103, 28.105, and 28.107 are redesignated as §§ 28.130 through 28.133 respectively.

15. Newly redesignated § 28.133 is revised to read as follows:

§ 28.133 Stay proceedings.

(a) If the General Counsel determines after an investigation under these rules that there are reasonable grounds to believe that a personnel action was taken, or is to be taken, as a result of a prohibited personnel practice, the General Counsel may request any member of the Board to order a temporary stay of the personnel action for a period of not more than 60 days.

(b) Content of request. Each request must be signed by the General Counsel or his/her representative and must set forth:

(1) The names of the parties.

(2) The agency and officials involved.

(3) The nature of the action to be stayed.

(4) A concise statement of facts justifying the charge that the personnel action was or is to be the result of a prohibited personnel practice.

(5) The laws or regulations that were or will be violated if the stay is not issued.

(c) A Board member shall order a temporary stay under paragraph (a) of this section, unless the member determines that such a stay would not be appropriate. Unless denied, any temporary stay requested shall be granted within 3 working days after the date of request.

(d) The Board may grant a further temporary stay or a permanent stay if the Board concurs in the determination of the General Counsel and after an opportunity for oral or written comment by the General Counsel and GAO. A permanent stay by the Board is final and appealable in accordance with § 28.90.

(e) Additional information and vacating a stay. At any time, the Board, or a member of the Board, where appropriate, may require the General Counsel and/or the agency to appear and present further information or explanation on a request for a stay, to file supplemental briefs or memoranda, or to supply factual information needed by the Board in making a determination regarding a stay. A stay may be vacated only by a decision of the full Board.

§§ 28.111 and 28.113 [Redesignated as §§ 28.140 and 28.141 respectively]

16. In Subpart H, §§ 28.111 and 28.113 are redesignated as §§ 28.140 and 28.141 respectively.

§§ 28.117, 28.119, 28.121, 28.123, and 28.125 [Redesignated as §§ 28.145 through 28.149 respectively]

17. In Subpart I, §§ 28.117, 28.119, 28.121, 28.123, and 28.125 are redesignated as §§ 28.145 through 28.149 respectively.

18. Subparts A and B of Part 28 are revised as follows:

Subpart A—Purpose, General Definitions, and Jurisdiction

§ 28.1 Purpose and scope.

(a) The purpose of these rules is to establish the procedures to be followed:

(1) By the GAO, in its dealings with the Board;

(2) By employees of the GAO or applicants for employment by the GAO, or by groups or organizations claiming to be affected adversely by the operations of the GAO personnel system;

(3) By employees or organizations petitioning for protection of rights or extension of benefits granted to them under Subchapters III and IV of Chapter 7 of Title 31, U.S.C.; and

(4) By the Board, in carrying out its responsibilities under Subchapters III and IV of Chapter 7 of Title 31, U.S.C.

(b) The scope of the Board's operations encompasses the investigation and, where necessary, adjudication of cases arising under 31 U.S.C. 753. In addition, the Board has authority for oversight of the equal employment opportunity program at GAO. This includes the review of policies and evaluation of operations as they relate to EEO objectives and, where necessary, the ordering of corrective action for violation of or inconsistencies with equal employment opportunity laws.

(c) The intent of Subchapters III and IV of Chapter 7 of Title 31, U.S.C. is to provide GAO independence in administering its labor and employee relations function, while ensuring that "GAO employees are entitled to the same rights and protection as employees in the executive branch" H.R. Rep. No. 96–494, p. 15 (1980).

(d) In considering any procedural matter not specifically addressed in these rules, the Board will be guided, but not bound, by the Federal Rules of Civil Procedure.

§ 28.2 Jurisdiction.

(a) The Board has jurisdiction to hear and decide the following actions brought by the General Counsel:

(1) Proceedings in which the General Counsel seeks to stay a personnel action based upon an alleged prohibited personnel practice that has occurred or is about to occur;

(2) Proceedings in which the General Counsel seeks corrective action for an alleged prohibited personnel practice; and

(3) Proceedings in which the General Counsel seeks discipline for a GAO employee who has allegedly committed a prohibited personnel practice or who has allegedly engaged in prohibited political activity.

(b) The Board has jurisdiction to hear any action brought by any person or group of persons in the following subject areas:

(1) An officer or employee appeal involving a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days;

(2) A prohibited personnel practice under 31 U.S.C. 732(b)(2);

(3) A decision of an appropriate unit of employees for collective bargaining;

(4) An election or certification of a collective bargaining representative;

(5) A matter appealable to the Board under the labor-management relations program under 31 U.S.C. 732(e), including an unfair labor practice under 31 U.S.C. 732(e)(1);

(6) An action involving discrimination prohibited under 31 U.S.C. 732(f)(1); and

(7) An issue about GAO personnel which the Comptroller General by regulation decides the Board shall resolve.

(c) Limitations on appellate jurisdiction, collective bargaining agreements and election of procedures.

(1) Where an employee is covered by a collective bargaining agreement which provides for an exclusive negotiated grievance procedure for actions involving discrimination under 5 U.S.C. 7702, reduction-in-grade or adverse actions under either 5 U.S.C. 4303 or 7512, the employee may raise the matter under either the negotiated grievance procedure or under the Board's appellate procedures but not both. However, selection of the negotiated grievance procedure in no manner prejudices the right of an employee to request the Board to review the final decision from the negotiated grievance procedure in which prohibited discrimination was at issue. Other matters which are covered by a negotiated grievance procedure under 5 U.S.C. 7121 may not be appealed to the Board.

(2) Election of procedure. Where a covered employee has initially elected to use an exclusive negotiated grievance procedure, he/she may not appeal the matter to the Board. This election,

however, does not prohibit an employee from requesting Board review of a decision involving discrimination, as described in paragraph (c)(1) of this section.

§ 28.3 General definitions.

In this part—

"Administrative Judge" means any individual designated by the Board to preside over a hearing conducted on matters within its jurisdiction. An administrative judge may be a member of the Board, an employee of the Board, or any individual qualified by experience or training to conduct a hearing and is appointed to do so by the Board. When a panel of Members or the full Board is hearing a case, the Chair shall designate one of the members to exercise the responsibilities of the administrative judge in the proceedings.

"Board" means the General Accounting Office Personnel Appeals Board as established by 31 U.S.C. 751.

"Charge" means any request filed with the PAB General Counsel on any matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

"Charging Party" means any person filing a charge with the General Counsel for investigation.

"Comptroller General" means the Comptroller General of the United States.

"Days" means calendar days.

"Exceptions to the Recommended Decision" means a request filed by a party with the Board that objects to the findings and/or conclusions of a recommended decision.

"Executive Assistant" means the Executive Assistant of the Board.

"GAO" means the General Accounting Office.

"General Counsel" means the General Counsel of the Board, as provided for under 31 U.S.C. 752.

"Initial Decision" means the adjudicatory statement of a case that is issued by an administrative judge who is a member of the Board.

"Person" means an employee or applicant for employment, a labor organization or the GAO.

"Petition for Review" means any request filed with the Board for action to be taken on matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

"Petitioner" means any person filing a petition for review for Board consideration.

"Pleading" means a document that initiates a cause of action before the Board, responds to a cause of action, amends a cause of action, responds to an amended cause of action, requests reconsideration of a decision, responds to a request for reconsideration, requests reconsideration of a recommended decision or responds to such a request.

"Recommended Decision" means the adjudicatory statement of a case that is issued by an administrative judge, who is not a member of the Board.

"Request for Reconsideration" means a request filed with the Board for review of an initial decision.

"Solicitor" means the attorney appointed by the Board to provide advice and assistance to the Board in carrying out its adjudicatory functions and to otherwise provide assistance as directed by the Board.

§ 28.4 Time limits.

(a) To compute the number of days for filing under these rules, the first day shall be the day after the event from which the time period begins to run and the last day for filing shall be included in the computation. When the last day falls on a Saturday, Sunday or federal government holiday, then the filing deadline will be the next regular federal government workday.

(b) The Board may waive the time limits in these rules for good cause shown.

Subpart B—Procedures

§ 28.8 Informal procedural advice.

(a) Persons may seek informal advice on all aspects of the Board's procedures by contacting the Board's Solicitor or General Counsel.

(b) Informal procedural advice will be supplied within the limits of available time and staff.

§ 28.9 Procedures—general.

(a) The procedures described in this subpart are generally applicable to the processing of all matters presented for consideration by the Board. Where special procedures are to be followed, they will be prescribed in those subsequent subparts to which they are particularly applicable.

(b) All pleadings, motions, and attachments thereto shall not exceed 60 pages. The Board may waive this limitation for good cause shown. Pleadings, motions, and attachments thereto filed with the Board shall be on standard letter-size paper (8½ x 11).

§ 28.10 Notice of appeal rights.

(a) The GAO shall be responsible for ensuring that employees are routinely advised of their appeal rights to the Board and that employees, who are the object of an adverse or performance-based action, are, at the time of the action, adequately advised of their appeal rights to the Board. The notice in adverse and performance-based actions must be accompanied by proof of service.

(b) Notice in adverse and performance-based actions shall include:

(1) Time limits for appealing to the Board and the address of the Board;

(2) A copy of the Board's regulations; and

(3) Notice of the right to representation and right to a hearing.

§ 28.11 Filing a charge with the General Counsel.

(a) Who may file.

(1) Any GAO employee or applicant for employment claiming to be affected adversely by GAO action or inaction which is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31, United States Code.

(2) Non-EEO class actions. One or more employees or applicants for employment may file a charge as representative of a class of employees or applicants for employment in any matter within the Board's jurisdiction. See § 28.97 for EEO class actions.

(b) When to file.

(1) Charges relating to adverse and performance-based actions must be filed within 20 days after the effective date of the action.

(2) Charges relating to other personnel actions must be filed within 20 days after the effective date of the action or 20 days after the charging party knew or should have known of the action.

(3) Charges relating to adverse and performance-based actions (paragraph (b)(1) of this section) and other personnel actions (paragraph (b)(2) of this section) that also raise an allegation of prohibited discrimination must be filed in accordance with paragraph (b)(4) of this section.

(4) Charges relating to discrimination complaints shall be filed any time after 120 days have passed since the filing of a formal complaint of discrimination with GAO, except that, when GAO has issued a final agency decision, the charge shall be filed within 20 days from receipt by the charging party of the final agency decision.

(5) Charges relating to continuing violations shall be filed at any time.

(c) How to file. Charges shall be filed at the Office of the General Counsel (Academy Building, 717 Fifth Street, NW., Washington, DC) or by mail addressed to the General Counsel, Personnel Appeals Board, Academy Building, General Accounting Office,

Washington, DC 20548. When filed by mail, the postmark shall be the date of filing for all submissions to the General Counsel.

(d) What to file. The charging party shall include in any charge the following information:

(1) Name of the charging party or a clear description of the group or class of persons on whose behalf the charge is being filed;

(2) The names and titles of persons, if any, responsible for actions the charging party wishes to have the General Counsel review;

(3) The actions complained about, including dates, reasons given, and internal appeals taken;

(4) The charging party's reasons for believing the actions to be improper;

(5) Remedies sought by the charging party;

(6) Name and address of the representative, if any, who will act for the charging party in any further stages of the matter; and

(7) Signature of the charging party or the charging party's representative.

(e) The General Counsel shall not represent a petitioner when the only issue is attorney fees. When attorney fees are the only issue raised in a charge to the General Counsel, the General Counsel shall transmit the charge to the Board for processing under §§ 28.18 through 28.88 as a petition for review.

§ 28.12 General Counsel procedures.

(a) The General Counsel shall serve on the agency a copy of the charge, investigate the matters raised in a charge, refine the issues where appropriate, and attempt to settle all matters at issue.

(b) The General Counsel's investigation may include gathering information from GAO and interviewing and taking statements from witnesses. Employees of GAO who are requested by the General Counsel to participate in any investigation under these Rules shall be on official time.

(c) Following the investigation, the General Counsel shall provide the charging party with a Right to Appeal Letter. Accompanying this letter will be a statement of the General Counsel advising the charging party of the results of the investigation. This statement of the General Counsel is not subject to discovery and may not be introduced into evidence before the Board.

(d) If, following the investigation, the General Counsel determines that there are not reasonable grounds to believe that the charging party's rights under Subchapter IV of Chapter 7 of Title 31, United States Code, have been violated, then the General Counsel shall not represent the charging party. If the General Counsel determines that there are reasonable grounds to believe that the charging party's rights under Subchapter IV of Chapter 7 of Title 31, United States Code, have been violated, then the General Counsel shall represent the charging party, unless the charging party elects not to be represented by the General Counsel. Any charging party may represent himself/herself or obtain other representation.

(e) When the charging party elects to be represented by the General Counsel, the General Counsel is to direct the representation in the charging party's case. The charging party may also retain a private representative in such cases. However, the role of a private representative is limited to assisting the General Counsel as the General Counsel determines to be appropriate.

(f) When the General Counsel is not participating in a case, the General Counsel may request permission to intervene with regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

Hearing Procedures for Cases Before the Board—General

§ 28.15 Scope and policy.

The rules in this subpart apply to actions brought by any person, except as otherwise provided in § 28.17. These rules also apply to actions brought by the General Counsel, except as otherwise provided in Subpart G. It is the policy of the Board that these rules shall be applied in a manner which expedites the processing of each case, but with due regard to the rights of all parties.

§ 28.16 Revocation, amendment or waiver of rules.

(a) The Board may revoke or amend these regulations by publishing proposed changes within GAO and providing for a comment period of not less than 30 days. Following the comment period, any changes to the rules are final once they are published in the **Federal Register**. Notice of publication in the **Federal Register** must be published throughout GAO.

(b) An administrative judge or the Board may waive a Board regulation in any case for good cause shown if application of the regulation is not required by statute.

§ 28.17 Internal appeals of Board employees.

(a) The provisions of the GAO Personnel Act, its implementing regulations, and the Board's procedural rules apply in the same manner to employees of the Board as they do to other GAO employees, with the following exceptions.

(1) The General Counsel has no cause of action in his/her own employment matters except for the statutory bases such as prohibited discrimination and prohibited personnel practices, as described at 31 U.S.C. 732 (b)(2) and (f)(1).

(2) When an employee of the Board has an EEO complaint, the employee shall consult either with the Solicitor or with the General Counsel and seek advice on filing an EEO complaint. If the matter cannot be resolved within 10 days, the Solicitor or General Counsel shall notify the employee of his/her right to file an EEO complaint. The employee shall have 20 days from receipt of this notice to file an EEO complaint with the General Counsel. Upon receipt of an EEO complaint, the General Counsel shall arrange for processing in accordance with paragraph (b) of this section.

(3) When an employee of the Board has any other issue that would be subject to the Board's jurisdiction, the employee shall file a charge with the General Counsel and the General Counsel shall arrange for processing in accordance with paragraph (b) of this section.

(b) The responsibilities and functions of the Board's General Counsel will be assumed by an attorney who is not a current or former employee of the Board or the GAO. The services of that attorney, who shall be knowledgeable in federal personnel matters, will be paid for by the Board. The attorney will be selected by an impartial body as described below.

(1) If agreed to by the Special Counsel of the Merit Systems Protection Board (MSPB) (or the EEOC, as appropriate), that body will appoint and detail a person from among its attorneys to perform the functions of the General Counsel.

(2) If the MSPB Special Counsel (or the EEOC) does not agree to such a procedure, an appointment of an attorney will be sought from the Federal Mediation and Conciliation Service (FMCS).

(3) In any event, whatever person is so appointed, he/she will possess all of the powers and authority possessed by the General Counsel in employee appeal cases.

(c) The adjudication responsibilities and functions of the Board will be assumed by a person who is not a current or former employee of the Board or the GAO. The services of that person, who shall be knowledgeable in federal

personnel matters, will be paid for by the Board. The person will be selected by an impartial body as described below.

(1) If agreed to by the MSPB (or the EEOC, as appropriate), that body will appoint and detail one of its administrative law judges or administrative judges to perform the Board's adjudicative functions.

(2) If the MSPB (or the EEOC) does not agree to such a procedure, an appointment of an arbitrator will be sought from the FMCS.

(3) In any event, whatever person is so appointed, he/she will possess all of the powers and authority possessed by the Board in employee appeals cases. The decision of the administrative law judge, administrative judge, or arbitrator shall be a final decision of the Board, in the same manner as if rendered by the Board under 4 CFR 28.86(e). Judicial review of the decision may be pursuant to 4 CFR 28.88.

(d) Any employee of the Board who believes that he/she is aggrieved by any personnel matter that is not reviewable by the Board under 31 U.S.C. 753(a) may file a grievance as follows:

(1) Informal Step. The employee must discuss the complained of incident with his/her supervisor as soon as possible after the complained of incident.

(2) Step 1. If the supervisor is unable to resolve the matter informally to the satisfaction of the employee, then the employee may file a formal grievance with the supervisor. The formal grievance must be filed by the employee with the supervisor within 20 days after the complained of incident. The supervisor must respond to the employee in writing within 10 days.

(3) Step 2.

(i) If the employee is not satisfied with the supervisor's response, the employee has 10 days in which to apppeal to the Chair. In this appeal, the employee must forward to the Chair the formal grievance, the supervisor's response and a brief statement from the employee explaining why the supervisor's response is not satisfactory.

(ii) The Chair or another member designated by the Chair, shall meet with the employee and discuss the matter of concern within 10 days after receipt of the step 2 appeal. The Chair or designee shall issue a written resolution of the grievance.

(4) Step 3. Within 10 days after receipt of the Chair's resolution or within 60 days after initiating step 2, whichever occurs first, the employee may request that the full Board review the grievance. The decision of the full Board is the final decision in the matter.

§ 28.18 Filing a petition for review and request for hearing with the Board.

(a) Who may file. Any GAO employee or applicant for employment, who has received a Right to Appeal Letter from the General Counsel and who is claiming to be affected adversely by a GAO action or inaction which is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31, United States Code, may file a petition for review.

(b) When to file. Petitions for review must be filed within 20 days after receipt by the charging party of the Right to Appeal Letter from the General Counsel.

(c) How to file. Petitions shall be filed as follows: by hand delivery at the Office of the Board (Academy Building, 717 Fifth Street, NW., Washington, DC) or by mail to the Personnel Appeals Board, Academy Building, General Accounting Office, Washington, DC 20548. When filed by mail, the postmark shall be the exclusive date of filing for all submissions to the Board.

(d) What to file. The petition for review shall include the following information:

(1) Name of the petitioner, or a clear description of the group or class of persons on whose behalf the petition is being filed;

(2) The names and titles of persons, if any, responsible for actions the petitioner wishes to have the Board review;

(3) The actions being complained about, including dates, reasons given, and internal appeals taken;

(4) Petitioner's reasons for believing the actions to be improper;

(5) Remedies sought by the petitioner;

(6) Name and address of the representative, if any, who will act for the petitioner in any further stages of the matter;

(7) Whether a hearing is requested; and

(8) Signature of the petitioner or petitioner's representative.

(e) Failure to raise a claim or defense in the petition for review shall not bar its submission later unless to do so would prejudice the rights of the other parties and unduly delay the proceedings.

(f) Right to hearing. In an unfair labor practice proceeding there will be a hearing conducted by the administrative judge. In all other proceedings, the employee/petitioner has a right to a hearing or may request a determination based on the record. A request by GAO for a hearing may be granted at the discretion of the administrative judge. A denial of such a request shall state the basis for the denial.

(g) Non-EEO class actions. One or more employees may file a petition for review as representatives of a class of employees in any matter within the Board's jurisdiction. For the purpose of determining whether it is appropriate to treat an appeal as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure. See § 28.97 for EEO class actions.

§ 28.19 Content of GAO response.

(a) Within 20 days after receiving a copy of a petition for review, the GAO shall file a response containing at least the following:

(1) A statement of GAO's position on each of the issues raised by the petitioner, including admissions, denials or explanations of each allegation made in the petition and any other defenses to the petition.

(2) Designation of, and signature by, the GAO representative authorized to act for the GAO in the matter.

(b) Failure to raise a claim or defense in the response shall not bar its submission later unless to do so would prejudice the rights of the other parties and unduly delay the proceedings.

§ 28.20 Number of pleadings, service, and response.

(a) *Number.* One original and seven copies of all pleadings, including the petition for review, and amendments to the petition, the response to the petition for review and amendments to the response, the request for reconsideration or the response to a request for reconsideration, must be filed with the Board.

(b) *Service*—(1) *Service by the Board.* The Board will serve copies of a petition for review upon the parties to the proceeding by mail. The Board will attach a service list indicating the names and addresses of the parties to the proceeding or their designated representatives. The Board will not serve copies of any pleadings, motions, or other submissions by the parties after the initial petition for review.

(2) *Service by the parties.* The parties shall serve on each other one copy of all pleadings other than the initial petition for review. Service shall be made by mailing or by delivering personally a copy of the pleading to each party on the service list previously provided by the Board. Each pleading must be accompanied by a certificate of service specifying how and when service was made. It shall be the duty of all parties to notify the Board and one another in

writing of any changes in the names or addresses on the service list.

(c) *Time limitations for response to pleadings.* Unless otherwise specified by the administrative judge or this Subpart, a party shall have 20 days from receipt to respond to a pleading served by another party.

(d) *Size limitations.* Size limitations are set forth at § 28.9(b).

§ 28.21 Prehearing procedures and motions practice.

(a) *Amendments to petitions.* The Board, at its discretion, may allow amendments to a petition for review as long as all persons who are parties to the proceeding have adequate notice to prepare for the new allegations and if to do so would not prejudice the rights of the other parties and unduly delay the proceedings.

(b) *Motions practice.* When an action is before an administrative judge, motions of the parties shall be filed with the administrative judge and shall be in writing except for oral motions made during the hearing. An original and 3 copies of written motions shall be filed with the administrative judge. When an action is before the Board, an original and 7 copies of any motion shall be filed with the Board. Copies shall be served simultaneously upon the other parties to the proceeding. An original and 3 copies of responses in opposition to written motions must be filed with the administrative judge, or if the action is before the Board an original and 7 copies must be filed with the Board, and served simultaneously upon the other parties to the proceeding within 20 days of receipt of the motion, unless the administrative judge requires a shorter response time. All written motions and responses thereto shall include a proposed order, where applicable. A certificate of service will be filed with all motions and responses thereto showing service by mail or personal delivery of the motion to the other parties. Additional responses to the motion or to the response to the motion by either party may be filed only with the approval of the administrative judge. Motions for extension of time will be granted only for good cause shown.

(c) *Order for a hearing.* The administrative judge shall order a hearing or deny a request for a hearing in accordance with § 28.18(f). The administrative judge may, at his/her own initiative, order a hearing. When there is no hearing, the administrative judge may issue a decision and order based upon the written submissions of the parties. The administrative judge may allow oral argument at his/her discretion.

(d) *General Counsel Settlement.* Where the General Counsel under § 28.12(a) transmits a settlement, which has been agreed to by the parties, the settlement agreement shall be the final disposition of the case.

§ 28.22 Administrative Judges.

(a) *Exercise of authority.* Administrative judges may exercise authority as provided in paragraph (b) of this section upon their own initiative or upon the motion of a party, as appropriate.

(b) *Authority.* Administrative judges shall conduct fair and impartial hearings and take all necessary action to avoid delay in the disposition of all proceedings. They shall have all powers necessary to that end unless otherwise limited by law, including, but not limited to, the authority to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas in accordance with § 28.46;

(3) Rule upon offers of proof and receive relevant evidence;

(4) Rule upon discovery issues as appropriate under §§ 28.42 through 28.45;

(5) Convene a hearing as appropriate, regulate the course of the hearing, maintain decorum and exclude from the hearing any disruptive persons;

(6) Exclude from the hearing any witness whose later testimony might be colored by testimony of other witnesses or any persons whose presence might have a chilling effect on a testifying witness;

(7) Rule on all motions, witness and exhibit lists and proposed findings;

(8) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(9) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material and nonrepetitious;

(10) Impose sanctions as provided under § 28.24 of this part;

(11) Hold prehearing conferences for the settlement and simplification of issues; and

(12) File recommended or initial decisions, as appropriate.

§ 28.23 Disqualification of Administrative Judges.

(a) In the event that an administrative judge considers himself/herself disqualified, he/she shall withdraw from the case, stating on the record the reasons therefor, and shall immediately notify the Board of the withdrawal.

(b) Any party may file a motion requesting the administrative judge to withdraw on the basis of personal bias or other disqualification and specifically setting forth the reasons for the request. This motion shall be filed as soon as the party has reason to believe there is a basis for disqualification.

(c) The administrative judge shall rule on the motion. If the motion is denied, the party requesting withdrawal may request certification of the issue to the Board as an interlocutory appeal under §§ 28.80 through 28.82. Failure of the party to request certification shall be considered a waiver of the request for withdrawal.

§ 28.24 Sanctions.

The administrative judge may impose sanctions upon the parties as necessary to serve the ends of justice, including but not limited to the instances set forth in this section.

(a) *Failure to comply with an order.* When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, a request for admission, and/or production of witnesses, the administrative judge may:

(1) Draw an inference in favor of the requesting party on the issue related to the information sought.

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

(3) Permit the requesting party to introduce secondary evidence concerning the information sought.

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

(b) *Failure to prosecute or defend.* If a party fails to prosecute or defend an appeal, the administrative judge may dismiss the action with prejudice or rule for the petitioner.

(c) *Failure to make timely filing.* The administrative judge may refuse to consider any motion or other action which is not filed in a timely fashion in compliance with this subpart.

Parties, Practitioners, and Witnesses

§ 28.25 Representation.

(a) All parties to an appeal may be represented in any matter relating to the appeal. The parties shall designate their representatives, if any, in the petition for review or responsive pleading. Any subsequent changes in representation shall also be in writing and submitted to the administrative judge.

(b) A party may choose any representative so long as the person is willing and available to serve. However, the other party or parties may challenge the representative on the grounds of

conflict of interest or conflict of position. This challenge must be made by motion to the administrative judge within 10 days after receipt of the notice of designation, and shall be ruled upon by the administrative judge prior to any further proceedings in the case. These procedures apply equally to original and subsequent designations of representatives. In the event the selected representative is disqualified, the party affected shall be given a reasonable time to obtain another representative.

(c) The administrative judge, on his/her own motion, may disqualify a party's representative on the grounds described in paragraph (b) of this section.

§ 28.26 Witness fees.

The costs involved in the appearance of witnesses in any Board proceeding shall be allocated as follows:

(a) Persons employed by the GAO shall, upon request by the administrative judge to GAO, be made available to participate in the hearing and shall be in official duty status for this purpose and shall not receive witness fees. Payment of travel and per diem expenses shall be governed by applicable laws and regulations.

(b) Employees of other federal agencies called to testify at a Board proceeding shall, at the request of the administrative judge and with the approval of the employing agency, be in official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees. Payment of travel and per diem expenses shall be governed by applicable laws and regulations. In the event that the employing agency refuses the request to release the employee-witness in an official duty status, the employee-witness may be paid a witness fee in accordance with paragraph (d) of this section.

(c) When the General Counsel is the petitioner or is representing the petitioner, the General Counsel shall pay witness fees and arrange for travel and per diem expenses consistent with applicable law and regulation.

(d) Witnesses who are not covered by paragraphs (a), (b) or (c) of this section are entitled to the same witness fees as those paid to subpoenaed witnesses under 28 U.S.C. 1821. The fees, in the first instance, shall be paid by the party requesting their appearance, subject to a subsequent decision otherwise in accordance with § 28.89. Such fees shall be tendered to the witness at the time the subpoena is served, or, when the witness appears voluntarily, at the time of appearance. A federal agency or corporation is not required to tender witness fees in advance. Payment of travel and per diem expenses shall be governed by applicable law and regulation.

§ 28.27 Intervenors.

(a) Intervenors are persons who are allowed to participate in a proceeding because the proceeding, or its outcome, may affect their rights or duties. A request to intervene may be made by motion to the administrative judge under paragraph (c) of this section.

(b) Any person may, by motion, request the administrative judge for permission to intervene. The motion shall state the reasons why the person should be permitted to intervene.

(c) A motion for permission to intervene will be granted where a determination is made by the administrative judge or Board that the requestor will be affected directly by the outcome of the proceeding, including any person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b). Denial of a motion for intervention may be appealed to the Board.

(d) Intervenors who are granted permission to intervene will be considered full parties to the hearing and will have the same rights and duties as a party with two exceptions:

(1) Intervenors will not have an independent right to a hearing.

(2) Intervenors may participate in Board proceedings only on the issues affecting them, as determined by the administrative judge or Board.

§ 28.28 Substitution.

(a) If a petitioner dies or is otherwise unable to pursue the appeal, the action shall be completed upon substitution of proper parties or by the representative of the original party. Substitution will not be permitted where the interests of the original party have terminated because of death or other disability.

(b) A motion for substitution shall be filed by the representative or proper party within 90 days after the death of the petitioner or other disabling event.

§ 28.29 Consolidation or joinder.

(a) *Explanation.* (1) Consolidation may occur where two or more parties have cases which should be united because they contain identical or similar issues or in such other circumstances as justice requires.

(2) Joinder may occur where one person has two or more appeals pending and they should be united for consideration. For example, a single appellant who has one appeal pending challenging a 30-day suspension and another appeal pending challenging a subsequent dismissal might have the cases joined.

(b) *Action by administrative judge.* An administrative judge may consolidate or join cases on his/her own initiative or on the motion of a party if to do so would expedite processing of the cases and not adversely affect the interests of the parties.

Discovery

§ 28.40 Statement of purpose.

Proceedings before the Board shall be conducted as expeditiously as possible with due regard to the rights of the parties. Discovery is designed to enable a party to obtain relevant information needed for presentation of the party's case. These regulations are intended to provide a simple method of discovery. They will be interpreted and applied so as to avoid delay and to facilitate adjudication of the case. The parties are expected to initiate and complete needed discovery with a minimum amount of Board intervention.

§ 28.41 Explanation, scope, and methods.

(a) *Explanation.* Discovery is the process apart from the hearing whereby a party may obtain relevant information from another person, including a party, which has not otherwise been provided. Relevant information includes information which appears reasonably calculated to lead to the discovery of admissible evidence. This information is obtained for the purpose of assisting the parties in developing, preparing, and presenting their cases. The Federal Rules of Civil Procedure may be used as a general guide for discovery practices in proceedings before the Board, except as to matters specifically covered by these regulations. The Federal Rules of Civil Procedure shall be interpreted as instructive rather than controlling in any event.

(b) *Scope.* Any person may be examined pursuant to paragraph (c) of this section regarding any nonprivileged matter which is relevant to the issue under appeal including the existence, description, nature, custody, condition, and location of documents or other tangible things and the identity and location of persons having knowledge of relevant facts. The information sought must appear reasonably calculated to lead to the discovery of admissible evidence.

(c) *Methods.* Discovery may be obtained by one or more of the methods provided under the Federal Rules of Civil Procedure, including: written interrogatories, depositions, production of documents or things for inspection or

copying, and requests for admission addressed to parties.

§ 28.42 Voluntary discovery and protective orders.

(a) Discovery from a party. A party seeking discovery from another party shall initiate the process by serving a request for discovery on the other party. The request for discovery shall conform to the following requirement:

(1) It shall state the time limit for responding, as prescribed in paragraph (d) of this section.

(2) In the case of a request for deposition of a party, reasonable notice in writing shall be given to every party to the action. The notice shall:

(i) Specify the time and place of the taking of the deposition, and

(ii) Be served on the person to be deposed.

(3) When a request for discovery is directed to an officer or employee of GAO, the agency shall make the officer or employee available on official time for the purpose of responding to the request and shall assist the officer or employee as necessary in providing relevant information that is available to the agency. For purposes of discovery under these regulations, a party includes an intervenor.

(b) Discovery from a nonparty. Parties are encouraged to attempt to obtain voluntary discovery from nonparties whenever possible. A party seeking discovery from a nonparty may initiate the process by serving a request for discovery on the nonparty and on all other parties to the proceeding.

(c) Responses to discovery requests.

(1) A party shall answer a discovery request within the time provided by paragraph (d)(2) of this section either by furnishing to the requesting party the information or testimony requested or agreeing to make deponents available to testify within a reasonable time or by stating an objection to the particular request and the reasons for objection or by requesting a protective order.

(2) Upon the failure or refusal of a party to respond in full to a discovery request, the requesting party may file with the administrative judge a motion to compel in accordance with § 28.42(d)(4). A copy of the motion shall be served on the other party and on any nonparty from whom the discovery was sought. The motion shall be accompanied by:

(i) A copy of the original request served on the other party and a statement showing the relevancy and materiality of the information sought.

(ii) A copy of the objections to discovery or, where appropriate, a verified statement that no response has been received.

(3) The other party and any other nonparty from whom discovery was sought shall respond to the motion to compel within the time limits set forth in (d)(4) of this section.

(d) *Time limits.* (1) Requests for discovery shall be served within 30 days after the service list is issued by the Board to all parties.

(2) A party or nonparty shall respond to a discovery request within 20 days after service on the party or nonparty of the request. Any discovery requests following the initial request shall be served within 10 days of the date of service of the prior response, unless otherwise directed. Deposition witnesses shall give their testimony at the time and place stated in the notice of deposition-taking or in the subpoena, unless otherwise agreed to by the parties.

(3) In responding to a discovery request, a party or nonparty shall respond as fully as possible, except to the extent that the party or nonparty objects to the discovery or requests a protective order. Any objection or request for protective order shall be filed within the time limits set forth in paragraph (d)(2) of this section. Any objection shall be addressed to the party requesting discovery and shall state the particular grounds for the objection. Any request for protective order shall state the grounds for the protective order and shall be served on the administrative judge and any other party and nonparty to the action. The administrative judge shall rule on the request for protective order.

(4) Motions for an order compelling discovery shall be filed with the administrative judge within 10 days of filing of objections or within 10 days of the expiration of the time limits for response when no response or an alleged inadequate response is received. Opposition to a motion to compel must be filed with the administrative judge within 10 days of the date of service of the motion.

(5) Discovery shall be completed by the time designated by the administrative judge, but no later than 65 days after the filing of the appeal. A later date may be set by the administrative judge after due consideration of the particular situation including the dates set for hearing and closing of the case record.

(6) The time limits prescribed in this section may be altered by the administrative judge for good cause shown.

§ 28.43 Compelling discovery.

(a) *Motion for an order compelling discovery.* Motions for orders compelling discovery shall be submitted to the administrative judge as set forth at § 28.42(c)(2) and (d)(4) above.

(b) *Content of order.* Any order issued may include, where appropriate:

(1) Provision for notice to the person to be deposed as to the time and place of such deposition.

(2) Such conditions or limitations concerning the conduct or scope of the proceedings or the subject matter as may be necessary to prevent undue delay or to protect any party or deponent from undue expense, embarrassment or oppression.

(3) Limitations upon the time for conducting depositions, answering written interrogatories, or producing documentary evidence.

(4) Other restrictions upon the discovery process as determined by the administrative judge.

(c) Failure to comply with an order compelling discovery may subject the noncomplying party to sanctions under § 28.24. Failure to comply with an order compelling discovery may subject a noncomplying nonparty to enforcement proceedings under § 28.50.

§ 28.44 Taking of depositions.

Depositions may be taken before any person not interested in the outcome of the proceedings who is authorized by law to administer oaths.

§ 28.45 Admissions of fact and genuineness of documents.

(a) Any party may be served with requests for the admission of the genuineness of any relevant documents identified within the request or the truth of any relevant matters of fact or application of law to the facts as set forth in the request.

(b) Within the time period prescribed by § 28.42(d)(2), the party on whom the request is served must submit to the requesting party:

(1) A sworn statement specifically denying, admitting, or expressing a lack of knowledge after making reasonable inquiry regarding the specific matters on which an admission is requested; and/or

(2) An objection to a request for the admission of the genuineness of any relevant document may be filed, in whole or in a part, on the grounds that the matters contained therein are privileged, irrelevant, or otherwise improper.

(c) Upon a failure or refusal of a party to respond or object to a request for admissions within the prescribed time

period, the request shall be deemed admitted.

Subpoenas

§ 28.46 Motion for subpoena.

(a) *Authority to issue subpoenas.* Any member of the Board may issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia; and order the taking of depositions and order responses to written interrogatories.

(b) *Motion.* A motion for the issuance of a subpoena requiring the attendance and testimony of witnesses or the production of documents or other evidence under § 28.46(a) shall be submitted to the administrative judge.

(c) *Forms and showing.* Motions for subpoenas shall be submitted in writing to the administrative judge and shall specify with particularity the books, papers, or testimony desired and shall be supported by a showing of general relevance and reasonable scope and a statement of the facts expected to be proven thereby.

(d) *Rulings.* Where the administrative judge is not a Board member, the motion shall be referred with a recommendation for decision to a Board member. The Board member shall promptly rule on the request. Where the administrative judge is a Board member, he/she shall rule directly on the request.

§ 28.47 Motion to quash.

Any person against whom a subpoena is directed may file a motion to quash or limit the subpoena setting forth the reasons why the subpoena should not be complied with or why it should be limited in scope. This motion shall be filed with the administrative judge within 20 days after service of the subpoena.

§ 28.48 Service.

Service of a subpoena may be made by a United States Marshal or Deputy Marshal or by any person who is over 18 years of age.

§ 28.49 Return of service.

When service of a subpoena is effected by a person other than a United States Marshal or Deputy Marshal, that person shall certify on the return of service that the prescribed fees have been tendered or provided for and that service was made either:

(1) In person,

(2) By registered or certified mail, or

(3) By delivery to a responsible person (named) at the residence or place of business (as appropriate) of the person to be served.

§ 28.50 Enforcement.

If a person has been served with a Board subpoena but fails or refuses to comply with its terms, the party seeking compliance may file a written motion for enforcement with the administrative judge or make an oral motion for enforcement while on record at a hearing. The party shall present the return of service and, except where the witness was required to appear before the administrative judge, shall submit affidavit evidence of the failure or refusal to obey the subpoena. The Board may then request the appropriate United States district court to enforce the subpoena.

Hearings

§ 28.55 Scheduling the hearing.

The notice of initial hearing shall fix the date, time and place of hearing. GAO, upon request of the administrative judge, shall provide appropriate hearing space. Motions for postponement by either party shall be made in writing and accompanied by an affidavit setting forth the reasons for the request and shall be granted only upon a showing of good cause. When the parties agree on postponement, motions may be made orally and shall be granted only upon a showing of good cause.

§ 28.56 Hearing procedures, conduct, and copies of exhibits.

(a) The Board may designate one or more administrative judges to conduct hearings on appropriate matters.

(b) The hearing will be conducted as an administrative proceeding and, ordinarily, the rules of evidence will not be strictly followed.

(c) Parties will be expected to present their cases in a concise manner limiting the testimony of witnesses and submission of documents to relevant matters.

(d) Any party to a hearing offering exhibits into the record shall submit two copies of all such exhibits to the administrative judge, plus one copy for each opposing party that is separately represented.

(e) Each party to a proceeding shall be responsible for bringing the proper number of copies of an exhibit to the hearing.

(f) Multipage exhibits shall be paginated in the lower right hand corner and the first page shall indicate the total number of pages in the exhibit.

§ 28.57 Public hearings.

(a) Hearings shall be open to the public. However, the administrative judge, at his or her discretion, may order a hearing or any part thereof closed, where to do so would be in the best interests of the petitioner, a witness, the public, or other affected persons. Any order closing the hearing shall set forth the reasons for the administrative judge's decision. Any objections thereto shall be made a part of the record.

(b) Regardless of whether a hearing is open or closed, the GAO technical representative, who is not expected to testify, the GAO representative, the petitioner and the petitioner's representative each has a right to be present at the hearing.

§ 28.58 Transcript.

(a) Preparation. A verbatim record made under supervision of the administrative judge shall be kept of every hearing and shall be the sole official record of the proceeding. Upon request, a copy of a transcript of the hearing shall be made available to each party. Additional copies of the transcript shall be made available to a party upon payment of costs. Exceptions to the payment requirement may be granted for good cause shown. Motions for an exception shall be made in writing and accompanied by an affidavit setting forth the reasons for the request and shall be granted upon a showing of good cause. Requests for copies of transcripts shall be directed to the executive assistant. The executive assistant may, by agreement with the person making the request, make arrangements with the official hearing reporter for required services to be charged to the requester.

(b) Corrections. Corrections to the official transcript will be permitted. Motions for correction must be submitted within 30 days of the receipt of the transcript. Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the administrative judge. The administrative judge may make changes at any time with notice to the parties.

§ 28.59 Official record.

The transcript of testimony and exhibits, together with all papers and motions filed in the proceedings, shall constitute the exclusive and official record.

§ 28.60 Briefs.

(a) Length. Principal briefs shall not exceed 60 pages and reply briefs 30 pages, exclusive of tables and pages limited only to quotations of statutes,

rules, and the like. Motions to file extended briefs shall be granted only for good cause shown.

(b) Format. Every brief must be easily readable. Pages must be 8 ½ x 11 inches with margins at least one inch on all sides. Typewritten briefs must have double spacing between each line of text, except for quoted texts which may be single spaced.

(c) Number of copies. An original and 3 copies of briefs shall be filed with the administrative judge and one copy served on each party separately. When an action is before the Board, an original and seven copies of each brief must be filed with the Board and one copy served on each party separately represented.

§ 28.61 Burden and degree of proof.

(a) In appealable actions, as defined by 5 U.S.C. 7701(a), agency action must be sustained by the Board if:

(1) It is a performance-based action and is supported by substantial evidence; or

(2) It is brought under any other provision of law, rule, or regulation as defined by 5 U.S.C. 7701(a) and is supported by a preponderance of evidence.

(b) Notwithstanding paragraph (a) of this section, the agency's decision may not be sustained if the petitioner:

(1) Shows harmful error in the application of the agency's procedures in arriving at such decision;

(2) Shows that the decision was based on any prohibited personnel practice described in 4 CFR 2.5; or

(3) Shows that the decision was not in accordance with law.

(c) In any other action within the Board's jurisdiction, the petitioner shall have the responsibility of presenting the evidence in support of the action and shall have the burden of proving the allegations of the appeal by a preponderance of the evidence.

(d) Definitions. The following definitions shall apply: "Harmful error" means error by the agency in the application of its procedures which, in the absence or cure of the error, might have caused the agency to reach a conclusion different than the one reached. The burden is upon the petitioner to show that, based upon the record as a whole, the error was harmful, i.e., caused substantial harm or prejudice to his/her rights.

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

"Substantial evidence" means that degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. This is a lower standard of proof than preponderance of the evidence.

§ 28.62 Closing the record.

(a) When there is a hearing, the record shall be closed at the conclusion of the hearing. However, when the administrative judge allows the parties to submit argument, briefs, or documents previously identified for introduction into evidence, the record shall be left open for such time as the administrative judge grants for that purpose.

(b) If the parties waive a hearing, the record shall be closed on the date set by the administrative judge as the final date for the receipt of submissions of the parties to the matter.

(c) Once the record is closed, no additional evidence or argument shall be accepted into the record except upon a showing that new and material evidence has become available which was not available despite due diligence prior to the closing of the record. However, the administrative judge shall make part of the record any motions for attorney fees, any supporting documentation, and determinations thereon, and any approved correction to the transcript.

Evidence

§ 28.65 Service of documents.

Any document submitted with regard to any pleading, motion, or brief shall be served upon all parties to the proceeding.

§ 28.66 Admissibility.

Evidence or testimony may be excluded from consideration by the administrative judge if it is irrelevant, immaterial, or unduly repetitious.

§ 28.67 Production of statements.

After an individual has given evidence in a proceeding, any party may request a copy of any prior signed statement made by that individual which is relevant to the evidence given. If the party refuses to furnish the statement, the administrative judge may draw an adverse inference from the failure to produce or may exclude the relevant portion of the evidence given by the individual from consideration.

§ 28.68 Stipulations.

The parties may stipulate as to any matter of fact. Such a stipulation will satisfy a party's burden of proving the fact alleged.

§ 28.69 Judicial notice.

The administrative judge on his/her own motion or on motion of a party, may take judicial notice of matters of common knowledge or matters that can be verified. Judicial notice taken of any fact satisfies a party's burden of proving the fact noticed.

Interlocutory Appeals

§ 28.80 Explanation.

An interlocutory appeal is an appeal to the Board of a ruling made by an administrative judge during the course of a proceeding. This appeal may be permitted by the administrative judge if he/she determines that the issue presented is of such importance to the proceeding that it requires the Board's immediate attention. The Board makes a decision on the issue and the administrative judge acts in accordance with that decision.

§ 28.81 Criteria for certification.

Rulings of the administrative judge may not be appealed during the course of the hearing unless the administrative judge certifies the ruling for review by the Board. The administrative judge shall certify a ruling for review only if it can be shown that:

(a) The ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and

(b) An immediate ruling will materially advance the completion of the proceeding, or denial of an immediate ruling will cause undue harm to a party or the public.

§ 28.82 Procedure.

(a) Motion for certification. A party seeking review by interlocutory appeal must file a motion for certification with the administrative judge within ten days of receipt of the administrative judge's determination. The motion shall include arguments in support of both the certification and the determination to be made by the Board. Responses, if any, shall be filed within ten days of receipt of the motion for certification.

(b) Certification and review. The administrative judge shall grant or deny a motion for certification following receipt of the motion and response, if any. If certification is granted, the record shall be referred to the Board. If certification is denied, the issue may be raised in exceptions to the recommended decision or in a request for reconsideration filed in accordance with § 28.86 after issuance of the

recommended decision or initial decision, respectively.

(c) Stay of hearing. The stay of the hearing during the time an interlocutory appeal is pending is at the discretion of the administrative judge. However, when the administrative judge refuses to stay the hearing during the time an interlocutory appeal is pending, the Board is not precluded from staying a hearing pending a decision on the interlocutory appeal.

Board Decisions, Attorney's Fees, and Judicial Review

§ 28.86 Board procedures; recommended decisions.

(a) Non-member recommended decisions. Where an administrative judge, who is not a Board member, conducts a hearing, the administrative judge shall transmit to the parties and to the Board a recommended decision.

(b) Exceptions to the recommended decision shall be filed within 30 days from issuance as follows: By hand delivery by any party at the office of the Board (Academy Building, 717 Fifth Street, NW., Washington, DC) or by mail to the Personnel Appeals Board, Academy Building, General Accounting Office, Washington, DC 20548. When filed by mail, the postmark shall be the exclusive date of filing. The party filing the exceptions shall serve the Board with an original and 7 copies and shall serve one copy of the exceptions on other parties. The exceptions shall include all supporting material and shall set forth objections to the recommended decision, with references to applicable laws or regulations, and with specific reference to the record. The responding party shall have 30 days from receipt of the exceptions to file any reply. Additional responsive pleadings may be filed only with the approval of the Board.

(c) Regardless of whether exceptions to a recommended decision are filed with the Board, the Board shall review the recommended decision. In reviewing the recommended decision, the Board shall review the record as though it were making the initial decision. The Board may adopt, reverse, remand, modify or vacate the recommended decision, in whole or in part. Where no party files exceptions to a recommended decision and the Board is considering any action other than adopting the recommended decision in whole as the final decision, the Board shall provide the parties an opportunity to address the issues it is considering. Where appropriate, the Board shall issue a final decision and order a date for compliance. In reviewing any recommended decision, the Board may:

(1) Issue a single decision which decides the case;

(2) Hear oral arguments;

(3) Require the filing of briefs;

(4) Remand the proceedings to the administrative judge to take further testimony or evidence or make further findings or conclusions; or

(5) Take any other action necessary for final disposition of the case.

(d) The Board shall reject a recommended decision, in whole or in part, on the basis of its own motion or on the basis of exceptions filed by the parties, when the Board finds that:

(1) New and material evidence is available that, despite due diligence, was not available when the record was closed;

(2) The recommended decision is based on an erroneous interpretation of statute or regulation;

(3) The recommended decision is arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(4) The recommended decision is not made consistent with required procedures and results in harmful error; or

(5) The recommended decision is unsupported by evidence required by the requisite burden of proof as set forth at § 28.61.

(e) The decision of the Board shall be final and subject to judicial review pursuant to § 28.90.

§ 28.87 Board procedures; initial decisions.

(a) Initial decisions by a member or panel of members. Where a Board member or panel of members hears a case, an initial decision shall be issued to the Board and to the parties. The initial decision—

(1) Shall contain the date upon which the initial decision will become final, which will be at least 30 days from issuance and

(2) Shall become final on that date unless, within 30 days from issuance of the initial decision, a party files a request for reconsideration or the Board decides to reconsider the initial decision on its own motion.

(b) A request for reconsideration of an initial decision shall be filed within 30 days from issuance as follows: by hand delivery by any party at the office of the Board (Academy Building, 717 Fifth Street, NW., Washington, DC) or by mail to the Personnel Appeals Board, Academy Building, General Accounting Office, Washington, DC 20548. When filed by mail, the postmark shall be the exclusive date of filing. The party filing the request for reconsideration shall serve the Board with an original and 7 copies and shall serve one copy of the request on other parties. The request for reconsideration shall include all supporting material and shall set forth objections to the initial decision, with references to applicable laws or regulations, and with specific reference to the record. The responding party shall have 30 days from receipt of the request for reconsideration to file any reply. Additional responsive pleadings may be filed only with the approval of the Board.

(c) When a request for reconsideration is filed, the Board shall review the initial decision. In reviewing the initial decision, the Board may review the record as though it were making the initial decision. The Board may affirm, reverse, remand, modify or vacate the initial decision, in whole or in part. Where appropriate, the Board shall issue a final decision and order a date for compliance. In reviewing any initial decision, the Board may:

(1) Issue a single decision which decides the case;

(2) Hear oral arguments;

(3) Require the filing of briefs;

(4) Remand the proceedings to the administrative judge to take further testimony or evidence or make further findings or conclusions; or

(5) Take any other action necessary for final disposition of the case.

(d) The Board shall reject an initial decision, in whole or in part, on the basis of its own motion or on the basis of a request for reconsideration, when the Board finds that:

(1) New and material evidence is available that, despite due diligence, was not available when the record was closed;

(2) The initial decision is based on an erroneous interpretation of statute or regulation;

(3) The initial decision is arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(4) The initial decision is not made consistent with required procedures and results in harmful error; or

(5) The initial decision is unsupported by evidence required by the requisite burden of proof as set forth at § 28.61.

(e) The decision of the Board shall be final and subject to judicial review pursuant to § 28.90.

§ 28.88 Board procedures; enforcement.

(a) A person required to take any action under the terms of a Board decision or order shall carry out its terms promptly, and shall, within 30 days after the decision or order becomes

final, provide the Board and all parties to the proceeding with a compliance report specifying:

(1) The manner in which compliance with the provisions of the decision or order has been accomplished.

(2) The reasons why compliance with any provisions of the Board's order has not been fully accomplished.

(3) The steps being taken to ensure full compliance.

(b) When the Board does not receive a compliance report in accordance with paragraph (a) of this section, the Executive Assistant shall make inquiries to determine the status of the compliance report. When the executive assistant establishes that a complete compliance report is not forthcoming, the executive assistant shall report the failure to file a complete compliance report to the Board.

(c) Any person and/or the General Counsel may petition the Board for enforcement of a final decision of the Board. The petition shall specifically set forth the reasons why the petitioner believes there is non-compliance.

(d) Upon receipt of a non-compliance report from its Executive Assistant or of a petition for enforcement of a final decision, the Board may issue a notice to any person to show cause why there was non-compliance. Following a show cause proceeding, the Board may seek judicial enforcement of its decision or order.

§ 28.89 Attorney fees and costs.

Within 20 days after receipt of a notice of final decision by the Board or other final resolution of the case, the petitioner, if he/she is the prevailing party, may submit a request for the award of reasonable attorney fees and costs. GAO may file a response to the request within 20 days after its receipt. Motions for attorney fees shall be filed in accordance with § 28.21 of these regulations. Rulings of the Board on attorney fees and costs shall be consistent with the standards set forth at 5 U.S.C. 7701(g). The Board's decision on attorney fees and costs shall be a final decision, in accordance with § 28.87.

§ 28.90 Board procedures; judicial review.

(a) A final decision by the Board under 31 U.S.C. 753(a) (1), (2), (3), (6), or (7) may be appealed to the United States Court of Appeals for the Federal Circuit within 30 days after the date the petitioner receives notice from the Board of the final decision.

(b) Special provisions regarding civil actions in discrimination complaints are set forth at § 28.100.

(c) The Board may designate the Solicitor, the General Counsel or any other qualified individual to represent it in any judicial proceeding involving a Board decision or the interpretation of a Board rule or of the GAO Personnel Act.

19. Part 28 is amended by adding a new Subpart J, consisting of § 28.155, to read as follows:

Subpart J—Savings Provisions

§ 28.155 Savings provisions.

Cases in which a charge has been filed with the General Counsel prior to June 6, 1989, will continue to be processed in accordance with the rules previously in effect. In circumstances in those previously filed cases where the prior rules contain no specific guidance, the provisions of these rules shall apply.

Date: May 26, 1989.

Jessie James, Jr.,

Chairman.

[FR Doc. 89-13212 Filed 6-5-89; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, and 273

[Amdt. No. 315]

Food Stamp Program; Disaster Assistance Act, Nondiscretionary Provisions of the Hunger Prevention Act, and Technical Corrections

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action contains final regulations pertaining to the Disaster Assistance Act of 1988, several nondiscretionary provisions of the Hunger Prevention Act of 1988, and some technical corrections. These provisions: (1) Eliminate the proration of the initial month's benefits when a migrant or seasonal farmworker household has participated in the Food Stamp Program within 30 days prior to application, (2) exclude any emergency general assistance (GA) or public assistance (PA) vendor payments while a migrant or seasonal farmworker household is in the job stream, (3) increase food stamp allotments in three stages to 103 percent of the Thrifty Food Plan (TFP), (4) increase the dependent care deduction from a maximum of $160 per household per month to a maximum of $160 per dependent per month, excluding costs paid by an employment and training program, (5) make monthly reporting and retrospective budgeting (MRRB) optional, (6) require prospective budgeting for all households except those subject to MRRB, (7) exclude advance earned income tax credit payments when calculating income for food stamp purposes, and (8) make technical corrections concerning the urban Alaska TFP, Alaska proration, energy assistance payments, and the dependent care deduction. The effect of these changes is to increase food stamp benefits and facilitate food stamp participation for some households.

EFFECTIVE DATES: This action is effective October 1, 1988, except for: (1) The provisions of 7 CFR 273.9(c)(1)(ii)(E) and 273.10(a)(1)(ii) affecting migrant and seasonal farmworkers, which are effective September 1, 1988; (2) the provision of 7 CFR 273.9(c)(11) relating to a technical correction concerning energy assistance payments, which is effective September 19, 1988; (3) the provision of 7 CFR 273.9(c)(14) concerning advance earned income tax credit payments, which is effective January 1, 1989; and (4) the provisions of 7 CFR 272.7(c), 272.7(f)(3)(iii), 273.11(c)(2)(iii) and 273.12(e)(1)(i)(C) making technical corrections concerning the urban Alaska TFP, Alaska proration, and the dependent care deduction, which are effective August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service (FNS), 3101 Park Center Drive, Alexandria, VA 22302, or by telephone at (703) 756-3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Department has classified this action as nonmajor. The annual effect of this action on the economy will be less than $100 million. The final action will have no effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.551.

For the reasons set forth in the Final rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires inter-governmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. However, State welfare agencies are affected by this rule to the extent that they must implement the provisions described in this action. Potentially eligible and currently participating households may receive increased benefits due to the changed method of adjusting the Thrifty Food Plan, the revised procedure for calculating the dependent care deduction, and the exclusion of advance earned income tax credit payments. Certain households which contain migrants and seasonal farmworkers will receive additional benefits if they have a break in participation of 30 days or less or certain emergency assistance payments are made on their behalf. Certain households may no longer be required to participate in monthly reporting and retrospective budgeting, and households not subject to monthly reporting must have their benefits determined using prospective budgeting.

Public Participation and Justification for Less Than a Thirty-day Effective Date

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b) (A) and (B). The matters addressed by this rulemaking are nondiscretionary. Moreover, most provisions in this rule have already been implemented by the State agencies.

The provisions relating to the Disaster Assistance Act were effective September 1, 1988. The provisions relating to the Thrifty Food Plan adjustment, the dependent care deduction, and monthly reporting and retrospective budgeting were effective October 1, 1988. The provision concerning advance earned income tax credit payments was effective January 1, 1989. Therefore, the Department has determined in accordance with 5 U.S.C. 553(b) that Notice of Proposed Rulemaking and Opportunity for public comments is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(d), finds that good cause exists for making this action effective prior to the date of publication.

Paperwork Reduction Act

This action does not contain any reporting and recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Background

Disaster Assistance Act—7 CFR 273.9(c)(1)(ii)(E) and 273.10(a)(1)(ii)

On August 11, 1988, the President signed Pub. L. 100-387, the Disaster Assistance Act of 1988. That law mandated two changes affecting the provision of food stamp benefits to migrant and seasonal farmworker households.

Under 7 CFR 273.9(b)(2)(i), PA and GA payments are generally counted as income to the household when determining its eligibility or calculating its benefits. Under certain circumstances, however, PA or GA payments provided in the form of a vendor payment (i.e., provided to a third party on behalf of the household) may be exempt from consideration as countable income, as provided in 7 CFR 272.9(c)(1)(ii). Section 501 of the Disaster Assistance Act amended section 5(k)(2) of the Food Stamp Act to broaden the circumstances under which PA or GA vendor payments may be excluded from income. Section 501 provides for an income exclusion for *any* emergency assistance payment which is provided to a third party on behalf of a migrant or seasonal farmworker household while the household is in the job stream. This assistance may include, but is not limited to, emergency vendor payments for housing or transportation—as long as the household is in the job stream. (Legislative history provides that this provision does not include vendor payments for gas or auto repair to get the migrant back home or to another area of employment, nor does it include transportation to get the seasonal worker to the farm. These are not a part of normal emergency grants. See *Congressional Record* of July 28, 1988, H 6036).

The effect of this provision is to lower the net incomes of certain migrant and seasonal farmworker households. By not counting these payments as income, net household incomes will be lower and, therefore, food stamp benefits may be greater. In addition, as a result of not counting these payments as income to the household, more migrant and seasonal farmworker households will have incomes low enough to qualify for expedited service, which will enable them to receive their food stamps sooner than they otherwise would.

Accordingly, this final action amends 7 CFR 273.9(c)(1)(ii) to provide that emergency PA or GA payments made on behalf of a migrant or seasonal farmworker during the period the household is in the job stream shall be considered excludable vendor payments and not counted as income to the household.

Under 7 CFR 273.10(a)(1)(ii), a household's food stamp benefits are prorated from the date of application to the end of the month in the initial month of certification. (The first month on the Program, or the "initial month," is defined as the first month of certification for participation in the Food Stamp Program following any period during which the household was not certified for participation.) Thus, if the household applied for the Program on a date other than the first of the month, it would only be entitled to a partial, or prorated, food stamp allotment for that month. The next month of participation, the household would be entitled to receive its entire monthly benefit.

Section 502 of the Disaster Assistance Act amended section 8(c) of the Food Stamp Act to eliminate the proration provision for certain migrant and seasonal farmworkers. They will receive the full allotment for a month of application when the household has participated in the Food Stamp Program within 30 days prior to the date of application.

Migrant and seasonal farmworker households may participate sporadically in the Food Stamp Program as they go in and out of the job stream, and they may have shorter-than-usual certification periods due to the unpredictability of their household circumstances. Exempting migrant and seasonal farmworkers from 7 CFR 273.10(a)(1)(ii) under certain circumstances will minimize the penalties associated with their taking advantage of short-term temporary job opportunities which may result in incomes temporarily too high to qualify for food stamps. Thus, unless the household's break in participation in the Food Stamp Program exceeds 30 days, the migrant or seasonal farmworker household will be eligible for a full month's allotment, rather than a prorated allotment, in the month of application. Accordingly, this final action amends 7 CFR 273.10(a)(1)(ii) to specify that the "initial month" for migrant and seasonal farmworkers will be the first month for which the household was certified for participation

following any period of more than 30 days during which the household was not certified for participation.

Hunger Prevention Act of 1988

On September 19, 1988, the President signed Pub. L. 100–435, the Hunger Prevention Act of 1988. Several nondiscretionary provisions of the Hunger Prevention Act are included in this action. These concern the adjustment of the TFP, monthly reporting and retrospective budgeting, advance payment of earned income tax credits, and the dependent care deduction.

Thrifty Food Plan—7 CFR 271.2, 271.7, 273.10(e)(2), 273.10(e)(4), and 273.12(e)

The TFP is a market basket of foods for obtaining a nutritious diet at low cost. Food stamp allotments are based on the cost of the TFP for a family of four persons consisting of a man and woman ages 20–50 and children ages 6–8 and 9–11. June costs of the TFP are used to establish allotments for the following October through September period. In order to obtain the maximum food stamp allotment for each household size, TFP costs are adjusted upward and downward by USDA to take into account economies of scale and household size and the final results are rounded down.

Section 120 of the Hunger Prevention Act requires a change in the procedures USDA follows in developing food stamp allotment levels. This change increases food stamp allotments by requiring the Department to adjust the TFP upward (prior to making economy of scale and household size adjustments) and base allotments on the adjusted level. Under this provision, food stamp allotments will be increased in three stages to a point where they equal 103 percent of the TFP for the preceding June. The October 1, 1988 adjustment was based on 100.65 percent of the June 1988 TFP. The October 1, 1989 adjustment will be based on 102.05 percent of the June 1989 TFP, and the October 1, 1990 adjustment will be based on 103 percent of the June 1990 TFP.

Therefore, June 1988 TFP costs of $298.10, were increased by .65 percent to $300.04 and rounded down to a food stamp allotment for the four-person household of $300 for the October 1, 1988 through September 30, 1989 period. A **Federal Register** Notice announcing this amount, as well as revised food stamp allotments for other household sizes, was published at 53 FR 44505, dated November 3, 1988 and 53 FR 46187, dated November 16, 1988. State agencies were notified of these amounts on August 18, 1988.

Accordingly, this final action amends 7 CFR 273.10(e)(4) to specify that maximum food stamp allotments will increase in stages to 103 percent of the cost of the TFP for the preceding June. It also makes conforming changes to 7 CFR 271.2, 271.7, 273.10(e)(2), and 273.12(e) to specify that the Secretary will make additional adjustments in the TFP to obtain maximum food stamp allotments.

Monthly Reporting and Retrospective Budgeting—7 CFR 273.21(a) and 273.21(b)

Under current rules at 7 CFR 273.21(b)(1) a State agency's monthly reporting and retrospective budgeting (MRRB) system must include all households with earnings and a recent work history. Currently budgeting and reporting requirements are mandated by section 5(f) and 6(c) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2014(f) and 2015(c)). Section 202 of the Hunger Prevention Act amended sections 5(f) and 6(c) to make monthly reporting a State agency option. The Hunger Prevention Act also expanded the statutory exemptions to monthly reporting to include seasonal farmworker households and households in which all members are homeless individuals. Prior to this only migrant farmworker households and households with no earned income in which all adult members are elderly or disabled were excluded from MRRB. A State agency may not require any households in the exempt categories to submit periodic (monthly) reports. To reflect the expanded exemptions the Department is amending 7 CFR 273.21(b) in this final action.

Under current rules at 7 CFR 273.21 (a) and (b), households subject to monthly reporting must be retrospectively budgeted. With the exception of those households exempt from MRRB, a State agency may determine the allotments of other households either prospectively or retrospectively. Section 202 of the Hunger Prevention Act amended section 5(f)(2) of the Food Stamp Act (7 U.S.C. 2014(f)) to require State agencies to prospectively budget all households not subject to monthly reporting. Accordingly, this final action amends 7 CFR 273.21(b)(2) to reflect this provision.

Prior to enactment of the Hunger Prevention Act, sections 6(c)(1) and 6(c)(5) of the Food Stamp Act contained authorities for several types of reporting waivers. Section 5(f) of the Food Stamp Act contained related authorities to permit waivers of budgeting requirements. The authorities are contained in current 7 CFR 273.21(a)(4), under which FNS may approve several types of budgeting and reporting waivers to provide State agencies with flexibility and to ensure that a State agency's MRRB system is operated in a cost effective manner. The waiver authorities also included waivers of budgeting and/or reporting requirements to allow State agencies to conform their food stamp budgeting and/or reporting systems to the criteria for budgeting or reporting in the Aid to Families with Dependent Children (AFDC) Program. Under the current waiver authority FNS could approve proposals to allow less-frequent-than-monthly periodic reporting if monthly reporting would not be cost effective for selected categories of households and to allow alternative methods of reporting at less frequent intervals for those households. The final waiver authority allows FNS to waive retrospective budgeting for households waived from monthly reporting.

The Hunger Prevention Act retains the waiver authorities for food stamp/AFDC budgeting and reporting consistency contained in sections 5(f)(4) and 6(c)(5) of the Food Stamp Act while eliminating the other waiver authorities. However the provision requiring prospective budgeting for households not subject to monthly reporting may not be waived. Thus, the authority permitting waivers of reporting requirements based on AFDC consistency is essentially moot although it has been retained in section 6(c)(5) of the Food Stamp Act. With the exception of households exempt from monthly reporting under section 6(c)(1), monthly reporting is optional and State agencies wishing to change reporting requirements will no longer need to request waivers to implement such changes. To reflect the above-described changes mandated by section 202 of the Hunger Prevention Act, the Department is amending 7 CFR 273.21(a) to delete obsolete waiver authorities.

Under the current provisions of 7 CFR 273.21(d) and (g), households (subject to MRRB) suffering serious hardship must have their benefits determined using prospective budgeting during the beginning months. Section 202 of the Hunger Prevention Act amended section 5(f)(3)(B) of the Food Stamp Act to require State agencies to determine the allotments of all households, otherwise subject to MRRB, prospectively for the first, or at the option of the State agency, for the first and second months of participation following certification without regard to serious hardship. To reflect this change the Department is amending 7 CFR 273.21 by deleting all references to special procedures for households suffering serious hardship. The Department is also amending 7 CFR

273.21(d) to remove the current option which allows a State agency to utilize an additional beginning month to coincide with the AFDC budgeting system for households applying jointly for both programs. This is consistent with the Hunger Prevention Act which specifies that State agencies must use one or two beginning months. State agencies wishing to use a third beginning month will not have to request a waiver from FNS.

Exclusion for Advance Payment of Earned Income Tax Credit—7 CFR 273.9(c)(14)

Section 402 of the Hunger Prevention Act amended section 5(d) of the Food Stamp Act to provide for an additional exclusion in calculating a household's income for food stamp purposes. Income exclusions are not counted toward the level of a household's net income. Since food stamp benefits are based upon an individual household's net income, an additional income exclusion would lower the net incomes of some households, thereby increasing their benefits.

Under 7 CFR 273.9(b) and 273.9(c)(9), there is an implicit distinction for food stamp purposes between earned income tax credit (EITC) payments made as advance payments and EITC payments made as tax refunds. (Under the Internal Revenue Code, certain low-income households can receive EITCs as advance payments. They can receive these as part of their income tax refunds, as part of their paychecks (though a reduction in taxes withheld), or as a reduction in taxes that otherwise would have been paid at the end of the year. More than 99 percent of EITC payments are provided as tax refunds (S. Report 100–397, dated June 23, 1988).

EITC payments which are made as "advance payments" are implicitly counted as part of food stamp income under 7 CFR 273.9 (b) and (c) to the extent that the credit is paid "in advance" in each paycheck. Tax refunds are considered to be nonrecurring lump-sum payments. As such, they are excluded from being counted as food stamp income under 7 CFR 273.9(c)(9); they are counted as food stamp resources in accordance with 7 CFR 273.8(c) of the food stamp regulations.

Section 402 of the Hunger Prevention Act provides that advance EITC payments must not be considered as income for food stamp purposes. Legislative history indicates that these payments should be counted as resources (S. Report 100–397, dated June 23, 1988). Thus, this final action amends 7 CFR 273.9(c) to add a new paragraph (14) to provide that advance EITC payments reflected in the paycheck will be treated in the same manner as EITC refund payments. These payments will be excluded from income; they will be counted as a resource against the food stamp recipient's resource limit to the extent that they become a resource available to the household.

Dependent Care Deduction—7 CFR 273.9(d)(4), 273.10(d)(1)(i), and 273.10(e)(1)(i)(E)

Deductions are expenses that are subtracted from a household's income in determining the amount of its net income for food stamp purposes. Under 7 CFR 273.9(d)(4), households are allowed a deduction for their actual dependent care expenses up to a maximum of $160 per household per month. These expenses must be necessary for a household member to: (1) Accept or continue employment, (2) seek employment in compliance with the Food Stamp Program's job search criteria or an equivalent effort by those not subject to job search, or (3) attend training or receive education which is preparatory to employment.

Section 403 of the Hunger Prevention Act amended section 5(e) of the Food Stamp Act to increase the dependent care deduction for certain households and to provide that other households would not be entitled to the dependent care deduction. Section 403: (1) Provides that households eligible for the dependent care deduction can deduct up to $160 a month per dependent rather than $160 a month per household, and (2) specifies that the dependent care deduction cannot be taken for dependent care expenses which are reimbursed under an employment and training program as specified in section 6(d)(4)(I) of the Act (7 CFR 273.7).

The restriction that households cannot receive a dependent care deduction for dependent care expenses which are reimbursed under an employment and training program simply reiterates the principle already set forth in 7 CFR 273.10(d)(1) that households should not be allowed a deduction from income for reimbursed expenses that are excluded from income. Allowing a dependent care deduction in addition to providing a reimbursement would generally constitute a subsidy to the household beyond that necessary to make up for the costs actually incurred for dependent care. Accordingly, this final action amends 7 CFR 273.9(d)(4), 273.10(d)(1)(i), and 273.10(e)(1)(i)(E) to increase the maximum dependent care deduction from $160 per household per month to $160 per dependent per month and to specify that households will not be entitled to a dependent care deduction under certain circumstances (including when their dependent care expenses are reimbursed under an employment and training program). It also makes a technical change to: (1) Delete references to seeking employment in compliance with the job search criteria or an equivalent effort, and (2) to add language to specify that dependent care costs incurred to pursue activities necessary to comply with employment and training requirements would meet the criteria for obtaining the dependent care deduction. This change will conform this section to language elsewhere in the regulations.

Technical Corrections—7 CFR 272.7(c), 272.7(f), 273.9(c)(11), 273.12(c)(2)(iii) and 273.12(e)(1)(C)

Under 7 CFR 272.7(c), the "Urban Alaska TFP" is incorrectly defined as being (in part) 1.0079 percent higher than the Anchorage TFP. The Urban Alaska TFP is obtained by multiplying the Anchorage TFP by 1.0079, which is different mathematically than being 1.0079 percent higher. Thus, the Urban Alaska TFP is actually 100.79 percent of the Anchorage TFP, or .79 percent higher. Accordingly, 7 CFR 272.7(c) is being amended to correct this and specify that the Urban Alaska TFP will be .79 percent higher than the Anchorage TFP.

Under 7 CFR 272.7(f)(3)(iii), households in Alaska are incorrectly excluded from the proration requirements of 7 CFR 273.10(a) for the initial month of participation. However, the Alaska State Agency correctly applies the provisions of 7 CFR 273.10(a). The oversight in the regulations is being corrected by this rule.

Section 343 of Pub. L. 100–435 made a technical change to the Food Stamp Act to specify that energy assistance payments or allowances that are excluded from income do not have to be part of a Federal, State, or local law enacted specifically for the purpose of providing energy assistance. Instead, the law may be for some other purpose, but it may include an energy assistance component. Under 7 CFR 273.9(c)(11) the Federal laws must be for the purpose of provding energy assistance, and payments or allowances under State or local laws must be designated and made for the purpose of providing energy assistance. According to legislative history, this change is not intended to change current policy (S. Rept. 100–397, dated June 23, 1988, p. 29). Accordingly, 7 CFR 273.9(c)(11) is amended to clarify that the payments or allowances under

Federal laws must be made for the purpose of providing energy assistance.

Under 7 CFR 273.12(e)(1)(C), adjustments in the shelter/dependent care deduction are effective in accordance with § 273.9(d)(8). However, Pub. L. 99–198 and Pub. L. 99–500 (See 51 FR 11009 and 51 FR 42992) established the dependent care deduction as a separate deduction from the shelter deduction. The dependent care deduction is not adjusted periodically to take into account changes in the cost of living, so the provisions of 7 CFR 273.9(d)(8) no longer apply. Likewise, 7 CFR 273.11(c)(2)(iii) continues to consider together the shelter and dependent care deductions in counting the expenses of ineligible household members. Therefore, 7 CFR 273.11(c)(2)(iii) and 273.12(e)(1)(i)(C) are being amended to reflect that the dependent care deduction is no longer tied to the shelter deduction.

Implementation

State agencies were required to implement the provisions of this rule in accordance with effective dates specified in Pub. L. 100–387 and Pub. L. 100–435.

The provisions of this rule which relate to migrant and seasonal farmworkers (7 CFR 273.9(c)(1)(ii)(E) and 273.10(a)(1)(ii)) were effective September 1, 1988 for all households applying or certified subsequent to August 31, 1988. Changes affecting currently participating households were to be implemented on recertification or when it was necessary to implement other changes affecting the household. The Food and Nutrition Service notified its regional offices on August 10, 1988 of these provisions of the Disaster Assistance Act. They, in turn, notified State agencies.

State agencies were required by section 701(b)(1) of Pub. L. 100–435 to implement the provisions of this rule regarding a technical correction to 7 CFR 273.9(c)(11) concerning energy assistance payments on September 19, 1988. This technical correction to 7 CFR 273.9(c)(11) does not represent any change in policy and does not require any special implementation efforts by State agencies.

State agencies were required to implement the provisions of this rule relating to the Thrifty Food Plan (7 CFR 271.2, 271.7, 273.10(e)(2), 273.10(e)(4)(ii), and 273.12(e)) on October 1, 1988. These provisions were implemented as a mass change in accordance with 7 CFR 273.12(e). If for any reason, a State agency failed to implement these provisions on that date, households should be provided the lost benefits which they would have received if the State agency had implemented these provisions as required. State agencies were individually notified about the provisions relating to the Thrifty Food Plan on August 18, 1988.

State agencies were required to implement the provisions relating to the dependent care deduction (7 CFR 273.9(d)(4), 273.10(d)(1)(i) and 273.10(e)(1)(i)(E)) and monthly reporting and retrospective budgeting (7 CFR 273.21 (a) and (b)) on October 1, 1988. These provisions were immediately effective for all households certified subsequent to September 30, 1988. Changes affecting currently participating households were to be implemented upon recertification, at the household's request, or when it was necessary to implement other changes affecting the household. (For example, a change reported by a nonmonthly reporting retrospectively budgeted household was to be implemented in accordance with 7 CFR 273.12.) The Department is not requiring State agencies to conduct a casefile review to implement monthly reporting and retrospective budgeting changes for currently participating households. Monthly reports submitted by households which have become exempt from MRRB as a result of the Hunger Prevention Act, such as non-migrant seasonal farmworkers or the homeless, are to be treated as change reports and processed prospectively in accordance with 7 CFR 273.12(c).

Changes relating to the dependent care deduction had to be implemented as of October 1, 1988 for all households. State agencies were individually notified about the dependent care deduction on August 18, 1988. Regional offices were notified about the monthly reporting and retrospective budgeting provisions on September 27, 1988.

State agencies were required to implement the provision of this rule concerning the exclusion of advance payment or earned income tax credits, 7 CFR 273.9(c)(14), on January 1, 1989. Households applying subsequent to December 31, 1988 were to have this provision implemented as of their date of application. Earned income tax credit changes affecting households participating as of December 31, 1988 were to be implemented upon recertification, at the household's request, or when it was necessary to implement other changes affecting the household. State agencies were notified on December 22, 1988 to implement the advance payment of earned income tax credits provision.

All other provisions of this rule involve only technical corrections concerning the urban Alaska TFP (7 CFR 272.7(c)), Alaska proration (7 CFR 272.7(f)(3)(iii)), and the dependent care deduction (7 CFR 273.11(c)(2)(iii) and 273.12(e)(1)(i)(C)). These technical corrections do not represent any change in policy and/or do not require any special implementation efforts by State agencies. These provisions will be effective August 1, 1989.

Lastly, this action clarifies that quality control errors resulting from changes to 7 CFR 273.9, 273.10, and 273.21 (relating to the increase in the dependent care deduction, monthly reporting and retrospective budgeting, assistance for migrants and seasonal farmworkers, and advance earned income tax credit payments) during the required implementation time frame established by this rulemaking shall be handled in accordance with interim regulations published at 53 FR 44171, dated November 2, 1988. Changes to 7 CFR 273.10(e)(4), relating to adjustments to food stamp allotments, are not covered in the quality control hold harmless provision in accordance with H. Rept. 100–828, dated August 5, 1988 (p. 35) which provides that the grace period would not apply for mass benefit changes, such as annual adjustments in deductions and benefit levels.

If for any reason a State agency failed to implement any of these provisions by the required dates, affected households shall be provided lost benefits which they would have received if the State agency had implemented these provisions as required.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Parts 271, 272 and 273 are amended as follows:

1. The authority citation for Parts 271, 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2:

a. The definition of "Beginning month(s)" is amended by removing the second sentence; and

b. The definition of "Thrifty Food Plan" is amended by removing the second sentence and replacing it with two new sentences.

The addition reads as follows:

§ 271.2 Definitions

* * * * *

"Thrifty Food Plan" * * * The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition. In order to develop maximum food stamp allotments, the Secretary shall make household size and other adjustments in the Thrifty Food Plan taking into account economies of scale and other adjustments as required by law.

* * * * *

§ 271.7 [Amended]

3. In § 271.7, paragraphs (b), (c), (d), and (e), are amended by replacing the words "Thrifty Food Plan" with the words "maximum food stamp allotments" each place they appear (eleven occurrences).

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

4. In § 272.1, a new paragraph (g)(109) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(109) *Amendment No. 315.* Program changes required by Amendment No. 315 to the food stamp regulations shall be implemented as follows:

(i) The provisions relating to migrant and seasonal farmworkers (7 CFR 273.9(c)(1)(ii)(E) and 273.10(a)(1)(ii)) are effective September 1, 1988 for all households applying or certified subsequent to August 31, 1988. Changes affecting currently participating households are to be implemented at recertification or when it is necessary to implement other changes affecting the household.

(ii) State agencies were required to implement the provision of this rule regarding a technical correction concerning energy assistance payments (7 CFR 273.9(c)(11)) on September 19, 1988.

(iii) State agencies were required to implement revised food stamp allotments on October 1, 1988 (7 CFR 271.2, 271.7, 273.10(e)(2), 273.10(e)(4)(ii), and 273.12(e)). Revised allotments were implemented as mass changes in accordance with 7 CFR 273.12(e).

(iv) State agencies were required to implement the provision relating to the dependent care deduction, 7 CFR 273.9(d)(4), 273.10(d)(1)(i), and 273.10(e)(1)(i)(E), and monthly reporting and retrospective budgeting, 7 CFR 273.21(a) and (b), on October 1, 1988. These provisions were immediately effective for all households certified subsequent to September 30, 1988. Changes affecting currently participating households were to be implemented upon recertification, at the household's request, or when it was necessary to implement other changes affecting the household. (For example, a change reported by a nonmonthly reporting retrospectively budgeted household was to be implemented in accordance with 7 CFR 273.12.) The Department was not requiring State agencies to conduct a casefile review to implement monthly reporting and retrospective budgeting changes for currently participating households. Monthly reports submitted by households which became exempt from MRRB as a result of the Hunger Prevention Act, such as non-migrant seasonal farmworkers or the homeless, were to be treated as change reports and processed prospectively in accordance with 7 CFR 273.12(c).

(v) State agencies were required to implement the provisions of this rule concerning the exclusion of advance payment of earned income tax credits, 7 CFR 273.8(c)(1) and 273.9(c)(14), on January 1, 1989. Households applying subsequent to December 31, 1988 should have had this provision applied to them as of their date of application. Changes affecting households participating as of December 31, 1988 were to be implemented upon recertification, at the household's request, or when it was necessary to implement other changes affecting the household.

(vi) All other provisions of this rule, relating to technical corrections concerning the urban Alaska TFP (7 CFR 272.7(c)), Alaska proration (7 CFR 272.7(f)(3)(iii)), and the dependent care deduction (7 CFR 273.11(c)(2)(iii) and 273.12(e)(1)(i)(C)), are to be implemented August 1, 1989.

(vii) Quality control errors made as a result of this rule's changes to §§ 273.9, 273.10, and 273.21 during the required implementation time frame established by this rulemaking shall be handled in accordance with interim regulations published at 53 *FR* 44171, dated November 2, 1988. Food stamp allotment changes are not covered by the interim regulation because this is a mass change.

(viii) State agencies which failed to implement any of these provisions by the required dates shall provide affected households with the lost benefits they would have received if the State agency had implemented these provisions as required.

5. In § 272.7:

a. The definition of "Urban Alaska TFP" in paragraph (c) is amended by revising the first sentence; and

b. The last sentence of paragraph (f)(3)(iii) is revised.

The revisions read as follows:

§ 272.7 Procedures for program administration in Alaska.

* * * * *

(c) * * *

"Urban Alaska TFP" refers to a TFP that is the higher of the TFP that was in effect in each area on October 1, 1985, or .79 percent higher than the Anchorage TFP, as calculated by FNS, with rounding and other reductions that are appropriate. * * *

* * * * *

(f) * * *

(3) * * *

(iii) * * * The household, if determined eligible, shall be entitled to benefits in accordance with § 273.10(a).

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

6. In § 273.9:

a. Paragraph (c)(1)(ii)(C) is amended by removing the last word "or";

b. Paragraph (c)(1)(ii)(D) is amended by changing the period "." to a semicolon ";" and adding the word "or";

c. New paragraph (c)((1)(ii)(E) is added;

d. The first sentence of paragraph (c)(11) is revised;

e. New paragraph (c)(14) is added; and

f. Paragraph (d)(4) is revised.

The revisions and additions read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(E) Emergency assistance for a migrant or seasonal farmworker household during the period the household is in the job stream. This assistance may include, but is not limited to, emergency vendor payments for housing or transportation.

* * * * *

(11) Payments or allowances made for the purpose of providing energy assistance under any Federal law. * * *

* * * * *

(14) Earned income tax credit payments received either as a lump sum or payments under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income tax credits received as part of the paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year).

(d) * * *

(4) *Dependent care.* Payments for the actual costs for the care of children or other dependents when necessary for a household member to accept or continue employment, comply with the employment and training requirements as specified under § 273.7(f), or attend training or pursue education which is preparatory to employment, except as provided in § 273.20(d)(1)(i). The maximum monthly dependent care deduction amount households shall be granted under this provision is $160 per month, per dependent.

* * * * *

7. In § 273.10:

a. The introductory text of paragraph (a)(1)(ii) is amended by removing the third sentence and replacing it with two new sentences;

b. The first sentence of paragraph (d)(1)(i) is revised;

c. The first sentence of paragraph (e)(1)(i)(E) is revised;

d. Paragraphs (e)(2)(ii)(A), (e)(2)(vi)(A), and (e)(2)(vi)(C) are amended by replacing the words "Thrifty Food Plan" with the words "maximum food stamp allotment" each place they appear (seven occurrences);

e. The title of paragraph (e)(4) is revised;

f. Paragraph (e)(4)(i) is revised;

g. Paragraph (e)(4)(ii)(C) is amended by replacing the words "and each October 1 thereafter," with the words "October 1, 1988, and October 1, 1987,"; and

h. New paragraphs (e)(4)(ii)(D), (e)(4)(ii)(E), and (e)(4)(ii)(F) are added.

The revisions and additions read as follows:

§ 273.10 Determining household eligibility and benefit levels.

(a) * * *

(1) * * *

(ii) * * * As used in this section, the term initial month means the first month for which the household is certified for participation in the Food Stamp Program following any period during which the household was not certified for participation, except for migrant and seasonal farmworker households. In the case of migrant and seasonal farmworker households, the term initial month means the first month for which the household is certified for participation in the Food Stamp Program following any period of more than 30 days during which the household was not certified for participation. * * *

* * * * *

(d) * * *

(1) * * *

(i) Any expense covered by an excluded reimbursement (including reimbursements under employment and training programs) or excluded vendor payment (except an energy assistance vendor payment made under the Low Income Home Energy Assistance Act (LIHEAA)) shall not be deductible. * * *

* * * * *

(e) * * *

(1) * * *

(i) * * *

(E) Subtract allowable monthly dependent care expenses, if any, up to a maximum amount of $160 per dependent. * * *

* * * * *

(4) Thrifty Food Plan (TFP) and Maximum Food Stamp Allotments.

(i) Maximum food stamp allotment level. Maximum food stamp allotments shall be based on the TFP as defined in § 271.2, and they shall be uniform by household size throughout the 48 contiguous States and the District of Columbia. The TFP for Hawaii shall be the TFP for the 48 States and DC adjusted for the price of food in Honolulu. The TFPs for urban, rural I, and rural II parts of Alaska shall be the TFP for the 48 States and DC adjusted by the price of food in Anchorage and further adjusted for urban, rural I, and rural II Alaska as defined in § 272.7(c). The TFPs for Guam and the Virgin Islands shall be adjusted for changes in the cost of food in the 48 States and DC, provided that the cost of these TFPs may not exceed the cost of the highest TFP for the 50 States. The TFP amounts and maximum allotments in each area are adjusted annually and will be prescribed in a General Notice published in the Federal Register.

(ii) * * *

(D) Effective October 1, 1988, maximum food stamp allotments shall be based on 100.65 percent of the cost of the TFP for the preceding June, rounded to the nearest lower dollar increment.

(E) Effective October 1, 1989, maximum food stamp allotments shall be based on 102.05 percent of the cost of the TFP for the preceding June, rounded to the nearest lower dollar increment.

(F) Effective October 1, 1990 and each October 1, thereafter, maximum food stamp allotments shall be based on 103 percent of the cost of the TFP for the preceding June, rounded to the nearest lower dollar increment.

* * * * *

8. In § 273.11, the last sentence of paragraph (c)(2)(iii) is revised to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(c) * * *

(2) * * *

(iii) * * * All but the ineligible members' share is counted as a deductible shelter or dependent care expense for the remaining household members.

* * * * *

9. In § 273.12:

a. Paragraph (e) introductory text and paragraph (e)(1)(i)(A) are amended by replacing the words "Thrifty Food Plan" with the words "maximum food stamp allotment" each place they appear (2 occurrences).

b. Paragraph (e)(1)(i)(C) is revised to read as follows:

§ 273.12 Reporting changes.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(C) Adjustments in the shelter deduction shall be effective in accordance with § 273.9(d)(8).

* * * * *

10. In § 273.21:

a. Paragraph (a)(4) is revised,

b. Paragraph (b) is revised,

c. In the second sentence of paragraph (d), the phrase "except that for a household which has applied for food stamps and AFDC at the same time the State agency may allow an additional beginning month if necessary to coincide with the AFDC budgeting system" is removed,

d. In the second sentence of paragraph (d)(2) the phrase "except when an additional beginning month is provided in accordance with introductory paragraph (d) of this section" is removed, and the comma (,) preceding the phrase is replaced with a period (.),

e. The phrase *"serious hardship provisions"* is removed from the title of paragraph (e) and the phrase *"beginning months' procedures"* is added in its place,

f. The phrase *"not suffering serious hardship"* is removed from the title of paragraph (f) and the phrase *"following*

the beginning months" is added in its place,

g. The phrase "such as for serious hardship cases or" is removed from paragraph (f)(1)(ii) and the phrase "during the beginning months or for" is added in its place,

h. The phrase "for households suffering serious hardship" is removed from the title of paragraph (g),

i. The introductory text of paragraph (g) is revised,

j. Paragraph (g)(1) is removed and paragraphs (g) (2) through (4) are redesignated (g) (1) through (3), respectively,

k. In the titles of newly redesignated paragraphs (g)(1) and (g)(2) the phrase *"for serious hardship cases"* is removed and the phrase *"during the beginning months"* is added in its place,

l. In the title of newly redesignated paragraph (g)(3), the phrase *"for serious hardship cases"* is removed and the phrase *"following the beginning months"* is added in its place, and

m. The fourth sentence of newly redesignated paragraph (g)(3) is removed.

The revisions read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

(a) * * *

(4) *Budgeting Waivers.* FNS may approve waivers of the budgeting requirements of this section to conform to budgeting procedures in the AFDC Program, except for households excluded from retrospective budgeting under paragraphs (b)(1) and (b)(2) of this section.

(b) *Included and excluded households.* The establishment of an MRRB system is a State agency option. Households not required to submit monthly reports shall have their eligibility and benefits determined on a prospective basis. A State agency may include any household in its MRRB system, except as follows:

(1) Migrant or seasonal farmworker households.

(2) Households in which all members are homeless individuals.

(3) Households with no earned income in which all adult members are elderly or disabled.

* * * * *

(g) *Determining eligibility and allotments in the beginning months.* The State agency shall use the prospective budgeting procedures of this paragraph for determining the allotments and eligibility of households in the MRRB system during this first month, or first and second month of participation.

* * * * *

G. Scott Dunn,

Acting Administrator, Food and Nutrition Service.

May 30, 1989.

[FR Doc. 89-13294 Filed 6-5-89; 8:45 am]

BILLING CODE 3410-30-M

Federal Grain Inspection Service

7 CFR Part 810

Official United States Standards for Grain

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is amending the Official United States Standards for Grain to show the proper method for recording the percentage of splits in soybeans.

EFFECTIVE DATE: June 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090-6454, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

D. R. Galliart, Acting Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Final Action

In the **Federal Register** of June 30, 1987 (52 FR 24414), FGIS published a final rule that included the complete text of the Official United States Standards for Grain with various amendments. It was FGIS' intention that the recording of splits in soybeans (7 CFR 810.104(b)) continue to be recorded in whole percents with fractions of a percent being disregarded. However, in the June 30, 1987, final rule the reference to recording the percentage of splits in soybeans was inadvertently placed with classes and subclasses in wheat, flint corn, flint and dent corn, waxy corn, classes in barley, and the percentage of each kind of grain in mixed grain, which are recorded to the nearest whole percent.

On March 21, 1989 (54 FR 11543), FGIS proposed to amend the United States Standards for Soybeans to show the proper method for recording the percentage of splits in soybeans.

Interested parties were invited to participate in the rulemaking process by submitting written comments on the proposed rule. During the comment period two comments were received from representatives of major trade associations. One commentor supported the proposed rule as written as well as making the change effective upon publication of the final rule. Although supporting the proposal, one commentor did question the consistency with rounding practices for reporting most other types of inspection results. As FGIS further reviews the soybean standards, the review will include the manner in which soybean splits are recorded. At this time, sufficient information is not available regarding the possible impact of reporting soybean splits to the nearest whole percent. Therefore, FGIS is amending § 810.104(b) for clarity, only to be consistent with current practices.

Pursuant to section 4(b) of the United States Grain Standards Act, no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. Because these changes are being made for clarity so as to show the proper method for recording the percentage of splits in soybeans, FGIS has determined that it is in the public interest that the change be made effective immediately. For these same reasons, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 810

Export, Grain.

For reasons set forth in the preamble, 7 CFR Part 810 is amended as follows:

PART 810—[AMENDED]

1. The authority citation for Part 810 continues to read as follows:

Authority: Secs. 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76).

Subpart A—General Provisions

§ 810.104 [Amended]

2. Section 810.104(b) is amended by revising the first sentence to read "The percentage of splits in soybeans, and the percentage of dockage in barley, flaxseed, rye, and sorghum are reported in whole percents with fractions of a percent being disregarded."

3. Section 810.104(b) is further amended by removing the phrase "splits in soybeans;" after the phrase "classes in barley;" in the ninth sentence.

Dated: May 18, 1989.

D.R. Galliart,

Acting Administrator.

[FR Doc. 89-13396 Filed 6-5-89; 8:45 am]

BILLING CODE 3410-EN-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

RIN 3150-AD08

Financial Protection Requirements and Indemnity Agreements; Miscellaneous Amendments Necessitated By Changes in the Price-Anderson Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to conform to changes made to the Price-Anderson Act by "The Price-Anderson Amendments Act of 1988," which was enacted on August 20, 1988. The Commission is also amending its regulations to increase the level of the primary layer of financial protection required of certain indemnified licensees. The provisions of Section 170 of the Atomic Energy Act of 1954, as amended, require production and utilization facility licensees to have and maintain financial protection to cover public liability claims. Therefore, the Commission is amending its regulations to coincide, as statutorily required, with the increase in the level of the primary layer of insurance provided by private nuclear liability insurance pools. This change would provide additional insurance to pay public liability claims arising out of a nuclear incident.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Policy Development and Financial Evaluation Section, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-1289.

SUPPLEMENTARY INFORMATION: On August 20, 1988, "The Price-Anderson Amendments Act of 1988" was enacted as Pub. L. 100-408. This legislation modifies and extends for 15 years (to August 1, 2002) the Price-Anderson Act. On December 20, 1988, the Commission published a proposed rule in the Federal Register (53 FR 51120) requesting comments on amending certain provisions of 10 CFR Part 140 to conform to changes made by Pub. L. 100-408. Two nonsubstantive comments were received on the proposed rule. The first commenter, without indicating a need, requested an extension of the comment period, which the NRC did not believe was warranted. The other commenter requested specific incorporation of certain other regulatory changes, which has been done. First, the requirement for the imposition of a surcharge above the $63 million deferred premium assessment, as specified in subsection 170o.(1)(E) of the Act, has been incorporated into the regulations. Second, the regulations have been clarified to specify that the $10 million annual deferred premium would be assessed on a "per incident" basis as implied in the Act and as clearly indicated in the legislative history.

Section 170 of the Atomic Energy Act of 1954, as amended, (the Act) requires production and utilization facility licensees to have and maintain financial protection to cover public liability claims resulting from a nuclear incident or precautionary evacuation. Section 170 also requires the Nuclear Regulatory Commission to indemnify the licensee and other persons indemnified, up to the statutory limitation on liability, against public liability claims in excess of the amount of financial protection required. Subsection 170b. of the Act requires that for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available from private sources. Primary financial protection may be in the form of private insurance, private contractual indemnities, self-insurance or other proof of financial responsibility, or combination of such measures.

The insurers who provide the nuclear liability insurance, American Nuclear Insurers (ANI) and Mutual Atomic Energy Liability Underwriters (MAELU), have advised the Commission that the maximum amount of primary nuclear energy liability insurance available has been increased from $160 million to $200 million. Pursuant to the provisions of subsection 170b. of the Act, the amount of primary financial protection required for facilities having a rated capacity of 100,000 electrical kilowatts or more will be increased to $200 million.

Environmental Impact: Categorical Exclusion

The Commission has determined that this rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) Existing requirements were approved by the Office of Management and Budget approval number 3150-0039.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) the Commission hereby certifies that this rule will not have a significant economic effect on a substantial number of small entities. This rule applies only to nuclear power plant licensees which are electric utility companies dominant in their service areas. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the standards set forth for small businesses in Small Business Administration regulations in 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, that a backfit analysis is not required for this rule. These amendments are required to conform NRC regulations to statutory directives and do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 140

Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the

Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 140.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

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

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 140.11(a), 140.12(a), 140.13, and 140.13a are issued under sec. 161b., 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and § 140.6 is issued under sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 140.11, paragraph (a)(4) is revised and the introductory text (a) is provided for the convenience of the user to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

(a) Each licensee is required to have and maintain financial protection:

* * * * *

(4) In an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability claims and costs, excluding costs payment of which is not authorized by section 170o.(1)(D), in excess of that covered by primary financial protection) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more: Provided, however, That under such a plan for deferred premium charges for each nuclear reactor which is licensed to operate, no more than $63,000,000 with respect to any nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) and no more than $10,000,000 per incident within one calendar year shall be charged.

* * * * *

3. In § 140.13a, paragraph (a) is revised to read as follows:

§ 140.13a Amount of financial protection required for plutonium processing and fuel fabrication plants.

(a) Each holder of a license issued pursuant to Part 70 of this chapter to possess and use plutonium at a plutonium processing and fuel fabrication plant is required to have and maintain financial protection in the form specified in § 140.14 in the amount of $200,000,000. Proof of financial protection shall be filed with the Commission in the manner in § 140.15 prior to issuance of the license under Part 70 of this chapter.

* * * * *

4. Section 140.92, Appendix B, is amended as follows:

a. Article I, paragraphs 1 and 7 are revised.

b. Article II, paragraph 4(c), introductory text of paragraph 8, and paragraphs 8(a), 8(b), and 8(c) are revised.

c. Article III, paragraph 4(b) is revised.

d. Article VIII, paragraph 1 is revised.

§ 140.92 Appendix B—Form of Indemnity Agreement With Licensees Furnishing Insurance Policies as Proof of Financial Protection

* * * * *

Article I

* * * * *

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

7. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

Article II

* * * * *

4. * * *

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

8. With respect to any common occurrence,

(a) If the sum of limit of liability of any Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association exceeds $155,000,000 the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $155,000,000 as the limit of liability of the Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association;

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds $45,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $45,000,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

* * * * *

Article III

* * * * *

4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under this agreement and all other applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection.

* * * * *

Article VIII

* * * * *

1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2 a and b of the Attachment annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges); Provided, however, That under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed $63,000,000 with respect to any single nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) nor exceed $10,000,000 per incident within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

* * * * *

5. Section 140.93, Appendix C, is amended as follows:

a. Article I, paragraphs 1 and 7 are revised.

b. Article II, paragraphs 4(c) and 8 are revised.

c. Article III, paragraph 4(b) is revised.

d. Article VIII, paragraph 1 is revised.

§ 140.93 Appendix C—Form of Indemnity Agreement With Licensees Furnishing Proof of Financial Protection in the Form of Licensee's Resources

* * * * *

Article I

* * * * *

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

7. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political sudivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material, and (b), if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

Article II

* * * * *

4. * * *

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

8. With respect to a common occurrence, if the sum of the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee described in paragraph 3 of this Article shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements. As used in this paragraph, and in Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170 c. or k. of the Act in which agreement the nuclear incident is defined as a "common occurrence".

* * * * *

Article III

* * * * *

4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to Paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amount of financial protection established under this agreement and to all other applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection.

* * * * *

Article VIII

* * * * *

1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2 annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges): Provided, however, That under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed $63,000,000 with respect to any single nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) nor exceed $10,000,000 per incident within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

* * * * *

6. Section 140.94, Appendix D, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraphs 4(c) and 6 are revised.

§ 140.94 Appendix D—Form of Indemnity Agreement With Federal Agencies

* * * * *

Article I

* * * * *

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State of Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3)

claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

Article II

* * * * *

4. * * *

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

6. With respect to a common occurrence, the obligations of the Commission under this Article shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amount of financial protection established under all applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection. As used in this Article "applicable agreements" means each agreement entered into by the Commission pursuant to subsection 170c. or k. of the Act in which agreement the nuclear incident is defined as "common occurrence.

* * * * *

7. Section 140.95, Appendix E, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraphs 2(c) is revised.

c. Article III, paragraphs 4(b) is revised.

d. Article IV, paragraph 1 is revised.

§ 140.95 Appendix E—Form of Indemnity Agreement With Nonprofit Education Institutions

* * * * *

Article I

* * * * *

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regualtions issued by the Commission.

* * * * *

6. "Public liability" means are legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Act of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, or the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

Article II

* * * * *

2. * * *

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

* * * * *

Article III

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4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under all applicable agreements; or (2) an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection. As used in this Article "applicable agreements" means each agreement entered into by the Commission pursuant to subsection 170 c. or k. of the Act in which agreement the nuclear incident is defined as a "common occurrence."

* * * * *

Article IV

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim including such legal costs of the licensee as are approved by the Commission and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

* * * * *

8. Section 140.107, Appendix G, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, introductory text of paragraph 6 and paragraphs 6(a), (6(b), and 6(c) are revised.

c. Article III, paragraph 4(b) is revised.

§ 140.107 Appendix G—Form of Indemnity Agreement With Licensees Processing Plutonium for Use in Plutonium Processing and Fuel Fabrication Plants and Furnishing Insurance Policies as Proof of Financial Protection

* * * * *

Article I

* * * * *

1. "By product material," "person," "source material," "special nuclear material," "precautionary evacuation," and "extraordinary nuclear occurrence" shall have the meaning given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of or damage to, or loss of use of (a) property which is located at the location and used in connection with the

licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

Article II

* * * * *

6. With respect to any common occurrence,

(a) If the sum of the limit of liability of any Nuclear Energy Liability-Property Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability-Property Insurance Association exceeds $155,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $155,000,000 as the limit of liability of the Nuclear Energy Liability-Property Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability-Property Insurance Association;

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds $45,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $45,000,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability-Property Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

* * * * *

Article III

* * * * *

4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed $200,000,000.

* * * * *

9. Section 140.108, Appendix H, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraph 6 is revised.

c. Article III, paragraph 4(b) is revised.

§ 140.108 Appendix H—Form of Indemnity Agreement With Licensees Possessing Plutonium for Use in Plutonium Processing and Fuel Fabrication Plants and Furnishing Proof of Financial Protection in the Form of the Licensee's Resources

* * * * *

Article I

* * * * *

1. "Byproduct material," "person," "source material," "special nuclear material," "precautionary evacuation," and "extraordinary nuclear occurrence" shall have the meaning given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

* * * * *

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

* * * * *

Article II

* * * * *

6. With respect to any common occurrence, if the sum of the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection, the obligations of the licensee described in paragraph 3 of this Article shall not exceed a greater proportion of an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements. As used in this paragraph, and in Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170c. or k. of the Act in which agreement the nuclear incident is defined as a "common occurrence."

* * * * *

Article III

* * * * *

4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed $200,000,000.

* * * * *

Dated at Rockville, MD, this 30th of May 1989.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 89-13381 Filed 6-5-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-146-AD; Amdt. 39-6232]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, which requires periodic inspections and cleaning of the cavity aft of the wing center section. This amendment is prompted by reports of inadequate drainage, which apparently

is caused by an inordinate quantity of debris and foreign material collecting in the cavity area. This situation has led to accumulated water leaking from the wing center section onto portions of the aileron control system and subsequently freezing. Ice in the aileron control system can result in reduced lateral control capability.

EFFECTIVE DATE: July 10, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires periodic inspections and cleaning of the cavity aft of the wing center section, was published in the Federal Register on January 13, 1989 (54 FR 89796). The comment period for the proposal closed on March 9, 1989.

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

The Air Transport Association (ATA) of America, on behalf of its members, expressed no technical objection with the proposed rule. The ATA did, however, request that the initial compliance interval be extended from 12 to 15 months, and that the repetitive inspection interval be extended from 15 to 18 months, to accommodate operators' normal "C" check maintenance hold. The extension is needed because, the proposed inspection will require substantially more time than the 9-manhour estimate stated in the cost estimate of the Notice unless it is accomplished when the airplane is open for inspection such as a "C" check. One ATA member has estimated that approximately 80 manhours are needed to accomplish the proposed task because of removal/replacement activities required for access. This task can, therefore, only be scheduled during long maintenance holds such as a "C" check. The FAA has considered the ATA's comment and has concluded that the request has merit. The FAA has determined that an extension of the initial compliance time to 15 months and the repetitive inspection interval to 18 months will not have a derogative effect on safety. The final rule has been revised accordingly.

Another commenter requested that this AD be revised to include a provision for a longer interval for the airplanes which have improved drain capability, such as the incorporation of Boeing Service Bulletins 747-51-2026, 747-51-2032, and 747-51-2036. The FAA agrees that there are other acceptable methods of complying with the rule, and paragraph B. of the AD contains provisions for alternate means of compliance. Since alternate means must be considered on a case-by-case basis, it is not practicable to incorporate all possible means of compliance in the final rule.

The manufacturer requested that this AD be revised to require visual inspection external of the cavity and, if drainage is blocked, then inspection internally. The FAA disagrees because accumulated water leaking from the wing center section onto portions of the aileron control system and subsequently freezing, was found on airplanes that were reported to have had the drainage previously checked.

The manufacturer also requested that the wording of the final rule identifying the inspection area be changed from "* * * cavity over the wing center section * * *" to "* * * cavity aft of the wing center section * * *." The FAA concurs; the suggested wording clarifies the intent of the rule. The final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted. The FAA has determined that these changes will neither increase the economic burden on any operator, nor increase the scope of the AD.

There are approximately 700 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 260 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $93,600.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this regulation and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Applies to all Model 747 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced lateral control caused by icing of the aileron control cables, accomplish the following:

A. Within the next 15 months after the effective date of this AD, unless already accomplished within the last 3 months, and thereafter at intervals not to exceed 18 months, perform the following:

1. Gain access to the cavity aft of the wing center section.

2. Remove all debris and foreign material, clean the cavity, and verify all drains are open and clean.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 10, 1989.

Issued in Seattle, Washington, on May 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-13317 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-13-AD; Amdt. 39-6233]

Airworthiness Directives; Israel Aircraft Industrie (IAI) Model 1121, 1121A, 1121B, 1123, 1124, and 1124A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Israel Aircraft Industrie (IAI) Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, which currently requires repetitive dye penetrant inspections to detect cracks in the horizontal stabilizer aft spar splice fitting, and replacement, as necessary. This amendment requires repetitive visual inspections for cracks in the hinge lugs of the horizontal stabilizer aft spar splice fitting, and replacement of any fittings found cracked. This amendment is prompted by reports of cracks found in the outer hinge lugs during a visual inspection, which were apparently missed during the previously required dye penetrant inspection. Such cracking, if not detected and corrected, could lead to failure of the outer and inner hinge lugs, which would compromise the structural integrity of the horizontal stabilizer assembly.

EFFECTIVE DATE: July 10, 1989.

ADDRESSES: The applicable service information may be obtained from Israel Aircraft Industrie (IAI), Delaware Office, P.O. Box 10086, Wilmington, Delaware 19850. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 86-14-02, Amendment 39-5341 (51 FR 23217; June 26, 1986), applicable to Israel Aircraft Industrie (IAI) Model 1121, 1121A, 1121B, 1123, 1124 and 1124A series airplanes, to require repetitive visual inspections for cracks in the hinge lugs of the horizontal stabilizer aft spar splice fitting, and replacement of any fittings found cracked, was published in the **Federal Register** on March 17, 1989 (54 FR 11226).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given the single comment received in response to the proposal.

The commenter supported the proposed rule.

Paragraph C. of the final rule has been revised to reflect the correct issue date for Revision 2 of Service Bulletins 1121-55-004 and 1123-55-007 as October 21, 1988.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously noted. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 410 airplanes of U.S. registry will be affected by this AD, that it will take approximately one-half manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,200 for the initial inspection cycle.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" or under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

1. The authority Citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 86-14-02, Amendment 39-5341 (51 FR 23217; June 26, 1986), with the following new airworthiness directive:

Israel Aircraft Industries (IAI): Applies to Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks in the hinge lugs of the horizontal stabilizer aft spar splice fitting (hinge assembly), accomplish the following:

A. Within the next 75 flight hours time-in-service after the effective date of this AD, unless previously accomplished within the last 225 flight hours time-in-service, conduct a visual inspection of the horizontal stabilizer aft spar splice fitting (hinge assembly) Part

Number 453005-501, in accordance with the following IAI service bulletins entitled "Horizontal Stabilizer Aft Spar Splice Fitting P/N 453005-501 (Hinge Assembly) Inspection", as appropriate:

Model	Service bulletin
1121, 1121A, 1121B	1121-55-003, Revision 1, dated August 8, 1988.
1123	1123-55-006, Revision 1, dated August 8, 1988.
1124, 1124A	1124-55-020, Revision 2, dated August 8, 1988.

B. If no cracks are found, repeat the inspection required by paragraph A., above, at intervals not to exceed 300 hours time-in-service.

C. If cracks are found, replace the splice fitting prior to further flight, in accordance with the following IAI service bulletins entitled "Horizontal Stabilizer Assembly—Inspection, Repair, and Improvement (AFC 2037)," as appropriate:

Model	Service bulletin
1121, 1121A, 1121B	1121-55-004, Revision 2, dated October 21, 1988.
1123	1123-55-007, Revision 2, dated October 21, 1988.
1124, 1124A	1124-55-021, Revision 3, dated October 21, 1988.

D. Following replacement of the splice fitting, described in the above service bulletins, repeat the inspection required by paragraph A. of this AD at intervals not to exceed 300 hours time-in-service.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Israel Aircraft Industries, Delaware Office, P.O. Box 10086, Wilmington, Delaware 19850. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment supersedes AD 86-14-02, Amendment 39-5341.

This Amendment becomes effective July 10, 1989.

Issued in Seattle, Washington, on May 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-13316 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-84-AD; Amdt. 39-6231]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR42 series airplanes, which requires modification of the cargo compartment smoke detector test system. This amendment is prompted by reports that the smoke detector test system may not indicate failure of a smoke detector when it occurs. This condition, if not corrected, could result in a fire in the cargo compartment remaining undetected.

EFFECTIVE DATE: June 20, 1989.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 216 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction Generale de L'Avaition Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Aerospatiale Model ATR42 series airplanes. There have been reports that the smoke detector test system may not indicate failure of a smoke detector when it occurs. This problem is due to a test signal feedback by the operative smoke detector. This condition, if not corrected, could result in a fire in cargo compartment remaining undetected.

Aerospatiale has issued Service Bulletin ATR42-26-0010, Revision 1, dated March 28, 1989, which describes procedures for modification of the smoke detector system in the cargo compartments which segregates the forward and aft smoke detector circuits. The DGAC has classified this service bulletin as mandatory and has issued French Airworthiness Directive 88-186-016B addressing this subject

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires modification of the smoke detector test system in the cargo compartments, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

The FAA has determined that this regulation is an emergency regulation and is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and

placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety

Adoption of the Amendment

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

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Aerospatiale: Applies to all Model ATR42 series airplanes, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent a fire in a cargo compartment remaining undetected, accomplish the following:

A. Modify the forward and aft smoke detector test systems, in accordance with Aerospatiale Service Bulletin ATR42-26-0010, Revision 1, dated March 28, 1989.

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

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

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Aerospatiale, 216 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 20, 1989.

Issued in Seattle, Washington, on May 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-13318 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ANM-13]

Establishment of VOR Federal Airway V-593; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a new Federal Airway, V-593, between Denver, CO, and Pueblo, CO. The arrival fix over Kiowa, CO, produces congestion in that area for traffic landing at Denver. This action adds a new airway that bypasses Kiowa for a direct route to the Denver terminal area, reduces delays and shortens the distance to the Denver terminal area by 9 miles.

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On August 11, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate new VOR Federal Airway, V-593, located in the vicinity of Denver, CO (53 FR 30298). We have identified the need for an airway to support procedures for the arrival traffic flow from the south. Presently, low and high altitude arrivals mix at Kiowa, CO, VORTAC, producing delays. This new airway bypasses Kiowa and shortens the route to the Denver terminal area by 9 miles. This action reduces controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1969.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a new Federal Airway, V-593, between Denver, CO, and Pueblo, CO. The arrival fix over Kiowa, CO, produces congestion in that area for traffic landing at Denver. This action adds a new airway that bypasses Kiowa for a direct route to the Denver terminal area, reduces delays, and shortens the distance to the Denver terminal area by 9 miles.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

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

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-593 [New] From Pueblo, CO, INT Pueblo 004° and Denver, CO, 147° radials; to Denver.

Issued in Washington, DC, on May 24, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-13319 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 90128-9133]

RIN 0694-AA05

Amendment of Validated License Controls on Magnetically Enhanced Sputtering Equipment

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for public comment.

SUMMARY: This rule amends the validated export license controls on certain magnetically enhanced sputtering equipment described in paragraph (b)(1)(vi) of Export Control Commodity Number (ECCN) 1355A in the Commodity Control List (Supplement No. 1 to § 799.1 of the Export Administration Regulations). This action is in accordance with a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended.

As a result of this regulatory action, exports of magnetically enhanced sputtering equipment to any destination located in Country Group T or V—except the People's Republic of China and Afghanistan—no longer require a validated license, unless the equipment is described in the *Validated License Required* paragraph of ECCN 1355A. A validated license continues to be required for national security reasons for exports of all magnetically enhanced sputtering equipment to destinations in Country Groups Q, S, W, Y, and Z, the People's Republic of China, and Afghanistan.

DATES: This rule is effective June 1, 1989. Comments must be received by July 6, 1989.

ADDRESS: Written comments (six copies) should be sent to Vincent Greenwald, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John R. Pastore, Office of Foreign Availability, Room SB701, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230, Telephone: (202) 377-8074.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1988, the Commerce Department published a positive finding of foreign availability of magnetically enhanced sputtering equipment in the **Federal Register** (53 FR 34135). However, because this equipment is still necessary for the production of critical integrated circuits, the notice reported a Presidential override of the foreign availability finding and requested public comments on the economic impact of continued control.

A Presidential override requires the Department of Commerce to retain the requirement for a validated export license while the President negotiates with the government(s) of the identified source(s) for the elimination of the foreign availability. The President overrode the foreign availability finding on June 24, 1987 and the United States initiated negotiations to eliminate the foreign availability.

The Department had 18 months to conclude negotiations to eliminate foreign availability. As a result of the negotiations, foreign availability was eliminated completely for a five-month period; hence, the foreign availability controls have been maintained up to the time of this regulatory action.

As of June 1, 1989, the United States Government has temporarily eliminated the foreign availability of magnetically enhanced sputtering equipment specially designed for the manufacture of semiconductors. The Commerce Department will continue to require a validated license for such equipment during the period for which foreign availability has been eliminated.

However, other magnetically enhanced sputtering equipment that are for general purpose applications and are not specially designed for manufacturing semiconductors (e.g., bell jar types without vacuum load locks—designed to normally process one wafer at a time—in which the main chamber is opened each time a wafer is manually loaded into and removed from the system, and batch types without vacuum load locks with hinged openings that provide access to the main chamber when wafers or other substrates are manually loaded into and removed from the system) will, effective June 1, 1989, no longer require a license to Country Groups T and V, except the People's Republic of China and Afghanistan. The U.S. Government will refer this finding to COCOM for a four-month consideration of possible removal of national security controls for exports to all destinations. A validated license will continue to be required for foreign policy reasons for exports to Country Groups S and Z.

Rulemaking Requirements and Invitation to Comment

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule mentions collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Office of Management and Budget has approved these collections under control numbers 0694-0004 and 0694-0005. The net effect of this rule will be to reduce the number of export license applications submitted for this equipment. This rule should reduce the paperwork burden on the public.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of the Federalism Assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Publishing this rule in proposed form would impair BXA's ability to issue effective and timely controls. Consistent with section 13(b) of the EAA, an opportunity for public comment is provided for this rule.

The period for submission of comments will close July 6, 1989. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their

consideration cannot be assured. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 to Title 15 of the *Code of Federal Regulations*. Information about the inspection and copying of records may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 799 of the Export Administration Regulations (15 CFR Parts 730–799) is amended as follows:

PART 799—[AMENDED]

1. The authority citation for 15 CFR Part 799 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*) as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 100–418 of August 23, 1988, and by Pub. L. 99–64 of July 12, 1985; E.O. 12523 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 799.1 [AMENDED]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1355A is amended by revising the *Validated License Required* paragraph, to read as follows:

1355A Equipment for the manufacture or testing of electronic components and materials; and specially designed components, accessories and "specially designed software" therefor.

* * * * *

Validated License Required: Country Groups QSTVWYZ, except as provided for magnetically enhanced sputtering equipment and wire bonders below.

Magnetically enhanced sputtering equipment. A validated license is required to Country Groups QSTVWYZ for single "wafer" in-line magnetically enhanced sputtering equipment and multiple wafer magnetically enhanced sputtering equipment that uses vacuum load locks to isolate the main chamber from the loading chamber. A validated license is required only to Country Groups QSWYZ, the People's Republic of China, and Afghanistan for other magnetically enhanced sputtering equipment controlled by paragraph (b)(1)(vi).

Technical Note: A "wafer" is a thin disk-like section of material (e.g., silicon, gallium arsenide, or aluminum oxide—crystalline or noncrystalline) that is the underlying support, base, or structure upon which materials are subsequently deposited and processed in the production of semiconductor devices.

Wire bonders. Wire bonders controlled by paragraph (b)(5)(ii) and *not* described below require a validated license only to Country Groups QSWYZ, the People's Republic of China, and Afghanistan. A validated license is required to County Groups QSTVWYZ for "stored program controlled" wire bonders that are specially designed and enabled to be integrated into a "totally automated (semiconductor) manufacturing facility" *or* that have all of the following characteristics:

(a) Bonding wire that is less than 0.0007 inches (17.5 micrometers) diameter;

(b) Bond to bonding pads (on semiconductor circuits and devices) that are 0.0015 inches × 0.0015 inches (37.5 micrometers × 37.5 micrometers) or less and spaced closer than 0.0025 inches (62.5 micrometers) from center to center; and

(c) Have a bond cycle time of 100 ms or less per wire (bond cycle time measured with 1.5 mm distance between bonds).

Technical Note: A "*totally* automated (semiconductor) manufacturing facility" is one in which all equipment controls and all materials handling operations from the blank polished wafer through encapsulation and electronic test are performed without human intervention in the production of semiconductor curcuits and devices. This is distinguished from an "automated (semiconductor) manufacturing facility" in which individual pieces of equipment used in the production of semiconductor circuits and devices are: (a) Controlled from a host computer; and (b) associated with facilities to supply material and remove processed material without human intervention.

* * * * *

Dated: June 1, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89–13450 Filed 6–2–89; 11:35 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM86–7–000; Order No. 473]

Compression Allowances and Protest Procedures Under NGPA Section 110

May 30, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Publication of pipeline filings made pursuant to Order No. 473.

SUMMARY: In Order No. 473, 52 FR 21,660 (June 9, 1987), the Federal Energy Regulatory Commission amended its regulations to provide parties an opportunity to protest allowances for delivery of natural gas which were heretofore presumed authorized by "area rate" clauses in gas sales contracts. Order No. 473 amended 18 CFR 271.1104(h) to require all interstate pipelines to provide a listing of those producers that have claimed an entitlement to delivery allowances pursuant to an "area rate" clause. The interstate pipelines were required to indicate whether they concurred in the producers claim for delivery allowances.

Attached are three lists provided by interstate pipelines as required by 18 CFR 271.1104(h) (1987). First, MIGC, Inc.

(MIGC) made a filing on December 9, 1988. List I sets forth the only first seller selling gas to MIGC that asserts contractual authority to collect delivery allowances under an area rate clause. Second, Valley Gas Transmission, Inc. (Valley) filed List II and III on January 7, 1989. List II sets forth those first sellers and gas purchase contracts for which Valley concurs with the assertion of contractual authority to collect delivery allowances pursuant to an area rate clause. List III sets forth the first sellers and gas purchase contracts for which Valley protests the assertion of contractual authority to collect delivery allowances pursuant to an area rate clause.

DATE: As provided in 18 CFR 271.1104(h)(4)(i) (1987), any protest must be filed by September 5, 1989.

ADDRESS: An original and 14 copies of each protest must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Edward G. Cingold, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-9114.

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

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. A copy of MIGC and Valley's filings may be obtained from CIPS up to 10 days following the date of issuance by the Commission. The complete text of this notice on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

MIGC, INC. First Seller with Contractual Authority to Collect Production Related Costs

The only first seller selling gas to MIGC, Inc. (MIGC) that asserts contractual authority to collect delivery allowances under an area rate clause is Western Gas Processors, Ltd. (Western Gas). MIGC believes that Western Gas does have contractual authority to collect production-related costs permitted under Section 271.1104 of the Commission's Regulations. The number of Western Gas' seventh amendment to the gas sales contract is IP-5000 (S-2153) dated November 1, 1985.

Valley Gas Transmission, Inc.—Lost of First Sellers and Gas Purchase Contracts for Which Valley Concurs With The Assertion of Contractual Authority To Collect Delivery Allowances Pursuant To An Area Rate Clause

First seller	Contract date	Rate schedule No.
Phillips Petroleum Co.	04/06/66	427
Suburban Propane Gas Corp.	05/23/66	
TXO Production Corp.	05/23/66	

Valley Gas Transmission, Inc.—List of First Sellers and Gas Purchase Contracts For Which Valley Protests The Assertion of Contractual Authority To Collect Delivery Allowances Pursuant To An Area Rate Clause

First seller	Contract date	Rate schedule No.
None		

[FR Doc. 89-13334 Filed 6-5-89; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

Country of Origin Marking Requirement on Fruit Juice Containers

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

ACTION: Notice of Postponement of Effective Date of interpretive rule.

SUMMARY: This document advises interested parties that the scheduled June 7, 1989, implementation date for requiring that labels on frozen concentrated and reconstituted fruit juices which contain imported concentrate be marked to show the foreign country of origin of the concentrate, is postponed.

EFFECTIVE DATE: The effective date of June 7, 1989, for merchandise entered, or withdrawn from warehouse for consumption is postponed.

FOR FURTHER INFORMATION CONTACT: John Doyle, Office of Regulations and Rulings (202) 566-5765.

SUPPLEMENTARY INFORMATION: Customs published a notice in the Federal Register on June 7, 1988 (53 FR 20836), announcing June 7, 1989, as the effective date for requiring that labels on frozen concentrated and reconstituted fruit juice products which contain imported concentrate be labeled to show the foreign country of origin of the concentrates. Such a rule is already in place in regard to imported orange juice concentrate and was to be extended to all other imported fruit juice concentrates. A method of compliance available to orange juice processors known as major supplier marking was also made available to processors of other juices.

Customs published another notice that same day (53 FR 20869), announcing that consideration was being given to discontinuing major supplier marking as an acceptable compliance method and requiring that all sources marking be the acceptable method for complying with the marking law as applied to imported fruit juice concentrate.

In the intervening months since those notices were published, Customs has considered the many comments received, and sought a resolution to this marking problem that balances the needs of all the parties concerned.

Determination

The June 7, 1989, implementation date for requiring that labels on frozen concentrated and reconstituted fruit juices which contain imported concentrate be marked to show the foreign country of origin of the concentrate, is postponed. Customs will publish a final rule concerning the country of origin marking of imported fruit juice concentrate, applicable to the entire juice industry, on or before August 7, 1989.

Date: June 1, 1989.

William von Raab,

Commissioner of Customs.

[FR Doc. 89-13564 Filed 6-5-89; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSMRE is announcing approval of an amendment to the Colorado permanent regulatory program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to the preservation of cultural and historic resources. It revises the State program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: June 6, 1989.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102; Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. Information regarding the general background on the Colorado program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in December 15, 1980, **Federal Register** (45 FR 82173). Actions taken subsequent to the approval of the Colorado program are found at 30 CFR 906.11, 906.15, and 906.30.

II. Submission of the Amendment

In accordance with the provisions of 30 CFR 732.17(d), the Director on June 9, 1987, notified Colorado of the changes necessary to ensure that the approved regulatory program was no less stringent than SMCRA and no less effective than the implementing Federal regulations with respect to the protection of cultural and historic resources. On October 14, 1988, Colorado submitted a proposed amendment partially addressing these concerns (Administrative Record No. CO–406). The proposed amendment pertains to the identification and protection of sites listed on or eligible for listing on the National Register of Historic Places (NRHP).

OSMRE announced receipt of the proposed amendment in the December 14, 1988, **Federal Register** (53 FR 50244) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on its substantive adequacy (Administrative Record No. CO–424). The public comment period closed on January 13, 1989. The public hearing, scheduled for January 9, 1989, was not held because no one requested an opportunity to testify.

III. Director's Findings

As discussed below, the Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendment submitted by Colorado on October 14, 1988, meets the requirements of, and is no less stringent and effective than, SMCRA and 30 CFR Chapter VII.

1. Rule 2.05.6(4)(b), Mitigation of Impacts of Mining Operations

Colorado proposes to add Rule 2.05.6(4)(b) which states that the Mined Land Reclamation Division (MLRD) may require an applicant for a mining permit to use appropriate mitigation and treatment measures to protect historic or archeological sites listed or eligible for listing on the NRHP as determined by the State Historic Preservation Officer (SHPO). It also states that such measures may be taken after permit issuance provided they are completed before the sites are affected by mining.

The proposed rule is substantively identical to the counterpart Federal regulations at 30 CFR 780.31(b) and 784.17(b), except that Colorado proposes to add language clarifying that the SHPO will make the determination on eligibility. The cited Federal regulations do not specify who makes the determination on eligibility.

However, the Federal regulations at 36 CFR 800.4(c), which impement Section 106 of the National Historic Preservation Act, specify that the Agency Official, in consultation with the SHPO, and following the Secretary's Standards and Guidelines for Evaluation, shall apply the National Register Criteria to evaluate properties for NRHP eligibility.

As stated in part I of this "SUPPLEMENTARY INFORMATION" section of the notice, Colorado is a State with an approved regulatory program. In States with regulatory programs approved by OSMRE, the regulatory authority issues permits for surface coal mining operations. Accordingly, State-issued permits are State rather than Federal undertakings, and Federal laws and rules such as the provisions of the National Historic Preservation Act and 36 CFR Part 800 do not directly apply (52 FR 4250, February 10, 1987).

The provisions of 30 CFR 730.5 require State programs to be consistent with SMCRA and rules adopted by OSMRE under SMCRA. However, they do not require direct State program implementation of other Federal laws such as the National Historic Preservation Act. Thus, State programs must be no less effective than the Secretary's regulations in meeting the requirements of SMCRA. There is no requirement in SMCRA that the approved State program be "no less effective than" the requirements of the National Historic Preservation Act (52 FR 4250).

Additionally, as discussed in more detail below, the Director notes that the Advisory Council on Historic Preservation commented that it is appropriate for the SHPO to have the lead role in determining eligibility of sites for the NRHP.

With respect to the subject State program amendment, since Colorado has elected to defer to the SHPO in making determinations as to NRHP eligibility, the Director finds that proposed Rule 2.05.6(4)(b) provides for a process which is (1) as a practical matter, at least effective as that provided for in 36 CFR 800.4(c), and (2) no less effective than the corresponding Federal regulations at 30 CFR 780.31(b) and 784.17(b).

2. Rule 2.07.6(2)(e) (i) and (ii), Criteria for Permit Approval or Denial

This rule requires that, prior to permit approval, the MLRD find that the operation either will not adversely affect any publicly owned park or places listed on the NRHP or that the operation has been jointly approved by all affected agencies with jurisdiction over the park or place. This requirement does not apply to operations with valid existing rights. Colorado proposes to expand the scope of this finding to include not only places listed on the NRHP but also those eligible for listing. Colorado also proposes to add language clarifying that the SHPO will make the

determination as to whether a site is eligible for listing.

In response to OSMRE's June 9, 1987, Part 732 notification, Colorado on February 16, 1988, provided OSMRE with clarification that it interprets the phrase "publicly-owned park or place listed on the NRHP" in its proposed Rules 2.07.6(2)(e) (i) and (ii) to include both publicly and privately-owned sites (Administrative Record No. CO–364). Therefore, the proposed rule as written provides protection to both publicly and privately-owned sites listed on or eligible for listing on the NRHP.

As revised, the Colorado rule affords greater protection to historic resources than does the corresponding Federal rule at 30 CFR 773.15(c)(3)(ii), which does not include places eligible for listing on the NRHP.

Based upon Colorado's interpretation of its rule that it affords protection to publicly and privately-owned sites, and the revised rule that protects sites listed on and eligible for listing on the NRHP, the Director finds that the revised rule is no less effective than its Federal counterpart. As explained in finding No. 1, Colorado's proposal to rely on the SHPO for determinations of eligibility is also no less effective than the Federal requirements.

Furthermore, by extending the protection of this finding to sites eligible for listing on the NRHP, Colorado has rendered moot that portion of the June 9, 1987, Part 732 notification requiring an amendment of the program to include a finding no less effective than that contained in 30 CFR 773.15(c)(11). The cited Federal rule requires a finding that the regulatory authority has taken into account the effect of the proposed permitting action on properties listed and eligible for listing on the NRHP. Since the revised State rule requires a finding of either no adverse impact or joint agency approval for operations affecting such properties, the Director finds Colorado Rule 2.07.6(2)(e) as revised to be no less effective than 30 CFR 773.15(c)(11).

3. Rule 2.10.3(1)(g), Specific Information Requirements for Maps and Plans

Colorado Rule 2.10.3(1)(g) requires each permit applicant to submit a map showing the location of cultural and historic resource sites within the proposed permit and adjacent areas if they are listed on the NRHP. Colorado proposes to revise this rule to require that this map also show those sites eligible for listing on the NRHP. Colorado also proposes to add language clarifying that the SHPO will make the determination as to whether a site is eligible for listing.

As revised, the mapping requirements of this rule are substantively identical to those of the corresponding Federal regulations at 30 CFR 779.24(i) and 783.24(i). As explained in finding No. 1, Colorado's proposal to rely on the SHPO for determinations of eligibility is no less effective than the applicable Federal requirements. Therefore, the Director finds Colorado Rule 2.10.3(1)(g) to be no less effective than the counterpart Federal regulations at 30 CFR 779.24(i) and 783.24(i).

IV. Summary and Disposition of Comments

OSMRE did not receive any public comments in response to its December 14, 1988, **Federal Register** notice, and it did not hold a public hearing because no one requested an opportunity to provide testimony.

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11), OSMRE solicited comments from various Federal agencies having an actual or potential interest in the Colorado program. It did not receive any substantive comments in response to this solicitation of comments. Pursuant to 30 CFR 732.17(h)(4) OSMRE also solicited comments from the SHPO and the Advisory Council on Historic Preservation (the Council) on this cultural and historic resources proposed amendment. The Council commented on three aspects of the proposed amendment (Administrative Record No. CO–421). These comments are summarized and discussed below.

First, the Council commented that it assumed that the language of Colorado's rules would be accompanied by appropriate procedures providing for the identification of properties eligible for listing on the NRHP. In response, the Director notes that OSMRE's June 9, 1987, Part 732 notification still requires Colorado to amend Rule 2.04.4 to authorize Colorado MLRD to require permit applicants to identify and evaluate, through collection of additional information, conduct of field investigations, or other appropriate analyses, important historic and archaeological resources that may be eligible for listing on the NRHP. The Director also notes that the Colorado MLRD and the SHPO are apparently preparing a cooperative agreement that will detail the procedures for cultural and historic resource permitting reviews. Since the revision of Rule 2.04.4 and the execution of the cooperative agreement between the Colorado MLRD and the SHPO will address (1) the identification and evaluation of cultural and historic resources which may be eligible for listing on the NRHP, and (2) the procedures to be followed during permit review to ensure that the MLRD and the SHPO properly consider all factors relating to cultural and historic resources, the Director has determined that no further action is required with regard to this comment.

Second, the Council commented that language paralleling that of Section 106 of the National Historic Preservation Act would be clearer than the language included in Colorado's proposed regulations. Specifically, the Council suggested that Colorado use the language "included in or eligible for inclusion in the National Register" in place of "listed on or those places eligible for listing * * * on the National Register of Historic Places." OSMRE did not require Colorado to revise its proposed rules in the manner suggested by the Council because the Colorado language is virtually identical to that contained in the counterpart Federal regulations and because its meaning is identical to that suggested by the Council.

Third, the Council also commented that while it is appropriate, as Colorado proposed, for the SHPO to have the lead role in determining eligibility of sites for the National Register, leaving these decisions to the unilateral discretion of the SHPO could create situations in which (1) OSMRE would be unable to exercise its section 106 responsibilities with respect to properties that are in fact eligible but have been determined ineligible by the SHPO, or (2) OSMRE would be carrying out section 106 responsibilities with respect to properties that are not, in fact, eligible. However, the Council concluded that such questions could probably be handled through consultation among the SHPO, OSMRE, the Keeper of the NRHP, and the Council without requiring further changes in Colorado's program.

In response, and for the following reasons, the Director agrees with the Council's conclusion that no further changes to Colorado's program are required. The Director notes, as previously stated, that in States such as Colorado with regulatory programs approved by OSMRE, the State, not OSMRE, issues permits for surface coal mining operations. Accordingly, it is not appropriate for OSMRE to routinely become involved in questions of eligibility arising from State actions, nor is such involvement and the involvement of the Keeper of the NRHP required under the Council's regulations at 36 CFR 800.4(c). Rather, such questions are to be determined by the

Agency Official, in consultation with the SHPO. The Director recognizes that, under 36 CFR 800.4(c)(4), the Council and the Secretary have the right, on their own initiative, to intervene on a case-by-case basis and elevate the question of eligibility to the Secretarial level. While this provision is rarely invoked, the Director does not interpret the Colorado rule as foreclosing this possibility, nor does the State have the authority to do so. Rather, the State's rules are intended to clarify routine determination procedures; where, as specified above, the Council or the Secretary decide to remove such decision-making authority from the SHPO, OSMRE expects that Colorado will abide by such a decision, as required by the National Historic Preservation Act. Additionally, the Director does not interpret the Colorado rule as foreclosing the SHPO, if the SHPO so desires, from seeking the advice of the Keeper of the NRHP in determining eligibility of sites for the NRHP.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by Colorado on October 14, 1988. The Federal regulations at 30 CFR Part 906 that codify decisions concerning the Colorado program are being amended to implement this decision. The Director is approving the rules with the provision that they be fully promulgated in a form identical to that submitted to and reviewed by OSMRE and the public. However, the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSMRE oversight of the Colorado program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Compliance with the National Environmental Policy Act

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

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

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB pursuant to 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

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

Allen D. Klein,

Acting Assistant Director, Western Field Operations.

Date: May 26, 1989.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 906—COLORADO

1. The authority citation for Part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 906.15 is amended by adding a new paragraph (l) to read as follows:

§ 906.15 Approval of regulatory program amendments.

* * * * *

(l) Revisions to § 2.05.6(4)(b), 2.07.6(2)(e) (i) and (ii), and 2.10.3(1)(g) of 2 CCR 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on October 14, 1988, are approved effective June 6, 1989. The revisions pertain to the identification and protection of cultural and historical resources.

[FR Doc. 89–13365 Filed 6–5–89; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Hampton Roads, Regulation 89–37]

Safety Zone; Chesapeake Bay, Off Fort Story, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the safety zone established around a U.S. Navy exercise off Fort Story in Virginia Beach, Virginia. The exercise began May 28, 1989 and is scheduled to end June 8, 1989. The safety zone is intended to minimize the risk of collision between military exercise vessels and other vessels. The Captain of the Port will close all access to the safety zone to non-exercise vessels in the interest of safety. Vessels or individuals will not be permitted to enter the safety zone, except in an emergency and then only in accordance with Captain of the Port orders or directions. In the event of an emergency, the Captain of the Port may be reached at phone: (804) 441–3314 and on VHF–FM channels 13 or 16.

EFFECTIVE DATE: These amended regulations are effective from 4:00 p.m., May 30, 1989 to 11:59 p.m., June 8, 1989, unless terminated sooner by the Captain of the Port Hampton Roads, Virginia.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R.R. Fiebrandt at telephone number (804) 441–3295.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553 a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical since the safety zone is already in existence. This regulation amends the safety zone by making it smaller and is considered to be in the public interest.

Drafting Information

The drafters of this amended regulation are Lieutenant Commander R.R. Fiebrandt, Project Officer, and Lieutenant Commander R. K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Coast Guard has established a safety zone around a U. S. Navy exercise in the waters off Fort Story in Virginia Beach, Virginia from May 28, 1989 to June 8, 1989. This regulation was published in the **Federal Register** on

May 26, 1989. The safety zone has been found to encompass more area than was actually needed and is being made smaller to reduce the impact on the public. The safety zone is needed to minimize the risk of collision between military exercise vessels and other vessels. The Captain of the Port will close all access to the safety zone to non-exercise vessels in the interest of safety. Vessels or individuals will not be permitted to enter the safety zone, except in an emergency and then only in accordance with Captain of the Port orders or directions. The boundaries of the safety zone will be marked by special purpose buoys with flashing yellow lights and Coast Guard patrol boats will be stationed along the boundaries of the safety zone. Coast Guard patrol vessels will be on scene at all times while the safety zone is in effect to notify boaters of the zone restrictions and to enforce the safety zone. Coast Guard patrol vessels will be monitoring channels 13 and 16 VHF-FM. Members of other Federal, state, local and private agencies may assist the Captain of the Port in enforcing these regulations.

List of Subjects in 33 CFR Part 165

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

Final Regulation

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

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 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.T0537 is revised to read as follows:

§ 165.T0537 Safety Zone: Chesapeake Bay, off Fort Story, Virginia Beach, Virginia.

(a) Location. The following area is a safety zone: The waters of the Chesapeake Bay bounded by the shoreline and a line connecting the following points:

Latitude	*Longitude*
36°55'30.0" N.	76°02'44.0" W.
36°56'03.7" N.	76°03'24.0" W.
36°57'06.0" N.	76°02'40.0" W.
36°56'58.0" N.	76°01'30.0" W.
36°55'54.0" N.	76°01'30.0" W.

(b) For the purposes of this section "representative of the Captain of the Port" means a Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf with respect to this safety zone.

(c) *Regulations.* (1) No person or vessel, other than those participating in the U. S. Navy exercise, may transit or otherwise enter, remain in or anchor in the safety zone.

(2) The Captain of the Port or a representative of the Captain of the Port may permit access to or open the safety zone to non-exercise vessels if he deems it necessary in the interest of safety or in the event of an emergency. The Captain of the Port may be reached at phone: (804) 441-3299 and on VHF-FM channels 13 or 16.

(3) Any person or vessel given permission to enter the safety zone under the provisions of paragraph (c)(2) of this section shall obey immediately any and all directions or orders of the Captain of the Port or a representative of the Captain of the Port.

(d) *Effective dates.* These regulations are effective from 5:00 a.m., May 28, 1989 to 11:59 p.m., June 8, 1989, unless terminated sooner by the Captain of the Port Hampton Roads, Virginia.

Dated: May 30, 1989.

E.K. Johnson,

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

[FR Doc. 89-13310 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-14-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 301

[Docket No. CRT 89-4-RM]

Modification of Rules of Agency Organization

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal is amending one of its rules concerning agency organization. The amendment clarifies the procedure for the rotation of chairmanship. This action is in response to the agency's own internal review of its rules.

EFFECTIVE DATE: July 6, 1989.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 37 CFR Part 301

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

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

PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

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

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

2. In § 301.4, paragraph (a) is revised as follows:

§ 301.4 The Chairman

(a) On December 1st of each year, the Chairman will be designated for a term of 1 year from the most senior Commissioner who has not yet previously served as Chairman, or, if all the Commissioners have served, the most senior Commissioner who has served the least number of terms will be designated Chairman, provided, that unless he is the most senior of all sitting Commissioners, no Commissioner may serve as Chairman until he has served at least one year as a Commissioner.

* * * * *

Edward W. Ray,

Chairman.

Dated: June 1, 1989.

[FR Doc. 89-13372 Filed 6-5-89; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 828 and 829

VA Acquisition Regulation; Bonds, Insurance and Taxes

RIN 2900-AE00

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending the VA Acquisition Regulation (VAAR) to assure that all Department-issued procurement-related regulations are essential to implement Governmentwide policies and procedures within the Department. In addition, authorization is given to the head of the contracting activity to approve group insurance plans under cost reimbursement contracts. Other administrative and technical changes are made as well as deleting duplicative coverage already provided for in the Federal Acquisition Regulation (FAR).

EFFECTIVE DATE: May 26, 1989.

FOR FURTHER INFORMATION CONTACT: Mildred C. Shields, Acquisition Policy

Staff (93), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, (202) 233–4339.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Federal Procurement Policy (OFPP) of the Office of Management and Budget has directed each executive agency to review their respective acquisition regulations to ensure that they are the minimum necessary to appropriately implement and supplement the FAR. This mandate is specifically aimed at reducing repetitive coverage in the agency acquisition regulation text.

This document contains a technical amendment to change the title of Title 48, Code of Federal Regulations, Chapter 8, Veterans Administration, to Title 48, Code of Federal Regulations, Chapter 8, Department of Veterans Affairs, to conform to the redesignation of the Veterans Administration to the Department of Veterans Affairs (Pub. L. 100–527).

VA is amending its regulations to update organizational titles and to delete duplicative coverage from 48 CFR Chapter 8. In addition, authorization is being given the head of the contracting activity to approve group insurance plans under cost reimbursement contracts.

These changes are internal VA management policies and therefore public participation is unnecessary (5 U.S.C. 553(d)(3)).

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this proposed rule is exempt from sections 3 and 4 or Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Since a notice of proposed rulemaking is unecessary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of the Act. Nevertheless, these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

IV. Paperwork Reduction Act

These amendments do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR 828 and 829

Government procurement.

Approved: May 26, 1989.

Edward J. Derwinski,

Secretary.

In 48 CFR Chapter 8, the title, and Parts 828 and 829 are amended as follows:

1. Title 48, Chapter 8, Code of Federal Regulations, is amended by revising the title to read as follows: Chapter 8—Department of Veterans Affairs

2. The authority citation for Parts 828 and 829 continues to read as follows:

Authority: 38 U.S.C. 210 and 40. U.S.C. 486(c).

PART 828—[AMENDED]

Subpart 828.2—[Removed]

3. Subpart 828.2, sections 828.203, 828.203–1, and 828.203–2 are removed.

4. Section 828.307–1 is added to read as follows:

828.307–1 Group insurance plans.

Under cost reimbursements contracts, before buying insurance under a group insurance plan, the contractor shall submit the plan to the contracting officer for review. During review, the contracting officer should utilize all sources of information available such as audit, industry practices, etc., to determine that acceptance of the group insurance plan, as submitted, is in the Government's best interest, prior to submitting the determination and the plan to the head of the contracting activity for approval.

828.7101 [Amended]

5. In 828.7101(a), remove the word "Administrator" and insert in its place, the word "Secretary", and in 828.7101(b), remove the words "Procurement and Supply" and insert in their place, the words "Acquisition and Materiel Management".

PART 829—[AMENDED]

829.202–70 [Amended]

6. In 829.202–70(a)(2), remove the words "Chief, Marketing Center," and insert in their place, the words "Director, Marketing Center", and remove the words "Chief, Supply Service" and insert in their place, the words "Chief, Acquisition and Materiel Management Service".

829.270 [Amended]

7. In 829.270(a) remove the words "the VA" wherever they appear and insert in their place, the word "VA".

829.270–1 [Amended]

8. In 829.270–1, in paragraphs (a), (b), and (e), remove the words "the VA" wherever they appear and insert in their place, the word "VA".

829.270–2 [Amended]

9. In 829.270–2, the section heading is amended to read as follows:

829.270–2 Processing of order by Department of Veterans Affairs.

* * * * *

Subpart 829.3—[Removed]

10. Subpart 829.3 and section 829.302 are removed.

[FR Doc. 89–13296 Filed 6–5–89; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–97; Amdt. 192–60A]

RIN 2137–AB20

Confirmation or Revision of Maximum Allowable Operating Pressure; Alternative Method

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: Under this final rule, the maximum allowable operating pressure (MAOP) of a pipeline may be confirmed or revised as a specified percentage of its past test pressure, provided the test was conducted for at least 8 hours. Previously, a pipeline must have been tested to at least 90 percent of the specified minimum yield strength (SMYS) of the pipe to qualify for this method of confirming or revising MAOP. This rule change may reduce the need to retest pipelines for which past test pressures provide an adequate safety basis for current operating pressures.

EFFECTIVE DATE: This final rule takes effect July 6, 1989.

FOR FURTHER INFORMATION CONTACT: Bernard L. Liebler, (202) 366–2392, regarding the subject matter of this final rule or the Docket Unit, (202) 366–4148, regarding copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

Section 192.611 requires that, when the class location (population density) of a pipeline segment increases, the

maximum allowable operating pressure (MAOP) must be confirmed or revised to be compatible with the existing class location. The rule permits three alternatives for confirming or revising the MAOP of the pipeline segment.

Under the first alternative (§ 192.611(a)), if the pipeline segment has been tested to at least 90 percent of its SMYS, its MAOP must be confirmed or reduced so that the resulting hoop stress will not exceed 72 percent of SMYS in Class 2 locations; 60 percent of SMYS in Class 3 locations; and 50 percent of SMYS in Class 4 locations. Under the second alternative (§ 192.611(b)), if the segment has not been tested to 90 percent of its SMYS, the MAOP must be reduced so that the corresponding hoop stress is not greater than that permitted for new segments of pipeline in the existing class location. Finally, the third alternative (§ 192.611(c)) requires pressure testing of the pipeline segment in accordance with the requirements of Subpart J. Pipeline segments tested under this alternative must be operated within the hoop stress constraints of the first alternative, and the MAOP is limited to 0.8 times the test pressure in Class 2, 0.667 in Class 3, and 0.555 in Class 4.

Notice 1 of this proceeding (53 FR 1043, January 15, 1988) proposed revising the first alternative to permit operators to confirm or revise the MAOP of a pipeline segment within the hoop stress constraints and MAOP limits of the third alternative based on any prior test pressure held for at least 8 hours. Under this proposal, the pipeline segment need not have been tested to at least 90 percent of its SMYS.

Comments

In response to Notice 1, RSPA received 28 comments from operators, State regulatory agencies, and trade groups. The commenters unanimously supported the objective of the proposed rule change.

A few commenters, however, suggested minor modifications so that the proposed alternative method would not result in a lower MAOP than could be obtained under § 192.611(b). One of these commenters cited the example of a pipeline tested originally to a pressure creating a hoop stress of 66 percent of SMYS, operating currently at 60 percent of SMYS, and experiencing a class location change from Class 2 to Class 3. This commenter noted that, under the proposed alternative method, the pipeline could be operated at 44 percent of SMYS (66%×.667=44%), but it could be operated under the second alternative (§ 192.611(b)) at a pressure producing a hoop stress of 50 percent of SMYS.

RSPA has not modified the proposed alternative method as recommended because it was not intended necessarily to allow a higher MAOP than other permitted methods. The intent of the proposed rule was to provide an alternative to retesting pipelines for all pipelines previously tested for at least 8 hours.

One commenter assumed that § 192.611 (a), (b), and (c) must be applied sequentially. Rather, Section 192.611 provides alternative methods for confirming or revising MAOP each of which results in a safe operating pressure. (See, e.g., Docket No. PS–90, Amdt. 192–53; 51 FR 34987.) The alternative method incorporated in this final rule will not change that policy. It will simply provide the operator with an additional method to apply in the proper circumstances.

To ensure the clarity of the rule, RSPA has revised the language of § 192.611 (a), (b), and (c) to specify the alternative nature of the requirements. In addition, RSPA has deleted the existing § 192.611(e)(1), which applies to class location changes that occurred before July 1, 1973, because this section is obsolete; and in the new paragraph (c), a reference to paragraph (a)(1) has been included because as a result of this amendment, pressure reduction may occur under either paragraph (a)(1) or (a)(2).

Advisory Committee Review

Section 4(b) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1673(b)), requires that each proposed amendment to a safety standard established under this statute be submitted to a 15-member advisory committee for its consideration. The Technical Pipeline Safety Standards Committee, composed of persons knowledgeable about transportation of gas by pipeline, discussed the proposed rule at a meeting held September 22, 1987. The Committee voted unanimously that the proposal was technically feasible, reasonable, and practicable. The Committee's official report for the meeting is in the docket.

Impact Assessment

This final rule is considered to be nonmajor under Executive Order 12291 and is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since the rule provides an alternative to an existing requirement, it will have a minimal impact on the economy, and a further evaluation of costs and benefits is unnecessary. Also, based on the facts available about the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities.

RSPA has analyzed this action in accordance with the principles and criteria contained in E. O. 12612 (52 FR 41685) and has determined that it does not have sufficient federalism implications to warrant preparing a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Pipeline Safety, Test, Tie-in, Joint.

In view of the foregoing RSPA amends 49 CFR Part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.611 is revised to read as follows:

§ 192.611 Change in class location: Confirmation or revision of maximum allowable operating pressure.

(a) If the hoop stress corresponding to the established maximum allowable operating pressure of a segment of pipeline is not commensurate with the present class location, and the segment is in satisfactory physical condition, the maximum allowable operating pressure of that segment of pipeline must be confirmed or revised according to one of the following requirements:

(1) If the segment involved has been previously tested in place for a period of not less than 8 hours, the maximum allowable operating pressure is 0.8 times the test pressure in Class 2 locations, 0.667 times the test pressure in Class 3 locations, or 0.555 times the test pressure in Class 4 locations. The corresponding hoop stress may not exceed 72 percent of the SMYS of the pipe in Class 2 locations, 60 percent of SMYS in Class 3 locations, or 50 percent of SMYS in Class 4 locations.

(2) The maximum allowable operating pressure of the segment involved must be reduced so that the corresponding hoop stress is not more than that allowed by this part for new segments of pipelines in the existing class location.

(3) The segment involved must be tested in accordance with the applicable requirements of Subpart J of this part, and its maximum allowable operating pressure must then be established according to the following criteria:

(i) The maximum allowable operating pressure after the requalification test is 0.8 times the test pressure for Class 2 locations, 0.667 times the test pressure for Class 3 locations, and 0.555 times the test pressure for Class 4 locations.

(ii) The maximum allowable operating pressure confirmed or revised in accordance with this section, may not exceed the maximum allowable operating pressure established before the confirmation or revision.

(iii) The corresponding hoop stress may not exceed 72 percent of the SMYS of the pipe in Class 2 locations, 60 percent of SMYS in Class 3 locations, or 50 percent of SMYS in Class 4 locations.

(b) Confirmation or revision of the maximum allowable operating pressure of a segment of pipeline in accordance with this section does not preclude the application of §§ 192.553 and 192.555.

(c) Confirmation or revision of the maximum allowable operating pressure that is required as a result of a study under § 192.609 must be completed within 18 months of the change in class location. Pressure reduction under paragraph (a) (1) or (2) of this section within the 18-month period does not preclude establishing a maximum allowable operating pressure under paragraph (a)(3) of this section at a later date.

Issued in Washington, DC, on June 1, 1989.

Travis P. Dungan,

Administrator, Research & Special Programs Administration.

[FR Doc. 89-13388 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California; Corrections

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

ACTION: Notice of 1989 fishery management measures, modification of the Klamath River fall chinook spawning escapement rate; corrections.

SUMMARY: This notice corrects an error and clarifies a table in the notice of 1989 fishery management measures and modified spawning escapement rate for the commercial and recreational ocean salmon fisheries off Washington, Oregon, and California, which was published May 8, 1989 (54 FR 19798).

EFFECTIVE DATE: May 1, 1989.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206-526-6140; Rodney R. McInnis (Southwest Region, NMFS), 213-514-6199; or Lawrence D. Six (Pacific Fishery Management Council), 503-221-6352.

In FR document 89-10793 in the issue of May 8, 1989, beginning on page 19798, the following corrections are made:

1. On page 19800, column 1, under the heading "Pink Salmon Stocks", in line 21 of the 2nd paragraph, the coordinate is corrected to read "48° N. lat.".

2. Table 3 on pages 19807-8 is clarified to indicate that the restrictions specified under the "Special restrictions by area" column apply to both open seasons defined under each treaty-Indian tribe. For example, under the Makah tribe, the special restriction by area (stating "Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 fixed lines per boat, or no more than 4 hand-held lines per person") applies to both the open seasons indicated.

Note: For an additional correction to the document referenced in this document, see the corrections section of this issue.

Dated: May 31, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 89-13293 Filed 6-5-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 107
Tuesday, June 6, 1989

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

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

United States Standards for Wheat

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed Rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is proposing to amend the United States Standards for wheat by replacing the single class White Wheat with two classes, Hard White wheat (HWW) and Soft White wheat (SWW). The class SWW would have three subclasses, Common White wheat, White Club Wheat and Western White Wheat. The class HWW would have no subclasses. These changes would provide greater consistency in applying the standards; make the standards easier to interpret; and would facilitate trade in both hard and soft white wheat.

DATE: Comments must be submitted on or before August 7, 1989.

ADDRESS: Written comments must be submitted to Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090–6454. Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail; telex users may respond to Lewis Lebakken, Jr., TLX: 7606351, ANS: FGIS UC; and telecopy users may send responses to the automatic telecopier machine at (202) 447–4628.

All comments received will be made available during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 610 et seq.). Further, the standards are applied equally to all entities.

Background

The United States Standards for Wheat include the following seven classes: Hard Red Spring wheat, Durum wheat, Hard Red Winter wheat, Soft Red Winter wheat, White wheat, Unclassed wheat and Mixed wheat. White wheat has four subclasses which are Hard White wheat, Soft White wheat, White Club wheat and Western White wheat.

Grain inspectors class wheat by visually examining kernel characteristics such as length, width, contour, and texture. Subclasses in wheat, excluding White Club and Western White, are based on a visual examination for vitreousness or hardness. Visual examination of wheat kernels to determine class and subclass has been used since 1917 and is currently the only approved method.

The recent development of white wheat varieties with hard endosperms and the establishment of a market for them creates a need to revise the United States Standards for Wheat. Milling and baking studies demonstrate a significant difference in milling properties and in end-use functions between hard and soft endosperm wheats. Hard and soft endosperm wheats are marketed as separate products to meet specific end-use needs. To reflect the specific end uses, the standards should address to the extent practicable, hard and soft endosperm wheats as separate wheat classes and consider the mixing of the two wheat types as mixed wheat.

A second issue regarding the current White wheat class standards focuses on the method used to distinguish the subclasses. The current standards define HWW as white wheat with 75 percent or more hard kernels and 10 percent or less club wheat. SWW is defined as white wheat with less than 75 percent hard kernels and 10 percent or less club wheat. Inspectors determine whether a kernel is hard based on the visual appearance of the kernel. Vitreous kernels are considered hard and nonvitreous kernels are considered soft. However, the visual analysis of wheat for vitreousness does not indicate whether the endosperm is hard or soft.

Until recently, the White wheat standards sufficiently met the needs of the industry. The subclass HWW accommodated occasional samples of wheat which had a high percentage of vitreous kernels and needed to be separated from the subclasses Soft White, White Club and Western White. However, six States now have active breeding programs to produce white wheat with hard endosperms and two States are producing them commercially. California leads this effort with the commercial production of hard endosperm white wheat. This production has increased to the extent that export shipments are predicted in 1989. Kansas wheat producers are growing two varieties of hard endosperm white wheat which are identity preserved in the marketing system. Montana State University is working on several varieties. Both Colorado and Idaho are producing small quantities of hard endosperm white wheat from the California variety.

Proposed Action

A HWW classification subcommittee of U.S. Wheat Associates, representing the HWW producers and the Pacific Northwest SWW producers recommended changes in the class White wheat to: create new classes called Hard White wheat and Soft White wheat; eliminate the class White wheat; eliminate the 75 percent hard kernel definition; and eliminate the subclass HWW.

FGIS proposes to revise the Official U.S. Standards for Wheat by replacing the current White wheat class with the classes HWW and SWW. The class SWW would have three subclasses, Common White, White Club and Western White. Further, under the current standards, Hard White wheat is white wheat that contains 75 percent or more of hard kernels and Soft White wheat is white wheat with less than 75 percent of hard kernels. Both may not

contain more than 10 percent White Club wheat. This proposal would revise the standards to eliminate the 75 percent vitreous kernel requirements. This would improve the ability under the standards to identify and grade hard and soft varieties as are marketed by the trade and thereby more approximately reflect end uses.

HWW and SWW would be defined as all hard endosperm white wheat varieties and all soft endosperm white wheat varieties, respectively. The class would be determined by visually examining the varietal kernel characteristics. The presence of HWW in SWW or SWW in HWW would be treated as "wheat of other classes."

The classes HWW and SWW would be treated as "contrasting classes" with respect to Durum, HRS, and HRW. Soft Red Winter wheat would be treated as "contrasting classes" in HWW and SWW because of the color contrast rather than "wheat of other classes" as is currently the case in the class White wheat. Because of the new class name SWW, the subclass name SWW would be changed to Common White wheat.

If this proposal is adopted, HWW and SWW will be classified by varietal kernel characteristics rather than vitreousness of the kernel. This method of classification is feasible at this time since only a few hard endosperm white wheat varieties are being produced. If more hard endosperm varieties are released into the marketplace in the future, the proposed classification system may become less practical. Therefore, FGIS is currently considering the development of alternative testing methods as the basis of a future classification system.

The proposed changes to the standards would provide greater consistency in applying the standards; make them easier to interpret; and facilitate trade in both hard and soft white wheat.

Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)), no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. If this proposal is adopted, it should become effective to coincide with the crop year, which begins on May 1, 1990.

List of Subjects in 7 CFR Part 810

Export, Grain.

For reasons set forth in the preamble, 7 CFR Part 810 is proposed to be amended as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

1. The authority citation for Part 810 continues to read as follows:

Authority: Sections 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76).

Subpart L—United States Standards for Wheat

Section 810.2202 (a) and (b) are revised to read as follows:

§ 810.2202 Definition of other terms.

(a) *Classes.* There are eight classes for wheat: Durum wheat, Hard Red Spring wheat, Hard Red Winter wheat, Hard White wheat, Soft Red Winter wheat, Soft White wheat, Unclassed wheat, and Mixed wheat.

(1) *Durum wheat.* All varieties of white (amber) durum wheat. This class is divided into the following three subclasses:

(i) *Hard Amber Durum wheat.* Durum wheat with 75 percent or more of hard and vitreous kernels of amber color.

(ii) *Amber Durum Wheat.* Durum wheat with 60 percent or more but less than 75 percent of hard and vitreous kernels of amber color.

(iii) *Durum wheat.* Durum wheat with less than 60 percent of hard and vitreous kernels of amber color.

(2) *Hard Red Spring wheat.* All varieties of Hard Red Spring wheat. This class shall be divided into the following three subclasses.

(i) *Dark Northern Spring wheat.* Hard Red Spring wheat with 75 percent or more of dark, hard, and vitreous kernels.

(ii) *Northern Spring wheat.* Hard Red Spring wheat with 25 percent or more but less than 75 percent of dark, hard, and vitreous kernels.

(iii) *Red Spring wheat.* Hard Red Spring wheat with less than 25 percent of dark, hard, and vitreous kernels.

(3) *Hard Red Winter wheat.* All varieties of Hard Red Winter wheat. There are no subclasses in this class.

(4) *Hard White wheat.* All hard endosperm white wheat varieties. There are no subclasses in this class.

(5) *Soft Red Winter wheat.* All varieties of Soft Red Winter wheat. There are no subclasses in this class.

(6) *Soft White wheat.* All soft endosperm white wheat varieties. This class is divided into the following three subclasses:

(i) *Common White wheat.* Soft endosperm white wheat varieties which contain not more than 10 percent of white club wheat.

(ii) *White Club wheat.* Club headed soft endosperm, white wheat varieties containing not more than 10 percent of white club wheat.

(iii) *Western White wheat.* Soft White wheat containing more than 10 percent of other soft white wheats.

(7) *Unclassed wheat.* Any variety of wheat that is not classifiable under other criteria provided in the wheat standards. There are no subclasses in this class. This class includes:

(i) Red durum wheat.

(ii) Any wheat which is other than red or white in color.

(8) *Mixed wheat.* Any mixture of wheat that consists of less than 90 percent of one class and more than 10 percent of one other class, or a combination of classes that meet the definition of wheat.

(b) *Contrasting classes.* Contrasting classes are:

(1) Durum wheat, Hard White wheat, Soft White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.

(2) Hard Red Spring wheat, Hard Red Winter wheat, Hard White wheat, Soft Red Winter wheat, Soft White wheat, and Unclassed wheat in the class Durum wheat.

(3) Durum wheat and Unclassed wheat in the class Soft Red Winter wheat.

(4) Hard Red Spring wheat, Durum wheat, Hard Red Winter wheat, Soft Red Winter wheat, and Unclassed wheat, in the classes Hard White wheat and Soft White wheat.

* * * * *

Dated: May 23, 1989.

W. Kirk Miller,

Administrator.

[FR Doc. 89-13397 Filed 6-5-89; 8:45 am]

BILLING CODE 3410-EN-M

Farmers Home Administration

7 CFR Part 1980

Form FmHA 1980-27 "Contract of Guarantee" (Line of Credit)

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," for clarification. A change is proposed in section (1)(b) of the form to add the word delinquent preceding the word taxes so that the form would agree with the present regulations. The change of

significance is made under "When Guarantee Terminates". The intended effect of this action is to clarify that the loan balance may float between $0 and the ceiling amount during the advance period (first 3 years) rather than the present method which requires the lender to maintain a balance from year at all times in order to keep the guarantee in effect. The other changes are made to eliminate confusion between a Line of Credit Agreement and a Promissory note. Either of these two methods is acceptable for a line of credit provided they meet all requirements of the regulations.

DATES: Comments are due on or before July 6, 1989.

FOR FURTHER INFORMATION CONTACT: Paul D. Hardin, Loan Officer, USDA FmHA, Farmer Program Loan Making Division, Guaranteed Branch, Room 5439–S, 14th Street and Independence Avenue SW., Washington, DC 20250, Telephone: (202) 382–1657.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Department Regulation 1512–1 which implements Executive Order 12291, and has been determined to be non-major. The annual effect on the economy is less than $100 million and there will be no significant adverse increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Program Affected

The program which this form affects is listed in the Catalog of Federal Domestic Assistance under No. 10.406 Farm Operating Loans. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program". It is the determination of FmHA that the action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 19–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1980

Loan programs—Agriculture, Loan programs—Business and industry—Rural development assistance, Loan programs—Housing and community development.

Therefore, as proposed, Chapter XVIII, Title 7, of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—General

2. Appendix D of Subpart A of Part 1980 is revised to read as follows:

Date: April 8, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

BILLING CODE 3410-07-M

Appendix D

USDA-FmHA
Form FmHA 1980-27
(Rev. 4-89)

CONTRACT OF GUARANTEE
(Line of Credit)

Type of Loan	
Case No.	
State	
County	
Lender / Lender's IRS Tax No.	Date of Line of Credit Agreement/Note
Lender's Address	Line of Credit Ceiling $
Borrower's Name and Address	

The guaranteed portion of this line of credit is _____% of the principal balance owed at any one time on advances made within an approved line of credit by the above-named Lender to the above-named Borrower.

In consideration of making advance(s) by the Lender within the line of credit ceiling pursuant to the Line of Credit Agreement, the United States of America acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.), the Emergency Livestock Credit Act of 1974 (P.L. 93-357), as amended, or the Emergency Agricultural Credit Adjustment Act of 1978 (P.L. 95-334) agrees that in accordance with and subject to the conditions and requirements in this agreement, it will pay to the Lender who holds the line of agreement(s) (and note(s), if any exist) for said advance(s) (or assumption agreement) covered by this contract the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including:
   a. Principal and interest indebtedness as evidenced by said line of credit agreement(s) (and note(s), if any exist) or by assumption agreement(s), and
   b. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to, advances for delinquent taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral; or
2. The guaranteed principal advances to or assumed by the Borrower under said line of credit agreement(s) (and note(s), if any exist) or assumption agreement(s) and any interest due thereon.

If an Operating Loan Line of Credit is involved, advances under that line of credit must be made within three years from the date of this Contract. Advances made after that date will not be covered by this Contract. If FmHA conducts the liquidation of the line of credit, loss occasioned to a Lender by accruing interest after the date FmHA accepts responsibility for liquidation will not be covered by this Contract of Guarantee. If Lender conducts the liquidation of the line of credit, accruing interest shall be covered by this Contract of Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

CONDITIONS OF GUARANTEE

1. Line of Credit Servicing

   Lender will be responsible for servicing the entire line of credit, and Lender will remain mortgagee and/or secured party of record. The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the Borrower of an Operating Loan Line of Credit for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the line of credit until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

2. Priorities

   The entire line of credit will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the line of credit. The unguaranteed portion of the line of credit will not be paid first nor given any preference or priority over the guaranteed portion.

3. Full Faith and Credit

   The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. If the line of credit agreement or note to which this Contract of Guarantee is attached provides for the payment of interest on interest, this Contract of Guarantee is void. In addition, the Contract of Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. Protective Advances

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Contract of Guarantee.

5. Custody of Unguaranteed Portion

The Lender may retain or sell the unguaranteed portion of the line of credit only through participation. Participation, as used in this instrument, means the sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists) collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit.

6. When Guarantee terminates

This Contract of Guarantee will terminate automatically (a) upon full payment of the guaranteed line of credit occurring after the advance period has expired; or (b) upon full payment of any loss obligation under this Contract; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Contract is returned to FmHA to be cancelled.

7. Settlement

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

8. Notices

All notices and actions will be initiated through the FmHA County Supervisor for _____ (County)

_____ (State) with mailing address at the date of this instrument:

_____

_____

UNITED STATES OF AMERICA

FARMERS HOME ADMINISTRATION

_____ *(Date)*

By: _____

Title: _____

Assumption Agreement by _____ dated _____, 19___

Assumption Agreement by _____ dated _____, 19___

[FR Doc. 89-13309 Filed 6-5-89; 8:45 am]

BILLING CODE 3410-07-C

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 88-001P]

RIN 0583-AA91

Definition of Terms; "Import (Imported)" and "Offer(ed) for Entry" and "Entry (Entered)"

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Federal meat inspection regulations and the poultry products inspection regulations by defining the terms "import (imported)" and "offer(ed) for entry" and "entry (entered)" to clarify what these terms are intended to mean and to clarify at what point meat and poultry products offered for entry into the United States are no longer considered to be imported products and are deemed and treated as domestic articles under the law. Once product offered for entry has been reinspected by FSIS inspectors and the official mark of inspection has been applied, FSIS considers that such product has been "entered" into the United States and, therefore, is the regulatory equivalent of domestic product. At that point, such product is subject to the laws and regulations of the United States as applied to domestic product, particularly with respect to the disposal of product found to be adulterated.

The definitions of "offer(ed) for entry" and "entry (entered)" would be different for products imported from Canada under the interim rule recently published in the **Federal Register** (54 FR 273). The interim rule exempted such products from the requirement that they be marked with the official mark of inspection and provided for a "streamlined" inspection procedure.

This action is a result of litigation which indicated the need for clarification of terms with respect to USDA's interpretation of provisions of the Federal Meat Inspection Act and the regulations promulgated thereunder concerning at what point FSIS considers imported products to be domestic products.

DATE: Comments must be received on or before July 6, 1989.

ADDRESS: Written comments to Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-3473.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this action. Written comments should be sent to the Policy Office and should refer to the document number located in the heading of this document. Requests to present oral comments, as provided by the Poultry Products Inspection Act, should be directed to Ms. Patricia Stolfa so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this rule will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Executive Order 12291

The Agency has determined that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

FSIS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposed rule would clarify, through the addition of definitions, when meat and poultry products are considered to be "imported" and when such products offered for entry are considered to be entered and, therefore, are treated as domestic products. Such domestic products are subject to the laws and regulations of the United States applicable to such products, particularly with respect to the disposal of products found to be adulterated. Clarification of these terms will not result in any change in current procedures. Domestic producers or domestic importers will not be affected by this proposed rule.

Background

Section 20 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 620) and section 17 of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 466) prohibit the importation of meat or poultry products into the United States if such products are adulterated or misbranded and unless they comply with all the inspection, building construction standards, and all other provisions of the Acts and regulations as are applied to domestic products. Section 20 of the FMIA and section 17 of the PPIA also provide that once imported products are entered into the United States, such products are considered to be and should be treated as domestic products subject to the provisions of the FMIA and PPIA and other food related statutes. FSIS is defining the terms "import (imported)" and "offer(ed) for entry" and "entry (entered)" to clarify at what point product offered for entry into the United States is considered to be domestic product. The term "import (imported)" is considered to be that point when the product is brought within the territorial limits of the United States whether that arrival is accomplished by land, air, or water. For product other than from Canada, the term "offered for entry" is considered to be that point at which the importer offers the product for reinspection to FSIS, that is, the point at which imported product from eligible countries has been presented to FSIS for reinspection. The term "entry (entered)" is considered to be the point at which product from eligible countries, other than Canada, imported into the United States and subsequently offered for entry receives reinspection and is marked with the official mark of inspection.

FSIS is providing separate definitions for "offer(ed) for entry" and "entry (entered)" for Canadian product as a result of the interim rule which was published on January 5, 1989, (54 FR 273) that exempted imported Canadian meat and pultry products from the requirement that such product be marked with the official mark of inspection. As part of the interim rule, FSIS also instituted new "streamlined" inspection procedures for Canadian product exported to the United States. Under these procedures, inspectors at participating Canadian establishments are authorized to request reinspection assignments and, if deemed necessary, to draw samples for reinspection by Program import inspectors. Therefore, FSIS is providing a separate definition for "offer(ed) for entry" as it applies to participating Canadian establishments. The term is defined as that point at which an official of the Canadian meat inspection system contacts the Import Field Office for an inspection

assignment. Products from nonparticipating establishments will receive an inspection assignment upon arrival at an import inspection establishment. For Canadian product produced in nonparticipating establishments, "offer(ed) for entry" is defined as that point at which the importer presents the product to the Program for reinspection.

FSIS has also instituted a new sampling program for all Canadian product, based on statistically based random sampling plans developed by FSIS, whereby some product is subject to reinspection by FSIS and some product is not. Therefore, because of the new "streamlined" inspection procedures, the new sampling plans, and the exemption of Canadian product from application of the official mark, FSIS is providing separate definitions for "entry (entered)" of Canadian product. For Canadian product not subject to reinspection, FSIS is defining "enter (entered)" as when the containers or the products themselves if not in containers are marked with the Canadian export stamp and upon the filing of Customs Form 7533 at the port of entry or at the nearest customshouse in accordance with 19 CFR Part 123.

For Canadian product subject to reinspection, FSIS is defining "enter (entered)" as when the containers or the products themselves if not in containers are marked with the Canadian export stamp and the foreign inspection certificate accompanying the product is stamped as "Inspected and Passed" by the import inspector.

The FMIA and PPIA and the regulations promulgated thereunder require that product found to be adulterated on the day it is reinspected be refused entry, and such product may be reexported (9 CFR 327.13(a)(2) and 381.202(a)(2)). In cases where meat product is only misbranded (e.g., labeling or certificates are missing, incorrect, or incomplete), such product may be brought into compliance by the importer, under FSIS's supervision (9 CFR 327.13(a)(4)).

Before a foreign country can export product to the United States it must be granted eligibility to do so. FSIS has established procedures by which foreign countries desiring to export meat and/or poultry products to the United States may become eligible to do so. These regulations are contained in Part 327 of the Federal meat inspection regulations and Part 381, Subpart T, of the poultry products inspection regulations (9 CFR Part 327 and Part 381, Subpart T). These reuglations provide that a meat and/or poultry product inspection system maintained by a foreign country, with respect to establishments preparing products in that country for export to the United States, must ensure compliance of such establishments and their meat and/or poultry products with requirements at least equal to all the provisions of the FMIA and the PPIA and the regulations that are applied to official establishments in the United States and their meat and poultry products. In addition, for approval to export meat and/or poultry products to the United States, the requirement that reliance can be placed on certificates required under the regulations from authorities in the country must also be met.

Before eligibility is granted, a complete evaluationof the country's inspection system is made by FSIS personnel. This evaluation consists of two processes—a document review and on-site reviews of system operations. The document review process involves a review of the laws, regulations, directives and other written materials used by the country to operate its inspection program. FSIS assists the country in organizing this material by providing questionnaires in five risk areas: Contamination, disease, processing, residues, and compliance/economic fraud. FSIS then evaluates the information to assure that the critical points in each of the risk areas are being addressed satisfactorily with respect to standards, activities, resources and enforcement. This process usually involves several exchanges of information. In many cases, the country seeking recognition must revise its regulations or publish special directives to achieve equivalency with United States requirements.

If the document review proves to be satisfactory, on-site reviews are scheduled using a multi-disciplinary team to evaluate all aspects of the country's program including laboratories and individual establishments within the country. On-site reviews are designed to further explore areas determined to require more detailed evaluation and are also undertaken to allow the FSIS review team to observe the system in its daily operation.

After a review of all the documents submitted by the foreign country and an evaluation of the findings of the on-site reviews, the Administrator makes a determination concerning the ability of the foreign country to assure, with respect to certified establishments within the foreign country preparing product for export to the United States, compliance with requirements at least equal to those applicable to official establishments within the United States which prepare meat and/or poultry products, and that reliance can be placed upon certificates required under the FMIA and the PPIA from authorities of the foreign country.

This judgement by the Administrator—that the foreign country's inspection system is considered to be "at least equal to" the inspection system of the United States—is the primary means used by FSIS to assure that product intended for export to the United States will be "at least equal to" all the requirements applied to domestic product. Once eligibility is granted, FSIS conducts ongoing reviews of the system in operation to assure that procedures and standards continue to meet United States requirements.

FSIS relies on its initial determination of a foreign country's eligibility coupled with ongoing reviews to provide assurance that products offered for entry from such eligible country are, and continue to be, wholesome and properly labeled and packaged. As a further check on the effectiveness of the foreign inspection system, all product offered for entry into the United States, except that from Canada as discussed above, is subject to basic reinspection by FSIS import inspectors. This reinspection consists of a review of the product containers to check for damage or other problems received in transit to the United States, and a review of product labeling, health certificates and FSIS inspection forms to assure that the documentaiton is correct and complete.

Such imported products offered for entry also receive a form of secondary level reinspection depending on the type of product. Secondary reinspection consists of examinations for production defects such as the presence of hair, grease, hide, dirt and similar substances in frozen or fresh bulk product; net weight checks, condition of container examinations, and incubation tests for canned products; laboratory analyses for food chemistry (fat, water, and nitrite levels) for processed products; and, analyses for chemical residues in fresh, frozen and canned product. Some of these test results are available immediately; others, such as incubation results or chemical residue analyses, are not available for several days. In cases where the product has passed basic reinspection, even though secondary inspection results are not available, the product is stamped with the official mark of inspection and is entered into the United States and is considered to be domestic product. At this point, FSIS assumes that the secondary test results will confirm that the product meets United States requirements.

When secondary test results are received by FSIS and the results indicate violations of United States requirements, especially in chemical residue analyses which would render the product adulterated under United States laws, FSIS institutes actions to locate the product and, if appropriate, to destroy it in accordance with requirements for product produced in the United States. Domestic product which is found to be adulterated, as defined in the Acts and under § 301.2(aa) of the meat inspection regulations (9 CFR 301.2(aa)) and § 381.1(b)(4) of the poultry products inspection regulations (9 CFR 381.1(b)(4)), must be destroyed for human food purposes in accordance with the provisions of Part 314 of the Federal meat inspection regulations (9 CFR Part 314) and Part 381, Subpart L, of the poultry products inspection regulations (9 CFR Part 381, Subpart L).

Proposed Rule

This proposal is a result of recent litigation concerning the seizure and condemnation of product offered for entry that had been reinspected, marked and allowed entry into the United States. The importers asserted that the product should be permitted to be exported because the statutes and regulations are not clear as to when imported products offered for entry are to be deemed and treated as domestic product. To preclude any future questions on that point, FSIS has concluded that it is prudent to make clarifying changes in the meat and poultry products inspection regulations. Clarification of terms will assure that all interested parties understand what is meant by use of the terms "import (imported)" and "offer(ed) for entry" and "entry (entered)" with respect to FSIS's jurisdiction over imported meat and poultry products.

Therefore, FSIS is proposing to amend § 327.1 of the Federal meat inspection regulations regulations (9 CFR 327.1) and § 381.195 of the poultry products inspection (9 CFR 381.195) to add definitions for the terms "import (imported)" and "offer(ed) for entry" and "entry (entered)." FSIS defines "import (imported)" as "to bring within the territorial limits of the United States whether that arrival is accomplished by land, water, or air." For imported products other than from Canada, FSIS defines "offer(ed) for entry" as "that point at which the importer presents the imported product to the Program for reinspection;" and defines "entry (entered)" as "that point at which imported product offered for entry receives reinspection and is marked with the official mark of inspection."

For Canadian product produced in Canadian establishments participating in the "streamlined" inspection procedures, FSIS is defining "offer(ed) for entry" as "that point at which an official of the Canadian meat inspection system contacts the Import Field Office for an inspection assignment."

For Canadian product produced in nonparticipating establishments, FSIS is defining "offer(ed) for entry" as "the point at which the importer presents the imported product to the Program for reinspection."

For Canadian product not subject to reinspection, FSIS is defining "enter (entered)" as "when the containers or the products themselves if not in containers are marked with the Canadian export stamp and upon the filing of Customs Form 7533 at the port of entry or at the nearest customshouse in accordance with 19 CFR Part 123."

For Canadian product subject to reinspection, FSIS is defining "enter (entered)" as "when the containers or the products themselves if not in containers are marked with the Canadian export stamp and the foreign inspection certificate accompanying the product is stamped as "Inspected and Passed" by the import inspector."

FSIS is also amending several sections of Parts 327 and 381 with respect to the terms "import (imported)," "offer(ed) for entry," and "entry (entered)" as defined in this proposed rule. These amendments would make consistent the use of the above terms as they are used in the affected sections. These amendments are editorial only and make no changes to the content of those sections.

For the reasons stated in the preamble, FSIS is proposing to amend Part 327 of the Federal meat inspection regulations and Part 381, Subpart T, of the poultry products inspection regulations as set forth below:

List of Subjects

9 CFR Part 327

Imported products; Meat inspection.

9 CFR Part 381

Imported products; poultry products inspection.

PART 327—IMPORTED PRODUCTS

1. The authority citation for Part 327 would continue to read as follows:

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

2. Section 327.1 would be amended by revising the section heading, by designating the existing text as paragraph (b), and by adding a new paragraph (a) to read as follows:

§ 327.1 Definitions; application of provisions.

(a) When used in this part, the following terms shall be construed to mean:

(1) *Import (imported).* To bring within the territorial limits of the United States whether that arrival is accomplished by land, air, or water.

(2) For product from eligible countries other than Canada:

(i) *Offer(ed) for entry.* The point at which the importer presents the imported product to the Program for reinspection.

(ii) *Entry (entered).* The point at which imported product offered for entry receives reinspection and is marked with the official mark of inspection in accordance with § 327.26 of this subchapter.

(3) For product from Canada:

(i) Offer(ed) for entry from establishments participating in the "streamlined" inspection procedures. The point at which an official of the Canadian meat inspection system contacts the Import Field Office for an inspection assignment.

(ii) Offer(ed) for entry from nonparticipating establishments. The point at which the importer presents the imported product to the Program for reinspection.

(iii) Entry (entered) for product not subject to reinspection. When the containers or the products themselves if not in containers are marked with the Canadian export stamp and upon the filing of Customs Form 7533 at the port of entry or at the nearest customshouse in accordance with 19 CFR Part 123.

(iv) Entry (entered) for product subject to reinspection. When the containers or the products themselves if not in containers are marked with the Canadian export stamp and the foreign inspection certificate accompanying the product is stamped as "Inspected and Passed" by the import inspector.

* * * * *

3. Paragraph (b) of § 327.2 would be revised to read as follows:

§ 327.2 Eligibility of foreign countries for importation of products into the United States.

* * * * *

(b) It has been determined that product of cattle, sheep, swine, and goats from the following countries covered by foreign meat inspection

certificates of the country of origin as required by § 327.4, except fresh, chilled, or frozen or other product ineligible for importation into the United States from countries in which the contagious and communicable disease of rinderpest or of foot-and-mouth disease or of African swine fever exists as provided in Part 94 of this title, is eligible under the regulations in this subchapter for entry into the United States after inspection and marking as required by the applicable provisions of this part.

* * * * *

4. Paragraphs (b) introductory text and (d) of § 327.3 would be revised to read as follows:

§ 327.3 No product to be imported without compliance with applicable regulations.

* * * * *

(b) No fresh or cured meat or meat trimmings in pieces too small to permit adequate inspection shall be imported into the United States. Individual pieces or trimmings must not be smaller than 2-inch cubes or pieces comparable in size. Except as provided in paragraph (c) of this section, processed meat food products prepared with meat pieces smaller than 2-inch cubes or pieces comparable in size shall not be imported except under the following conditions:

* * * * *

(d) Further, no carcasses or parts of carcasses of livestock offered for entry from which naturally associated tissues such as the peritoneum, pleura, body lymph glands, or the portal glands of the liver have been removed, shall be imported into the United States.

5. Section 327.5 heading and the First sentence of paragraph (a) would be revised to read as follows:

§ 327.5 Importer to make application for inspection of products for entry; information required; "streamlined" inspection procedures for Canadian product.

(a) Except for importers of Canadian products, each importer shall apply for inspection of any product offered for entry by contracting the Import Field Office covering the location where import inspection will take place.* * *

* * * * *

6. Paragraph (a)(1) of § 327.6 would be revised to read as follows:

§ 327.6 Products for importation; program inspection, time and place; application for approval of facilities as official import inspection establishment; refusal or withdrawal of approval; official numbers.

(a)(1) Except as provided in §§ 327.5(d)(1), 327.16 and 327.17, all products offered for entry from any foreign country shall be inspected by a Program inspector before they shall be entered into the United States.

* * * * *

§ 327.10 [Amended]

7. Paragraph (b) of § 327.10 would be revised to read as follows:

* * * * *

(b) Except for product offered for entry from Canada, the outside containers of all products offered for entry from any foreign country and accompanied with a foreign inspection certificate as required by this part, which, upon reinspection by import inspectors are found not to be adulterated or misbranded and otherwise eligible for entry into the United States under this part, or the products themselves if not in containers, shall be marked with the official inspection legend prescribed in § 327.26 of this subchapter. Except for Canadian product, all other products so marked, in compliance with this part, shall be entered into the United States, insofar as such entry is regulated under the Act.

* * * * *

§ 327.15 [Amended]

8. Paragraph (c) of § 327.15 would be revised to read as follows:

* * * * *

(c) Except for product offered for entry from Canada, all outside containers of products which have been inspected and passed in accordance with this part shall be marked by a Program import inspector or under a Program import inspector's supervision with the official import meat inspection mark prescribed in § 327.26.

9. Section 327.16 Would be revised to read as follows:

§ 327.16 Small importations for importer's own consumption; requirements.

Any product in a quantity of 50 pounds or less which was purchased by the importer outside the United States for his/her own consumption, is eligible to be imported into the United States from any country without compliance with the provisions in other sections of this part but subject to applicable requirements under other laws, including the regulations in Part 94 of this title. However, Program employees may inspect any product imported under this section to determine whether it is within the class eligible to be imported under this paragraph.

10. Section 327.18 heading and paragraphs (a) and (b) would be revised to read as follows:

§ 327.18 Products offered for entry and entered to be handled and transported as domestic; exception.

(a) All products, after entry into the United States, shall be deemed and treated as domestic products and shall be subject to the applicable provisions of the Act and the regulations in this subchapter and the applicable requirements under the Federal Food, Drug and Cosmetic Act, except that products imported under § 327.16 are required to comply only with the requirements of that Act and § 327.16 of this subchapter.

(b) Products entered in accordance with this part may, subject to the provisions of Part 318 of this subchapter, be taken into official establishments and be mixed with or added to any product in such establishments which has been inspected and passed therein.

* * * * *

11. Section 327.20 would be revised to read as follows:

§ 327.20 Importation of foreign inedible fats.

No inedible grease, inedible tallow, or other inedible rendered fat shall be imported into the United States unless it has been first denatured as prescribed in § 327.25 of this part and the containers marked as prescribed by § 316.15 of this subchapter or unless it is identified and handled as prescribed by § 325.11 (b) or (c) of this subchapter.

12. Section 327.22 would be revised to read as follows:

§ 327.22 Official seals for transportation of products.

The official mark for use in sealing cars, trucks, other means of conveyance, or containers in which any product offered for entry is conveyed shall be the inscription and a serial number hereinafter shown below[1], and the import meat seal approved by the Administrator for applying such mark shall be an official device for purposes of the Act. Such device shall be attached to the means of conveyance only by a Program employee, or a Customs officer or his/her designee, and he/she shall also affix thereto a "Warning Tag" (Form MP–408–3).

13. The title and paragraph (b) introductory text of § 327.23 would be revised to read as follows:

§ 327.23 Compliance procedure for cured pork products offered for entry.

* * * * *

[1] The term "F–351587" is given as an example only. The serial number of the specific seal will be shown in lieu thereof.

(b) *Normal monitoring procedures.* Except for product imported from Canada, the Department shall collect sample(s) of cured pork product on a random basis from lots offered for entry at the Port of Entry and, after analyzing the sample for fat and indigenous protein content, calculate the PFF percentage. The product shall not be held pending laboratory results during the monitoring phase. The PFF percentage for each sample shall be considered along with the cumulative results of prior samples to assess the effectiveness of a country's overall compliance program and to determine the course of action for subsequent lots of product.

* * * * *

§ 327.2 [Amended]

14. Paragraph (b) of § 327.26 would be revised to read as follows:

(b) Except for product offered for entry from Canada, when import inspections are performed in official establishments the official inspection legend to be applied to meat and meat food products offered for entry shall be the appropriate form as specified in §§ 312.2 and 312.3 of this subchapter.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

15. The authority citation for Part 381 would continue to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

16. Section 381.195 would be amended by revising the heading, by designating the current text of paragraphs (a) and (b) as paragraphs (b) and (c) respectively, and by adding a new paragraph (a) to read as follows:

§ 381.195 Definitions; Requirements for importation into the United States.

(a) When used in this part, the following terms shall be construed to mean:

(1) *Import (imported).* To bring within the territorial limits of the United States whether that arrival is accomplished by land, air, or water.

(2) For product from eligible countries other than Canada:

(i) *Offer(ed) for entry.* The point at which the importer presents the imported product to the Program for reinspection.

(ii) *Entry (entered).* The point at which imported product offered for entry receives reinspection and is marked with the official mark of inspection in accordance with § 327.26 of this subchapter.

(3) For product from Canada:

(i) Offer(ed) for entry from establishments participating in the "streamlined" inspection procedures. The point at which an official of the Canadian inspection system contacts the Import Field Office for an inspection assignment.

(ii) Offered for entry from nonparticipating establishments. The point at which the importer presents the imported product to the Program for reinspection.

(iii) Entry (entered) for product not subject to reinspection. When the containers or the products themselves if not in containers are marked with the Canadian export stamp and upon the filing of Customs Form 7533 at the port of entry or at the nearest customshouse in accordance with 19 CFR Part 123.

(iv) Entry (entered) for product subject to reinspection. When the containers or the products themselves if not in containers are marked with the Canadian export stamp and the foreign inspection certificate accompanying the product is stamped as "Inspected and Passed" by the import inspector.

* * * * *

§ 381.196 [Amended]

17. Paragraph (b) introductory text of § 381.196 would be revised to read as follows:

* * * * *

(b) It has been determined that poultry products from the following countries, covered by foreign poultry inspection certificates of the country of origin as required by § 381.197, are eligible under the regulations in this subpart for entry into the United States, after inspection and marking as required by the applicable provisions of this subpart: [1]

* * * * *

18. The heading and first sentence of paragraph (a) of § 391.198 would be revised to read as follows:

§ 381.198 Importer to make application for inspection of poultry products offered for entry.

(a) Each person who wishes to offer for entry any slaughtered poultry or other poultry product shall make application for inspection to the import supervisor of the import field office at the port where the poultry product is to be offered for entry, or to the Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, as long as possible in advance of the anticipated arrival of each cosignment of such product, except in the case of poultry product exempted from inspection by §§ 381.207 or 381.209. * * *

19. Paragraphs (a)(1) and (b) and the heading of § 381.199 would be revised to read as follows:

§ 381.199 Inspection of poultry products offered for entry.

(a)(1) Except as provided in §§ 381.198(b)(1) and 381.209 of this part, and paragraph (c) of this section, all slaughtered poultry and poultry products offered for entry from any foreign country shall be reinspected by a Program import inspector before they shall be allowed entry into the United States.

* * * * *

(b) Inspectors may take, without cost to the United States, from each consignment of poultry products offered for entry, such samples of the products as are deemed necessary to determine the eligibility of the products for entry into the commerce of the United States.

* * * * *

20. The first sentence of paragraph (c) and the heading of § 381.200 would be revised to read as follows:

§ 381.200 Poultry products offered for entry, retention in customs custody; delivery under bond; movement prior to inspection; sealing; handling; facilities and assistance; official seal.

* * * * *

(c) Means of conveyance or outside containers in which any poultry product intended to be offered for entry is moved, prior to inspection from the port or wharf where first unloaded in the United States, shall be sealed with the official seals of the Department of Agriculture as prescribed in paragraph (h) of this section or otherwise identified as provided in this paragraph unless sealed with customs or consular seals in accordance with the customs regulations. * * *

* * * * *

21. The heading of § 381.201 would be revised to read as follows:

§ 381.201 Means of conveyance and equipment used in handling poultry products offered for entry to be maintained in sanitary condition.

22. The heading of and § 381.203 would be revised to read as follows:

§ 381.203 Products offered for entry; charges for storage, cartage, and labor with respect to products which are refused entry.

All charges for storage, cartage, and labor with respect to any product

[1] Listing of any country in this section does not relieve the poultry products of such country from applicable requirements under other Federal laws.

offered for entry which is refused entry pursuant to the regulations shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any other products offered for entry thereafter by or for such owner or consignee.

§ 381.204 [Amended]

23. Paragraph (a) of § 381.204 would be revised to read as follows:

(a) Except for product offered for entry from Canada, poultry products which upon reinspection are found to be acceptable for entry into the United States shall be marked with the official inspection legend shown in paragraph (b) of this section. Such inspection legend shall be placed upon such products only after completion of official import inspection and product acceptance.

* * * * *

24. The heading and paragraph (a) and the first sentence of paragraph (c) of § 381.205 would be revised to read as follows:

§ 381.205 Labeling of immediate containers of poultry products offered for entry.

(a) Immediate containers of poultry products imported into the United States shall bear a label printed in English showing in accordance with Subpart N of this part all information required by that section (except that the inspection mark and establishment number assigned by the foreign poultry inspection system and certified to the Inspection Service shall be shown instead of the official dressed poultry identification mark or other official inspection legend, and official establishment number); and in addition the label shall show the name of the country of origin preceded by the words "Product of," which statement shall appear immediately under the name of the product.

* * * * *

(c) Labels for immediate containers of imported poultry products shall be submitted for approval in sketch form to the Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, USDA, Washington, DC 20250. * * *

25. The heading and the first sentence of § 381.206 would be revised to read as follows:

§ 381.206 Labeling of shipping containers of poultry products offered for entry.

Shipping containers or imported poultry products are required to bear in a prominent and legible manner the name of the product, the name of the country of origin, the foreign inspection system establishment number of the establishment in which the product was processed, and the inspection mark of the country of origin. * * *

* * * * *

26. Section 381.207 up to the proviso would be revised to read as follows:

§ 381.207 Small importations for consignee's personal use, display, or laboratory analysis.

Any poultry product (other than one which is forbidden entry by other Federal law or regulation) from any country in quantities of less than 50 pounds net weight, exclusively for the personal use of the consignee, or for display or laboratory analysis by the consignee, and not for sale or distribution; which is sound, healthful, wholesome, and fit for human food, and which is not adulterated and contains no substance not permitted by the Act or regulations, may be imported into the United States without a foreign inspection certificate, and such product is not required to be inspected upon arrival in the United States and may be shipped to the consignee without further restriction under this part, except as provided in § 381.199(c): * * *

27. The heading and paragraphs (a) and (b) of § 381.208 would be revised to read as follows:

§ 381.208 Poultry products offered for entry and entered to be handled and transported as domestic; entry into official establishments; transportation.

(a) All poultry products, after entry into the United States in compliance with this subpart, shall be deemed and treated and, except as provided in § 381.207, shall be handled and transported as domestic products, and shall be subject to the applicable provisions of this part and to the provisions of the Poultry Products Inspection Act and the Federal Food, Drug, and Cosmetic Act.

(b) Poultry products entered in accordance with this subpart may, subject to the provisions of the regulations, be taken into official establishments and be mixed with or added to poultry products that are inspected and passed or exempted from inspection in such establishments.

* * * * *

Done in Washington, DC, on: April 25, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-13238 Filed 6-5-89; 8:45 p.m.]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-89-5]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 7, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 31, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 24784.

Petitioner: Icarus Executive Services, Inc.

Regulations Affected: 14 CFR 135.73.

Description of Petition: The amendment would permit a person acceptable to the Administrator to conduct certain inspections or audits of Part 135 certificate holders that presently are performed by the Administrator of the Federal Aviation Administration. Denied. May 19, 1989.

[FR Doc. 89-13322 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-63-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require visual inspection of certain H-11 steel bolts for cracks or fracture, and replacement, if necessary; and would require the eventual replacement of H-11 steel bolts with bolts made of Iconel 718 material. This proposal is prompted by reports of cracking or fracture of H-11 steel bolts at several critical locations. This condition, if not corrected, could result in severe structural damage.

DATES: Comments must be received no later than July 24, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-63-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-63-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Several operators of Model 747 series airplanes have reported fractures and cracking found on 43 H-11 steel bolts installed in several critical locations on the airplane. Such locations have included the body landing gear inboard and outboard trunnion vertical support, and the wing landing gear beam upper chord to longeron attachment. Cracking of these bolts has initiated due to stress corrosion, which can result from finish deterioration, preload, moisture presence, and/or shank corrosion. This condition, if not corrected, could lead to overloading the adjacent bolts and severe structural damage.

The FAA has reviewed and approved Boeing Service Bulletin 747-51-2043, dated June 30, 1988, which describes procedures for visual inspections of the H-11 steel bolts for cracks or fracture. A terminating action for these inspections is also described, which consists of replacing all affected H-11 bolts with Inconel 718 bolts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require repetitive visual inspections for cracks or fracture of H-11 bolts installed in certain locations of the airplane, and replacement, if necessary, in accordance with the service bulletin previously described. The AD would also require the eventual replacement of all H-11 steel bolts with bolts made of Iconel 718 material.

There are approximately 648 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 165 airplanes of U.S. registry would be affected by this AD, that it would take approximately 67 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Parts are estimated at $200 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $475,200.

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

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of

the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-51-2043, dated June 30, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural damage caused by cracked or fractured H-11 steel bolts, accomplish the following:

A. Prior to the accumulation of 4 years total time-in-service, or within the next 15 months after the effective date of this AD, whichever occurs later, visually inspect H-11 steel bolts for cracks or fractures, in accordance with Boeing Service Bulletin 747-51-2043, dated June 30, 1988, at the following locations:

1. Body landing gear inboard and outboard trunnion vertical support.
2. Wing landing gear beam upper chord to longeron attachment.
3. Wing landing gear beam lower chord to crease beam attachment.
4. Body station (BS) 2598 horizontal stabilizer hinge attachment.
5. BS 2598 longeron splice fitting attachment at stringers 11 and 23.
6. Fin to body attachment.
7. The horizontal stabilizer front spar jack screw attachment.

B. If a cracked or fractured bolt is found, replace it with an Inconel 718 bolt prior to further flight, in accordance with Boeing Service Bulletin 747-51-2043, dated June 30, 1988.

C. If a cracked or fractured bolt is found and if Inconel 718 bolts are unavailable, replace the cracked or fractured bolt with an H-11 steel bolt, prior to further flight, in accordance with Boeing Service Bulletin 747-51-2043, dated June 30, 1988. Repeat the visual inspection required by paragraph A., above, at intervals not to exceed 18 months.

D. If no cracking or fracture is found, repeat the visual inspections required by paragraph A., above, at intervals not to exceed 18 months.

E. Within the next 36 months after the effective date of this AD, replace all affected H-11 steel bolts with Inconel 718 bolts, in accordance with Boeing Service Bulletin 747-51-2043, dated June 30, 1988.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 22, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-13320 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-25-AD]

Airworthiness Directives; Lockheed Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Lockheed Model L 1011 series airplanes, which currently requires extending and rerouting overheat sensors for the air conditioning bleed air ducts located below the Mid-Electrical Service Center (MESC) floor, removing excess flow sensors, modifying structure, and installing isolation barriers. This action would require a further modification to the previously accomplished rework, and the installation of additional overheat sensors and improved isolation barriers. This action is prompted by an incident where the No. 2 air conditioning pack duct failed under the MESC floor and activated the overheat sensor for the No. 3 pack instead of its own overheat sensor. This condition, if not corrected, could result in loss of all AC/DC electrical power, including the emergency bus.

DATES: Comments must be received no later than July 25, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-25 AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Department 65-33, Unit 20, Plant A-1. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Kuniyoshi, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5337.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-25-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 25, 1985, the FAA issued AD 85-07-05, Amendment 39-5028 (50 FR 13014; April 2, 1985), to require (1) extension and rerouting of overheat sensors for the air conditioning bleed air ducts located below the MESC floor, removal of excess flow sensors, modification of structure, and installation of an isolation barrier, in accordance with Lockheed Service Bulletin 093-21-214, dated December 9, 1983; and (2) extension of the barrier in the MESC area in accordance with Lockheed Service Bulletin 093-21-222, dated January 9, 1984. That action was prompted by reports of clamp and duct failures in the vicinity of the MESC area during flight. This condition, if not corrected, could result in an uncontrolled overheating of the MESC floor, leading to the loss of AC/DC electrical power.

Since issuance of AD 85-07-05, an additional incident has occurred where the No. 2 air conditioning pack duct failed under the MESC floor and activated the overheat sensor for the No. 3 pack instead of its own overheat sensor. Since the flight crew was unable to isolate the source of failure from the warning indication immediately, the continued leakage under the floor caused multiple areas to be overheated before the No. 2 pack was finally shut down by the flight crew. This condition, if not corrected, could result in loss of all AC/DC electrical power, including the emergency bus.

This latest incident occurred on an airplane on which the provisions of the two previously mentioned service bulletins had been accomplished. Investigation revealed, however, that the pack duct isolation barriers, installed in accordance with the two service bulletins, must be extended to seal up against the MESC floor; and that the capability of the overheat sensor to detect the No. 2 pack duct overheat was limited, due to insufficient length of the sensor and partial blockage by the barrier support between the No. 2 and No. 3 pack ducts.

The FAA has reviewed and approved Lockheed Service Bulletin 093-21-227, dated August 15, 1988, which describes procedures for (1) the extension of the duct isolation barrier to completely seal up against the MESC floor, (2) the addition of overheat sensors for the No. 2 pack duct, and (3) a revision of the insulation blanket retention. These modifications provide a prompt and accurate air conditioning bleed air duct failure overheat warning indication to the flight crew.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 85-07-05 to require the modification of the duct isolation barrier, overheat sensors, and insulation blanket retention, in accordance with the service bulletin previously described.

Additionally, the proposed revision removes all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden in any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance of this AD, as provided by paragraph D.

There are approximately 249 Model L-1011 series airplanes of the affected design in the worldwide fleet. It is estimated that 91 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of modification parts is estimated to be $13,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,280 per airplane, or $1,208,480 for the U.S. fleet.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 85-07-05, Amendment 39-5028 (50 FR 13014; April 2, 1985), as follows:

Lockheed Aeronautical Systems Company: Applies to Lockheed Model L-1011 series airplanes, serial numbers -1002 through -1221, that have not been modified in accordance with Lockheed Service Bulletin 093-21-184, dated November 21, 1983, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To minimize the potential for unrecoverable loss of all AC/DC electrical power, including the emergency bus, accomplish the following:

A. Within 3,600 flight hours after May 9, 1985 (the effective date of Amendment 39-5028), extend and reroute Fenwall thermal overheat sensors below the Mid-Electrical Service Center (MESC) floor, remove excess flow sensors, and modify the structure below the MESC floor, in accordance with Lockheed Service Bulletin 093-21-214, Revision 1, dated December 9, 1983; Revision 2, dated September 10, 1984; Revision 3, dated April 21, 1986; or Part I of the Accomplishment Instructions of Revision 4, dated August 15,1988.

B. Within 3,600 flight hours after May 9, 1985 (the effective date of Amendment 39-5028), extend the duct isolation barrier in accordance with Lockheed Service Bulletin 093-21-222, dated January 9, 1984; Revision 1, dated April 30, 1984; or Revision 2, dated August 15, 1988.

C. Within 1,800 flight hours after the effective date of this amendment, further extend the duct isolation barrier, add overheat sensors, and revise the insulation blanket retention, in accordance with Lockheed Service Bulletin 093-21-227, dated August 15, 1988.

D. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199, to

operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Department 65–33, Unit 20, Plant A–1. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on May 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–13321 Filed 6–5–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 71 and 75

[Airspace Docket No. 89–ASO–12]

Proposed Alteration of VOR Federal Airways and Jet Routes; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several Federal Airways and Jet Routes located in the vicinity of Fort Myers, FL. The lease on the Fort Myers very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) will not be renewed; therefore, the VORTAC is being renamed and relocated to the Southwest Florida Regional Airport. This action supports the relocation of the VORTAC.

DATES: Comments must be received on or before July 17, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 89–ASO–12, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASO–12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to change the descriptions of all VOR Federal Airways and Jet Routes affected by the relocation of the Fort Myers VORTAC. The lease for the Fort Myers VORTAC will not be renewed at its current location. The new VORTAC will be located at the Southwest Florida Regional Airport, and renamed the Lee County VORTAC. The coordinates for the VORTAC site are latitude 26°31'46"N., long. 81°46'34"W. This action supports relocation of the Fort Myers VORTAC. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6E dated January 3, 1989.

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

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways, Jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–7 [Amended]

By removing the words ", via Fort Myers, FL; Lakeland, FL;" and substituting the words "; Lee County, FL; INT Lee County 349°T(351°M) and Lakeland, FL, 175°T(174°M) radials; Lakeland;"

V–35 [Amended]

By removing the words "and Fort Myers, FL, 137° radials; Fort Myers;" and substituting the words "and Lee County, FL, 139°T(141°M) radials; Lee County;"

V–225 [Amended]

By removing the words "Fort Myers, FL;" and substituting the words "Lee County, FL;"

V–521 [Amended]

By removing the words "Fort Myers, FL, 101° radials; Fort Myers; INT Fort Myers 022°" and substituting the words "Lee County, FL, 099°T(101°M) radials; Lee County; INT Lee County 014°T(016°M)"

V–539 [Revised]

From Key West, FL; INT Key West 012°T(014°M) and Lee County, FL, 167°T(169°M) radials; to Lee County.

V–579 [Amended]

By removing the words "From Ft. Myers, FL, via INT Ft. Myers 311°" and substituting the words "From Lee County, FL; INT Lee County 312°T(314°M)"

§ 71.203 [Amended]

3. Section 71.203 is amended as follows:

Fort Myers, FL [Removed]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

4. The authority citation for Part 75 continues to read as follows:

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

§ 75.100 [Amended]

5. Section 75.100 is amended as follows:

J–41 [Amended]

By removing the words "From Key West, FL, via INT of Key West 358° and St. Petersburg, FL, 151° radials;" and substituting the words "From Key West, FL; Lee County, FL;"

J–58 [Amended]

By removing the words "and Sarasota, FL, 286° radials; Sarasota; INT of Sarasota 138° and Biscayne Bay, FL, 301° radials; to Biscayne Bay." and substituting the words "and Sarasota, FL, 286°T(288°M) radials; Sarasota; Lee County, FL; Biscayne Bay, FL."

J–75 [Amended]

By removing the words "From Biscayne Bay, FL; Fort Myers, FL; INT Fort Myers 345° and Taylor, FL, 175° radials;" and substituting the words "From INT Fort Lauderdale, FL, 272°T(272°M) and Lee County, FL, 120°T(122°M) radials; Lee County; INT Lee County 340°T(342°M) and Taylor, FL, 176°T(179°M) radials;"

Issued in Washington, DC, on May 24, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–13323 Filed 6–5–89; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 414

Trade Regulation Rule; Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers

AGENCY: Federal Trade Commission.

ACTION: Notice of Proposed Rulemaking (NPR).

SUMMARY: The Federal Trade Commission announces the commencement of a rulemaking proceeding for the trade regulation rule concerning deception as to transistor count of radio receiving sets, including transceivers ("Transistor Rule" or "Rule") (16 CFR Part 414). The proceeding will address whether or not the Transistor Rule should be repealed. The Commission invites public comment on how the Transistor Rule has affected consumers, businesses and others.

DATE: Written comments and requests for a public hearing will be accepted until July 6, 1989.

ADDRESS: Comments and requests for a public hearing should be submitted to Henry B. Cabell, Presiding Officer, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. All comments and requests should be captioned: "NPR Comment—Transistor Rule."

FOR FURTHER INFORMATION CONTACT: Robert E. Easton, Esq., Special Assistant—Enforcement, (202) 326–3029, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: In an Advance Notice of Proposed Rulemaking, the Commission invited public comment upon whether the Rule should remain in effect as it is or be repealed. The Commission received only one public comment (from an industry association). This comment, which is on the public record of this proceeding, confirmed the information garnered in staff's preliminary inquiry that transistors are no longer considered selling features for audio electronic products. Further, the comment recommended that the Rule be repealed in the interest of efficient government. The paucity of public comment indicates that the issue of repeal is not controversial. Because it is anticipated that there will be no need for public hearing unless such hearing is requested (See Part E—Requests for Public Hearings), no dates are set for submissions of notifications of interest in questioning witnesses and requests to testify at hearings.

Part A—Background Information

This notice is being published pursuant to Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a *et seq.*, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7 and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45.

The Transistor Rule declares that it is an unfair method of competition and an unfair or deceptive act or practice in connection with the sale of radio receiving sets including transceivers to represent directly or by implication that a radio set contains a specified number of transistors when the transistors counted do not function to detect, amplify or receive radio signals.

The Transistor Rule was adopted on May 14, 1968, and became effective on December 10, 1968.

Part B—Objectives and Analysis

The objective of this rulemaking proceeding is to determine whether the Commission's Transistor Rule should be repealed. To assist the Commission in reaching its determination, the Commission seeks evidence on the following factual issues: (1) Whether there are any benefits from the Transistor Rule and, if so, whether they are greater than its costs; and (2) whether radio technology and marketing have changed so that the Rule is no longer needed.

Those factual issues were previously raised in the ANPR (54 FR 5090, Feb. 1, 1989). The only comment received was from the Electronics Industries Association (EIA), an association of manufacturers of consumer electronics products. The EIA submission is on the public record in this proceeding and stated:

[T]ransistor counts are rarely, if ever, used in the consumer electronics industry as a means of marketing audio products. Some

products may still use transistors but most rely on solid state componentry. Transistors are no longer considered a selling feature for audio electronics products.

Although we believe the rule imposes minimal costs, if any, on manufacturers, it does not appear to have any benefits. Accordingly, it should be eliminated in the interest of efficient government.

The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules to determine their current effectiveness and impact. Based on information currently in its possession, the Commission believes that the Rule no longer serves the public interest and should be repealed.

Part C—Alternative Actions

The Commission does not plan to consider alternatives to repealing the Transistor Rule or leaving it in effect as it is.

Part D—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Transistor Rule. A comment that includes the reasoning or basis for a proposition will likely be more persuasive than a comment without supporting information. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies a number of issues on which it solicits public comment. The identification of issues is designed to assist the public to comment on relevant matters and should not be construed as a limitation on the issues or the public comment.

Questions

(1) Do manufacturers and retailers of radios and transceivers (walkie-talkies) currently use transistor counts as a means of marketing their products (this question does not apply to integrated circuits which are not covered by the Rule)?

(2) Are transistors currently used in radios and transceivers to detect, amplify or receive radio signals?

(3) Is the use of transistors in radios and transceivers considered "state of the art" technology?

(4) Is promotion of the number of transistors in radios or transceivers a useful marketing strategy?

(5) Is the number of transistors contained in a radio or transceiver customarily disclosed on the set itself or in promotional material such as advertisements?

(6) Are retail store sales personnel informed of the transistor count of radios and transceivers and/or instructed to mention such count to customers?

(7) What are the costs to manufacturers and sellers of radios and transceivers imposed by the Rule?

(8) What are the benefits to consumers from the Rule?

(9) Should the Rule be kept in effect or should it be repealed?

Part E—Requests for Public Hearings

Because there does not appear to be any dispute as to the material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like the Commission to schedule public hearings, he or she should address a request for public hearings to Henry B. Cabell, Presiding Officer, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580 (202–326–3642) as soon as possible but not later than 30 days from publication of this notice.

Part F—Preliminary Regulatory Analysis

The following discussion constitutes the Commission's Preliminary Regulatory Analysis of the proposed Rule pursuant to the Requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et. seq.* The Act requires an analysis of the anticipated impact of the proposed Rule repeal on small business. The analysis must contain, as applicable, a description of the reasons why action is being considered; the objectives of and legal basis for the proposed Rule; the class and number of small entities affected; the projected reporting, recordkeeping and other compliance requirements of the proposed Rule; any existing federal rules which may duplicate, overlap or conflict with the proposed Rule; and any significant alternatives to the proposed Rule which accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of and legal basis for the proposed repeal of the Rule have been explained elsewhere in this Notice.

Repeal of the Rule would appear to have little or no effect on any small business. Because of changes in technology, it appears that small businesses no longer use transistor count as a method for marketing radio receiving sets.

Repeal of the Rule will remove any reporting, recordkeeping or other compliance requirements of the Rule.

The Commission is not aware of any existing federal rules which would conflict with, duplicate, or overlap the Rule.

The only significant alternative to repeal of the Rule is to keep it as is. Because of advances in technology, the Rule no longer appears to serve a meaningful purpose. Under these circumstances, keeping the Rule as is would run counter to the efficiencies of repealing rules which no longer serve a useful purpose.

Part G—Paperwork Reduction Act

The Transistor Rule contains no information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501–3518.

Part H—Proposed Repeal of Trade Regulation Rule

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, *as amended*, 15 U.S.C. 41, *et seq.*, the provisions of Part I, Subpart B of the Commission's Procedures and Rules of Practice, 16 CFR 1.7, *et seq.*, and the Administrative Procedures Act, 5 U.S.C. 553, *et seq.*, has initiated a proceeding for the repeal of the trade regulation rule concerning deception as to transistor count of radio receiving sets, including transceivers.

List of Subjects in 16 CFR Part 414

Transistor, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga Concerning "Transistor Rule" Notice of Proposed Rulemaking

I dissent from the Commission's decision to initiate a rulemaking proceeding to repeal the "Transistor Rule," 16 CFR Part 414, because I believe that the costs of repealing the rule outweigh the benefits.

There are obvious benefits to repealing rules that contain unnecessary reporting or recordkeeping requirements, affirmative disclosure provisions, or other burdensome features. Less tangible benefits also may come from removing outdated and unnecessary regulations from the Code of Federal Regulations where, as in this case, those regulations do not impose burdens.

Unfortunately, the Commission can delete the regulatory flotsam and jetsam that clutters the CFR only through the cumbersome and expensive procedures of Magnuson-Moss rulemaking, which requires an advance notice of proposed rulemaking, an initial public comment period, a final notice of proposed rulemaking, a preliminary

regulatory analysis, a second public comment period, a staff report, a recommended decision by the presiding officer, a post-record comment period, a statement of basis and purpose, and a final regulatory analysis. See 15 U.S.C. 57a; 16 CFR 1.10–1.15.
By repealing the Transistor Rule, the Commission would reduce the size of the CFR by two pages. Given our current budgetary constraints, I believe that we should focus our efforts on matters that offer the prospect of a more substantial return on our resource investment.

Dissenting Statement of Commissioner Andrew J. Strenio, Jr. Regarding Transistor Count Rule (R011005)

This obsolete rule does not now harm consumers or competition. Repealing the rule would consume staff time that already is stretched thin. Therefore, I oppose initiating this rulemaking both because the tangible costs outweigh any theoretical benefits, and because the agency's scarce resources can be put to much more practical use.

[FR Doc. 89–13402 Filed 6–5–89; 8:45 am]
BILLING CODE 6750–01–M

RAILROAD RETIREMENT BOARD

20 CFR Parts 200 and 262

RIN 3220–AA56

General Administration; Miscellaneous

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board proposes to amend Parts 200 and 262 of its regulations in order to consolidate certain administrative procedures in one part (Part 200) of its regulations, to revise and clarify certain procedures for the disclosure of information obtained in the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, and to eliminate certain little-used and obsolete provisions. This action is necessary to avoid the confusion which can result from having to consult two entirely separate parts containing general administrative rules. The proposed rule will remove Part 262.

DATE: Comments must be submitted on or before August 7, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4945 (FTS 386–4945).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board (Board) is charged with the administration of both the Railroad Retirement Act (45 U.S.C. 231 *et seq.*) and the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*). The Board has issued separate regulations to facilitate the administration of these two Acts. However, certain administrative procedures may be applied in situations arising under either Act. The Board believes that such procedures would be better incorporated into one regulatory part (Part 200), rather than being set forth in separate parts. Moreover, the subjects covered by certain regulations now in Part 262 have already been incorporated into other sections of the Board's regulations as part of an ongoing project to revise and update the agency's regulations. In addition, the procedures in the present § 262.16 concerning the disclosure of information in the possession of the agency are proposed to be revised, reorganized, and moved to Part 200, which already contains the Board's regulations issued under the Freedom of Information Act (§ 200.4) and the Privacy Act (§ 200.5), so that all of the agency's disclosure regulations may be located in one part. Finally, certain of the provisions in the current Part 262 are little used and are proposed to be removed because they are obsolete.

A brief summary of the disposition of the various sections of the present Part 262 under the proposed regulation is set forth below.

1. Sections 262.1, "Penalties," is simply a repetition of 45 U.S.C. 2311 and, because of this redundancy, is proposed to be removed.

2. Sections 262.2, "Posting notices to employees," and 262.10, "Free Transportation," are seldom used and are proposed to be removed for obsolescence.

3. The subjects formerly covered by §§ 262.5, 262.6, and 262.7 now appear in Part 243 of the Board's regulations. These three sections were removed when Part 243 was added to the Board's regulations.

4. Section 262.12 is proposed to be redesignated as § 200.10.

5. The subject covered by § 262.15, "Offices of the Board," is covered in detail in § 200.1. Section 262.15 is therefore proposed to be removed.

6. Section 262.16 is proposed to be redesignated as § 200.8. In addition, certain revisions are proposed to be made to this section in order to facilitate the administration of certain provisions of section 12(d) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 362(d)), which is incorporated into the Railroad Retirement Act (RRA) by section 7(b)(3) of that Act (45 U.S.C. 231f(b)(3)). The present § 262.16 provides that no document or any information in the possession of the Board will be produced, disclosed, delivered, or opened to inspection unless the Board finds that such production, disclosure, delivery, or opening to inspection "will not be detrimental to the interest of the person to whom the document pertains, or to the estate of such person." The "not detrimental" standard was set forth at 4 FR 1503, April 7, 1939, as part of a complete reissue of the Board's previous regulations under the Railroad Retirement Act of 1937. Section 12(d) of the RUIA permits disclosure if the Board finds that disclosure "is clearly in furtherance of the interest of the employee or his estate." Although the standard in section 12(d) was enacted as part of the original RUIA in June 1938, section 12(d) was not incorporated into the Railroad Retirement Act of 1937 until 1966 by Pub. L. 89–700, 80 Stat. 1079, and was also subsequently incorporated into the Railroad Retirement Act of 1974, Pub. L. 93–445, October 15, 1974, 88 Stat. 1305, the successor to the 1937 Act, by section 7(b)(3) of that Act. The difference in the two standards has caused some confusion. The proposed revised regulation incorporates the statutory standard.

7. The proposed § 200.8 would also reorganize most of the disclosure procedures contained in the present § 262.16 and update statutory references therein. In addition, introductory provisions would clarify the applicability of § 200.8 in order to avoid confusion with the Board's regulations issued under the Freedom of Information Act (found in § 200.4) and those issued under the Privacy Act (found in § 200.5).

8. Section 262.17 simply repeats statutory provisions concerning the Actuarial Advisory Committee provided for in section 15(f) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(f)) and formerly provided for in the Railroad Retirement Act of 1937 (45 U.S.C. 228(o)) and is proposed to be removed.

9. Section 262.18 is proposed to be redesignated as § 200.9. The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, this rule does not impose any information collections within the meaning of the Paperwork Reduction Act.

List of Subjects in 20 CFR Parts 200 and 262

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, Title 20, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for Part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362., § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717, unless otherwise noted.

2. Section 200.4 is amended by revising paragraph (b) to read as follows:

§ 200.4 Availability of information to public.

* * * * *

(b) The identifying details to be deleted shall include, but not be limited to, names and identifying numbers of employees and other individuals as needed to comply with sections 12 (d) and (n) of the Railroad Unemployment Insurance Act, section 7(b)(3) of the Railroad Retirement Act, and § 200.8 of this part, or to prevent a clearly unwarranted invasion of personal privacy.

3. Section 200.8 is proposed to be added to read as follows:

§ 200.8 Disclosure of information obtained in the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(a) *Purpose and scope.* The purpose of this section is to establish specific procedures necessary for compliance with section 12(d) of the Railroad Unemployment Insurance Act, which is incorporated into the Railroad Retirement Act by section 7(b)(3) of that Act. Except as otherwise indicated in this section, these regulations apply to all information obtained by the Railroad Retirement Board in connection with the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(b) *Definitions.*

Agency. The term "agency" refers to the Railroad Retirement Board, an independent agency in the executive branch of the United States Government.

Applicant. The term "applicant" means a person who signs an application for an annuity or lump-sum payment or unemployment benefits or sickness benefits for himself or herself or for some other person.

Beneficiary. The term "beneficiary" refers to an individual to whom a benefit is payable under either the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

Board. The term "Board" refers to the three-member governing body of the Railroad Retirement Board.

Document. The term "document" includes correspondence, applications, claims, reports, records, memoranda and any other materials or data used, prepared, received or transmitted to, from, by or for the agency in connection with the administration of the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

Information. The term "information" means any non-medical document or data which is obtained by the agency in the administration of the Railroad Retirement Act and/or the Railroad Unemployment Insurance Act. "Information" does not include the fact of entitlement to or the amount of a benefit under either of these Acts. Medical records are subject to the disclosure provisions set out in § 200.5(e) of this part.

(c) *General rule.* Except as otherwise authorized by this section, information shall not be produced, disclosed, delivered or open to inspection in any manner revealing the identity of an employee, applicant or beneficiary unless the Board or its authorized designee finds that such production, disclosure, delivery, or inspection is clearly in furtherance of the interest of the employee, applicant or beneficiary or of the estate of such employee, applicant or beneficiary. Where no such finding is made, no information shall be released except in accordance with the provisions of § 200.5 of this part, unless release of such information is required by a law determined to supersede this general rule. In addition, regardless of whether or not such finding can be made, information which is compiled in anticipation of a civil or criminal action or proceeding against an applicant or beneficiary may not be released under this general rule.

(d) *Subpoenas—general rule.* (1) No officer, agent, or employee of the agency is authorized to accept or receive service of subpoenas, summons, or other judicial process addressed to the Board or to the agency except as the Board may from time to time delegate such authority by power of attorney. The Board has issued such power of attorney to the Deputy General Counsel of the agency and to no one else.

(2) In the event the production, disclosure, or delivery of any information is called for on behalf of the United States or the agency, such information shall be produced, disclosed, or delivered only upon and pursuant to the advice of the Deputy General Counsel.

(3) When any member, officer, agent, or employee of the agency is served with a subpoena to produce, disclose, deliver, or furnish any information, he or she shall immediately notify the Deputy General Counsel of the fact of the service of such subpoena. Unless otherwise ordered by the Deputy General Counsel or his or her designee, he or she shall appear in response to the subpoena and respectfully decline to produce, disclose, deliver, or furnish the information, basing such refusal upon the authority of this section.

(e) *Subpoena duces tecum.* (1) When any document is sought from the agency by a subpoena duces tecum or other judicial order issued to the agency by a court of competent jurisdiction in a proceeding wherein such document is relevant, a copy of such document, certified by the Secretary to the Board to be a true copy, may be produced, disclosed, or delivered by the agency if, in the judgment of the Board or its designee, such production is clearly in furtherance of the interest of the employee, applicant, or beneficiary to whom the document pertains, or is clearly in furtherance of the interest of the estate of such employee, applicant, or beneficiary, and such document does not consist of or include a report of medical information.

(2) When the production, disclosure, or delivery of any document described in paragraph (e)(1) of this section would not be permitted under the standards therein set forth, no member, officer, agent, or employee of the agency shall make any disclosure of or testify with respect to such document.

(f) *Authorized release of information.* Subject to the limitation expressed in paragraph (h) of this section, disclosure of documents and information is hereby authorized, in such manner as the Board may by instructions prescribe, in the following cases:

(1) To any employer, employee, applicant, or prospective applicant for an annuity or death benefit under the Railroad Retirement Act of 1974, or his or her duly authorized representative, as to matters directly concerning such employer, employee, applicant, or prospective applicant in connection with the administration of such Act.

(2) To any employer, employee, applicant or prospective applicant for benefits under the Railroad Unemployment Insurance Act, or his or her duly authorized representative, as to matters directly concerning such employer, employee, applicant, or

prospective applicant in connection with the administration of such Act.

(3) To any officer or employee of the United States lawfully charged with the administration of the Railroad Retirement Tax Act, the Social Security Act, or acts or executive orders administered by the Veterans Administration, and for the purpose of the administration of those Acts only.

(4) To any applicant or prospective applicant for death benefits or accrued annuities under the Railroad Retirement Act, or to his or her duly authorized representative, as to the amount payable as such death benefits or accrued annuities, and the name of the person or persons determined by the agency to be the beneficiary, or beneficiaries, thereof, if such applicant or prospective applicant purports to have a valid reason for believing himself or herself to be, in whole or in part, the beneficiary thereof.

(5) To any officer or employee of the United States lawfully charged with the administration of any Federal law concerning taxes imposed with respect to amounts payable under the Railroad Retirement Act of 1974 and the Railroad Unemployment Insurance Act and the name of the person or persons to whom such amount was payable.

(6) To any officer or employee of any state of the United States lawfully charged with the administration of any law of such state concerning unemployment compensation, as to the amounts payable to payees or beneficiaries under the Railroad Retirement Act of 1974 and the Railroad Unemployment Insurance Act.

(7) To any court of competent jurisdiction in which proceedings are pending which relate to the care of the person or estate of an incompetent individual, as to amounts payable under the Railroad Retirement Act to such incompetent individual, but only for the purpose of such proceedings.

(8) To parties involved in litigation, including an action with respect to child support, alimony, or marital property, the amount of any actual or estimated benefit payable under the Railroad Retirement Act or the Railroad Unemployment Insurance Act, where such amount or estimated amount is relevant to that litigation.

(9) To any employer, as to the monthly amount of any retirement annuity under the Railroad Retirement Act of 1974 or benefit under the Railroad Unemployment Insurance Act to which a present or former employee of that employer is entitled.

(10) To any governmental welfare agency, information about the receipt of benefits and eligibility for benefits.

(11) To any law enforcement agency, information necessary to investigate or prosecute criminal activity in connection with claims for benefits under the Railroad Retirement Act, Railroad Unemployment Insurance Act, or any other Act the Board may be authorized to administer.

(g) No document and no information acquired solely by reason of any agreement, arrangement, contract, or request by or on behalf of the agency, relating to the gathering, preparation, receipt or transmittal of documents or information to, from or for the agency, which is by virtue of such agreement, arrangement, contract, or request in the possession of any person other than an employee of the agency, shall be produced, reproduced, or duplicated, disclosed or delivered by any person to any other person or tribunal (other than the agency or an employee thereof, or the person to whom the document or information pertains), whether in response to a subpoena or otherwise, except with the consent of the Board or its designee. Any person, upon receipt of any request, subpoena, or order calling for the production, disclosure, or delivery of such document or information shall notify the Board or its designee of the request, subpoena, or order and shall take no further action except upon advice of the Board or its designee. Unless consent of the Board or its designee is given, the person shall respectfully decline to comply with the request, subpoena or order.

(h) Notwithstanding any other provision of this section, no disclosure of information may be made by the Board or any member, officer, agent, or employee of the agency, if the disclosure of such information is prohibited by law.

4. Section 200.9 is proposed to be added to read as follows:

§ 200.9 Selection of members of Actuarial Advisory Committee.

(a) *Introduction.* Under section 15(f) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(f)), the Board is directed to select two actuaries to serve on an Actuarial Advisory Committee. This section describes how the two actuaries are selected.

(b) *Carrier actuary.* One member of the Actuarial Advisory Committee shall be selected by recommendations made by "carrier representatives." "Carrier representatives," as used in this section, shall mean any organization formed jointly by the express companies, sleeping-car companies and carriers by railroad subject to the Interstate Commerce Act which own or control more than 50 percent of the total railroad mileage within the United States.

(c) *Railway labor actuary.* The other member of the Actuarial Advisory Committee to be selected by the Board shall be recommended by "representatives of employees." "Representatives of employees," as used in this section, shall mean any organization or body formed jointly by a majority of railway labor organizations organized in accordance with the Provisions of the Railway Labor Act, as amended, or any individual or committee authorized by a majority of such railway labor organizations to make such recommendation.

5. Section 200.10 is proposed to be added to read as follows:

§ 200.10 Representatives of applicants or beneficiaries.

(a) *Power of attorney.* An applicant or a beneficiary shall not be required to hire, retain or utilize the services of an attorney, agent, or other representative in any claim filed with the Board. In the event an applicant or beneficiary desires to be represented by another person, he or she shall file with the Board prior to the time of such representation a power of attorney signed by such applicant or beneficiary and naming such other person as the person authorized to represent the applicant or beneficiary with respect to matters in connection with his or her claim. However, the Board may recognize one of the following persons as the duly authorized representative of the applicant or beneficiary without requiring such power of attorney when it appears that such recognition is in the interest of the applicant or beneficiary:

(1) A Member of Congress;

(2) A person designated by the railway labor organization of which the applicant or beneficiary is a member to act on behalf of members of that organization on such matters; or

(3) An attorney who, in the absence of information to the contrary, declares that he or she is representing the applicant or beneficiary.

(b) *Payment of claim.* The Board will not certify payment of any awarded claim to or through any person other than the applicant or beneficiary for the reason that a power of attorney for such person to represent such applicant or beneficiary has been filed.

PART 262—MISCELLANEOUS [REMOVED AND RESERVED]

6. Part 262, consisting of §§ 262.1 through 262.18, is proposed to be removed and reserved.

Dated: May 30, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-13361 Filed 6-5-89; 8:45 am]

BILLING CODE 7905-01-M

20 CFR Part 222

RIN 3220-AA57

Family Relationships

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board proposes to amend its regulations by adding a new Part 222 which will define the relationships to a railroad employee created by marriage, divorce, birth, adoption, or dependency which a claimant may have to establish in order to qualify for benefits under the Railroad Retirement Act.

DATE: Comments must be submitted on or before August 7, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Act (45 U.S.C. 231 *et seq.*) provides a system of retirement and disability benefits for railroad employees, their spouses, children, and survivors who meet certain eligibility requirements under that Act. The Railroad Retirement Board's regulations regarding family relationships are currently located in Parts 216 and 219. These regulations were issued in February 1982 and do not take into account the categories of beneficiaries which were added by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35); namely divorced spouses, surviving divorced spouses and remarried widow(er)s.

The proposed regulation incorporates the provisions regarding family relationships currently contained in Parts 216 and 219 into one new Part 222, and adds provisions pertaining to the classes of beneficiaries created by the 1981 Amendments to the Railroad Retirement Act. The phrase "family relationship" generally pertains to a relationship to a railroad employee which has been created by marriage, divorce, birth, adoption, or dependency. Both Parts 216 and 219 are also currently under extensive revision and when published as final rules will reflect that all definitions regarding family relationships are now contained in Part 222.

The Bureau of Law within the Railroad Retirement Board is currently involved in a project to revise all regulations for which the agency has responsibility. It is the aim of the project to incorporate the latest legislative, legal and policy changes while using plain language in order to make the regulations easier to use and understand. As a result, this part has been written to be an integral part of the planned revised and reorganized regulations and may, in certain instances, refer to parts of regulations which are not currently in effect. The Railroad Retirement Board believes that any minor inconveniences that might arise as a result of publishing the regulations on a part-by-part basis are outweighed by the benefits derived from publishing current, more easily usable and understandable regulations on a consistent basis.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, this rule does not impose any information collections within the meaning of the Papework Reduction Act (44 U.S.C. Ch. 35).

List of Subjects in 20 CFR Part 222

Railroad employees, Railroad retirement, Family relationships.

For the reasons set out in the preamble, Title 20, Chapter II of the Code of Federal Regulations is proposed to be amended by adding Part 222, Family Relationships, to read as follows:

PART 222—FAMILY RELATIONSHIPS

Subpart A—General

Sec.

Subpart B—Relationship as Wife, Husband or Widow(er)

Subpart C—Relationship as Divorced Spouse, Surviving Divorced Spouse, or Remarried Widow(er)

Subpart D—Relationship as Child

Subpart E—Relationship as Parent, Grandchild, Brother or Sister

Subpart F—Child Support and Dependency

Authority: 45 U.S.C. 231f.

Subpart A—General

§ 222.1 Introduction.

This part sets forth and describes the family relationships that may make a claimant eligible for an annuity or lump-sum payment under the Railroad Retirement Act and furnishes the basic rules for determining when those relationships exist. Such relationships

may result from a current or terminated marriage or through birth, death or adoption. Other relevant relationships are having a child in care, dependency or lack of it, contributing to support, living in the same household, and being under court order to contribute to support.

§ 222.2 Definitions.

As used in this part—

"Annunity" means a payment under the Railroad Retirement Act due to an entitled claimant for a calendar month and made to him or her on the first day of the following month.

"Apply" means to sign a form or statement that the Railroad Retirement Board accepts as an application for an annuity or lump-sum payment under the rules set out in Part 217 of this chapter.

"Child" has differing definitions for annuity and lump-sum payment purposes. See § 222.31.

"Claimant" means a person who files an application for an annuity or lump-sum payment or for whom an application is filed.

"Eligible" means that a person would meet all the requirements for payment of an annuity or lump-sum payment as of a given date but has not yet applied therefor.

"Employee" means an employee as defined in Part 203 of this chapter.

"Final divorce" means a divorce that completely dissolves a marriage and restores the parties to the status of single persons; it is also referred to as an absolute divorce.

"Finally divorced person" means a person whose marriage has been terminated or dissolved by a final divorce.

"Legal impediment" means that there was a defect in the procedures followed in a marriage ceremony or that a previous marriage of the employee or spouse had not ended at the time of the ceremony.

"Lump-sum payment" means any of the following payments under the Railroad Retirement Act: lump-sum death payment, residual lump-sum, annuities due but unpaid at death, or lump-sum refund payment (see Part 234 of this chapter).

"Marriage" means the social and legal relationship of husband and wife for family relationship purposes, as well as the act by which the married state is effected.

"Permanent home" means the employee's true and fixed home (legal domicile); it is the place to which the employee intends to return whenever he or she is absent therefrom.

"Relationship" means a family connection by blood, marriage, or adoption between the employee and another person who is a claimant.

"Spouse" means the husband or wife of the employee.

"State law" means the law of the State in which the employee has his or her permanent home or, in the case of a deceased employee, the law of the State in which the employee had his or her permanent home at the time of his or her death. If the employee's permanent home is not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, the laws of the District of Columbia are applied.

§ 222.3 Other regulations related to this part.

This part is related to a number of other parts of this chapter:

Part 216 describes when a person is eligible for an annuity under the Railroad Retirement Act.

Part 217 describes how to apply for an annuity or for lump-sum payments.

Part 218 sets forth the beginning and ending dates of annuities.

Part 219 sets out what evidence is necessary to prove eligibility and the relationships described in this part.

Part 220 describes when a person is eligible for a disability annuity under the Railroad Retirement Act or a period of disability under the Social Security Act.

Part 225 explains how primary insurance amounts (PIA's) are computed.

Part 226 outlines the computation of employee and spouse annuities.

Part 228 describes how survivor annuities are computed.

Part 229 describes when and how an employee and spouse annuity may be increased under the social security overall minimum provision.

Part 234 describes lump-sum payments under the Railroad Retirement Act.

§ 222.4 Homicide of employee.

No person convicted of the felonious and intentional homicide of an employee can be entitled to an annuity or lump-sum payment based on the employee's earnings record (service and compensation). Further, the convicted person is considered not to exist in deciding the rights of other persons to annuity or lump-sum payments. A minor may be denied a survivor annuity or lump-sum payment on the earnings record of a parent if the minor was convicted of intentionally causing the parent's death by an act which would be considered a felony if committed by an adult.

Subpart B—Relationship as Wife, Husband, or Widow(er)

§ 222.10 When determinations of relationship as wife, husband, widow or widower of employee are made.

(a) The claimant's relationship as the wife or husband of an employee is determined when the claimant applies for an annuity, or when there is a claim which would include a husband or wife in the computation of the social security overall minimum provision, or when a claim is filed for a lump-sum payment. If a deemed marriage (see § 222.14) is to be determined, the husband, wife, or widow(er) must also be found to be or to have been living in the same household as the employee (see § 222.16).

(b) The claimant's relationship as the widow(er) of an employee is determined as of the date on which the employee died. If the claimant applied for a lump-sum payment as the widow(er) of the employee, one of the following determinations is made:

(1) Whether the widow(er) was living in the same household as the employee, as defined in § 222.16 of this part, at the time of the employee's death, if the claimant is applying for the 1974 Act lump-sum death payment.

(2) Whether the widow(er) was living with the employee, as defined in § 222.15 of this part, at the time of the employee's death, if the claimant is applying for the 1937 Act lump-sum death payment, annuities due but unpaid at death, the residual lump-sum payment, or a lump-sum refund payment.

(c) In order for a claimant who has applied for a monthly survivor annuity to establish a deemed marriage, the claimant must have been living in the same household as the employee at the time of the employee's death (see § 222.16).

(d) If the husband, wife, widow(er), remarried widow(er), or surviving divorced spouse of the employee is a claimant for a monthly annuity on a basis other than age or disability, a child in care determination is required (see §§ 222.17 and 222.18).

§ 222.11 Determination of marriage relationship.

A claimant will be considered to be the husband, wife, or widow(er) of an employee if the law of the State in which the employee has or had a permanent home would recognize that the claimant and employee were validly married, or if a deemed marriage is established.

(a) Generally, State courts will find that a claimant and employee were validly married if—

(1) The employee and claimant were married in a civil or religious ceremony (see § 222.12) or

(2) The employee and claimant live together in a common-law marriage relationship which is recognized under applicable State law (see § 222.13), and no impediment to the marriage existed at the time it took place.

(b) A deemed marriage relationship may be established as described in § 222.14.

§ 222.12 Ceremonial marriage relationship.

A valid ceremonial marriage is one which would be recognized as valid by the courts of the State in which the marriage ceremony took place. Generally, State law provides various procedures which must be followed, such as designation of who may perform the marriage ceremony, what licenses or witnesses are required, and similar rules. A ceremonial marriage may be a civil or religious ceremony, or a ceremony which follows tribal customs, Chinese customs, or similar traditional procedures.

§ 222.13 Common-law marriage relationship.

Under the laws of some States, a common-law marriage is one which is not solemnized in a formal ceremony, but is generally evidenced by a consummated agreement to marry between two persons legally capable of making a marriage contract, followed by cohabitation. The laws of the various States which recognize common-law marriage delineate specific factors which must be present in order to establish a valid common-law marriage in those States.

§ 222.14 Deemed marriage relationship.

If a ceremonial or common-law marriage relationship cannot be established under State law, a claimant may still be found to have the relationship as spouse of an employee based upon a deemed marriage. A claimant is deemed to be the wife, husband, or widow(er) of the employee if the person's marriage to the employee would have been valid under State law except for a legal impediment, and all of the following requirements are met:

(a) The claimant married the employee in a civil or religious ceremony.

(b) The claimant went through the marriage ceremony in good faith. Good faith means that at the time of the ceremony the claimant did not know that a legal impediment existed, or if the claimant did know, he or she thought that it would not prevent a valid marriage.

(c) The claimant was living in the same household as the employee (see § 222.16) when he or she applied for the spouse annuity or when the employee died.

(d) At the time the claimant applies for his or her annuity, no other person has a relationship under State law, as described in §§ 222.12 and 222.13, as the employee's wife, husband, or widow(er), and is entitled to an annuity under the Railroad Retirement Act or a monthly social security benefit based on that relationship.

§ 222.15 When spouse is living with employee.

A spouse, or widow(er) is living with the employee if—

(a) He or she and the employee are living in the same household; or

(b) The employee is contributing to the support of the spouse or widow(er); or

(c) The employee is under court order to contribute to the support of the spouse or widow(er).

§ 222.16 When spouse is living in the same household with employee.

(a) Living in the same household means that the employee and spouse customarily live together as a married couple in the same residence.

(b) The employee and spouse are also considered members of the same household when they live apart but expect to resume or continue living together after a temporary separation.

(c) If the employee and spouse were separated solely for medical reasons, the Board will consider them "living in the same household" even if the separation was likely to be permanent.

§ 222.17 "Child in care" when child of the employee is living with the claimant.

"Child in care" means a child who has been living with the claimant for at least 30 consecutive days unless—

(a) The child is inactive military service;

(b) The child is 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older and is not disabled;

(c) The child is 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older with a mental disability and the claimant does not exercise parental control and responsibility; or

(d) The child is 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older with a physical disability, but it is not necessary for the claimant to perform personal services for the child.

(e) Parental control and responsibility for the care and welfare of the child means that the parent supervises the child's activities and makes important decisions about the child's needs either alone or with another person. Personal services are services such as dressing, feeding and managing money which the child cannot do alone because of a disability.

§ 222.18 "Child in care" when child of the employee is not living with the claimant.

(a) *When child is in care.* A child living apart from a claimant is in that claimants care if—

(1) the child lives apart or is expected to live apart from the claimant for not more than six months; or

(2) The child is under 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities), the claimant supervises the child's activities and makes important decisions about his or her needs, and one of the following circumstances applies:

(i) The child is living apart because of attendance at school but generally spends a vacation of at least 30 consecutive days with the claimant each year, and, if the claimant and the child's other parent are separated, the school must look to the claimant for decisions about the child's welfare.

(ii) The child is living apart because of the claimant's employment but the claimant makes regular and substantial contributions to the child's support. "Contributing to support" is defined in § 222.42.

(iii) The child is living apart because of the child's or the claimant's physical disability; or

(3) The child is 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older and is mentally disabled and the claimant supervises the child's activities, makes important decisions about the child's needs, and helps in the child's upbringing and development.

(b) *When child is not in care.* A child living apart from a claimant is not in the claimant's care if—

(1) The child is in active military service; or

(2) The child is living with his or her other parent; or

(3) A court order removed the child from the claimant's custody and control; or

(4) The claimant gave the right to custody and control of the child to someone else; or

(5) The claimant is mentally disabled.

Subpart C—Relationship as Divorced Spouse, Surviving Divorced Spouse, or Remarried Widow(er)

§ 222.20 When determination of relationship as divorced spouse, surviving divorced spouse, or remarried widow(er) is made.

(a) *Divorced spouse.* The claimant's relationship as the divorced spouse of an employee is determined when the purported divorced spouse applies for an annuity, or when there is a claim which would include a divorced spouse in the computation of the social security overall minimum provision. Such a determination is also made when a spouse annuitant age 62 or over secures a final divorce from the employee after 10 years of marriage.

(b) *Surviving divorced spouse.* The claimant's relationship as the surviving divorced spouse of an employee is determined when the purported surviving divorced spouse applies for an annuity on the basis of age, disability, or having a child in care. Such a determination is also made when there is a divorced spouse annuitant and the employee dies.

(c) *Remarried widow(er).* The claimant's relationship as a remarried widow(er) of an employee is determined when the purported remarried widow(er) applies for an annuity. Such a determination is also made when a widow(er) who is receiving an annuity remarries after age 60, or when a widow(er) who is receiving a disability annuity remarries after age 50.

§ 222.21 When marriage is terminated by final divorce.

A final divorce, often referred to as an absolute divorce, completely dissolves the marriage relationship and restores the parties to the status of single persons. A legal separation, qualified or preliminary divorce, divorce from bed and board, interlocutory decree of divorce, or similar court order is not considered a final divorce for family relationship and benefit entitlement purposes.

§ 222.22 Relationship as divorced spouse.

A claimant will be considered to be the divorced spouse of an employee if—

(a) His or her marriage to the employee has been terminated by a final divorce; and

(b) He or she is not married (if the claimant remarried after the divorce from the employee, the later marriage has been terminated by death, final divorce, or annulment); and

(c) He or she had been validly married to the employee, as set forth in § 222.11, for a period of 10 years immediately before the date the divorce became final. The claimant meets this requirement even if the claimant and employee were divorced within the ten-year period, provided that the claimant and employee were remarried no later than the calendar year immediately following the year in which the divorce took place.

§ 222.23 Relationship as surviving divorced spouse.

A claimant will be considered to be the surviving divorced spouse of a deceased employee if the conditions in either paragraph (a) or (b) of this section are met:

(a) *Age or disability.* The claimant applied for an annuity on the basis of age or disability, and the conditions set forth in § 222.22 are met.

(b) *Child in care.* The claimant applied for an annuity on the basis of having a child in care, and—

(1) His or her marriage to the employee has been terminated by a final divorce, and

(2) He or she is not married (if the claimant remarried after the divorce from the employee, the later marriage has been terminated by death, final divorce, or annulment); and

(3) He or she either—

(i) Was the natural parent of the employee's child; or

(ii) Had been married to the employee when either the employee or the claimant legally adopted the other's child or when they both legally adopted a child who was then under 18 years of age.

§ 222.24 Relationship as remarried widow(er).

(a) *New eligibility.* A claimant will have the relationship of a remarried widow(er) if he or she is the widow(er), as discussed in § 222.11, of an employee and the claimant—

(1) Remarried after attaining age 60, or remarried after attaining age 50 and after the date on which he or she became disabled; or

(2) Remarried before attaining age 60, but is now unmarried, or remarried before attaining age 50 or before the date on which he or she became disabled, but is now unmarried.

(b) *Reentitlement.* A claimant will have the relationship of a remarried widow(er) if he or she remarries after his or her entitlement to an annuity as a widow(er) has been established, and the claimant—

(1) Remarries after attaining age 60, or remarries after attaining age 50 and after the date on which he or she became disabled; or

(2) Is entitled to an annuity based upon having a child of the employee in care and remarries, but this marriage is to a person who is entitled to a retirement, disability, widow(er)'s, mother's, father's, parent's, or disabled child's benefit under the Railroad Retirement Act or Social Security Act.

Subpart D—Relationship as Child

§ 222.30 When determinations of relationship as child are made.

(a) Determinations will be made regarding a person's relationship as the child of the employee and that person's dependency on the employee (see Subpart F of this part) when—

(1) The wife or husband of an employee applies for a spouse's annuity based on having the employee's child in care; or

(2) The employee's annuity can be increased under the social security overall minimum provision based on the child; or

(3) The employee dies and the claimant applies for a child's annuity.

(b) A determination will be made regarding a claimant's relationship as the child of the employee when the claimant applies for a share of a lump-sum payment as a child.

§ 222.31 Relationship as child for annuity and lump-sum payment purposes.

(a) *Annuity claimant.* When there are claimants under paragraphs (a)(1), (a)(2), or (a)(3) of § 222.30 above, a person will be considered the child of the employee when that person is—

(1) The natural or legally adopted child of the employee (see § 222.33); or

(2) The stepchild of the employee; or

(3) The grandchild or stepgrandchild of the employee or spouse; or

(4) The equitably adopted child of the employee.

(b) *Lump-sum payment claimant.* A claimant for a lump-sum payment must be one of the following in order to be considered the child of the employee;

(1) The natural child of the employee;

(2) A child legally adopted by the employee (this does not include any child adopted by the employee's widow or widower after the employee's death);

(3) The equitably adopted child of the employee.

§ 222.32 Relationship as a natural child.

A claimant will be considered the natural child of the employee for both annuity and lump-sun payment purposes if one of the following sets of conditions is met:

(a) Under relevant State law, the claimant could inherit a share of the employee's personal estate as the

employee's natural child if the employee were to die without leaving a will;

(b) The claimant is the employee's son or daughter, and the employee and the claimant's mother or father went through a marriage ceremony which would have been valid except for a legal impediment;

(c) The claimant's mother or father has not married the employee, but—

(1) The employee has acknowledged in writing that the claimant is his or her son or daughter; or

(2) A court has decreed that the employee is the mother or father of the claimant; or

(3) A court has ordered the employee to contribute to the claimant's support because the claimant is the employee's son or daughter; and

(4) Such acknowledgement, court decree, or court order was made not less than one year before the employee became entitled to an annuity or, in the case of a disability annuitant, prior to his or her most recent period of disability or, in case the employee is deceased, prior to his or her death.

(d) The claimant's mother or father has not married the employee, but—

(1) The claimant has submitted evidence acceptable in the judgment of the Board, other than that discussed in paragraph (c) of this section, that the employee is his or her mother or father; and

(2) The employee was living with the claimant or contributing to the claimant's support, as discussed in §§ 222.58 and 222.42 of this part, when—

(i) The spouse applied for an annuity based on having the employee's child in care; or

(ii) The employee's annuity could have been increased under the social security overall minimum provision; or

(iii) The employee died, if the claimant is applying for a child's annuity or lump-sum payment.

§ 222.33 Relationship resulting from legal adoption.

(a) *Adopted by employee.* A claimant will be considered to be the child of the employee for both annuity and lump-sum payment purposes if the employee legally adopted the claimant in accordance with applicable State law. Legal adoption differs from equitable adoption in that in the case of legal adoption formal adoption proceedings have been completed in accordance with applicable State law and such proceedings are not defective.

(b) *Adopted by widow or widower.* A claimant who is legally adopted by the widow or widower of the employee after the employee's death will be considered to be the child of the employee for annuity but not for lump-sum payment purposes if—

(1) Either the claimant is adopted by the widow or widower within two years after the date on which the employee died, or the employee commenced proceedings to legally adopt the claimant before the employee's death; and

(2) The claimant was living in the employee's household at the time of the employee's death; and

(3) The claimant was not receiving regular support contributions from any other person other than the employee or spouse at the time of the employee's death.

§ 222.34 Relationship resulting from equitable adoption.

In many States, where a legal adoption proceeding was defective under State law or where a contemplated legal adoption was not completed, a claimant may be considered to be an equitably adopted child. A claimant will have the relationship of an equitably adopted child for annuity and lump-sum payment purposes if, in addition to meeting the other requirements of this part—

(a) The employee had agreed to adopt the claimant; and

(b) The natural parents or the person legally responsible for the care of the claimant agreed to the adoption; and

(c) The employee and the claimant lived together as parent and child; and

(d) The agreement to adopt is recognized under applicable State law such that, if the employee were to die without leaving a will, the claimant could inherit a share of the employee's personal estate as the child of the employee.

§ 222.35 Relationship as a stepchild.

A claimant will be considered to have the relationship of stepchild of an employee, and will be considered a child for annuity but not for lump-sum benefit purposes if—

(a) The claimant's natural or adoptive parent married the employee after the claimant's birth; and

(b) The marriage between the employee and the claimant's parent is a valid marriage under applicable State law (see §§ 222.12 and 222.13), or would be valid except for a legal impediment; and

(c) The employee and the claimant's parent were married at least one year before the date—

(1) On which the spouse applies for an annuity based on having the employee's child in care; or

(2) On which the employee's annuity can be increased under the social security overall minimum provision; or

(d) The employee and the claimant's parent were married at least nine months before the date on which the employee died if the claimant is applying for a child's annuity; or if the employee and the claimant's parent were married less than nine months, the employee was reasonably expected to live for nine months, and—

(1) The employee's death was accidental; or

(2) The employee died in the line of duty as a member of the armed forces of the United States; or

(3) The widow(er) was previously married to the employee for at least nine months.

§ 222.36 Relationship as grandchild or stepgrandchild.

A claimant will have the relationship of grandchild or stepgrandchild of an employee, or the grandchild or stepgrandchild of an employee's spouse, and be considered a child for annuity purposes if the requirements in both paragraph (a) and either paragraph (b) or (c) of this section are met.

(a) The claimant is the natural child, adopted child, or stepchild of a child of an employee, or of a child of the employee's spouse as defined in this subpart;

(b) The claimant's natural or adoptive parents are deceased or are disabled, as defined in section 223(d) of the Social Security Act, in the month in which—

(1) The employee, who is entitled to an age and service or disability annuity, under the Railroad Retirement Act, would also be entitled to an age benefit under section 202(a) of the Social Security Act or a disability benefit under section 223 of the Social Security Act, if his or her railroad compensation were considered wages under that Act; or

(2) The employee dies; or

(3) The employee's period of disability begins, if the employee has a period of disability which continues until he or she could be entitled to a social security benefit as described in paragraph (b)(1) of this section or until he or she dies;

(c) The claimant was legally adopted in the United States by the employee's widow(er) after the employee's death, and the claimant's natural or adoptive parent or stepparent was not living in the employee's household and making regular contributions to the claimant's support at the time the employee died.

Note: A grandchild or stepgrandchild does not have the relationship of "child" for lump-sum payment purposes (see § 222.44).

Subpart E—Relationship as Parent, Grandchild, Brother or Sister

§ 222.40 When determinations of relationship are made for parent, grandchild, brother or sister.

(a) *Parent.* The claimant's relationship as a parent of the employee is determined when the claimant applies for an annuity or for lump-sum payments.

(b) *Grandchild.* The claimant's relationship as a grandchild, rather than as a child, of the employee is determined when the claimant applies for lump-sum payments.

(c) *Brother or sister.* The claimant's relationship as a brother or sister of the employee is determined when the claimant applies for lump-sum payments.

§ 222.41 Determination of relationship and support for parent.

(a) *Annuity claimant.* For purposes of applying for an annuity, a claimant is considered the employee's parent when the claimant—

(1) Is the natural mother or father of the employee, and is considered the employee's parent under the law of the State in which the employee had a permanent home when the employee died; or

(2) Is a person who legally adopted the employee before the employee became 16 years old; or

(3) Is a stepparent who married the employee's natural or adoptive parent before the employee became 16 years old (the marriage must be valid under the law of the State in which the employee had a permanent home when the employee died); and

(4) Was receiving at least one-half support from the employee (see §§ 222.42 and 222.43 of this part) either when the employee died or at the beginning of the period of disability, if the employee had a period of disability.

(b) *Lump-sum payment claimant.* For purposes of applying for lump-sum payments, a claimant is considered the employee's parent when he or she—

(1) Is the natural mother or father of the employee, and is considered the employee's parent under applicable State law; or

(2) Legally adopted the employee, if thereby recognized as a parent under applicable State law; but

(3) The claimant need not have received one-half support from the employee.

§ 222.42 When employee is contributing to support.

(a) An employee is contributing to the support of a person if the employee gives cash, goods, or services to help support such person. Support includes food, clothing, housing, routine medical care, and other ordinary and necessary living expenses. The value of any goods which the employee contributes shall be based upon the replacement cost of those goods at the time they are contributed. If the employee provides services that would otherwise require monetary payment, the cash value of the employee's services may be considered a contribution to support.

(b) The employee is contributing to the support of a person if that person receives an allotment, allowance, or benefit based upon the employee's military pay, veteran's pension or compensation, social security earnings, or railroad compensation.

(c) Contributions must be made regularly and must be large enough to meet an important part of the person's ordinary and necessary living expenses. If the employee provides only occasional gifts or donations for special purposes, they will not be considered contributions for support. Although the employee's contributions must be made on a regular basis, temporary interruptions caused by circumstances beyond the employee's control, such as illness or unemployment, will be disregarded unless during these interruptions someone else assumes responsibility for support of the person on a regular basis.

§ 222.43 How the one-half support determination is made.

(a) *Amount of contributions.* The employee provides one-half support to a person if the employee makes regular contributions to that person's support, and the amount of the contributions is equal to or in excess of one-half of the person's ordinary and necessary living expenses. Ordinary and necessary living expenses are the costs for food, clothing, housing, routine medical care, and similar necessities. A contribution may be in cash, goods, or services (see §222.42 of this part). For example, an employee pays rent and utilities amounting to $6,000 per year on an apartment in which his mother resides. In addition, the employee's mother receives $3,600 per year in social security benefits which she uses to pay for her food, clothing and medical care. The mother's total necessary living expenses are $9,600 ($6,0000+$3,600). Since the employee contributes $6,000 toward these expenses he is contributing in excess of one-half of his mother's support.

(b) *Reasonable period of time.* The employee is not providing at least one-half of a person's support unless the employee has made contributions for a reasonble period of time. Ordinarily, the Board will consider a reasonable period of time to be the 12-month period immediately preceding the time when the one-half support requirement must be satisfied. However, if the employee provided one-half or more of the person's support for at least 3 months of the 12-month period, and was forced to stop or reduce contributions because of circumstances beyond his or her control, such as illness or unemployment, and no one else took over responsibility for providing at least one-half of the person's support on a permanent basis, three months shall be considered a reasonable period of time.

§ 222.44 Other relationship determinations for lump-sum payments.

Other claimants will be considered to have the relationships to the employee shown below for lump-sum payment purposes:

(a) *Grandchildren.* A grandchild is a separate class of beneficiary to be considered for lump-sum payments and is not a child of the employee; he or she is a child of the employee's son or daughter as determined under State law. A stepgrandchild is not included in this class of beneficiary.

(b) *Brother or Sister.* "Brother" or "Sister" means a full brother or sister or a half brother or half sister, but not a stepbrother or stepsister.

Subpart F—Child Support and Dependency

§ 222.50 When child dependency determinations are made.

(a) *Dependency determination.* One of the requirements for a child's annuity or for increasing an employee or spouse annuity under the social security overall minimum provision on the basis of the presence of a child in the family group is that the child be dependent upon the employee. The dependency requirements and the time when they must be met are explained in §§ 222.51 through 222.57.

(b) *Related determinations.* To prove a child's dependency, an applicant may be asked to show that at a specific time the child lived with the employee, that the child received contributions for his or her support from the employee, or that the employee provided at least one-half of the child's support. The terms "living with", "contributing to support", and "one-half support" are defined in §§ 222.58, 222.42, and 222.43. These determinations are required when—

(1) A natural child or legally adopted child of the employee is adopted by someone else; or

(2) The child claimant is the stepchild, grandchild, or equitably adopted child of the employee.

§ 222.51 When a natural child is dependent.

The employee's natural child, as defined in § 222.32, is considered to be dependent upon the employee. However, if the child is legally adopted by someone else during the employee's lifetime and, after the adoption, a child's annuity or other annuity or annuity increase is applied for on the basis of the employee's earnings record and the relationship of the child to the employee, the child will be considered dependent upon the employee (the natural parent) only if he or she was either living with the employee or the employee was contributing to the child's support when either

(a) A spouse's annuity begins; or

(b) The employee's annuity can be increased under the social security overall minimum provision; or

(c) The employee dies; or

(d) If the employee had a period of disability which lasted until he or she could have become entitled to an age or disability benefit under the Social Security Act (treating the employee's railroad compensation as wages under that Act), at the beginning of the period of disability or at the time the employee could have become entitled to the benefit.

§ 222.52 When a legally adopted child is dependent—general.

(a) *During employee's lifetime.* If the employee adopts a child before he or she could become entitled to a social security benefit (treating his or her railroad compensation as wages under that Act), the child is considered dependent upon the employee. If the employee adopts a child, unless the child is his natural child or stepchild, after he or she could become entitled to an old age or disability benefit under the Social Security Act (treating his or her railroad compensation as wages under that Act), the child is considered dependent on the employee only if the requirements of § 222.53 are met.

(b) *After employee's death.* If the surviving spouse of an employee adopted a child after the employee's death, the child is considered dependent on the employee if either—

(1) The employee began proceedings to adopt the child prior to his or her death, or the surviving spouse adopted the child within two years after the employee's death; and

(2) The child was living in the employee's household at the time of the employee's death; and

(3) The child was not receiving regular contributions from any person, including any public or private welfare organization, other than the employee or spouse at the time of the employee's death.

§ 222.53 When a legally adopted child is dependent—child adopted after entitlement.

A child who is not the employee's natural child, stepchild, grandchild, or stepgrandchild, and who is adopted by the employee after the employee could become entitled to an old age or disability benefit under the Social Security Act (treating his or her railroad compensation as wages under that Act), is considered dependent on the employee during the employee's lifetime only if the requirements in paragraphs (a) and (b), and either (c) or (d) of this section are met:

(a) The child is adopted in the United States;

(b) The child began living with the employee before the child attained age 18;

(c) The child is living with the employee in the United States and received at least one-half of his or her support from the employee for the year before the month in which—

(1) The employee could become entitled to a social security benefit as described above; or

(2) The employee becomes entitled to a period of disability which continues until he or she could become entitled to a social security benefit as described above;

(d) In the case of a child born within the one-year period stated in paragraph (c) of this section, at the close of such period the child must have been living with and have been receiving at least one-half of his or her support from the employee for substantially all of the period that began on the date the child was born.

(e) "Substantially all" means—

(1) The child was living with and receiving one-half support from the employee when the employee could have become entitled to a social security benefit as described above; and

(2) Any period during which the child was not living with or receiving one-half support from the employee is not more than one-half the period from the child's birth to the employee's date of entitlement or three months, whichever is less.

§ 222.54 When a legally adopted child is dependent—grandchild or stepgrandchild adopted after entitlement.

If an employee legally adopts his or her grandchild or the spouse's grandchild after he could become entitled to an old age or disability benefit under the Social Security Act (treating his or her railroad compensation as wages under that Act), the grandchild is considered dependent on the employee during the employee's lifetime only if the requirements in paragraphs (a) and (b), and either (c) or (d) of this section are met:

(a) The grandchild is adopted in the United States.

(b) The grandchild began living with the employee before the grandchild attained age 18.

(c) The grandchild is living with the employee in the United States and receives at least one-half of his or her support from the employee for the year before the month in which—

(1) The employee's annuity was increased under the social security overall minimum provision by including the grandchild; or

(2) The employee could become entitled to a social security benefit as described above; or

(3) The employee becomes entitled to a period of disability which continues until he or she could become entitled to a social security benefit as described above.

(d) In the case of a grandchild born within the one-year period referred to in paragraph (c) of this section, at the close of such period the child must have been living with and have been receiving at least one-half of his or her support from the employee for substantially all of the period that began on the date the grandchild was born. "Substantially all" is defined in § 222.53.

§ 222.55 When a stepchild is dependent.

An employee's stepchild, as described in § 222.35, is considered dependent on the employee if the stepchild is living with or receiving at least one-half of his or her support from the employee at one of the times shown in § 222.51.

§ 222.56 When a grandchild or stepgrandchild is dependent.

An employee's grandchild or stepgrandchild, as described in § 222.36, is considered dependent on the employee if the requirements in both paragraphs (a) and (b), or paragraph (c) of this section are met:

(a) The grandchild or stepgrandchild was living with the employee before the grandchild or stepgrandchild attained age 18.

(b) The grandchild or stepgrandchild is living with the employee in the United States and receives at least one-half of his or her support from the employee for the year before the month in which—

(1) The employee could become entitled to an age and service or disability annuity under the Social Security Act (treating his or her railroad compensation as wages under that Act); or

(2) The employee dies; or

(3) The employee becomes entitled to a period of disability that lasts until he or she could become entitled to a social security benefit as described above or until he or she dies.

(c) In the case of a grandchild or stepgrandchild born within the one-year period referred to in paragraph (b) of this section, at the close of such period the child must have been living with and receiving at least one-half of his or her support from the employee for substantially all of the period that began on the date the grandchild or stepgrandchild was born. "Substantially all" is defined in § 222.53.

§ 222.57 When an equitably adopted child is dependent.

An employee's equitably adopted child, as defined in § 222.34, is considered dependent upon the employee if the employee was either living with or contributing to the support of the child at the time of his or her death. If the equitable adoption is found to have occurred after the employee could have become entitled to an old age or disability benefit under the Social Security Act (treating his or her railroad compensation as wages under that Act), the child is not considered dependent on the employee during the employee's lifetime. If the equitable adoption took place before such time, the child is dependent on the employee if the employee was living with or contributing to the support of the child at one of the times shown in § 222.51.

§ 222.58 When a child is living with an employee.

A child is living with the employee if the child normally lives in the same household with the employee and the employee has parental control and authority over the child's activities. The child is considered to be "living with" the employee while they are living apart if they expect to live together again after a temporary separation. A temporary separation may include the employee's absence because of working away from home or hospitalization. However, the employee must have parental control and authority over the child during the period of temporary separation. A child who is in active military service or in prison is not "living with" the employee, since the employee does not have parental control over the child.

Dated: May 30, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-13362 Filed 6-5-89; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 17

Enforcement of Non-discrimination on the Basis of Handicap in Treasury Programs

AGENCY: Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Department of the Treasury. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination.

DATES: To be assured of consideration, comments must be in writing and must be received on or before August 7, 1989. Comments should refer to the specific sections in the regulation.

ADDRESSES: Comments should be sent to: Charlene J. Robinson, Director, Human Resources Directorate, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. (202) 566-5256.

Comments received will be available for public inspection from 9:00 a.m. to 5:30 p.m., Monday through Friday in the Office of Equal Opportunity Program, Department of the Treasury, 1201 Constitution Avenue, NW., Room 7225, Washington, DC 20220. Copies of this notice will be made available on tape for persons with impaired vision who request them. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Charlene J. Robinson, Director, Human Resources Directorate, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. (202) 566-5256. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of the Treasury. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap[s], be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by an Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*

(29 U.S.C. 794) (1978 amendment italicized).

The substantive nondiscrimination of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. See 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); id. at 38,552 (remarks of Rep. Sarisin).

There are, however, some language differences between this proposed rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting Davis and section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C.

Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300 and explicitly noted that "[t]he regulations implementing section 504 (for federally assisted programs) are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at 301 n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*. Therefore, their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence, the agency believes that there are no significant differences between this proposed rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice.

It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It has been determined that this proposed regulation is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

It is further certified that the regulation does not have a significant economic impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis

Section 17.101 Purpose

Section 17.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 17.102 Application

The proposed regulation applies to all programs or activities conducted by the agency but does not include programs or activities outside the United States that do not involve individuals with handicaps in the United States. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the agency for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits.

Section 17.703 Definitions

"Agency." For purposes of this part, "agency" means the Department of the Treasury.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 17.160(a)(1), they may also be necessary to meet other requirements of the regulations.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 100-day period for the agency's investigation (*see* § 17.170(g)) begins when the agency receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)), except that the term "rolling stock or other conveyances" has been added and the phase "or interest in such property" has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulations applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in §§ 17.149, 17.150 and 17.170(f).

"Individual with handicaps." The definition of "individual with handicaps" is substantially similar to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 Coordination Regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without

modifications in the program that the agency can demonstrate would result in a fundamental alteration in the nature of the program. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1976). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent here from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of (the) program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by Section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

Treasury has incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate accommodation, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the accommodations do not fundamentally alter the nature of the program.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§ 17.150(a) and 17.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by and explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (3) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 17.140. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "Section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 17.110 Self-evaluation

The Department shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section 17.111 Notice

Section 17.111 requires the agency to make available sufficient information to interested persons including employees, applicants, participants, and beneficiaries of Treasury programs and activities to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information may include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 17.130 General Prohibitions Against Discrimination

Section 17.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 17.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 17.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation, all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce. It may not be permissible to automatically disqualify all those who are blind in just one eye.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a

program if the facility in which the program is conducted is inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that opportunity afforded to others. The later sections on program accessibility (§§ 17.149–17.151) and communications (§ 17.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs or activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) provides that different or separate aids, benefits, or services to qualified handicapped persons is not justified unless such action is necessary to provide individuals with handicaps with aids, benefits, or services as effective as those provided others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(3) provides that a qualified individual with handicaps may still choose to participate in the program that is not designed to accommodate individuals with handicaps. It is not appropriate to assume that all individuals with handicaps should participate in a special "handicapped" program even if the program is designed to meet the particular needs of some individuals with handicaps. This is intended to ensure that individuals with handicaps are not unnecessarily segregated from nonhandicapped people or subjected to arbitrary or stereotypical limitations on their participation in federally conducted programs.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from otherwise limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(2) is taken from the Department of Health, Education, and Welfare's (now Health and Human Services) original regulation implementing section 504 for programs and activities to which it provides Federal financial assistance (45 CFR 84.4(b)(2)). It clarifies that the agency is required to provide equal opportunities to individuals with handicaps, but is not required to guarantee equality of results.

Paragraph (b)(4) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(5) specifically applies the prohibition enunciated in § 17.130(b)(4) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the agency. Paragraph (b)(5) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(6) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(7) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certifications. A person is a qualified individual with handicaps with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 17.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(7) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive Order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d) provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 17.140 Employment.

Section 17.140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *U.S. Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 301–04 (5th Cir. 1981); *Contra McGuiness* v. *U.S. Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *U.S. Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504, *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 17.140 (Employment) of this rule adopts the definitions, requirement and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. In addition to this section, 17.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal law prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp. p. 206). Under this authority, the EEOC establishes government-wide standards on non-discrimination in employment on the basis of handicap. While this rule could define terms with respect to employment and enumerate what

practices are covered and what requirements apply, the agency has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Section 17.149 Program Accessibility: Discrimination Prohibited

Section 17.149 states the general non-discriminate principle underlying the program accessibility requirements of §§ 17.150 and 17.151.

Section 17.150 Program Accessibility: Existing Facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 17.150 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 17.150(a)(1)). However, § 17.150, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 17.150(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in §17.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that Section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644, (2d Cir. 1982); *American Public Transit Association* v. *Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981).

Paragraphs (a)(2) and 17.160(d) are also supported by the Supreme Court's decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementting regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *id.* at 301, and what "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration[s] in the nature of a program.' " *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and earlier, lower court decisions that there are situations when accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation. This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 17.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered.

The burden of proving that compliance with § 17.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accomplished by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she has been injured by the agency head's decision or failure to make a decision may file a compliant under the compliance procedures established in section 17.170.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provisions of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provisions of services in the most integrated setting possible. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. (Is should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features such as removal of or alterations to a loading-bearing structural member.) The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other

necessary steps to achieve compliance shall be taken within sixty days.

Section 17.151 Program Accessibility: New Contruction and Alterations

Overlapping coverage exists with respect to new construction under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 17.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 through 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act. Further, adopting of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 17.150. To the extent the buildings are newly contructed or altered, they must also meet the new construction and alteration requirements of § 17.151.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

Section 17.160 Communications

Section 17.160 requires that the agency take appropriate steps to effectively communicate with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 17.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency § 17.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 17.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 17.150(a)(3)). Unless not required by § 17.160(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 17.150(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the agency's obligation to comply with § 17.160.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthly period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall effectively communicate with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids shall be used where necessary for effective communication. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter.

The agency will not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 17.160(a)(1)(ii)). For example, the agency is not required to provide eyeglasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information, as appropriate, to individuals with handicaps concerning accessible services, activities, and facilities.

Paragraph (c) requires the agency to post signs at inaccessible facilities that direct users to locations with information about accessible facilities.

Section 17.170 Compliance Procedures

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) vests responsibility for the implementation and operation of this section in the Office of the Deputy Assistant Secretary for Departmental Finance and Management.

Paragraph (d)(1) is adapted from the compliance procedures of the Department of Justice's regulation implementing section 504 for its federally conducted programs and activities (28 CFR 39.170(d)(1)(i). It provides that complaints may be filed by a person who alleges that he or she has been subjected to discrimination prohibited by this part or that he or she is a member of a class of persons subjected to discrimination, or by an authorized representative of such a person. This paragraph prevents third parties from filing generalized complaints where there has been no harm to a particular individual or individuals.

The agency is required to accept and investigate all complete complaints (§ 17.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to an appropriate entity of the Federal Government (§ 17.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility

subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 17.170(g)). One appeal within the agency shall be provided (§ 17.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance.

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. Under this paragraph the agency may have any required investigation performed by a nongovernment investigator under contract with the agency. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 31 CFR Part 17

Blind, Buildings, Civil Rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

For the reasons set forth in the Preamble, Subtitle A of Title 31, Part 17 of the Code of Federal Regulations is proposed to be amended as follows:

David M. Nummy,

Acting Assistant Secretary of the Treasury (Management).

Part 17 is added to read as follows:

PART 17—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF THE TREASURY

Sec.

Authority: 29 U.S.C. 794.

§ 17.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 ("section 504") to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 17.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 17.103 Definitions.

For purposes of this part, the term—

(a) "Agency" means the Department of the Treasury.

(b) "Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(c) "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials and other similar services and devices.

(d) "Complete complaint" means a written statement that contains the complainant's name and address, and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes of individuals with handicaps shall also identify (where possible) the alleged victims of discrimination.

(e) "Facility" means all or any portion of a building, structure, equipment, road, walk, parking lot, rolling stock, or other conveyance, or other real or personal property.

(f) "Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more of the individual's major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs, cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addition and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more of the individual's major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (f)(1) of this definition but is treated by the agency as having such an impairment.

(g) "Qualified individual with handicaps" means—

(1) With respect to an agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and

who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in the nature of the program; and

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) For purposes of employment, "qualified handicapped person" is defined in 29 CFR 1613.702(f), which is made applicable to this part by § 17.140.

(h) "Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 17.104–17.109 [Reserved]

§ 17.110 Self-evaluation.

(a) The agency shall, by one year after the effective date of this part, evaluate its current policies and practices, and the effects thereof, to determine if they meet the requirements of this part. To the extent modification of any such policy and practice is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both telephonic and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 17.111 Notice.

The agency shall make available to all Treasury employees, and to all interested persons, as appropriate, information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such a manner as is necessary to apprise them of the protections against discrimination assured them by section 504 of this part.

§§ 17.112–17.129 [Reserved]

§ 17.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps in the United States, shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified invididual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with handicaps and for nonhandicapped persons, but must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs.

(3) Even if the agency is permitted, under paragraph (b)(1)(iv) of this section, to operate a separate or different program for individual with handicaps or for any class of individuals with handicaps, the agency must permit any qualified individuals with handicaps who wishes to participate in the program that is not separate or different to do so.

(4) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(6) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(7) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the

needs of qualified individuals with handicaps.

§§ 17.131–17.139 [Reserved]

§ 17.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 17.141–17.148 Reserved]

§ 17.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 17.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 17.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not require the agency—

(1) To make structural alterations in each of its existing facilities in order to make them accessible to and usable by individuals with handicaps where other methods are effective in achieving compliance with this section; or

(2) To take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with the § 17.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty (60) days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both telephonic and written). A copy of the transition plan shall be made available for public inspection. The plan shall at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the physical accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is no longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 17.151 Program Accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 through 101–19.607 apply to buildings covered by this section.

§§ 17.152–17.159 [Reserved]

§ 17.160 Communications.

(a) The agency shall take appropriate steps to effectively communicate with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature to applicants or participants in programs.

(2) Where the agency communicates with applicants and beneficiaries by telephone, the agency shall use telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems to communicate with persons with impaired hearing.

(b) The agency shall make available to interested persons, including persons with impaired vision or hearing, information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall post notices at a primary entrance to each of its

inaccessible facilities, directing users to an accessible facility, or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 17.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration of such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 17.161–17.169 [Reserved]

§ 17.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) All other complaints alleging violations of section 504 shall be filed and processed according to regulations which will be published by this Department. Until such regulations are published, all complaints alleging violations of section 504 that do not concern employment will be filed with the Director, Human Resources Directorate, who will forward them to the appropriate offices for processing. Responsibility for implementation and operation of this section shall be vested in the Office of the Deputy Assistant Secretary for Departmental Finance and Management.

(d) (1) Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint.

(2) The agency shall accept and investigate all complete complaints over which it has jurisdiction.

(3) All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building, or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 100 days of the receipt of a complete complaint over which it has jurisdiction, the agency shall notify complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 17.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director, Equal Employment Opportunity, or his or her designee, who will issue the final agency decision which may include appropriate corrective action to be taken by the agency.

(j) The agency shall notify the complainant of the results of the appeal within 30 days of the receipt of the appeal. If the agency determines that it needs additional information from the complainant, it shall have 30 days from the date it received the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended for an individual case when the Deputy Secretary determines that there is good cause, based on the particular circumstances of that case, for the extension.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies or may contract with a nongovernment investigators to perform the investigation but the authority for making the final determinations may not be delegated to another agency.

§§ 17.171–17.999 [Reserved]

[FR Doc. 89–13363 Filed 6–5–89; 8:45 am]
BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AE01

Duty Periods

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulation for classification of training performed by members of the Senior Reserve Officers' Training Corps. This change is required because of a change of law regarding the definition of training for this group. The intended result of this change is to clarify the duty status of this group during specific types of training.

DATES: Comments must be received on or before July 6, 1989. Comments will be available for public inspection until July 17, 1989. This amendment is proposed to be effective October 1, 1988, in accordance with the provisions of Pub. L. 100–456 (1988).

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 17, 1989.

FOR FURTHER INFORMATION CONTACT: Bill Leonard, Legal Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Section 633(c) of Pub. L. 100-456, National Defense Authorization Act, amends 38 U.S.C. 101, requiring training duty performed by members of the Senior Reserve Officers' Training Corps for periods of less than four weeks, or for any period which is not a prerequisite to commissioning, to be defined as "inactive duty training" rather than "active duty for training." Training by applicants for membership in the Senior Reserve Officers' Training Corps as defined in 5 U.S.C. 8140(g) is also included under the definition of "inactive duty training." We propose to implement this change by amending 38 CFR 3.6 (c) and (d).

The Secretary hereby certifies that this proposed regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this proposed regulatory amendment is non-major for the following reasons.

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 39 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: May 12, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 3, Adjudication, is proposed to be amended as follows:

PART 3—[AMENDED]

In § 3.6, paragraph (c)(4) is revised, and authority citation is added following paragraph (c)(5), paragraph (d)(3) is redesignated as paragraph (d)(4), paragraph (d)(2) is revised, new paragraph (d)(3) and a new authority citation for the section are added so the revised and added text reads as follows:

§ 3.6 Duty periods.

* * * * *

(c) * * *

(4) Duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under Chapter 103 of Title 10, United States Code.

(i) The requirements of this paragraph are effective—

(A) On or after October 1, 1982, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated after September 30, 1982, and

(B) October 1, 1983, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated before October 1, 1982.

(ii) Effective on or after October 1, 1988, such duty must be prerequisite to the member being commissioned and must be for a period of at least four continuous weeks.

(Authority: 38 U.S.C. 101(22)(D) as amended by Pub. L. 100-456)

(5) * * *

(Authority: 38 U.S.C. 101(22)

(d) * * *

(2) Special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and

(3) Training (other than active duty for training) by a member of, or applicant for membership (as defined in 5 U.S.C. 8140(g)) in, the Senior Reserve Officers' Training Corps prescribed under Chapter 103 of Title 10, United States Code.

* * * * *

(Authority: 38 U.S.C. 101(23))

[FR Doc. 89-13297 Filed 6-5-89; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-3598-4]

Requirements for Preparations, Adoption, and Submittal of Implementation Plans; Methods for Measurement of PM_{10} Emissions From Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The EPA has promulgated a revised National Ambient Air Quality Standard (NAAQS) (52 FR 24634), which, depending on the control strategy adopted by the State, may require State implementation plans (SIP's) to contain emission limits for particulate matter (PM) with an aerodynamic diameter of 10 μm or less (PM_{10}). Because of the need for a source test method for PM_{10}, the Agency proposes to add two PM_{10} methods, Methods 201 and 201A, for the measurement of PM_{10} emissions from stationary sources, to Appendix M, 40 CFR Part 51. Appendix M is a newly designated repository for example test methods for SIP's. The Agency also proposes to revise Subpart K, 40 CFR Part 51, to direct States to Appendix M and to reiterate the fact that each SIP must include enforceable test methods with each emission limit in the SIP, including PM_{10}. The PM_{10} source test method shall be Method 201, 201A, or an acceptable alternative. A public hearing will be held, if necessary, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before August 21, 1989.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by June 27, 1989, a public hearing will be held July 21, 1989, beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under **ADDRESSES** to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by June 27, 1989.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Attention: Docket Number A-88-08, U.S. Environmental Protection Agency, Room M1500—1st floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory Building, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Roy Huntley, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–1060.

FOR FURTHER INFORMATION CONTACT: Roy Huntley or Roger Shigehara, Emission Measurement Branch (MD–19), Technical Support Division, telephone number (919) 541–1060, or Joseph J. Sableski, Air Quality Management Division (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5697.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Section 110 of the Clean Air Act, as amended (42 U.S.C. 7410), specifies that States are to submit plans for EPA approval that provide for the attainment and maintenance of emission standards through control programs directed at sources of the pollutants involved. Those plans shall include enforceable test methods for each emission limit, including PM_{10}. The source test method for PM_{10} shall be Method 201, 201A, or an acceptable alternative.

Although EPA recognized this need on the part of the States for test methods when it proposed and promulgated the PM_{10} standard and the associated implementation requirements, EPA did not have sufficient time and resources to develop a PM_{10} source test method. Accodingly, EPA elected to provide States and local control agencies and the public with guidance on how a widely accepted source testing train, EPA's Method 5 train, could be modified to measure PM_{10}. Appendix C of the PM_{10} SIP Development Guideline gives instructions which would allow a person knowledgeable in source testing theory and methods to adapt a Method 5 train for measuring emissions of PM_{10}.

Improved PM_{10} source test methodology has since been developed and, in order to make this methodology available to States, the EPA, in this notice, is proposing to publish two PM_{10} source test methods in the **Federal Register**. The methods will be published as example test methods in Appendix M, which this notice will designate as a repository for example test methods that States can use in their SIP's. Appendix M, entitled Example Test Methods for State Implementation Plans, will contain methods numbered 201–299.

This notice also revises Subpart K to emphasize the requirement that States must include enforceable test methods in their SIP's for each emission limit. Also, Subpart K is revised to direct States to Appendix M, and two methods for measuring PM_{10} from stationary sources are added to Appendix M. The first method, Method 201 (also known as the Exhaust Gas Recycle (EGR) Procedure), uses a recycle loop to maintain a constant flow rate through a cyclone while maintaining isokinetic flow conditions at the nozzle. The second method, Method 201A (previously known as SIM–5 and called the Constant Sampling Rate (CSR) Procedure in this action), maintains a constant sampling rate through the particle sizing device while keeping the anisokinetic errors within well defined limits. The EPA considers the methods equivalent in PM_{10} measurement and is therefore proposing both methods.

Interested parties were advised by an Advance Notice of Proposed Rulemaking (ANPR) (53 FR 11688) of the Agency's intention to propose methods to measure PM_{10} source emissions.

Technical Problems in PM_{10} Emission Measurement

The collection of PM_{10} is based on the aerodynamic behavior of particles. Therefore, two types of inertial separators—cascade impactors and cyclones—are most appropriate for the in-stack collection of PM_{10}. Although similar principles are involved, each has advantages and disadvantages.

Cascade impactors are best suited for determining multiple cut fractions of PM. Their technology is developed to the point that their performance can be accurately predicted from geometrical and flow considerations. However, each stage can collect only a few milligrams of PM before particle bounce adversely affects collection performance. Omission of stages in impactors to reduce the number of size fractions and increase catch sizes hastens the increase of errors due to particle bounce. Because of problems due to particle bounce, the sampling times with cascade impactors are relatively short.

Cyclones perform well as single stage collectors, do not suffer from problems due to particle bounce, and have the potential of collecting PM mass in the order of grams. However, current theories on cyclone operations are rudimentary and cannot accurately predict cyclone performance from geometrical and flow considerations. This limits the use of cyclones to those that have been demonstrated to produce the necessary particle cut size through empirical calibration procedures. The cut size of an inertial sizing device is defined here as the aerodynamic diameter of a particle that has a 50 percent probability of capture by the device. Cyclones capable of collecting PM_{10} with acceptable sharpness of cut have been developed and are currently available for both the EGR and CSR sampling trains.

Sampling from stacks presents challenges when using inertial sizing devices. For example, the aerodynamic cut size is a function of the flow rate and viscosity of the gas flowing through the sizing device. Therefore, the flow rate through the sizing device must be kept at a constant discrete value to maintain the cut size at 10 μm. Since stack velocities usually vary from point to point, maintaining both isokinetic sampling rates and constant sizing device flow rates in the sizing device is a problem not easily overcome. The two PM_{10} methods offer different solutions to this problem.

The EGR Procedure. The EGR train samples isokinetically at the nozzle tip and recycles a filtered, dried portion of the exhaust sample gas back through a single state cyclone to maintain the constant flow rate through the cyclone required for a cut size of 10 μm. Isokinetic sampling is maintained by changing the recycle and sample flow rates. For example, if the stack gas velocity increases, the tester can increase the nozzle velocity to match the stack velocity by increasing the sample flow rate while simultaneously decreasing the recycle flow rate so that the total flow rate through the cyclone remains the same. Thus, the recycle capability of the EGR procedure permits the tester to sample isokinetically in the presence of variable stack gas velocity while maintainig a constant cut size of 10 μm in the cyclone.

The EGR sampling train includes a meter and flow control console to monitor the sample, recycle, and total flow rates throughout the sampling train. The nozzle is constructed to allow for the addition of recycle exhaust gas. The sampling protocol is similar to Method 5 except that the required maximum number of points in a stack is 12. Also, a total PM catch can be calculated by summing the PM_{10} catch and the cyclone catch.

The ERG sampling train is available commercially, however, only one company manufactures the train. The cost is approximately $19,000. An earlier **Federal Register** notice (53 FR 11688) erroneously reported this cost to be $10,000.

The CSR Procedure. The CSR sizing device can be either a cyclone or a cascade impactor. In this procedure, a constant sampling rate required for a 10 μm cut size is maintained throughout the sample traverse. The anisokinetic error is kept within acceptable limits by specifying a permissible range of velocity values for each sampling probe nozzle. The nozzle selected is the one whose maximum and minimum velocity values bracket all of the actual sampling point velocities. Often only one nozzle is required to complete a sampling run, but if the sampling point velocities vary beyond the specified range of any single nozzle, the use of more than one nozzle and sampling train per traverse will be necessary. A larger number (11) of nozzles are recommended to increase the likelihood that the tester can complete the sample traverse with only one nozzle and sampling train.

To add practicality to the procedure, the criteria for accepting the results in terms of isokinetic variation are more liberal than for the EGR procedure. Rather than the ±10 percent allowed for the EGR procedure, an isokinetic variation of ±20 percent with all of the sampling points within the nozzle velocity limits or ±10 percent with no more than one sampling point outside the nozzle velocity is used. Because the particles of interest are less affected by inertial effects than larger particles, the total PM catch will not be as accurate as the EGR procedure. To account for the effects of sampling anisokinetically, the sampling time at each point is adjusted proportionally to the velocity at that point to provide a velocity weighted sample.

The CSR procedure uses a standard Method 5 sampling train, two glass fiber filters, and an inertial sizing device, either a cyclone or a cascade impactor. The impactors will have to be extensively calibrated for this procedure. The approximate cost of a calibrated impactor, pre-collector, and 11 nozzles is $8,000. The approximate cost of a PM_{10} cyclone and 11 nozzles is $3,000.

Both the EGR and the CSR procedures have two glass fiber filters. One filter is located out-of-stack directly behind the probe and maintained at a constant temperature of 120 ± 14 °C (248 ± 25 °F). The temperature requirement of the out-of-stack filter is consistent with the temperature requirement of the Method 5 filter.

Another filter is an in-stack filter, located directly behind the sizing device. The PM_{10} concentration at many sources can be very low, and the recovery of small amounts of PM_{10} over a large surface area, such as the interior surfaces of a long probe, is difficult. Therefore, this filter collects PM_{10} immediately behind the sizing device at stack temperatures, and usually catches the majority of the PM_{10}. In both methods, PM_{10} is the sum of the PM recovered on both filters and on all of the surfaces from the sizing device to the front half of the out-of-stack filter.

Comments and Responses to ANPR

The comment period extended from April 8, 1988, to May 9, 1988. Seventeen comment letters were submitted. The American Mining Congress, BP America, and the Utilities Air Regulatory Group also requested an additional 30 days in which to comment. These extensions were granted.

Commenters included three oil companies, four trade associations, three local control agencies, three cement companies, one aluminum company, one car manufacturer, and two public utilities. The major comments and responses are summarized below.

PM_{10} Measurement

Three commenters preferred the EGR method, two commenters preferred the CSR method, and three commenters said that either method would be more accurate than using an assumed PM_{10} ratio and a total PM measurement. As a result of the comments, EPA is proposing both methods.

Two commenters criticized EPA for proposing the PM_{10} emission test methods after the deadline for the PM_{10} based SIP, and questioned the legality of EPA disapproving a previously approved SIP because the SIP specifies another method to measure PM_{10}. Also, these two commenters are concerned that EPA would use one of these new methods to determine compliance for a PM_{10} SIP emission limit that was based on a "nonreference" method.

When EPA promulgated the PM_{10} NAAQS in July 1987, a method for measuring PM_{10} emissions was included in the PM_{10} SIP Development Guideline. This method was considered an interim method to be used until the ERG and the CSR methods could be developed and promulgated. It is very similar to the CSR method being proposed today except that the train described in the Guideline had only one filter.

To date, no PM_{10} SIP has received final approval by EPA. It is thus possible for a State to include a PM_{10} test method in its PM_{10} SIP as that SIP is being developed. The EPA expects all States to either make provision in their SIP's for an in-stack test method based on the methods proposed herein, or for an alternate method acceptable to the Administrator, or to commit to including a PM_{10} test method in their SIP based on the methods EPA finally promulgates.

One commenter did not like the out-of-stack filter for two reasons. First, both methods have been developed and field tested with only the in-stack filter. The commenter felt that the addition of the out-of-stack filter changes the method and new field tests should be done before these methods are proposed. Second, the addition of the out-of-stack filter means that the sample probe must be glass-lined. The commenter felt that the torque of the heavy sampling apparatus (cyclone, nozzle, filter holder, and pilot) would break a conventional Method 5 glass liner.

The out-of-stack filter was added to make the measurements similar to Method 5. Since the addition of the out-of-stack filter makes either of the PM_{10} methods not significantly different from other PM methods, a new round of field tests is not justified.

The EPA agrees that the sampling apparatus of the EGR sampling train is heavier than the sampling apparatus of the Method 5 sampling train and that the extra weight would probably break a glass liner if the probe was constructed like the Method 5 probe. If these methods are promulgated with the out-of-stack filter, the sampling probe of both methods will have to be redesigned to reduce the torque of the sampling apparatus on the glass liner. If stack temperature permits, a Teflon liner may be used.

Three commenters cited a report by Kilkelly Environmental Associates (KEA) that states that ambient and source PM size separators have different sample collection characteristics and that these differences can result in the over prediction of source PM_{10} emissions by an average of 38 percent. The KEA report concludes that the PM_{10} source test methods may overestimate a source's contributions to ambient PM_{10} concentrations significantly.

The conclusions and estimates by KEA were based on a misinterpretation of data. The data used in the KEA report were obtained from Southern Research Institute (SoRI) and are the same data EPA used to develop AP-42 emission factors. The KEA report confused physical or Stokes diameter with aerodynamic diameter when calculating source PM_{10} emission data. In effect, KEA calculated values for PM_{16} rather than for PM_{10}. The EMB contacted SoRI and obtained the correct values. These values indicate that the collection effectiveness for the source PM_{10} sampler and the collection effectiveness for the ambient sampler are essentially

the same and that KEA's conclusions are not correct.

One commenter stated that EPA should conduct interlaboratory collaborative testing before promulgation. The EPA feels that collaborative tests are desirable, but not essential. The EPA has promulgated numerous methods without doing this type of testing and has no plans for collaborative testing for either PM_{10} method before promulgation.

Condensible Measurement

Regarding the measurement of condensible PM, four commenters preferred the impinger catch method, four preferred special procedures, three preferred the dilution and filter method, and two felt that none of the methods described in the ANPR were acceptable.

Several commenters felt that condensible PM should not be measured when determining compliance with an emission limit that is based on a test method that does not measure condensible PM. The EPA agrees with these commenters. The test method for determining compliance with an emission standard should consider the means used to establish the emission standard. The EPA discussed the problem of whether or not to include condensibles in the PM_{10} SIP Development Guideline. As discussed in that document, EPA recognizes that many sources with good particulate controls may emit significant amounts of condensible particulate matter. All methods discussed herein do, in fact, collect varying amounts of condensible particulate matter depending primarily on the temperature of the filter or other collecting media. Thus, the greatest amount of condensibles would be collected in the impingers in the train as they are immersed in an ice bath that cools the gas stream to 20 °C. The next greatest amount would be collected on the out-of-stack filter as it is maintained at 120 °C. The least amount would be collected on the in-stack filters, assuming the gas temperature in the stack to be above 120 °C. By allowing the States to adopt alternate methods to those proposed herein, EPA is allowing them to make provision for test methods applicable to sources that have large amounts of condensibles in their effluents. Such sources might best be tested with a train in which there are no filters, all materials being collected in the impingers.

Another commenter stated that condensible PM are uncontrollable because they exist as vapor in the stack. The EPA agrees that a material in the vapor state cannot be controlled by dry particulate control devices. However, condensible emissions can be reduced by other means, such as wet scrubbers, incinerators, or process modifications.

Other commenters believed that the EPA should first define condensible PM, then develop a method to measure them. In addition, the test method should simulate the gradual cooling in the atmosphere.

The EPA has defined condensible particulate in section 5.5 of the PM_{10} SIP Development Guideline. Condensible particulate matter can be broadly defined as material that is not particulate matter at stack conditions but which condenses upon cooling and dilution in the ambient air to form particulate matter immediately after discharge from the stack. Condensible particulate matter is of potential importance because it usually is quite fine and thus falls primarily within the PM_{10} fraction.

It is unlikely that a method can be developed that will measure exactly that portion of condensible emissions that contribute to ambient PM concentrations. The only prudent course is to select a method that has good precision and either reasonably measures condensible emissions or measures an acceptable surrogate. Therefore, the EPA is currently examining two approaches to measuring condensible emissions. The impinger catch procedure is a gravimetric determination of a modified Method 5 "back-half". The dilution and filter procedure is a gravimetric determination of a filter catch after the stack gas has been diluted and cooled by conditioned ambient air. In both of these procedures, the test method will define condensible PM. Since data available to the EPA indicate that condensible stack gases condense outside the stack as PM_{10}, the Agency is planning to eventually propose methods for condensible emissions. Regardless of the condensible issue, States are required to include Method 201, 201A, or an acceptable alternative in their SIP.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed test method in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket for this regulatory action is A–88–08. The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) (Section 307(d)(7)(A)).

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking is not major because it will not have an annual effect on the economy of $100 million of more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have an economic impact on small entities because no additional costs will be incurred.

This rule does not contain an information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Date: May 25, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

The EPA proposes to amend Title 40, Chapter I, Part 51 of the Code of Federal Regulations as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: Section 110 of the Clean Air Act as Amended. 42 U.S.C. 7410.

2. Subpart K. Section 51.212 is amended by adding paragraph (c) to read as follows:

§ 51.212 Testing inspection, enforcement, and complaints.

* * * * *

(c) Enforceable test methods for each pollutant regulated under the plan. As an enforceable method, States may use:

(1) Any of the appropriate methods in Appendix M, Example Test Methods for State Implementation Plans, or

(2) An alternative method following review and approval of that method by the Administrator, or

(3) Any appropriate method in Appendix A to 40 CFR 60.

3. Appendix M, which was reserved, is now titled "Example Test Methods for State Implementation Plans", and two methods are added as follows: Method 201—Determination of PM_{10} Emissions (Exhaust Gas Recycle Procedure) and Method 201A—Determination of PM_{10} Emissions (Constant Sampling Rate Procedure).

Appendix M—Example Test Methods for State Implementation Plans

The example regulations presented herein reflect generally recognized ways of measuring air pollutants emanating from an emission source. They are provided as example methods a State may use in its plan to meet the requirements of Subpart K—Source Surveillance.

The State may also choose to adopt other methods to meet the requirements of Subpart K, subject to the normal plan review process.

The State may also meet the requirements of Subpart K by adopting, again subject to the normal plan review process, any of the relevant methods in Appendix A to 40 CFR Part 60.

Method 201—Determination of PM_{10} Emissions (Exhaust Gas Recycle Procedure)

1. Applicability and Principle

1.1 Applicability. This method applies to the measurement of particulate matter (PM) emissions equal to or less than an aerodynamic diameter of nominally 10 μm (PM_{10}) from stationary sources. This method does not measure condensible emissions; it measures only PM_{10} as it occurs in the stack and at 120 °C (248 °F).

1.2 Principle. A gas sample is isokinetically extracted from the source. An in-stack cyclone is used to separate PM greater than PM_{10}, and glass fiber filters are used to collect the PM_{10}. To maintain isokinetic flow rate conditions at the tip of the probe nozzle and a constant flow rate through the cyclone, a clean, dried portion of the sample gas at stack temperature is recycled into the nozzle. The particulate mass is determined gravimetrically after removal of uncombined water.

2. Apparatus

Note: Method 5 as cited in this method refers to the method in 40 CFR Part 60, Appendix A.

2.1 Sampling Train. A schematic of the exhaust gas recycle (EGR) train is shown in Figure 1.

2.1.1 Nozzle with Recycle Attachment. Stainless steel (316 or equivalent) with a sharp tapered leading edge, and recycle attachment welded directly on the side of the nozzle (see schematic in Figure 2). The nozzle shall meet the design specifications in the EGR Operators Manual, entitled *Applications Guide for Source PM_{10} Exhaust Gas Recycle Sampling System*, EPA 600/3–88–058.

2.1.1.1 The recycle attachment shall have a thermocouple as shown in Figure 3 to measure the temperature of the recycle gas. The recycle attachment shall be made of stainless steel and shall be connected to the probe and nozzle with stainless steel fittings. Two nozzle sizes, e.g., 0.125 and 0.156 in., should be available to allow isokinetic sampling to be conducted over a range of flow rates. Each nozzle shall be calibrated as described in Method 5, section 5.1.

2.1.2 PM_{10} Sizer. Cyclone, meeting the specifications in section 5.7.

2.1.3 Filter Holder. Same as in Method 5, section 2.1.5 (or equivalent) for the out-of-stack filter and 63-mm, stainless steel for the in-stack filter. An Anderson filter, part number SE274, has been found to be acceptable for the in-stack filter.

Note. Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

2.1.4 Pitot Tube. Same as in Method 5, section 2.1.3. Attach the pitot to the pitot lines with stainless steel fittings and to the cyclone in a configuration similar to that shown in Figure 3. The pitot lines shall be made of heat resistant material and attached to the probe with stainless steel fittings.

2.1.5 EGR Probe. Stainless steel, 15.9-mm (⅝-in.) ID tubing with a probe liner, stainless steel 9.53-mm (⅜-in.) ID stainless steel recycle tubing, two 6.35-mm (¼-in.) ID stainless steel tubing for the pitot tube extensions, three thermocouple leads, and one power lead, all contained by stainless steel tubing with a diameter of approximately 51 mm (2.0 in.). Design considerations should include minimum weight construction materials sufficient for probe structural strength. The sample and recycle tubes shall be wrapped with a heating tape to heat the sample and recycle gases to stack temperature. The probe liner shall be like that in Method 5, section 2.1.2.

2.1.6 Condenser. Same as in Method 5, section 2.1.7.

2.1.7 Umbilical Connector. Flexible tubing with thermocouple and power leads of sufficient length to connect probe to meter and flow control console.

2.1.8 Vacuum Pump. Leak-tight, oil-less, noncontaminating, with an absolute filter, "HEPA" type, at the pump exit. A Gast Model 0522–V103 G18DX pump has been found to be satisfactory.

2.1.9 Meter and Flow Control Console. System consisting of a dry gas meter and calibrated orifice for measuring sample flow rate and capable of measuring volume to ±2 percent, calibrated laminar flow elements (LFE's) or equivalent for measuring total and sample flow rates, probe heater control, and manometers and magnehelic gauges (as shown in Figures 4 and 5), or equivalent. Temperatures needed for calculations include stack, recycle, probe, dry gas meter, filter, and total flow. Flow measurements include velocity head (Δp), orifice differential pressure (ΔH), total flow, recycle flow, and total back-pressure through the system.

2.1.10 Barometer. Same as in Method 5, section 2.1.9.

2.1.11 Rubber Tubing. 6.35-mm (¼-in.) ID flexible rubber tubing.

2.2 Sample Recovery.

2.2.1 Nozzle, Cyclone, and Filter Holder Brushes. Nylon bristle brushes properly sized and shaped for cleaning the nozzle, cyclone, filter holder, and probe or probe liner, with stainless steel wire shafts and handles.

2.2.2 Wash Bottles, Glass Sample Storage Containers, Petri Dishes, Graduated Cylinder and Balance, Plastic Storage Containers, and Funnels. Same as Method 5, sections 2.2.2 through 2.2.6, and 2.2.8, respectively.

2.3 Analysis. Same as in Method 5, section 2.3.

3. Reagents

The reagents used in sampling, sample recovery, and analysis are the same as that specified in Method 5, sections 3.1, 3.2, and 3.3, repectively.

4. Procedure

4.1 Sampling. The complexity of this method is such that, in order to obtain reliable results, testers should be trained and experienced with the test procedures.

4.1.1 Pretest Preparation. Same as in Method 5, section 4.1.1.

4.1.2 Preliminary Determinations. Same as in Method 5, section 4.1.2, except use the directions on nozzle size selection in this section. Use of the EGR method may require a minimum sampling port diameter of 6 inches. Also, the required maximum number of sample traverse points at any location shall be 12.

4.1.2.1 The cyclone and filter holder must be in-stack or at stack temperature during sampling. The blockage effect of the EGR sampling assembly will be minimal if the cross-sectional area of the sampling assembly is 3 percent or less of the cross-sectional area of the duct and a pitot coefficient of 0.84 may be assigned to the pitot. If the cross-sectional area of the assembly is greater than 3 percent of the cross-sectional area of the duct, then use the procedures in Method 1A to determine the sampling site, flow measurements, and the number of traverse points.

4.1.2.2 Construct a setup sheet of pressure drops for various Δp's and temperatures. A computer is useful for these calculations. An example of the output of the EGR setup program is shown in Figure 6, and directions on its use are in section 4.1.5. Computer programs, written in IBM BASIC computer language, to do these types of setup and reduction calculations for the EGR procedure are available through the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161.

4.1.2.3 The EGR set up program allows the tester to select the nozzle size based on anticipated average stack conditions and prints a setup sheet for field use. The amount of recycle through the nozzle should be between 10 and 80 percent. Inputs for the EGR setup program are stack temperature (minimum, maximum, and average), stack velocity (minimum, Maximum, and average), atmospheric pressure, stack differential pressure, meter box temperature, stack moisture, percent O_2 and percent CO_2 in the stack gas, pitot coefficient (C_p), orifice $\Delta H@$, flow rate measurement calibration values [slope (m) and y-intercept (b) of the calibration curve], and the number of nozzles available and their diameters.

4.1.2.4 A less rigorous calculation for the setup sheet can be done manually using the equations on the example worksheets in Figures 7, 8, and 9, or by a Hewlett-Packard HP41 calculator using the program provided in Appendix D of the EGR operators manual, entitled *Applications Guide for Source PM_{10} Exhaust Gas Recycle Sampling System*. This calculation uses an approximation of the total flow rate and agrees within 1 percent of the exact solution for pressure drops at stack temperatures from 38 to 260 °C (100 to 500 °F) and stack mositure up to 50 percent. Also, the example worksheets use a constant stack temperature in the calculations, ignoring the complicated temperature dependence from all three pressure drop equations. Errors for this at stack temperatures ±28 °C (±50 °F) of the temperature used in the setup calculations are within 5 percent for flow rate and within 5 percent for cyclone cut size.

4.1.2.4.1 The pressure upstream of the LFE's is assumed to be constant at 0.6 in. Hg in the EGR setup calculations.

4.1.2.4.2 The setup sheet constructed using this procedure shall be similar to Figure 6. Inputs needed for the calculation are the same as for the EGR setup computer program except that stack velocities are not needed.

4.1.3 Preparation of Collection Train. Same as in Method 5, section 4.1.3, except use the following directions to set up the train.

4.1.3.1 Assemble the EGR sampling device, and attach it to probe as shown in Figure 3. If stack temperatures exceed 260 °C (500 °F), then assemble the EGR cyclone without the O-ring and reduce the vacuum requirement to 130 mm (5.0 in.) in the leak-check procedure in section 4.1.4.3.2.

4.1.3.2. Connect the probe directly to the filter holder and condenser as in Method 5. Connect the condenser and probe to the meter and flow control console with the umbilical connector. Plug in the pump and attach pump lines to the meter and flow control console.

4.1.4 Leak-Check Procedure. The leak-check for the EGR Method consists of two parts: the sample-side and the recycle-side. The sample-side leak-check is required at the end of the run. The recycle-side leak-check tests the leak tight integrity of the recycle components and is required prior to the first test run and after each shipment.

4.1.4.1 Pretest Leak-Check. A pretest leak-check of the sample-side is recommended but not required. Use the procedure in section 4.1.4.3 to conduct a pretest leak-check.

4.1.4.2 Leak-Checks During Sample Run. Same as in Method 5, section 4.1.4.1.

4.1.4.3 Post-Test Leak-Check. A leak-check is required at the conclusion of each sampling run. Use the following procedure to conduct a post-test leak-check.

4.1.4.3.1 The sample-side leak-check is performed as follows: Seal the nozzle with a leak-tight stopper. Maintain the out-of-stack filter at stack temperature. Before starting pump, close the coarse total valve and both recycle valves, and open completely the sample back pressure valve and the fine total valve. After turning the pump on, partially open the coarse total valve slowly to prevent a surge in the manometer. Adjust the vacuum to at least 381 mm Hg (15.0 in. Hg) with the fine total valve. If the desired vacuum is exceeded, either leak-check at this higher vacuum or end the leak-check as shown below and start over. CAUTION: Do not decrease the vacuum with any of the valves. This may cause a rupture of the filter.
Note: A lower vacuum may be used, provided that it is not exceeded during the test.

4.1.4.3.2 Leak rates in excess of 0.00057 m^3/min (0.020 ft^3/min) are unacceptable. If the leak rate is too high, void the sampling run.

4.1.4.3.3 To complete the leak-check, slowly remove the stopper from the nozzle until vacuum is near zero, then immediately turn off the pump. The procedure sequence prevents a pressure surge in the manometer fluid and rupture of the filter.

4.1.4.3.4 The recycle-side leak-check is performed as follows: Close the coarse and fine total valves and sample back pressure valve. Open the coarse and fine recycle valves. Disconnect the recycle plug from the umbilical connector. Connect a second vacuum pump with a vacuum gauge and dry gas meter into the recycle inlet on the meter and flow control console. Start the additional pump, adjust the vacuum to at least 380 mm Hg (15 in. Hg), and read the leak rate on the extra dry gas meter. If the desired vacuum is exceeded, either leak-check at this higher vacuum, or end the leak-check and start over. Minimum acceptable leak rates are the same as for the sample-side. If the leak rate is too high, void the sampling run.

4.1.5 EGR Train Operation. Same as in Method 5, section 4.1.5, except omit references to nomographs and recommendations about changing the entire filter assembly rather than just the filter.

4.1.5.1 Record the data required on a data sheet such as the one shown in Figure 10. Make periodic checks of the manometer level and zero to ensure correct ΔH and Δp values. An acceptable procedure for checking the zero is to equalize the pressure at both ends of the manometer by pulling off the tubing, allowing the fluid to equilibrate and, if necessary, to re-zero. Maintain the probe temperature to within 11 °C (20° F) of stack temperature.

4.1.5.2 The procedure for using the example EGR setup sheet is as follows: Obtain a stack velocity reading from the pitot manometer (Δp), and find this value on the ordinate axis of the setup sheet. Find the stack temperature on the abscissa. Where these two values intersect are the differential pressures necessary to achieve isokineticity and 10 μm cut size (interpolation may be necessary).

4.1.5.3 The top three numbers are differential pressures (in. H_2O), and the bottom number is the percent recycle at these flow settings. Adjust the total flow rate valves, coarse and fine, to the sample value (ΔH) on the setup sheet, and the recycle flow rate valves, coarse and fine, to the recycle flow value on the setup sheet.

4.1.5.4 For startup of the EGR sample train, the following procedure is recommended. Preheat the cyclone in the stack for 30 minutes. Close both the sample and recycle coarse valves. Open the fine total, fine recycle, and sample back pressure valves halfway. Ensure that the nozzle is properly aligned with the sample stream. After noting the Δp and stack temperature, select the appropriate ΔH and recycle values from the EGR setup sheet. Start the pump and timing device simultaneously. Immediately open both the coarse total and the coarse recycle valves slowly to obtain the approximate desired values. Adjust both the fine total and the fine recycle valves to achieve more precisely the desire values. In the EGR flow system, adjustment of either valve will result in a change in both total and recycle flow rates, and a slight iteration between the total and recycle valves may be necessary. Because the sample back pressure valve controls the total flow rate through the system, it may be necessary to adjust this valve in order to obtain the correct flow rate.

Note: Isokinetic sampling and proper operation of the cyclone are not achieved unless the correct ΔH and recycle flow rates are maintained.

4.1.5.5 During the test run, monitor the probe and filter temperatures periodically, and make adjustments as necessary to maintain the desired temperatures. If the sampling loading is high, the filter may begin to blind or the cyclone may clog. The filter or the cyclone may be replaced during the sample run. Before changing the filter or cyclone, conduct a leak-check (section 4.1.4.2). The total particulate mass shall be the sum of all cyclone and filter catches during the run. Monitor stack temperature and Δp periodically, and make the necessary adjustments in sampling and recycle flow rates to maintain isokinetic sampling and the proper flow rate through the cyclone. At the end of the run, turn off the pump, close the coarse total valve, and record the final dry gas meter reading. Remove the probe from the stack, and conduct a post test leak-check as outlined in section 4.1.4.3.

4.1.6 Calculation of Percent Isokinetic Rate and Aerodynamic Cut Size. Calculate percent isokinetic rate and the aerodynamic cut size (D_{50}) (see Calculations, section 6) to determine whether the test was valid or another test run should be made. If there was difficulty in maintaining isokinetic rates or a D_{50} of 10 μm because of source conditions, the Administrator may be consulted for possible variance.

4.2 Sample Recovery. Allow the probe to cool. When the probe can be safely handled, wipe off all external PM adhering to the outside of the nozzle, cyclone, and nozzle attachment, and place a cap over the nozzle to prevent losing or gaining PM. Do not cap the nozzle tip tightly while the sampling train is cooling, as this action would create a vacuum in the filter holder.

4.2.1 Disconnect the probe from the umbilical connector, and take the probe to the cleanup site. Sample recovery should be conducted in a dry indoor area or, if outside, in an area protected from wind and free of dust. Cap the ends of the impingers, and carry them to the cleanup site. Inspect the components of the train prior to and during disassembly to note any abnormal conditions. Disconnect the pitot from the cyclone. Remove the cyclone from the probe. Recover the sample as follows:

4.2.1.1 *Container No. 1* (In-Stack Filter). The recovery shall be the same as that for Container No. 1 in Method 5, section 4.2.

4.2.1.2 *Container No. 2* (Out-of-Stack Filter). The recovery shall be the same as that for Container No. 1 in Method 5, section 4.2.

4.2.1.3 *Container No. 3* (Cyclone or Large PM Catch). The cyclone must be disassembled and the nozzle removed in order to recover the large PM catch. Quantitatively recover the PM from the interior surfaces of the nozzle and the cyclone, excluding the "turn around" cup and the interior surfaces of the exit tube. The recovery shall be the same as that for Container No. 2 in Method 5, section 4.2.

4.2.1.4 *Container No. 4* (PM_{10}). Quantitatively recover the PM from all of the surfaces from cyclone exit to the front half of the in-stack filter holder, including the "turn around" cup and the interior of the exit tube. The recovery shall be the same as that for Container No. 2 in Method 5, section 4.2.

4.2.1.5 *Container No. 5* (PM_{10}). Quantitatively recover the PM from all interior surfaces between the in-stack filter and the out-of-stack filter. The recovery shall be the same as that for Container No. 2 in Method 5, section 4.2.

4.2.1.6 *Container No. 6* (Silica Gel). Same as that for Container No. 3 in Method 5, section 4.2.

4.2.1.7 *Impinger Water*. Same as in Method 5, section 4.2, under "Impinger Water."

4.3 Analysis. Same as in Method 5, section 4.3, except handle EGR Containers No. 1 and No. 2 like Container No. 1, EGR Containers No. 3, No. 4, and No. 5 like Container No. 2, and EGR Container No. 6 like Container No. 3. Use Figure 11 to record the weights of PM collected.

4.4 Quality Control Procedures. Same as in Method 5, section 4.4.

5. Calibration

Maintain an accurate laboratory log of all calibrations.

5.1 Probe Nozzle. Same as in Method 5, section 5.1.

5.2 Pitot Tube. Same as in Method 5, section 5.2.

5.3 Meter and Flow Control Console. Same as in Method 5, section 5.3, for the dry gas meter.

5.3.1 Calibrate the recycle, total, and inlet total LFE gauges with a manometer. Read and record flow rates at 10, 50, and 90 percent of full scale on the total and recycle pressure gauges. Read and record flow rates at 10, 20, and 30 percent of full scale on the inlet total LFE pressure gauge. Record the total and recycle readings to the nearest 0.3 mm (0.01 in.). Record the inlet total LFE readings to the nearest 3 mm (0.1 in.). Record the manometer readings to the nearest 0.3 mm (0.01 in.). Make three separate measurements at each setting and calculate the average. The maximum difference between the average pressure reading and the average manometer reading shall not exceed 1 mm (0.05 in.). If the differences exceed the limit specified, adjust or replace the pressure gauge. After each field use, check the calibration of the pressure gauges.

5.3.2 Total LFE. Same as in Method 5, section 5.3.

5.3.3 Recycle LFE. Same as in Method 5, section 5.3, except completely close both the coarse and fine recycle valves.

5.4 Probe Heater Calibration. Connect the probe through the umbilical connector to the meter and flow control console. Insert a thermocouple into the probe sample line approximately half the length of the probe sample line. Calibrate the probe heater at 66 °C (150 °F), 121 °C (250 °F), and 177 °C (350 °F). Turn on the probe power, and set the probe heater to the specified temperature. Allow the heater to equilibrate, and record the thermocouple temperature and the meter and flow control console temperature to the nearest 0.5 °C (1 °F). The two temperatures should agree within 5.5 °C (10 °F). If this agreement is not met, adjust or replace the probe heater controller.

5.5 Temperature Gauges. Connect all thermocouples, and let the meter and flow control console equilibrate to ambient temperature. All thermocouples shall agree to within 1.1 °C (2.0 °F) with a standard mercury-in-glass thermometer. Replace defective thermocouples.

5.6 Barometer. Calibrate against a standard mercury-in-glass barometer.

5.7 Probe Cyclone and Nozzle Combinations. The probe cyclone and nozzle combinations need not be calibrated if both the cyclone and the nozzle meet the design specifications in Figures 12 and 13. If the nozzles do not meet the design specifications, then test the cyclone and nozzle combination for conformity with the performance specifications (PS's) in Table 1. The purpose of the PS tests are to determine if the cyclone's sharpness of cut meets minimum performance criteria. If the cyclone does not meet design specifications, then, in addition to the cyclone and nozzle combination conforming to the PS's, calibrate the cyclone and determine the relationship between flow rate, gas viscosity, and gas density. Use the procedures in section 5.7.4 to connect PS tests and the procedures in section 5.7.6 to calibrate the cyclone.

5.7.1 Conduct the PS tests in a wind tunnel described in section 5.7.2 and using a particle generation system described in section 5.7.3. Use five particle sizes and three wind velocities as listed in Table 2. Perform a minimum of three replicate measurements of collection efficiency for each of the 15 conditions listed, for a minimum of 45 measurements.

5.7.2 Wind Tunnel. Perform calibration and PS tests in a wind tunnel (or equivalent test apparatus) capable of establishing and maintaining the required gas stream velocities within 10 percent.

5.7.3 Particle Generation System. The particle generation system shall be capable of producing solid monodispersed dye particles with the mass median aerodynamic diameters specified in Table 2. The particle size distribution verification should be performed on an integrated sample obtained during the sampling period of each test. An acceptable alternative is to verify the size distribution of samples obtained before and after each test, with both samples required to meet the diameter and monodispersity requirements for an acceptable test run.

5.7.4 Establish the size of the solid dye particles delivered to the test section of the wind tunnel using the operating parameters of the particle generation system, and verify the size during the tests by microscopic examination of samples of the particles collected on a membrane filter. The particle size, as established by the operating parameters of the generation system, shall be within the tolerance specified in Table 2. The precision of the particle size verification technique shall be at least ±0.5 μm, and the particle size determined by the verification technique shall not differ by more than 10 percent from that established by the operating parameters of the particle generation system.

5.7.5 Certify the monodispersity of the particles for each test either by microscopic inspection of collected particles on filters or by other suitable monitoring techniques such as an optical particle counter followed by a multichannel pulse height analyzer. If the proportion of multiplets and satellites in an aerosol exceeds 10 percent by mass, the particle generation system is unacceptable for purposes of this test. Multiplets are particles that are agglomerated, and satellites are particles that are smaller than the specified size range.

5.7.6 Schematic drawings of the wind tunnel and blower system and other information showing complete procedural details of the test atmosphere generation, verification, and delivery techniques shall be furnished with calibration data to the reviewing agency.

5.7.7 Flow Rate Measurements. Determine the cyclone air flow rates with a dry gas meter and a stopwatch, or a calibrated orifice system capable of measuring flow rates to within 2 percent.

5.7.8 Performance Specification Procedure. Establish the test particle generator operation and verify the particle size microscopically. If monodispersity is to be verified by measurements at the beginning and the end of the run rather than by an integrated sample, these measurements may be made at this time.

5.7.9 The cyclone cut size (D_{50}) is defined as the aerodynamic diameter of a particle having a 50 percent probability of penetration. Determine the required cyclone flow rate for a D_{50} of 10 μm. A suggested procedure is to vary the cyclone flow rate while keeping a constant particle size of 10 μm. Measure the PM collected in the cyclone (m_c), exit tube (m_t), and filter (m_f). Compute the cyclone efficiency (E_c) as follows:

$$E_c = \frac{m_c}{(m_c + m_t + m_f)} \times 100$$

5.7.10 Perform three replicates and calculate the average cyclone efficiency as follows:

$$E_{avg} = \frac{(E_1 + E_2 + E_3)}{3}$$

where E_1, E_2, and E_3 are replicate measurements of E_c.

5.7.11 Calculate the standard deviation (σ) for the replicate measurements of E_c as follows:

$$\sigma = \left[\frac{(E_1^2 + E_2^2 + E_3^2) - \frac{(E_1 + E_2 + E_3)^2}{3}}{2} \right]^{0.5}$$

If σ exceeds 0.10, the replicate runs shall be repeated.

5.7.12 Using the cyclone flow rate that produces D_{50} for 10 μm, measure the overall efficiency of the cyclone and nozzle, E_o, at the particle sizes and nominal gas velocities in Table 2 using the following procedure.

5.7.13 Set the air velocity in the wind tunnel to one of the nominal gas velocities from Table 2. Establish isokinetic sampling conditions and the correct flow rate through the sampler (cyclone and nozzle) using recycle capacity so that the D_{50} is 10 μm. Sample long enough to obtain ± 5 percent precision on the total collected mass as determined by the precision and the sensitivity of the measuring technique. Determine separately the nozzle catch (m_n), cyclone catch (m_c), cyclone exit tube catch (m_t), and collection filter catch (m_f).

5.7.14 Calculate the overall efficiency (E_o) as follows:

$$E_o = \frac{(m_n + m_c)}{(m_n + m_c + m_t + m_f)} \times 100$$

5.7.15 Do three replicates for each combination of gas velocities and particle sizes in Table 2. Calculate E_o for each particle size following the procedures described in this section for determining efficiency. Calculate the standard deviation (σ) for the replicate measurements. If σ exceeds 0.10, the replicate runs shall be repeated.

5.7.16 Criteria for Acceptance. For each of the three gas stream velocities, plot the average E_o as a function of particle size on Figure 14. Draw a smooth curve for each velocity through all particle sizes. E_o shall be within the banded region for all sizes, and the average E_c for a D_{50} of 10 μm shall be 50±0.5 percent.

5.7.17 Cyclone Calibration Procedure. The purpose of this section is to develop the relationship between flow rate, gas viscosity, gas density, and D_{50}. This procedure only needs to be done on those cyclones that do not meet the design specifications in Figure 12.

5.7.18 Determine the flow rates and D_{50}'s for three different particle sizes between 5 μm and 15 μm, one of which shall be 10 μm. All sizes must be determined within 0.5 μm. For each size, use a different temperature within 60° C (108° F) of the temperature at which the cyclone is to be used and conduct triplicate runs. A suggested procedure is to keep the particle size constant and vary the flow rate. Some of the values obtained in the PS tests in Section 5.7.4 may be used.

5.7.19 On log-log graph paper, plot the Reynolds number (Re) on the abscissa, and the square root of the Stokes 50 number [$(Stk_{50})^{0.5}$] on the ordinate for each temperature. Use the following equations:

$$Re = \frac{4 \rho Q_{cyc}}{d_{cyc} \pi \mu_{cyc}}$$

$$(Stk_{50})^{0.5} = \left[\frac{4 Q_{cyc} (D_{50})^2}{9 \pi \mu_{cyc} (d_{cyc})^3} \right]^{0.5}$$

where:

Q_{cyc} = Cyclone flow rate, cm³/sec.

ρ = Gas density, g/cm³.

d_{cyc} = Diameter of cyclone inlet, cm.

μ_{cyc} = Viscosity of gas through the cyclone, poise.

D_{50} = Cyclone cut size, cm.

Use a linear regression analysis to determine the slope (m), and the y-intercept (b). Use the following formula to determine Q, the cyclone flow rate required for a size cut of 10 μm.

$$Q = \frac{\pi \mu_{cyc}}{4} \left[(3000)(K_1)^b \right]^{-(0.5-m)} \left[\frac{T_s}{M_c P_s} \right]^{m/(m-0.5)} d^{(m-1.5)/(m-0.5)}$$

where:

Q = Cyclone flow rate for a size cut of 10 μm, cm³/sec.

T_s = Stack gas temperature, °K.

d = Diameter of nozzle, cm.

$K_1 = 4.077 \times 10^{-3}$

5.7.20 Refer to Section 5 of the EGR operators manual for directions in using this expression for Q in the setup calculations.

6. Calculations

6.1 The EGR data reduction calculations are performed by the EGR reduction computer program, written in IBM BASIC basic computer language, and is available

through NTIS. Examples of program inputs and outputs are shown in Figure 14.

6.1.1 Calculations can also be done manually, as specified in Method 5, Sections 6.3 through 6.7, and 6.9 through 6.12, with the addition of the following:

6.1.2 Nomenclature.

B_c = Moisture fraction of mixed cyclone gas, by volume, dimensionless.

C_1 = Viscosity constant, 51.12 micropoise for °K (51.05 micropoise for °R).

C_2 = Viscosity constant, 0.372 micropoise/°K (0.207 micropoise/°R).

C_3 = Viscosity constant, 1.05×10^{-4} micropoise/°K² (3.24×10^{-5} micropoise/°R²).

C_4 = Viscosity constant, 53.147 micropoise/fraction O_2.

C_5 = Viscosity constant, 74.143 micropoise/fraction H_2O.

D_{50} = Diameter of particles having a 50 percent probability of penetration, μm.

f_{o2} = Stack gas fraction O_2, by volume, dry basis.

K_1 = 0.3858 °K/mm Hg (17.64 °R/in. Hg).

M_c = Wet molecular weight of mixed gas through the PM_{10} cyclone, g/g-mole (lb/lb-mole).

M_d = Dry molecular weight of stack gas, g/g-mole (lb/lb-mole).

P_{bar} = Barometric pressure at sampling site, mm Hg (in. Hg).

P_{inl} = Gauge pressure at inlet to total LFE, mm H_2O (in. H_2O).

P_s = Absolute stack pressure, mm Hg (in. Hg).

Q_s = Total cyclone flow rate at wet cyclone conditions, m³/min (ft³/min).

$Q_{s(std)}$ = Total cyclone flow rate at standard conditions, dscm/min (dscf/min).

T_m = Average temperature of dry gas meter, °K (°R).

T_s = Average stack gas temperature, °K (°R).

$V_{w(std)}$ = Volume of water vapor in gas sample (standard conditions), scm (scf).

X_T = Total LFE linear calibration constant, m³/[(min)(mm H_2O)] {ft³/[(min)(in. H_2O)]}.

Y_T = Total LFE linear calibration constant, dscm/min (dscf/min).

ΔP_T = Pressure differential across total LFE, mm H_2O (in. H_2O).

θ = Total sampling time, min.

μ_{cyc} = Viscosity of mixed cyclone gas, micropoise.

μ_{LFE} = Viscosity of gas at laminar flow elements, micropoise.

μ_{std} = Viscosity of standard air, 180.1 micropoise.

6.2 PM_{10} Particulate Weight. Determine the weight of PM_{10} by summing the weights obtained from Containers No. 1, 2, 4, and 5, less the acetone blank.

6.3 Total Particulate Weight. Determine the particulate catch for greater than PM_{10} from the weight obtained from Container No. 3 less the acetone blank, and add it to the PM_{10} particulate weight.

6.4 Total Cyclone Flow Rate. The average total flow rate at standard conditions is determined from the average pressure drop across the total LFE and is calculated as follows:

$$Q_{s(std)} = K_1 \left[X_t \Delta P \quad \frac{\mu std}{\mu LFE} + Y_T \right] \frac{P_{bar} + P_{inl}/13.6}{T_m}$$

The PM_{10} flow rate, at actual cyclone conditions, is calculated as follows:

$$Q_s = \frac{T_s}{K_1 P_s} \left[Q_{s(std)} + \frac{V_{m(std)}}{\theta} \right]$$

6.5 Aerodynamic Cut Size. Use the following procedure to determine the aerodynamic cut size (D_{50}):

6.5.1 Determine the water fraction of the mixed gas through the cyclone by using the equation below.

$$B_c = \frac{V_{w(std)}}{Q_{s(std)}\,\theta + V_{w(std)}}$$

6.5.2 Calculate the cyclone gas viscosity as follows:

$$\mu_{cyc} = C_1 + C_2 T_s + C_3 T_s^2 + C_4 f_o - C_5 B_c$$

6.5.3 Calculate the molecular weight on a wet basis of the cyclone gas as follows:

$$M_c = M_d(1 - B_c) + 18.0(B_c)$$

6.5.4 If the cyclone meets the design specification in Figure 12, calculate the actual D_{50} of the cyclone for the run as follows:

$$D_{50} = \beta_1 \left[\frac{T_s}{M_c P_s} \right]^{0.2091} \left[\frac{\mu_{cyc}}{Q_s} \right]^{0.7091} \quad \text{where } \beta_1 = 0.1562.$$

6.4.5 If the cyclone does not meet the design specifications in Figure 12, then use the following equation to calculate D_{50}.

$$D_{50} = (3)(10)^b (7.376 \times 10^{-4})^m \left[\frac{M_c P_s}{T_s} \right]^m \left[\frac{4\,Q_s}{\pi\,\mu_{cyc}} \right]^{m-0.5} {}_d(1.5\text{-m}$$

where:

m = Slope of the calibration curve obtained in section 5.7.6.

b = y-intercept of the calibration curve obtained in section 5.7.6.

6.6 Acceptable Results. Acceptability of anisokinetic variation is the same as Method 5, section 6.12.

6.6.1 If 9.0 μm < D_{50} < 11 μm, the results are acceptable. If D_{50} is greater than 11 μm, the Administrator may accept the results. If D_{50} is less than 9.0 μm, reject the results and repeat the test, unless the total particulate catch is less than the PM_{10} standard. In this

case, the Administrator may accept the results.

7. Bibliography

1. Same as Bibliography in Method 5.

2. McCain, J.D., J.W. Ragland, and A.D. Williamson. Recommended Methodology for the Determination of Particle Size Distributions in Ducted Sources, Final Report. Prepared for the California Air Resources Board by Southern Research Institute. May 1986.

3. Farthing, W.E., S.S. Dawes, A.D. Williamson, J.D. McCain, R.S. Martin, and J.W. Ragland. Development of Sampling Methods for Stationary Source PM–10 Particulate Emissions. Southern Research Institute for the Environmental Protection Agency. 1986 (Unpublished).

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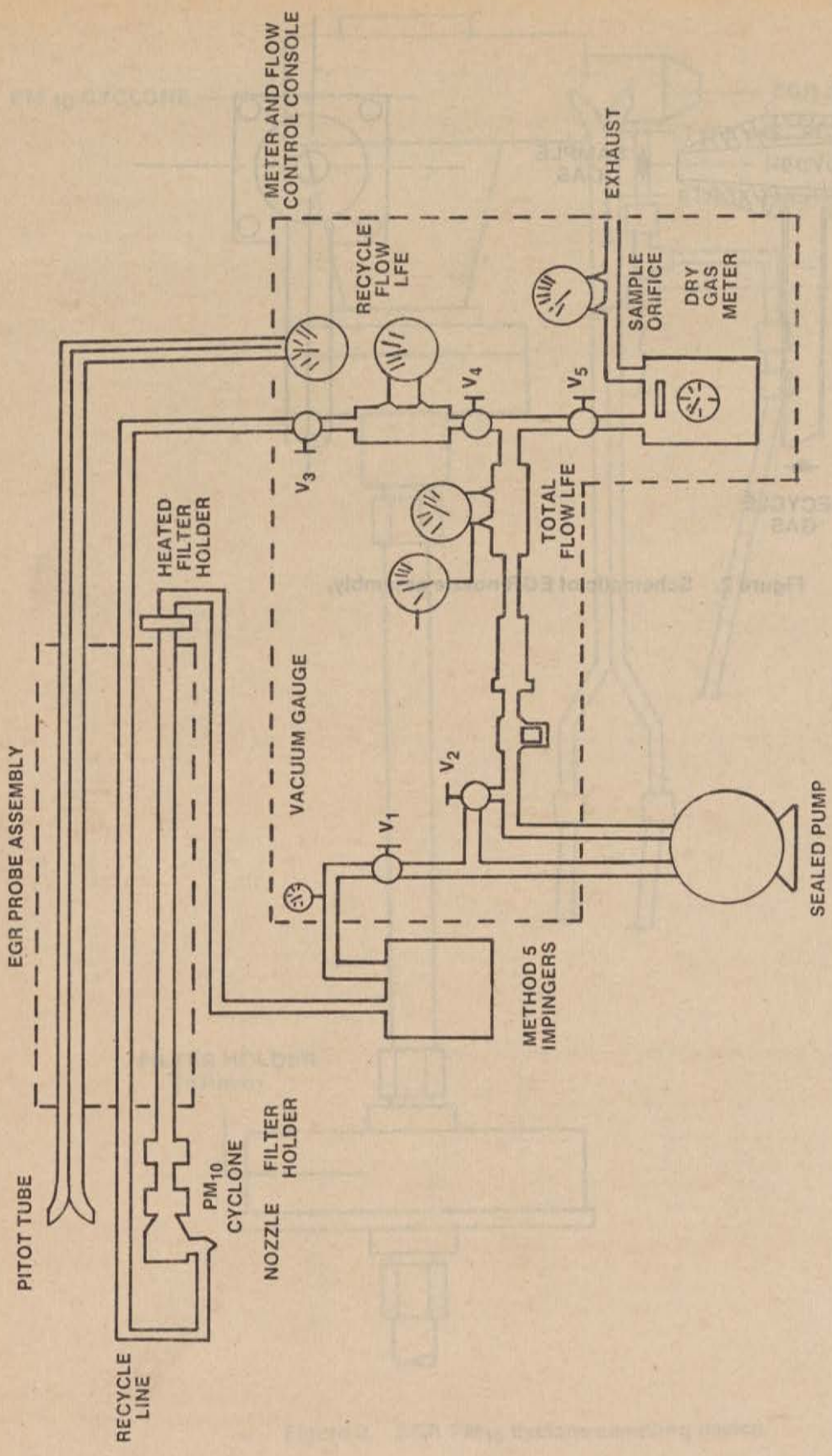

Figure 1. Schematic of the exhaust gas recycle train.

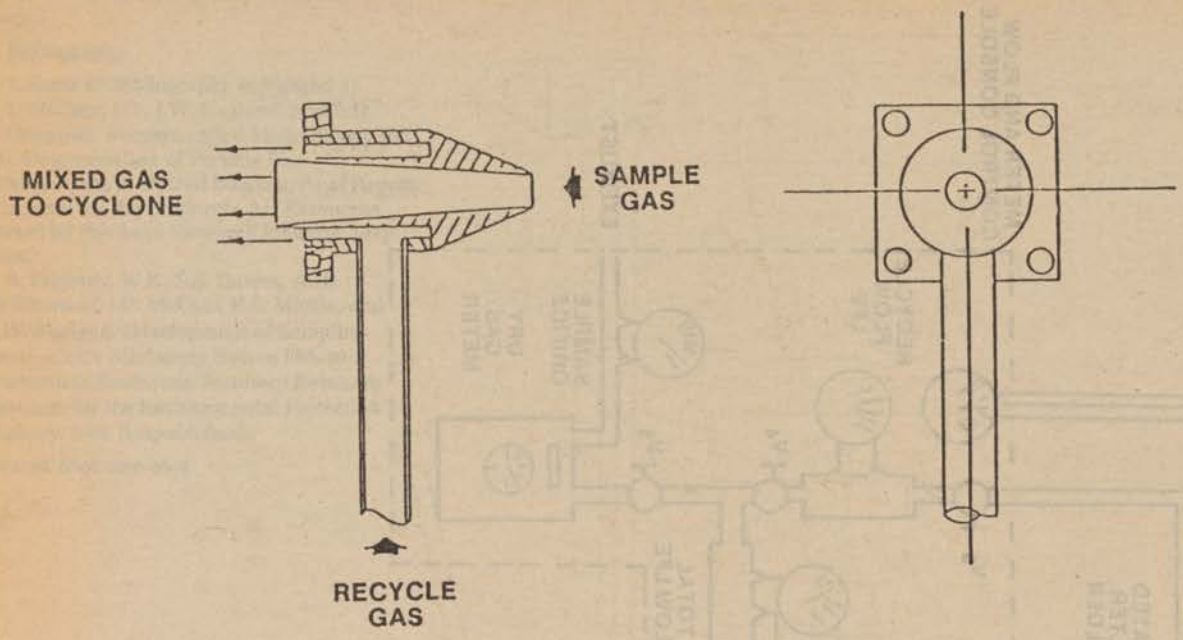

Figure 2. Schematic of EGR nozzle assembly.

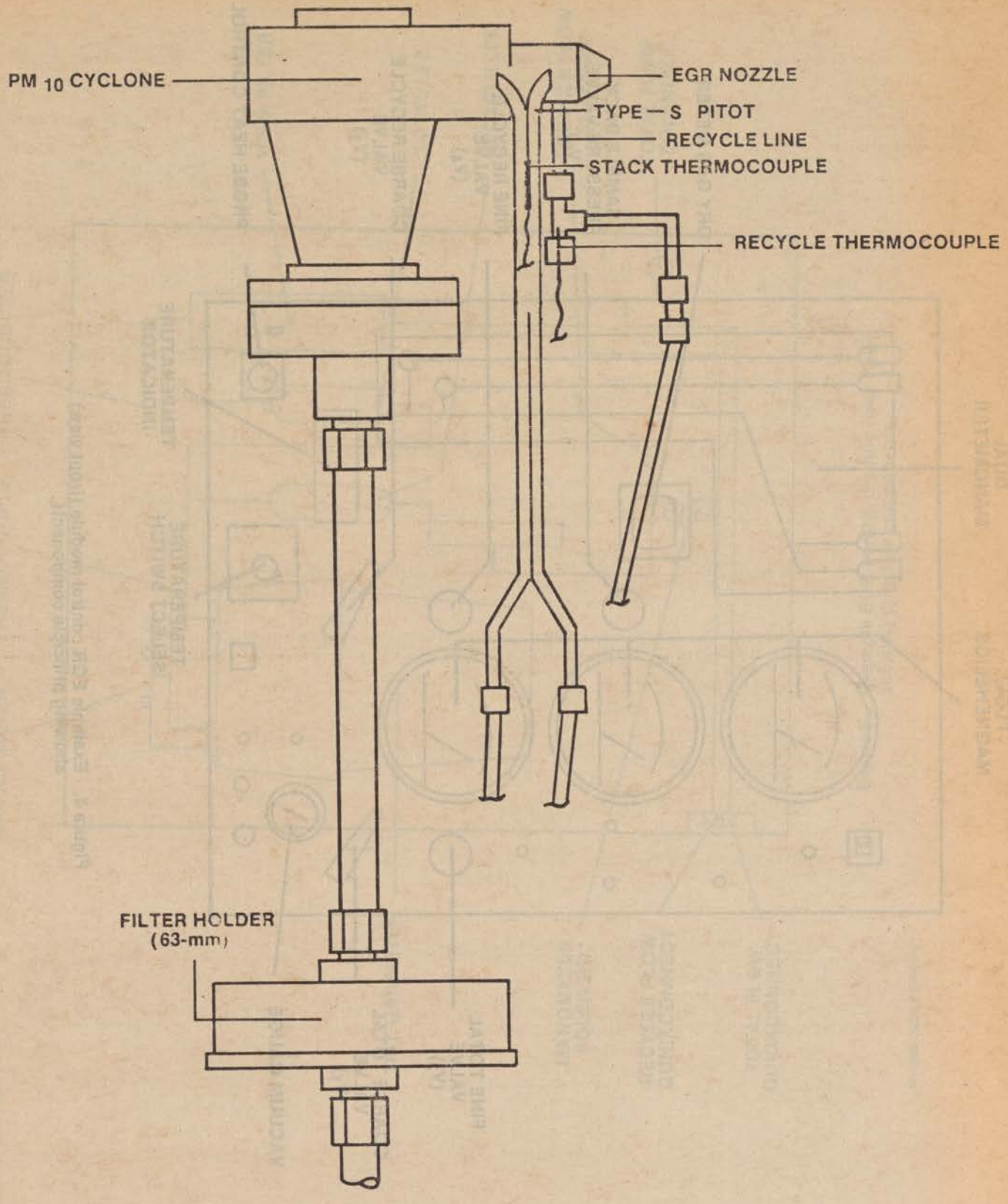

Figure 3. EGR PM_{10} cyclone sampling device.

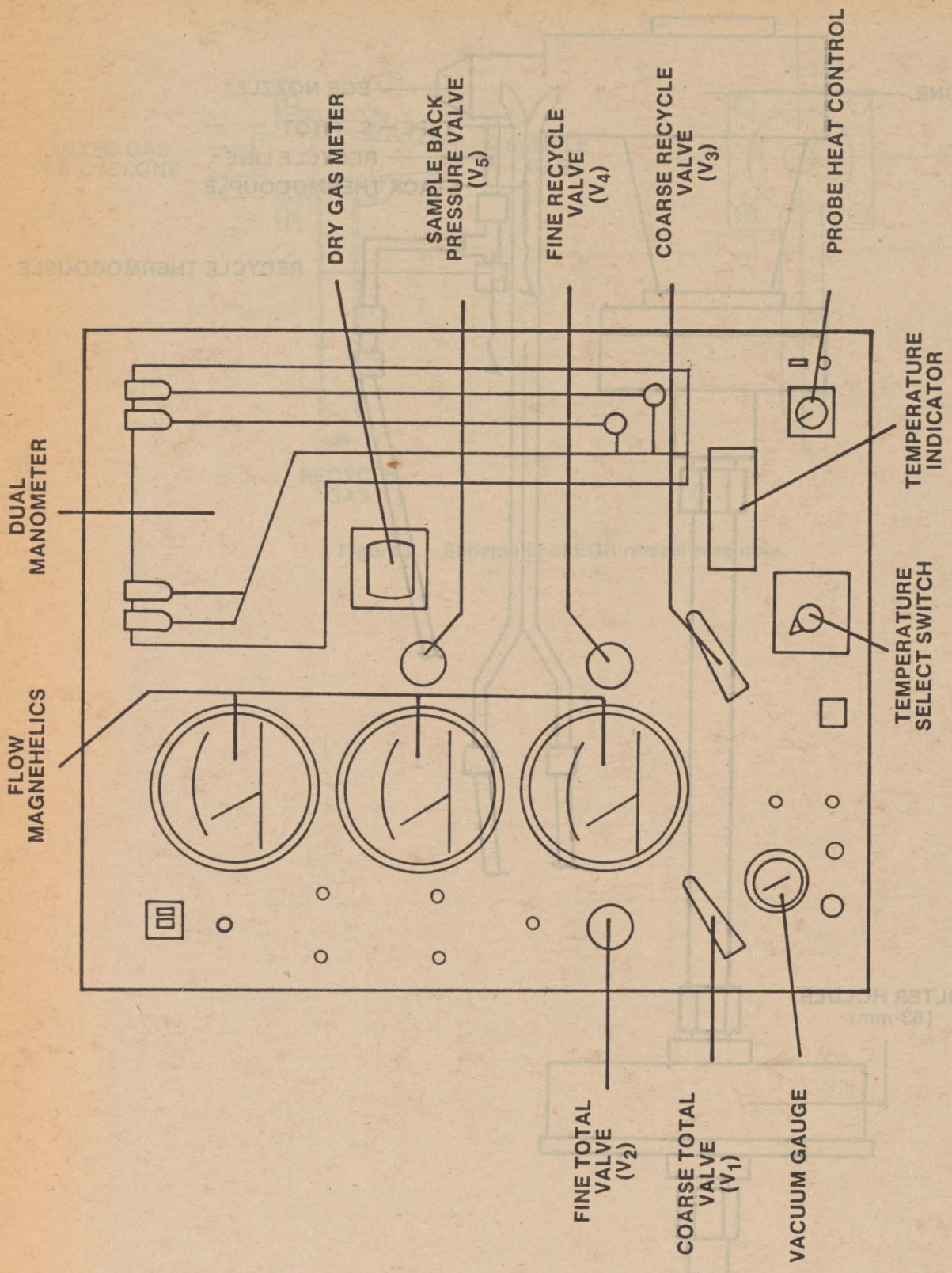

Figure 4. Example EGR control module (front view) showing principle components.

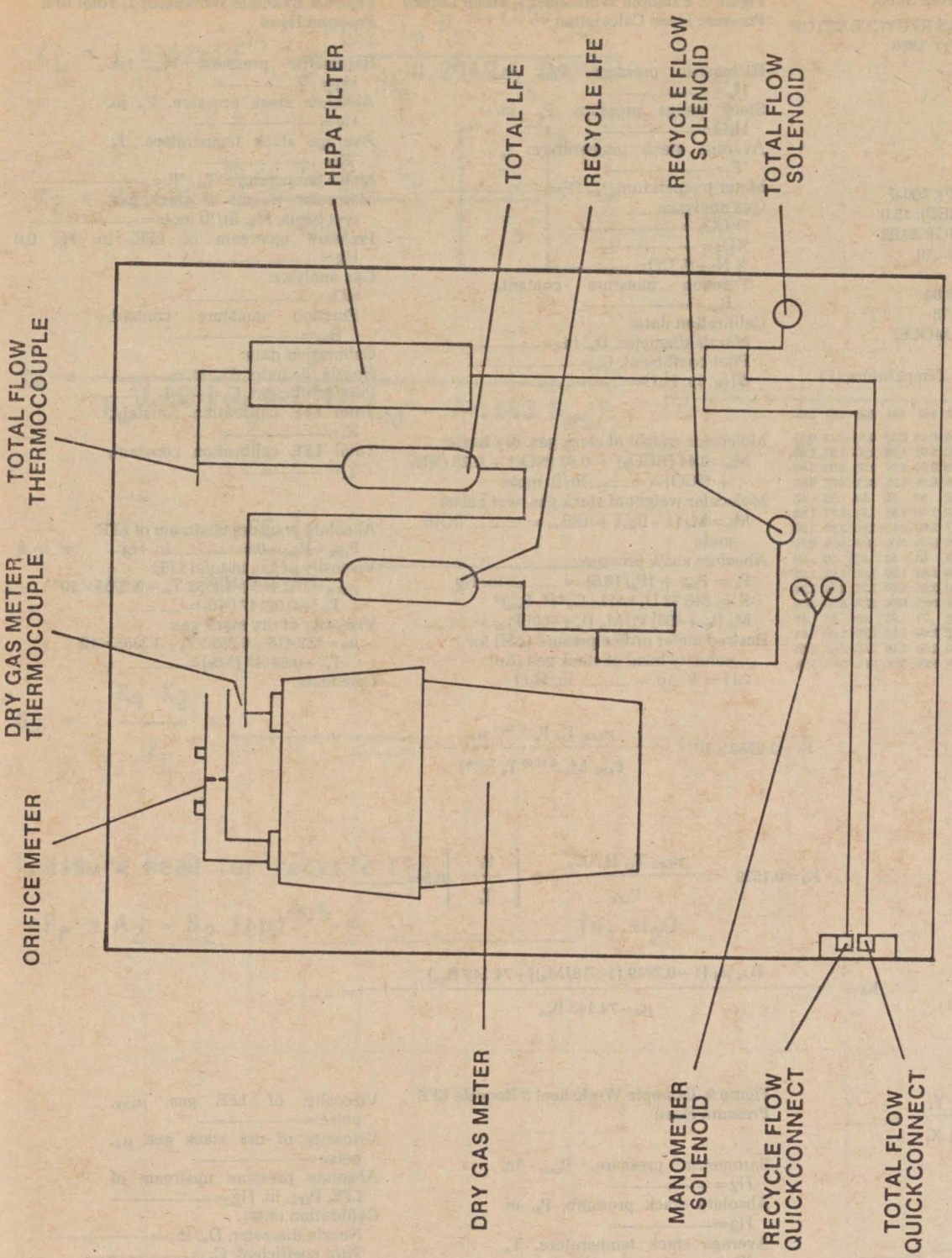

Figure 5. Example EGR control module (rear view) showing principle components.

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Figure 6. Example EGR Setup Sheet

EXAMPLE EMISSION GAS RECYCLE SETUP SHEET, VERSION 3.1, MAY 1986

Test I.D.: Sample Setup
Run Date: 11/24/86
Location: Source SIM
Operator(s): RH JB
Nozzle Diameter (IN): .25
Stack Conditions:
Average Temperature (F): 200.0
Average Velocity (FT/SEC): 15.0
Ambient Pressure (IN HG): 29.92
Stack Pressure (IN H_2O): .10
Gas Composition
H_2O=10.0% MD=28.84
O_2=20.9% MW=27.75
CO_2= .0% (LB/LB MOLE)

Target Pressure Drops Temperature (F)

DP (PTO)		150	161	172	183	194	206	217	228
0.026	Sample		0.49	0.49	0.48	0.47	0.46	0.45	0.45
	Total		1.90	1.90	1.91	1.92	1.92	1.92	1.93
	Recycle		2.89	2.92	2.94	2.97	3.00	3.02	3.05
	% RCL		61%	61%	62%	62%	62%	63%	63%
0.031	.58		.58	.55	.55	.55	.54	.53	.52
	1.88		1.89	1.89	1.90	1.91	1.91	1.91	1.92
	2.71		2.74	2.77	2.80	2.82	2.85	2.88	2.90
	57%		57%	58%	58%	59%	59%	60%	60%
0.035	.67		.65	.64	.63	.62	.61	.60	.59
	1.88		1.88	1.89	1.89	1.90	1.90	1.91	1.91
	2.57		2.60	2.63	2.66	2.69	2.72	2.74	2.74
	54%		55%	55%	56%	56%	57%	57%	57%
0.039	.75		.74	.72	.71	.70	.69	.67	.66
	1.87		1.88	1.88	1.89	1.89	1.90	1.90	1.91
	2.44		2.47	2.50	2.53	2.56	2.59	2.62	2.65
	51%		52%	52%	53%	53%	54%	54%	55%

Figure 7. Example Worksheet 1, Meter Orifice Pressure Head Calculation

Barometric pressure, P_{bar}, in. Hg=_____
Stack gauge pressure, P_g, in. H_2O=_____
Average stack temperature, t_s, °F=_____
Meter temperature, t_m, °F=_____
Gas analysis:
% CO_2=_____
% O_2=_____
% N_2+% CO=_____
Fraction moisture content, B_{ws}=_____
Calibration data:
Nozzle diameter, D_n, in.=_____
Pitot coefficient, C_p=_____
$\Delta H@$, in. H_2O=_____

Molecular weight of stack gas, dry basis:
$M_d = 0.44\ (\%CO_2) + 0.32\ (\%O_2) + 0.28\ (\%N_2 + \%CO)$ = _____ lb/lb mole
Molecular weight of stack gas, wet basis:
$M_w = M_d\ (1-B_{ws}) + 18B_{ws}$ = _____ lb/lb mole
Absolute stack pressure:
$P_s = P_{bar} + (P_g/13.6)$ = _____ in. Hg
$K = 846.72\ D_n^4\ \Delta H@\ C_p^2\ (1-B_{ws})^2$
$M_d\ (t_m+460)\ P_s/M_w\ (t_s+460)\ P_{bar}$ = _____
Desired meter orifice presure (ΔH) for velocity head of stack gas (Δp):
$\Delta H = K\ \Delta p$ = _____ in. H_2O

Figure 8. Example Worksheet 2, Total LFE Pressure Head

Barometric pressure, P_{bar}, in. Hg=_____
Absolute stack pressure, P_s, in. Hg=_____
Average stack temperature, T_s, °R=_____
Meter temperature, T_m, °R=_____
Molecular weight of stack gas, wet basis, M_d, lb/lb mole=_____
Pressure upstream of LFE, in. Hg 0.6
Hg=_____
Gas analysis:
$\%O_2$=_____
Fraction moisture content, B_{ws}=_____
Calibration data:
Nozzle diameter, D_n, in.=_____
Pitot coefficient, C_p=_____
Total LFE calibration constant, X_t=_____
Total LFE calibration constant, Y_t=_____

Absolute pressure upstream of LFE:
$P_{LFE} = P_{bar} + 0.6$ = _____ in. Hg
Viscosity of gas in total LFE:
$\mu_{LFE} = 152.418 + 0.2552\ T_m + 3.2355 \times 10^{-5}\ T_m^2 + 0.53147\ (\%0_2)$ = _____
Viscosity of dry stack gas:
$\mu_d = 152.418 + 0.2552\ T_s + 3.2355 \times 10^{-5}\ T_s^2 + 0.53147\ (\%0_2)$ = _____
Constants:

$$K_1 = 1.5752 \times 10^{-5}\ \frac{\mu_{LFE}\ T_m\ P_s^{\ 0.7051}\ \mu_d}{P_{LFE}\ M_d^{\ 0.2949}\ T_s^{\ 0.7051}} = \_\_\_\_\_$$

$$K_2 = 0.1539\ \frac{\mu_{LFE}\ T_m\ D_n^{\ 2}\ C_p}{P_{LFE}} \left[\frac{P_s}{T_s}\right] 0.5 = \_\_\_\_\_$$

$$K_3 = \frac{B_{ws}\ \mu_d\ [1-0.2949\ (1-18/M_d)] + 74.143\ B_{ws})}{\mu_d - 74.143\ B_{ws}} = \_\_\_\_\_$$

$$A_1 = \frac{K_1}{X_t} - \frac{\mu_{LFE}\ Y_t}{180.1\ X_t} = \_\_\_\_\_$$

$$B_1 = \frac{K_2\ K_3}{(M_w)^{0.5}\ X_t} = \_\_\_\_\_$$

Total LFE pressure head:
$\Delta p_t = A_1 - B_1\ (\Delta p)^{0.5}$ = _____ in. H_2O

Figure 9. Example Worksheet 3 Recycle LFE Pressure Head

Barometric pressure, P_{bar}, in. Hg=_____
Absolute stack pressure, P_s, in. Hg=_____
Average stack temperature, T_s, °R=_____
Meter temperature, T_m, °R=_____
Molecular weight of stack gas, dry basis, M_d, lb/1b mole=_____
Viscosity of LFE gas, μ_{LFE}, poise=_____
Viscosity of dry stack gas, μ_d, poise=_____
Absolute pressure upstream of LFE, P_{LFE}, in. Hg=_____
Calibration data:
Nozzle diameter, D_n, in. =_____
Pitot coefficient, C_p=_____
Recycle LFE calibration constant, X_r=_____

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$$K_1 = 1.5752 \times 10^{-5} \frac{\mu_{LFE}\ T_m\ P_s^{0.7051}\ \mu_d}{P_{LFE}\ M_d^{0.2949}\ T_s^{0.7051}} = \_\_\_\_\_$$

$$K_2 = 0.1539 \frac{M_{LFE}\ T_m\ D_n^2\ C_p}{P_{LFE}} \left[\frac{P_s}{T_s}\right]^{0.5} = \_\_\_\_\_$$

$$K_4 = \frac{\mu_d}{M_w^{0.2051}\ M_d^{0.2949}\ (\mu_d - 74.143\ B_{ws})} = \_\_\_\_\_$$

$$A_2 = \frac{K_1}{X_r} - \frac{\mu_{LFE}\ Y_r}{180.1\ X_r} = \_\_\_\_\_$$

$$B_2 = \frac{K_4\ K_2}{X_r} = \_\_\_\_\_$$

Pressure head for recycle LFE:

$$\Delta P_r = A_2 - B_2\ (\Delta p)^{0.5} = \_\_\_\_\_ \text{ in. } H_2O$$

Run Code	Date	Stack Temperature (°F)	Gas Composition %CO_2 %O_2 %CO Moisture Content
Sampler ID	Start Time	Stack Gauge Pressure (in.H_2O)	
Filter ID	End Time	Ambient Temperature (°F)	
Sampler Orientation	Sampling Duration (min)	Ambient Pressure (in.Hg)	
Sampling Location	DGM (initial)	Gas Velocity	Pitot Leak Check (Pos) (Neg)
Nozzle Diameter-ID (in)	DGM (final)	System Leak Check ($\geq$ 15 in. Hg)	Notes
Operator(s)	Sample Volume (ft^3)		
Dual Manometer Leveled and Zeroed?			
Magnehelics Zeroed?			

Run Time	Port No / Trav.Pt.	ΔP Pitot	ΔH Sample	DGM Volume	ΔP Total	P Inlet	ΔP Recycle	T_1 Stack	T_2 Recycle	T_3 Probe	T_4 LFE	T_5 DGM	T_6 Fil

Figure 10. Example EGR Procedure data sheet.

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Figure 11. EGR Method Analysis Sheet

Plant _____
Date _____
Run no. _____
Filter no. (in-stack) _____
Filter no. (out-of stack) _____
Amount liquid lost during transport _____
Acetone blank volume, ml _____
Acetone wash volume, ml (3) _____ (4) _____ (5) _____
Acetone blank conc., mg/mg (Equation 5–4, Method 5) _____
Acetone wash blank, mg (Equation 5–5, Method 5) _____

Container number	Weight of particulate matter, mg		
	Final weight	Tare weight	Weight gain
1			
2			
4			
5			
Total			
Less acetone blank			
Weight of PM_{10}			
3			
Total particulate weight			

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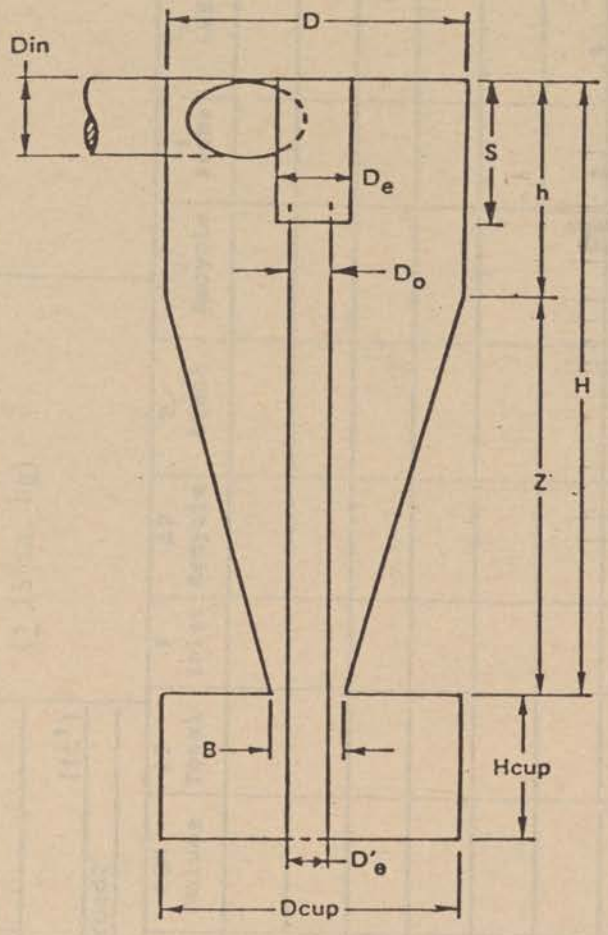
Cyclone Interior Dimensions



	Dimensions, ± 0.013 cm (± 0.005 in.)											
	Din	D	De	B	H	h	Z	S	Hcup	Dcup	D'_e	D_o
cm	1.27	4.47	1.50	1.88	6.95	2.24	4.71	1.57	2.25	4.45	1.02	1.24
inches	0.50	1.76	0.59	0.74	2.74	0.88	1.85	0.62	0.89	1.75	0.40	0.49

Figure 12. Cyclone design specifications.

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TABLE 1. PERFORMANCE SPECIFICATIONS FOR PM_{10} CYCLONES AND NOZZLE COMBINATIONS

Parameter	Units	Specification
1. Collection efficiency.	Percent.....	Such that collection efficiency falls within envelope specified by Section 5.7.5 and Figure 9.
2. Cyclone cut size.	μm.....	10±1 μm aerodynamic diameter.

TABLE 2.—TEST PARTICLE SIZES AND TARGET GAS VELOCITIES

Particle size (μm)[a]	Target gas velocities (m/sec)		
	7±1.0	15±1.5	25±2.5
5±0.5			
7±0.5			
10±0.5			
14±1.0			
20±1.0			

(a) Mass median aerodynamic diameter.

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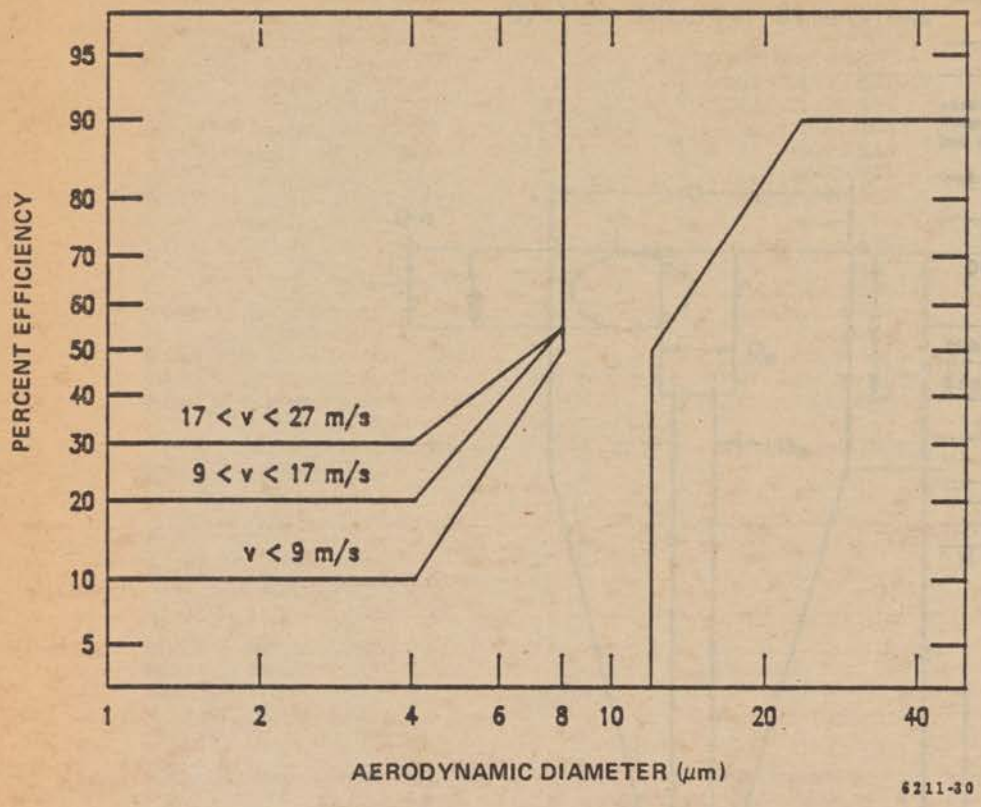

Figure 13. Efficiency envelope for the PM_{10} cyclone.

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Figure 14. Example Imputs and Outputs of the EGR Reduction Program

EMISSION GAS RECYCLE DATA REDUCTION, VERSION 3.4, MAY 1986

Test ID. Code: Chapel Hill 2
Test Location: Baghouse Outlet
Test Site: Chapel Hill
Test Date: 10/20/86
Operator(s): JB RH MH

Entered Run Data

Temperatures
T(STK): 251.0 F
T(RCL): 259.0 F
T(LFE): 81.0 F
T(DGM): 76.0 F

System Pressures
DH(ORI): 1.18 INWG
DP(TOT): 1.91 INWG
P(INL): 12.15 INWG
DP(RCL): 2.21 INWG
DP(PTO): 0.06 INWG

Miscellanea
P(BAR): 29.99 INWG
DP(STK): 0.10 INWG
V(DGM): 13.744 FT3
TIME: 60.00 MIN
% CO2: 8.00
% O2: 20.00
NOZ (IN): 0.2500

Water Content
Estimate: 0.0 %
or
Condenser: 7.0 ML
Column: 0.0 GM

Raw Masses
Cyclone 1:21.7 MG
Filter:11.7 MG
Impinger Residue: 0.0 MG

Blank Values
CYC Rinse: 0.0 MG
Filter Holder Rinse: 0.0 MG
Filter Blank: 0.0 MG
Impinger Rinse: 0.0 MG

Calibration Values
CP(PITOT): 0.840
DH@(ORI): 10.980
M(TOT LFE): 0.2298
B(TOT LFE): −.0058
M(RCL LFE): 0.0948
B(RCL LFE): −.0007
DGMA Gamma: 0.9940

REDUCED DATA

Stack Velocity (FT/SEC) 15.95
Stack Gas Moisture (%) 2.4
Sample Flow Rate (ACFM) 0.3104
Total Flow Rate (ACFM) 0.5819
Recycle Flow Rate (ACFM) 0.2760
Percent Recycle 46.7
Isokinetic Ratio (%) 95.1

	(UM)	(% <) (Particulate)	(MG/DNCM)	(GR/ACF)	GR/DCF)	(LB/DSCF) (X 1E6)
Cyclone 1	10.15	35.8	56.6	0.01794	0.02470	3.53701
Backup Filter			30.5	0.00968	0.01332	1.907
Particulate Total			87.2	0.02762	0.03802	5.444

Method 201A—Determination of PM_{10} Emissions

(Constant Sampling Rate Procedure)

1. Applicability and Principle

1.1 Applicability. This method applies to the measurement of particulate matter (PM) emissions with an aerodynamic diameter equal to or less than nominally 10 μm (PM_{10}) from stationary sources. This method does not measure condensible emissions; it measures only PM_{10} as it occurs in the stack and at 120°C (248° F).

1.2 Principle. A gas sample is extracted at a constant flow rate through an in-stack sizing device, which separates PM greater than PM_{10}, and two glass fiber filters are used to collect the PM_{10}. Variations from isokinetic sampling conditions are maintained within well-defined limits. The particulate mass is determined gravimetrically after removal of uncombined water.

2. Apparatus

2.1 Sampling Train. A schematic of the Method 201A sampling train is shown in Figure 1. With the exception of the PM_{10} sizing device and in-stack filter, this train is the same as a standard Method 5 train.

Note: Method 5 as cited in this method is part of 40 CFR Part 60, Appendix A.

2.1.1 Nozzle. Stainless steel (316 or equivalent) with a sharp tapered leading edge. Eleven nozzles that meet the design specifications in Figure 2 are recommended. A large number of nozzles with small nozzle increments increase the likelihood that a single nozzle can be used for the entire traverse. If the nozzles do not meet the design specifications in Figure 2, then the nozzles must meet the criteria in section 5.2.

2.1.2 Sizing Device. Stainless steel (316 or equivalent), capable of determining the PM_{10} fraction. The sizing device shall be either a cyclone that meets the specifications in section 5.2 or a cascade impactor that meets the specifications in section 5.3

2.1.3 Probe Liner. Same as in Method 5, section 2.1.2.

2.1.4 Pitot Tube. Same as in Method 5, section 2.1.3. The pitot lines shall be made of heat resistant tubing and attached to the probe with stainless steel fittings.

2.1.5 Differential Pressure Gauge, Filter Holders, Filter Heating System, Condenser, Metering System, Barometer, and Gas Density Determination Equipment. Same as in Method 5, sections 2.1.4. through 2.1.10 respectively.

2.2. Sample Recovery.

2.2.1 Nozzle, Sizing Device, Probe, and Filter Holder Brushes. Nylon bristle brushes with stainless steel wire shafts and handles, properly sized and shaped for cleaning the nozzle, sizing device, probe or probe liner, and filter holders.

2.2.2 Wash Bottles, Glass Sample Storage Containers, Petri Dishes, Graduated Cylinder and Balance, Plastic Storage Containers, Funnel and Rubber Policeman, and Funnel.

Same as in Method 5, section 2.2.2 through 2.2.8, respectively.

2.3 Analysis. Same as in Method 5, section 2.3.

3. Reagents

The reagents for sampling, sample recovery, and analysis are the same as that specified in Method 5, sections 3.1, 3.2, and 3.3, respectively.

4. Procedure

4.1 Sampling. The complexity of this method is such that, in order to obtain reliable results, testers should be trained and experienced with the test procedures.

4.1.1 Pretest Preparation. Same as in Method 5, section 4.1.1.

4.1.2 Preliminary Determinations. Same as in Method 5, section 4.1.2, except use the directions on nozzle size selection and sampling time in this section. Use of any nozzles greater than 0.16 in. in diameter require a minimum sampling port diameter of 6 inches. Also, the required maximum number of traverse points at any location shall be 12.

4.1.2.1 The sizing device must be in-stack or maintained at stack temperature during sampling. The blockage effect of the EGR sampling assembly will be minimal if the cross-sectional area of the sampling assembly is 3 percent or less of the cross-sectional area of the duct. If the cross-sectional area of the assembly is greater than 3 percent of the cross-sectional area of the duct, then use the procedures in Method 1A to determine the sampling site, flow measurements, and the number of traverse points.

4.1.2.2 The setup calculations can be performed by using the following procedures.

4.1.2.2.1 In order to maintain a cut size of 10 μm in the sizing device, the flow rate through the sizing device must be maintained at a constant, discrete value during the run. If the sizing device is a cyclone that meets the design specifications in Figure 3, use the equations in Figure 4 to calculate three orifice pressure heads (ΔH): one at the average stack temperature, and the other two at temperatures $\pm 28°C$ ($\pm 50°F$) of the average stack temperature. Use the ΔH calculated at the average stack temperature as the pressure head for the sample flow rate as long as the stack temperature during the run is within 28°C (50°F) of the average stack temperature. If the stack temperature varies by more than 28°C (50°F), then use the appropriate ΔH.

4.1.2.2.2 If the sizing device is a cyclone that does not meet the design specifications in Figure 3, use the equations in Figure 4, except use the equation for cyclone flow rate derived in section 5.2.6.

4.1.2.2.3 To select a nozzle, use the equations in Figure 5 to calculate Δp_{min} and Δp_{max} for each nozzle at all three temperatures. If the sizing device is a cyclone that does not meet the design specifications in Figure 3, the example worksheets can be used except use the procedures in section 5.2.6 to determine Q_a, the correct cyclone flow rate for a 10 μm cut size.

4.1.2.2.4 Correct the Method 2 pitot readings to Method 201A pitot readings by multiplying the Method 2 pitot readings by the square of a ratio of the Method 201A pitot coefficient to the Method 2 pitot coefficient. Select the nozzle for which Δp_{min} and Δp_{max} bracket all of the corrected Method 2 pitot readings. If more than one nozzle meets this requirement, select the nozzle giving the greatest symmetry. Note that if the expected pitot reading for one or more points is near a limit for a chosen nozzle, it may be outside the limits at the time of the run.

4.1.2.2.5 Vary the dwell time, or sampling time, at each traverse point proportionately with the point velocity. Use the equations in Figure 6 to calculate the dwell time at the first point and at each subsequent point. It is recommended that the number of minutes sampled at each point be rounded to the nearest 15 seconds.

4.1.3 Preparation of Collection Train. Same as in Method 5, section 4.1.3, except omit directions about a glass cyclone.

4.1.4 Leak-Check Procedure.

4.1.4.1 Pretest Leak-Check. Same as in Method 5, section 4.1.4.1.

4.1.4.2 Leak-Checks During Sample Run. Same as in Method 5 section 4.1.4.1.

4.1.4.3 Post-Test Leak-Check. Same as in Method 5, section 4.1.4.3.

4.1.5 Method 201A Train Operation. Same as in Method 5, section 4.1.5, except use the procedures in this section for isokinetic sampling and flow rate adjustment. Maintain the flow rate calculated in section 4.1.2 throughout the run provided the stack temperature is within 28°C (50°F) of the temperature used to calculate ΔH. If stack temperatures vary by more than 28°C (50°F), use the appropriate ΔH value calculated in section 4.1.2. Calculate the dwell time at each traverse point as in Figure 6.

4.1.6 Calculation of Percent Isokinetic Rate and Aerodynamic Cut Size (D_{50}). Calculate percent isokinetic drag and D_{50} (see Calculations, section 6) to determine whether the test was valid or another test run should be made. If there was difficulty in maintaining isokinetic sampling rates within the prescribed range, or if the D_{50} is not in its proper range because of source conditions, the Administrator may be consulted for possible variance.

4.2 *Sample Recovery.* If a cascade impactor is used, use the manufacturer's recommended procedures for sample recovery. If a cyclone is used, use the same sample recovery as that in Method 5, section 4.2, except an increased number of sample recovery containers is required.

4.2.1 *Container No. 1* (In-Stack Filter). The recovery shall be the same as that for Container No. 1 in Method 5, section 4.2.

4.2.2 *Container No. 2* (Out-of-Stack Filter). The recovery shall be the same as that for Container No. 1 in Method 5, section 4.2.

4.2.3 *Container No. 3* (Cyclone or Large PM Catch). This step is optional. The anisokinetic error for the cyclone PM is theoretically larger than the error for the PM_{10} catch. Therefore, adding all the fractions to get a total PM catch is not as accurate as Method 5 or Method F2. Disassemble the cyclone and remove the nozzle to recover the large PM catch. Quantitatively recover the PM from the interior surfaces of the nozzle and cyclone, excluding the "turn around" cup and the interior surfaces of the exit tube. The recovery shall be the same as that for Container No. 2 in Method 5, section 4.2.

4.2.4 *Container No. 4* (PM_{10}). Quantitatively recover the PM from all of the surfaces from the cyclone exit to the front half of the in-stack filter holder, including the "turn around" cup inside the cyclone and the interior surfaces of the exit tube. The recovery shall be the same as that for Container No. 2 in Method 5, section 4.2.

4.2.5 *Container No. 5* (PM_{10}). Quantitatively recover PM between the back half of the in-stack filter holder and the front half of the out-of-stack filter. The recovery shall be the same as that for Container No. 2 in Method 5, section 4.2.

4.2.6 *Container No. 6* (Silica Gel). The recovery shall be the same as that for Container No. 3 in Method 5, section 4.2.

4.2.7 *Impinger Water.* Same as Method 5, section 4.2, under "Impinger Water."

4.3 *Analysis.* Same as in Method 5, section 4.3, except handle Method 201A Containers No. 1 and No. 2 like Container No. 1, Method 201A Containers No. 3, No. 4, and No. 5 like Container No. 2, and Method 201A Container No. 6 like Container No. 3. Use Figure 7 to record the weights of PM collected. Use Figure 5–3 in Method 5, section 4.3, to record the volume of water collected.

4.4 *Quality Control Procedures.* Same as in Method 5, section 4.4.

5. Calibration

Maintain an accurate laboratory log of all calibrations.

5.1 *Probe Nozzle, Pitot Tube, Metering System, Probe Heater Calibration, Temperature Gauges, Leak-check of Metering System, and Barometer.* Same as in Method 5, sections 5.1 through 5.7, respectively.

5.2 *Probe Cyclone and Nozzle Combinations.* The probe cyclone and nozzle combinations need not be calibrated if both meet design specifications in Figures 2 and 3. If the nozzles do not meet design specifications, then the cyclone and nozzle combinations shall be tested for conformity with performance specifications (PS's) in Table 1. If the cyclone does not meet design specifications, then the cyclone and nozzle combination shall conform to PS's and the cyclone shall be calibrated to determine the relationship between flow rate, gas viscosity, and gas density. Use the procedures in section 5.2.4 to conduct PS tests and the procedures in section 5.2.6 to calibrate the cyclone.

5.2.1 Conduct the PS tests in a wind tunnel described in section 5.2.2 and particle generation system described in section 5.2.3. Use five particle sizes and three wind velocities as listed in Table 2. A minimum of three replicate measurements of collection efficiency shall be performed for each of the 15 conditions listed, for a minimum of 45 measurements.

5.2.2 Wind Tunnel. The calibration and PS tests shall be performed in a wind tunnel (or equivalent test apparatus) capable of establishing and maintaining the required gas stream velocities within 10 percent.

5.2.3 Particle Generation System. The particle generation system shall be capable of producing solid monodispersed dye particle

with the mass median aerodynamic diameters specified in Table 2. The particles size distribution verification should be performed on an integrated sample obtained during the sampling period of each test. An acceptable alternative is to verify the size distribution of sample obtained before and after each test, with both sample required to meet the diameter and monodispersity requirements for an acceptable test run.

5.2.4 Establish the size of the solid dye particles delivered to the test section of the wind tunnel by using the operating parameters of the particle generation system, and verify them during the tests by microscopic examination of samples of the particles collected on a membrane filter. The particle size, as established by the operating parameters of the generation system, shall be within the tolerance specified in Table 2. The precision of the particle size verification technigue shall be least ±0.5 μm, and particle size determined by the verification technigue shall not differ by more than 10 percent from that established by the operating parameters of the particle generation system.

5.2.5 The monodispersity of the particles shall be certified for each test either by microsopic inspection of collected particles on filters or by other suitable monitoring techniques such as an optical particle counter followed by a multichannel pulse height analyzer. If the proportion of multiplets and satellites in an aerosol exceeds 10 percent by mass, the particle generation system is unacceptable for purposes of this test. Mulltiplets are particles that are agglomerated, and satellites are particles that are smaller than the specified size range.

5.2.6 Schematic drawings of the wind tunnel and blower system and other information showing complete procedural details of the test atmosphere generation, verification, and delivery techniques shall be furnished with calibration data to the reviewing agnecy.

5.2.7 Flow Measurements. Measure the cyclone air flow rates with a dry gas meter and a stopwatch, or a calibrated orifice system capable of meausring flow rates to within 2 percent.

5.2.8 Performance Specification Procedure. Establish test particle generator operation and verify particle size microscopically. If monodispersity is to be verified by measurement at the beginning and the end of the run rather than by an integrated sample, these measurements may be made at this time.

5.2.9 The cut size, or D_{50}, of a cyclone is defined here as the particle size having a 50 percent probability of penetration. Determine the cyclone flow rate at which the D_{50} is 10 μm. A suggested procedure is to vary the cyclone flow rate while keeping a constant particle size of 10 μm. Measure the PM collected in the cyclone (m_c), the exit tube (m_t), and the filter (m_f). Calculate cyclone efficiency (E_c) for each flow rate as follows:

$$E_c = \frac{m_c}{(m_c + m_t + m_f)} \times 100$$

5.2.10 Do three replicates and calculate the average cyclone efficiency [$E_{c(avg)}$] as follows:

$E_{c(avg)} = (E_1 + E_2 + E_3)/3$

where E_1, E_2, and E_3 are replicate measurements of E_c.

5.2.11 Calculate the standard deviation (σ) for the replicate measurements of E_c as follows.

$$\sigma = \left[\frac{(E_1^2 + E_2^2 + E_3^2) - \frac{(E_1 + E_2 + E_3)^2}{3}}{2} \right]^{0.5}$$

If σ exceeds 0.10, or if $E_{c(avg)}$ is not 50± 0.5 percent, repeat the replicate runs.

5.2.12 Measure the overall efficiency of the cyclone and nozzle, E_o, at the particle sizes and nominal gas velocities in Table 2 using the following procedure.

5.2.13 Set the air velocity and particle size from one of the conditions in Table 2. Establish isokinetic sampling conditions and the correct flow rate in the cyclone (obtained by procedures in this section) such that the D_{50} is 10 μm. Sample long enough to obtain ±5 percent precision on total collected mass as determined by the precision and the sensitivity of measuring technique. Determine separately the nozzle catch (m_n), cyclone catch (m_c), cyclone exit tube (m_t), and collection filter catch (m_f) for each particle size and nominal gas velocity in Table 2. Calculate overall efficiency (E_o) as follows:

$$E_o = \frac{(m_n + m_c)}{(m_n + m_c + m_t + m_f)} \times 100$$

5.2.14 Do three replicates for each combination of gas velocity and particle size in Table 2. Use the equation below to calculate the average overall efficiency [$E_{o(avg)}$] for each combination following the procedures described in this section for determining efficiency.

$E_{o(avg)} = (E_1 E_2 E_3)/3$

where E_1, E_2, and E_3 are replicate measurements of E_o.

5.2.15 Use the appropriate formula in this section to calculate σ for the replicate measurements. If σ exceeds 0.10 or if the particle sizes and nominal gas velocities are not within the limits specified in Table 2, repeat the replicate runs.

5.2.16 Criteria for Acceptance. For each of the three gas stream velocities, plot the $E_{o(avg)}$ as function of particle size on Figure 8. Draw smooth curves through all particle sizes. $E_{o(avg)}$ shall be within the banded region for all sizes, and the $E_{c(avg)}$ shall be 50± 0.5 percent at 10 μm.

5.3 Cyclone Calibration Procedure. The purpose of this section is to develop the relationship between flow rate, gas viscosity, gas density, and D_{50}.

5.3.1 Determine flow rates and D_{50}'s for three different particle sizes between 5 μm and 15 μm, one of which shall be 10 μm. All sizes must be determined within 0.5 μm. For each size, use a different temperature within 60°C (108°F) of the temperature at which the cyclone is to be used and conduct triplicate runs. A suggested procedure is to keep the particle size constant and vary the flow rate.

5.3.2 On log-log graph paper, plot the Reynolds number (Re) on the abscissa, and the square root of the Stokes 50 number [$(Stk_{50})^{0.5}$] on the ordinate for each temperature. Use the following equations to compute both values:

$$Re = \frac{4 \rho Q_{cyc}}{d_{cyc} \pi \mu_{cyc}}$$

$$(Stk_{50})^{0.5} = \left[\frac{4 Q_{cyc} (D_{50})^2}{9 \pi \mu_{cyc} (d_{cyc})^3} \right]^{0.5}$$

where:

Q_{cyc} = Cyclone flow rate, cm^3/sec.
ρ = Gas density, g/cm^3.
d_{cyc} = Diameter of cyclone inlet, cm.
μ_{cyc} = Viscosity of gas through the cyclone, micropoise.
D_{50} = Aerodynamic diameter of a particle having a 50 percent probability of penetration, cm.

5.3.3 Use a linear regression analysis to determine the slope (m) and the y-intercept (b). Use the following formula to determine Q, the cyclone flow rate required for a size cut of 10 μm.

$$Q = \frac{\pi \mu_{cyc}}{4} \left[(3000)(K_1)^{b-(0.5-m)} \left[\frac{T_s}{M_c P_s} \right]^{m/(m-0.5)} d^{(m-1.50)/(m-0.5)} \right]$$

where:

m = Slope of the calibration line.
b = y-intercept of the calibration line.
Q = Cyclone flow rate for a size cut of 10 μm, cm^3/sec.
d = Diameter of nozzle, cm.
T_s = Stack gas temperature, °R.
P_s = Absolute stack pressure, in. Hg.
M_c = Molecular weight of the stack gas, lb/lb-mole.
$K = 4.077 \times 10^{-3}$.

5.3.4 Refer to the Method 201A operators manual, entitled *Measurement of Size Selective Particulate Emissions from Stationary Sources by Constant Sampling Rate*, for directions in the use of this equation for Q in the setup calculations.

5.4 Cascade Impactor Calibration Procedure. The purpose of calibrating a cascade impactor is to determine the empirical constant (Stk_{50}), which is specific to the impactor and which permits the accurate determination of the cut sizes of the impactor stages at field conditions. It is not necessary to calibrate each individual impactor. Once an impactor has been calibrated, the calibration data can be applied to other impactors of identical design.

5.4.1 Wind Tunnel. Same as in section 5.2.2.

5.4.2 Particle Generation System. Same as in section 5.2.3.

5.4.4 Hardware Configuration for Calibrations. An impaction stage constrains an aerosol to form circular or rectangular jets, which are directed toward a suitable substrate where the larger aerosol particles are collected. For calibration purposes, three stages of the cascade impactor shall be discussed and designated calibration stages 1, 2, and 3. The first calibration stage consists of the collection substrate of an impaction stage and all upstream surfaces up to and including the nozzle. This may include other preceding impactor stages. The second and third calibration stages consist of each respective collection substrate and all upstream surfaces up to but excluding the collection substrate of the preceding calibration stage. This may include intervening impactor stages which are not designated as calibration stages. The cut size, or D_{50}, of the adjacent calibration stages shall differ by a factor of not less than 1.5 and not more than 2.0. For example, if the first calibration stage has a D_{50} of 12 μm, then the D_{50} of the downstream stage shall be between 6 and 8 μm.

5.4.5. It is expected, but not necessary, that the complete hardware assembly will be used in each of the sampling runs of the calibration and performance determinations. Only the first calibration stage must be tested under isokinetic sampling conditions. The second and third calibration stages must be calibrated with the collection substrate of the preceding calibration stage in place, so that gas flow patterns existing in field operation will be simulated.

5.4.6 Each of the PM_{10} stages should be calibrated with the type of collection substrate, viscid material (such as grease) or glass fiber, used in PM_{10} measurements. Note that most materials used as substrates at elevated temperatures are not viscid at normal laboratory conditions. The substrate material used for calibrations should minimize particle bounce yet be viscous enough to withstand erosion or deformation by the impactor jets and not interfere with the procedure for measuring the collected PM.

5.4.7 Calibration Procedure. Establish test particle generator operation and verify particle size microscopically. If monodispersity is to be verified by measurements at the beginning and the end of the run rather than by an integrated sample, these measurements shall be made at this time. Measure in triplicate the PM collected by the calibration stage (m) and the PM on all surfaces downstream of the respective calibration stage (m') for all of the flow rates and particle size combinations shown in Table 2. Techniques of mass measurement may include the use of a dye and spectrophotometer. Particles on the upstream side of a jet plate shall be included with the substrate downstream, except agglomerates of particles, which shall be included with the preceding or upstream substrate. Use the following formula to calculate the collection efficiency (E) for each stage.

$$E = \frac{m}{m+m'} \times 100$$

5.4.8 Use the appropriate formula in section 5.2.4 to calculate the standard deviation (σ) for the replicate measurements. If σ exceeds 0.10, repeat the replicate runs.

5.4.9 Use the following formula to calculate the average collection efficiency (E_{avg}) for each set of replicate measurements.

$E_{avg} = (E_1 + E_2 + E_3)/3$

where E_1, E_2, and E_3 are replicate measurements of E.

5.4.10 Use the following formula to calculate Stk for each E_{avg}.

$$Stk = \frac{D^2 Q}{9\ \mu\ A\ d_j}$$

where:

D = Aerodynamic diameter of the test particle, cm $(g/cm^3)^{0.5}$.
Q = Gas flow rate through the calibration stage at inlet conditions, cm^3 sec.
μ = Gas viscosity, micropoise.
A = Total cross-sectional area of the jets of the calibration stage, cm^2.
d_j = Diameter of one jet of the calibration stage, cm.

5.4.11 Determine Stk_{50} for each calibration stage by plotting E_{avg} versus Stk on log-log paper. Stk_{50} is the Stk number at 50 percent efficiency. Note that particle bounce can cause efficiency to decrease at high values of Stk. Thus, 50 percent efficiency can occur at multiple values of Stk. The calibration data should clearly indicate the value of Stk_{50} for minimum particle bounce. Impactor efficiency versus Stk with minimal particle bounce is characterized by a monotonically increasing function with constant or increasing slope with increasing Stk.

5.4.12 The Stk_{50} of the first calibration stage can potentially decrease with decreasing nozzle size. Therefore, calibrations should be performed with enough nozzle sizes to provide a measured value within 25 percent of any nozzle size used in PM_{10} measurements.

5.4.13 Criteria For Acceptance. Plot E_{avg} for the first calibration stage versus the square root of the ratio of Stk to Stk_{50} on Figure 9. Draw a smooth curve through all of the points. The curve shall be within the banded region.

6. Calculations

6.1 *Nomenclature.*

B_{ws} = Moisture fraction of stack, by volume, dimensionless.
C_1 = Viscosity constant, 51.12 micropoise for °K (51.05 micropoise for °R).
C_2 = Viscosity constant, 0.372 micropoise/°K (0.207 micropoise/°R).
C_3 = Viscosity constant, 1.05×10^{-4} micropoise/$°K^2$ (3.24×10^{-5} micropoise/°R2).
C_4 = Viscosity constant, 53.147 micropoise/fraction O_2.
C_5 = Viscosity constant, 74.143 micropoise/fraction H_2O.
D_{50} = Diameter of particles having a 50 percent probability of penetration, μm.
$'O_2$ = Stack gas fraction O_2, by volume, dry basis.
K_1 = 0.3858 °K/mm Hg (17.64 °R/in. Hg).
M_c = Wet molecular weight of mixed gas through the PM_{10} cyclone, g/g-mole (lb/lb-mole).
M_d = Dry molecular weight of stack gas, g/g-mole (lb/lb-mole).
P_{bar} = Barometric pressure at sampling site, mm Hg (in. Hg).
P_s = Absolute stack pressure, mm Hg (in. Hg).
Q_a = Total cyclone flow rate at wet cyclone conditions, m^3/min (ft^3/min).
$Q_{a(std)}$ = Total cyclone flow rate at standard conditions, dscm/min (dscf/min).
T_m = Average absolute temperature of dry meter, °K (°R).
T_s = Average absolute stack gas temperature, °K (°R).
$V_{w(std)}$ = Volume of water vapor in gas sample (standard conditions), scm (scf).
Θ = Total sampling time, min.
μ_{cyc} = Viscosity of mixed cyclone gas, micropoise.
μ_{std} = Viscosity of standard air, 180.1 micropoise.

6.2 *Analysis of Cascade Impactor Data.* Use the manufacturer's recommended procedures to analyze data from cascade impactors.

6.3 *Analysis of Cyclone Data.* Use the following procedures to analyze data from a single stage cyclone.

6.3.1 PM_{10} Weight. Determine the PM catch in the PM_{10} range from the sum of the weights obtained from Containers Nos. 1, 2, 4, and 5 less the acetone blank.

6.3.2. Total PM Weight (optional). Determine the PM catch for greater than PM_{10}

from the weight obtained from Container No. 3 less the acetone blank, and add it to the PM_{10} weight.

6.3.3. Aerodynamic Cut Size. Calculate the stack gas viscosity as follows:

$$\mu_{cyc}=C_1+C_2\,T_s+C_3\,T_s^2+\Psi_4\,{}^fO_2-C_5\,B_{ws}$$

6.3.3.1 The PM_{10} flow rate, at actual cyclone conditions, is calculated as follows:

$$Q_s=\frac{T_s V_{m(std)}}{K_1 P_s(1-B_{ws})\Theta}$$

6.3.3.2 Calculate the molecular weight on a wet basis of the stack gas as follows:

$$M_c=M_d(1-B_{ws})+18.0(B_{ws})$$

6.3.3.3 Calculate the actual D_{50} of the cyclone for the given conditions as follows:

$$D_{50}=\beta_1\left[\frac{T_s}{M_c P_s}\right]0.2091\left[\frac{\mu_{cyc}}{Q_s}\right]0.7091$$

where $\beta_1=0.27754$ for metric units (0.15625 for English units).

6.3.4 Acceptable Results. The results are acceptable if two conditions are met. The first is that 9.0 μm $\leq D_{50} \leq$ 11.0 μm. The second is that no sampling points are outside ΔP_{min} and ΔP_{max}, or that 80 percent $\leq I \leq$ 120 percent and no more than one sampling point is outside ΔP_{min} and ΔP_{max}. If D_{50} is less than 9.0 μm, reject the results and repeat the test, unless the total particulate catch is less than the PM_{10} standard. In this case, or if D_{50} is greater than 11 μm, the Administrator may accept the results.

7. Bibliography

1. Same as Bibliography in Method 5.

2. McCain, J.D., J.W. Ragland, and A.D. Williamson. Recommended Methodology for the Determination of Particle Size Distributions in Ducted Sources, Final Report. Prepared for the California Air Resources Board by Southern Research Institute. May 1986.

3. Farthing, W.E., S.S. Dawes, A.D. Williamson, J.D. McCain, R.S. Martin, and J.W. Ragland. Development of Sampling Methods for Stationary Source PM-10 Particulate Emissions. Southern Research Institute for the Environmental Protection Agency. 1986 (Unpublished).

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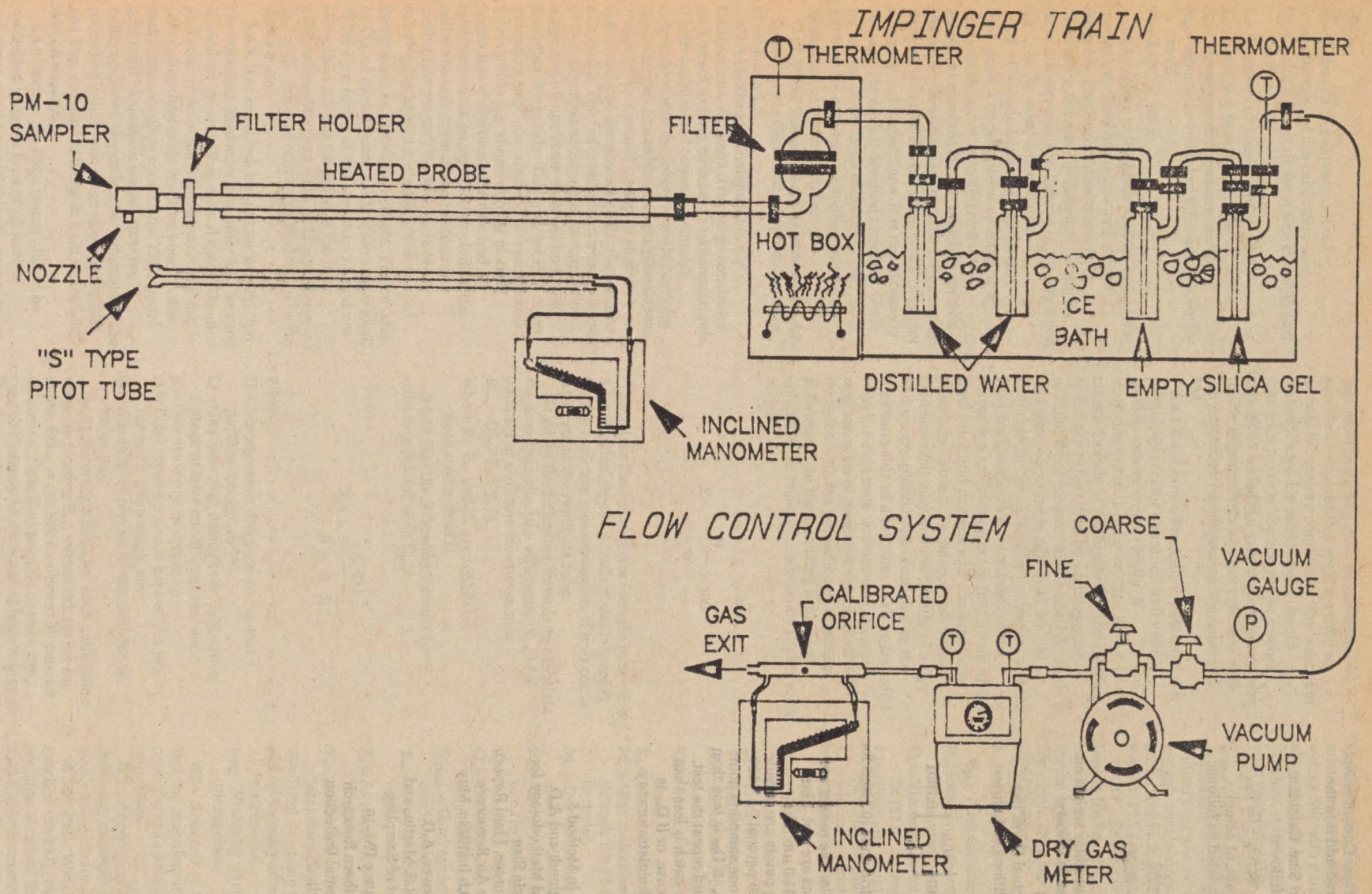
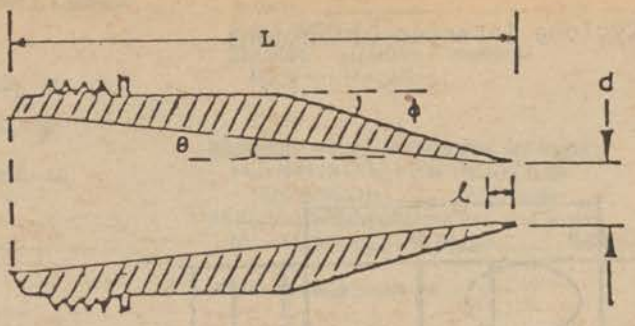


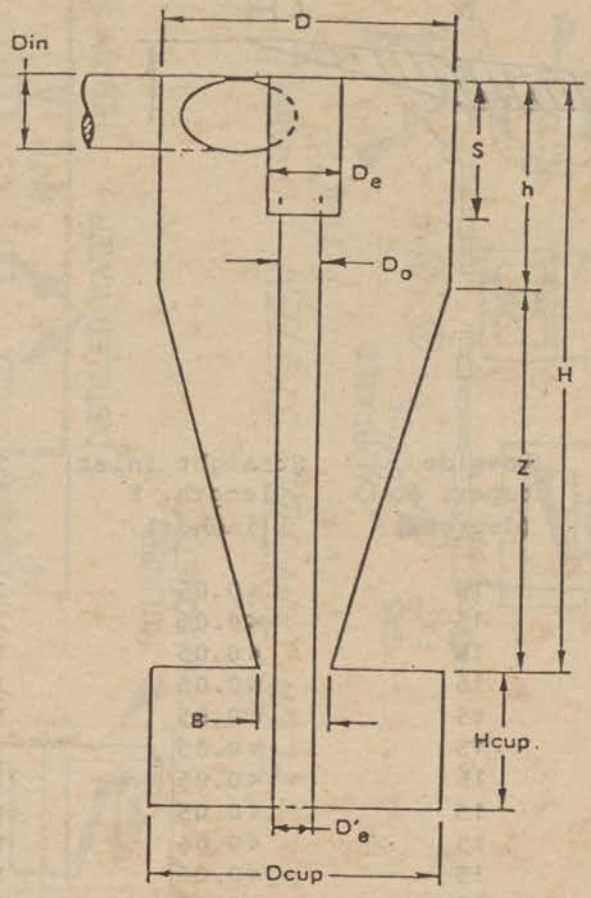
Figure 1. CSR Sampling Train



Nozzle Diameter (inches)	Cone Angle, θ (degrees)	Outside taper, ϕ (degrees)	Straight inlet length, ℓ (inches)	Total Length L (inches)
0.136	4	15	<0.05	2.653±0.05
0.150	4	15	<0.05	2.553±0.05
0.164	5	15	<0.05	1.970±0.05
0.180	6	15	<0.05	1.572±0.05
0.197	6	15	<0.05	1.491±0.05
0.215	6	15	<0.05	1.45 ±0.05
0.233	6	15	<0.05	1.45 ±0.05
0.264	5	15	<0.05	1.45 ±0.05
0.300	4	15	<0.05	1.48 ±0.05
0.342	4	15	<0.05	1.45 ±0.05
0.390	3	15	<0.05	1.45 ±0.05

Figure 2. Nozzle design specifications.

Cyclone Interior Dimensions



	Dimensions, ± 0.013 cm (± 0.005 in.)											
	Din	D	De	B	H	h	Z	S	Hcup	Dcup	D'_e	D_o
cm	1.27	4.47	1.50	1.88	6.95	2.24	4.71	1.57	2.25	4.45	1.02	1.24
inches	0.50	1.76	0.59	0.74	2.74	0.88	1.85	0.62	0.89	1.75	0.40	0.49

Figure 3. Cyclone design specifications.

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Figure 4. Example Worksheet 1, Cyclone Flow Rate and ΔH

Barometric pressure, P_{bar}, in. Hg = _____
Stack gauge pressure, P_g, in. H_2O = _____
Average stack temperature, t_s, °F = _____
Meter temperature, t_m, °F = _____
Orifice ΔH@, in. H_2O = _____
Gas analysis:
% CO_2 = _____
% O_2 = _____
% N_2 + %CO = _____
Fraction moisture content, B_{ws} = _____

$$P_s = P_{bar} + \frac{P_g}{13.6} = \_\_\_\_\_ \text{in. Hg}$$

Molecular weight of stack gas, dry basis:
$M_d = 0.44\ (\%CO_2) + 0.32\ (\%O_2) + 0.28\ (\%N_2 + \%CO) = \_\_\_\_\_$ lb/lb mole
Molecular weight of stack gas, wet basis:
$M_w = M_d\ (1 - B_{ws}) + 18\ (B_{ws}) = \_\_\_\_\_$ lb/lb mole
Absolute stack pressure:

Viscosity of stack gas:
$\mu s = 152.418 + 0.2552\ t_s + 3.2355 \times 10^{-5}\ t_s^2 + 0.53147\ (\%\ O_2) - 74.143\ B_{ws} = \_\_\_\_\_$ micropoise
Cyclone flow rate:

$$Q_s = 0.002837\ \mu_s \left[\frac{(t_s + 460)}{M_w\ P_s} \right]^{0.2949} = \_\_\_\_\_ \text{ft}^3/\text{min}$$

Orifice pressure head (ΔH) needed for cyclone flow rate:

$$\Delta H = \left[\frac{Q_s\ (1 - B_{ws})\ P_s}{t_s + 460} \right]^2 \frac{t_m\ M_d\ 1.083\ \Delta H@}{P_{bar}} = \_\_\_\_\_ \text{In. } H_2O$$

Calculate ΔH for three temperatures:

t_s, °F	
ΔH, in. H_2O	

Figure 5. Example Worksheet 2, Nozzle Selection

Stack viscosity, μ_s, micropoise = _____
Absolute stack pressure, P_s, in. Hg = _____
Average stack temperature, t_s, °F = _____
Meter temperature, t_m, °F = _____
Method 201A pitot coefficient, C_p = _____
Cyclone flow rate, ft³/min, Q_s = _____
Method 2 pitot coefficient, C_p = _____

Molecular weight of stack gas, wet basis, M_w = _____
Nozzle diameter, D_n, in. = _____

Nozzle velocity:

$$v_n = \frac{3.056\ Q_s}{D_n^2} = \_\_\_\_\_ \text{ft/sec}$$

Maximum and minimum velocites:

$$v_{min} = v_n \left[0.24578 + \left[0.3072 + \frac{0.2603\ Q_s^{0.5} \mu_s}{v_n^{1.5}} \right]^{0.5} \right] = \_\_\_\_\_ \text{ft/sec.}$$

$$v_{max} = v \left[0.4457 + \left[0.5690 + \frac{0.2603\ Q_s^{0.5} \mu_s}{v_n^{1.5}} \right]^{0.5} \right] = \_\_\_\_\_ \text{ft/sec.}$$

Maximum and minimum velocity head values:

$$\Delta P_{min} = 1.3686 \times 10^{-4} \frac{P_s M_w\ (v_{min})^2}{(t_s + 460)\ C_p^2} = \_\_\_\_\_ \text{in. } H_2O$$

$$\Delta P_{max} = 1.3686 \times 10^{-4} \frac{P_s M_w (v_{max})^2}{(t_s + 460) C_p^2} = \_\_\_\_ \text{in. } H_2O$$

Nozzle number				
D_n, in.				
v_n, ft/sec				
v_{min}, ft/sec				
V_{max}, ft/sec				
Δp_{mix}, in. H_2O				
Δp_{max}, in. H_2O				

Velocity traverse data:

$$\Delta p(\text{Method 201A}) = \Delta(\text{Method 2}) \left[\frac{C_p}{C_p^1} \right]^2 = \_\_\_\_ \text{in. } H_2O$$

Figure 6. Example Worksheet 3, Dwell Time

Total run time, minutes = _____
No. traverse points = _____

$$t_1 = \left[\frac{\Delta p'1}{\Delta p'avg} \right] 0.5 \frac{\text{(Total run time)}}{\text{(No. points)}}$$

where:

t_1 = dwell time at first traverse point, minutes.

$\Delta p'1$ = the velocity head at the first traverse point (from a previous traverse), in. H_2O.

$\Delta p'_{avg}$ = the square of the average square root of the Δp's (from a previous velocity traverse), in. H_2).

At subsequent traverse points, measure the velocity Δp and calculate the dwell time by using the following equation:

$$t_n = \frac{t_1}{(\Delta p_1)^{0.5}} (\Delta p_n)^{0.5}, \; n = 2,3, \ldots \text{total number of sampling points}$$

where:

t_n = dwell time at traverse point n, minutes.

Δp_n = measured velocity head at point n, in. H_2O.

Δp_1 = dwell time at first traverse point, minutes.

Point No.	Port ____		Port ____		Port ____		Port ____	
	Δp	t	Δp	t	Δp	t	Δp	t
1								
2								
3								
4								
5								
6								

Figure 7. Method 201A Analysis Sheet

Plant _____
Date _____
Run no. _____
Filter no. (in-stack) _____
Filter No. (out-of-stack) _____
Amount of liquid lost during transport _____
Acetone blank volume, ml _____
Acetone wash volume, ml (4) _____ (5) _____
Acetone blank conc., mg/mg (Equation 5–4, Method 5) _____
Acetone wash blank, mg (Equation 5–5, Method 5) _____

Container number	Weight of PM_{10} mg		
	Final weight	Tare weight	Weight gain
1			
2			
4			
5			
Total			
Less acetone blank			
Weight of PM_{10}			

TABLE 1.—PERFORMANCE SPECIFICATIONS FOR SOURCE PM_{10} Cyclones and Nozzle Combinations

Parameter	Units	Specification
1. Collection efficiency.	Percent	Such that collection efficiency falls within envelope specified by Section 5.2.5 and Figure 8.
2. Cyclone cut size (D_{50}).	μm	10±1 μm aerodynamic diameter.

TABLE 2.—PARTICLE SIZES AND NOMINAL GAS VELOCITIES FOR EFFICIENCY

Particle size (μm)[a]	Target gas velocities (m/sec)		
	7±1.0	15±1.5	25±2.5
5±0.5			
7±0.5			
10±0.5			
14±1.0			
20±1.0			

(a) Mass median aerodynamic diameter.

BILLING CODE 6560-50-M

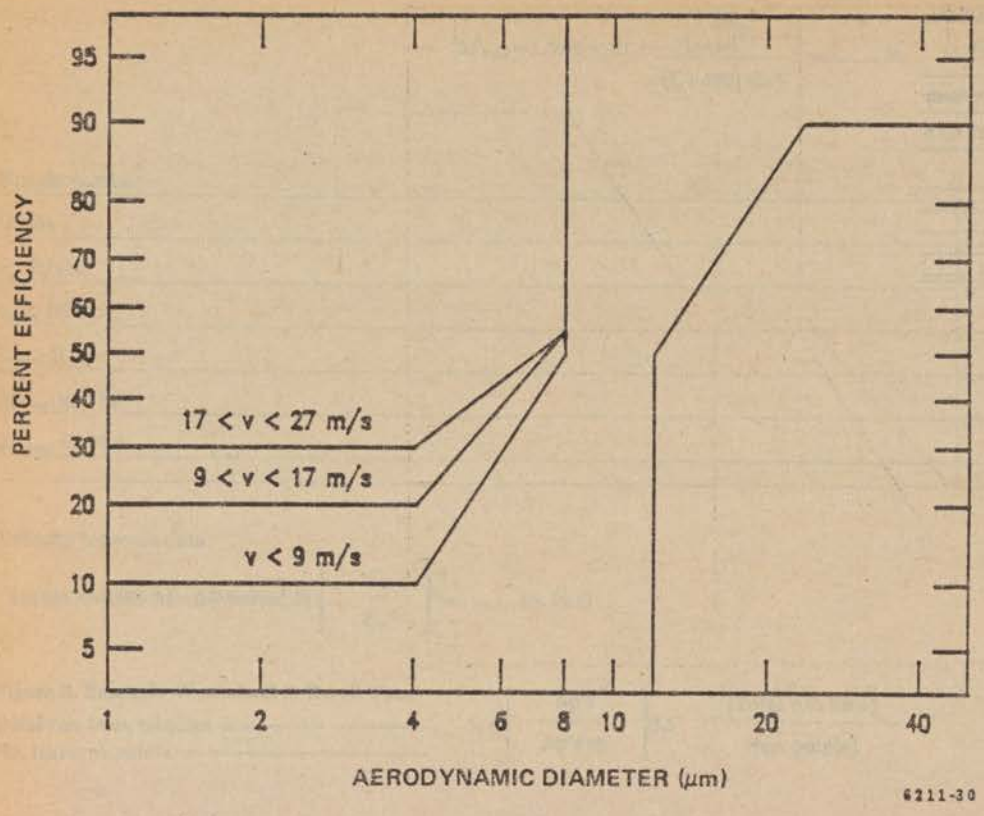

Figure 8. Efficiency envelope for the PM_{10} cyclone.

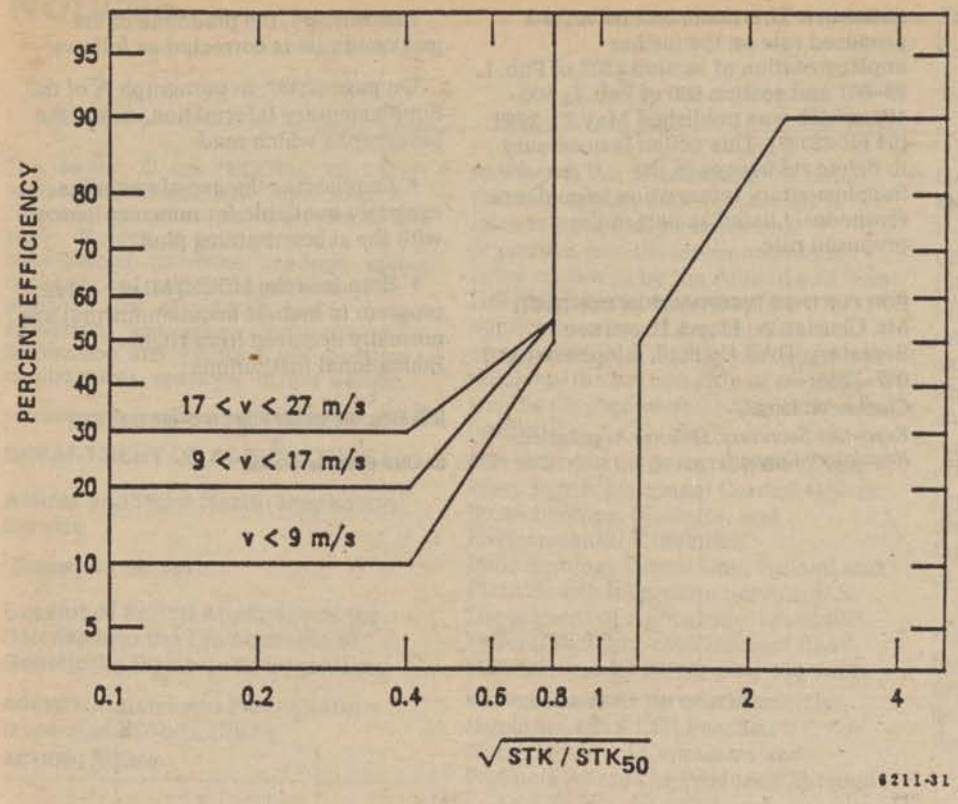

Figure 9. Efficiency envelope for first calibration stage.

[FR Doc. 89-13161 Filed 6-5-89; 8:45 am]
BILLING CODE 6560-50-C

DEPARTMENT OF DEFENSE

48 CFR Parts 217, 219, 232, 242, and 252

Department of Defense Federal Acquisition Regulation Supplement; DFARS Implementation of Section 1207 of Pub. L. 99-661 and Section 806 of Pub. L. 100-180; Contracting With Small Disadvantaged Business Concerns, Historically Black Colleges and Universities, and Minority Institutions

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comment; correction.

SUMMARY: This document corrects a proposed rule on the further implementation of section 1207 of Pub. L. 99-661 and section 806 of Pub. L. 100-180, which was published May 23, 1989 (54 FR 22337). This action is necessary to delete references in the Supplementary Information to guidance erroneously listed as part of the proposed rule.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the preamble of the proposed rule is corrected as follows:

On page 22337, in paragraph A of the Supplementary Information, delete the paragraphs which read:

- Emphasizes the use of remedies currently available for noncompliance with the subcontracting plan.

- Broadens the HBCU/MI set-aside program to include acquisitions that are normally acquired from Higher Educational Institutions.

[FR Doc. 89-13369 Filed 6-5-89; 8:45 am]

BILLING CODE 3810-01-M

Notices

Federal Register
Vol. 54, No. 107
Tuesday, June 6, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-083]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Officer, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 847, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organism	Field test location
89-109-03	Iowa State University	04-19-89	Popular plants genetically engineered to express wound inducible chloramphenicol acetyltransferase..	Iowa.
89-116-20	BioTechnica Agriculture, Inc	04-26-89	Tobacco plants genetically engineered to express dihydrodipicolinic acid synthase..	Wisconsin.

Done in Washington, DC, this 31st day of May 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13405 Filed 6-5-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Annual Retail Trade Survey
Form Numbers: B-151, B-151A, B-151D, B-152, B-153, B-153D
Agency Approval Number: 0607-0013
Type of Request: Extension of a currently approved form
Burden: 9,076 hours
Number of Respondents: 21,635
Avg Hours per Response: 25 minutes
Needs and Uses: Data Collected will be used by the Bureau of Economic Analysis in computing the Gross National Product, by the Federal Reserve Board in measuring consumer credit, and by businesses in determinng market share
Affected Public: Businesses or other for-profit institutions, Small businesses or organizations
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 31, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-13333 Filed 6-5-89; 8:45 am]

BILLING CODE 3510-07-M

National Institute of Standards and Technology

Visting Committee on Advanced Technology; Closed Meeting

AGENCY: National Institute for Standards and Technology, Commerce.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that there will be a closed meeting of the Visiting Committee on Advanced Technology of the National Institute of Standards and Technology on Wednesday, June 21, 1989, at 9:30 a.m. to 10:30 a.m. with officials at the Department of Commerce. The Visiting Committee on Advanced Technology is composed of

nine members from the private sector, prominent in their fields in industry or academia and appointed by the Director of the National Institute of Standards and Technology. The purpose of this meeting is to fully examine and discuss FY 1991 budget planning information for the National Institute of Standards and Technology.

DATE: The meeting will convene June 21, 1989, at 9:30 a.m. and adjourn at 10:30 a.m. on June 21, 1989. The entire meeting will be closed.

ADDRESS: The meeting will be held in Conference Room 5859, Department of Commerce, 14th and Constitution, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Dale E. Hall, Executive Director, Visiting Committee on Advanced Technology, National Institute for Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 31, 1989 that the meeting of the Visiting Committee on Advanced Technology with officials at the Department of Commerce will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., as amended by section 5(c) of the Government in the Sunshine Act, P.L. 94–409. The meeting, which involves review of budget planning information to be fully examined and discussed, may be closed to the public in accordance with section 552(c)(4) of Title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Date: May 31, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89–13532 Filed 6–5–89; 8:45 am]

BILLING CODE 3510–13–M

Malcolm Baldrige National Quality Award's Panel of Judges; Closed Meeting

AGENCY: National Institute of Standards and Technology, DoC.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that there will be a closed meeting of the Panel of Judges of the Malcolm Baldrige National quality Award from Tuesday, June 14, through Wednesday, June 15, 1989. The Panel of Judges is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the 1989 Award applications and to select applications to be considered in the second stage of the evaluation. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 14, 1989 at 8:30 a.m. and adjourn at approximately 2:00 p.m. on June 15, 1989. The entire meeting will be closed.

ADDRESS: The meeting will be held in Suite 500 of the American Society for Quality Control, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Associate Director of Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 19, 1989 that the meeting of the Panel of Judges will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Raymond G. Kammer,

Acting Director.

Date: May 30, 1989.

[FR Doc. 89–13348 Filed 6–5–89; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Mr. Guerrero-Calderon From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal.

On March 17, 1989, the Secretary of Commerce received a notice of appeal from Mr. Guerrero-Calderon (Appellant) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's consistency certification for a United States Army Corps of Engineers (Corps) permit to build a private use timber pier, with mooring pilings and buoys, in Tamarindo Bay, Culebra, Puerto Rico. the PRPB's objection precludes the Corps from issuing the permit pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the Federal Register and a local newspaper.

FOR FURTHER INFORMATION CONTACT: Hugh C. Schratwieser, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: May 26, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 89–13301 Filed 6–5–89; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of DoD 5025.1–I, "DoD Directives System Annual Index"

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to inform the public and U.S. Government Agencies other than the Department of Defense of the availability of DoD 5025.1–I. The Index may be purchased from the following organizations:

National Technical Information (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Telephone number (703) 487–4600,

or

U.S. Naval Publications and Forms Center (NPFC), 5801 Tabor Avenue, Attention Code 1052, Philadelphia, Pennsylvania 19120–5099, Telephone number (215) 697–3321.

The NTIS accession number for the "DoD Directives System Annual Index," January 1989 edition, is PB89 175186; NPFC identifies it as DoD 5025.1-I.

FOR FURTHER INFORMATION CONTACT: Ms Linda Bynum, Correspondence and Directives Directorate, Directives Division, Room 2A286, the Pentagon, Washington, DC 20301-1155, telephone number (202) 697-4111.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 31, 1989.

[FR Doc. 89-13303 Filed 6-5-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Advisory Board; Cancellation of Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board, DoD.

ACTION: Notice of cancellation of closed meeting.

SUMMARY: Notice is hereby given that the closed meeting of the DIA Advisory Board's Tactical Intelligence Information Handling Systems Panel, scheduled for 31 May 1989, that was announced in the **Federal Register** on Thursday, 6 April 1989, Vol. 54, No. 65, 13944 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340-1328 (202/373-4930).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 31, 1989.

[FR Doc. 89-13304 Filed 6-5-89; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Advisory Committee on Uncompensated Overtime; Meeting

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the provisions of Public Law 92-463 (Federal Advisory Committee Act), notice is hereby given that a meeting of the Department of Defense Advisory Committee on Uncompensated Overtime is scheduled to be held on June 16, 1989, from 1:00 pm to 4:00 pm, at The Pentagon, Washington, DC, in OSD Conference Room 1E801 #7. The meeting is open to the public. This is the third meeting of the advisory committee.

The Department of Defense Advisory Committee on Uncompensated Overtime was established pursuant to section 804 of Pub. L. 100-456 (FY89 National Defense Authorization Act). The advisory committee is responsible for: (1) Developing criteria to ensure that proposals for contracts for professional and technical services are evaluated on a basis which does not encourage contractors to propose mandatory uncompensated overtime for professional and technical employees, and (2) making recommendations to the Secretary of Defense on the criteria to be adopted by the Secretary. In developing the recommendations, the advisory committee shall address the following issues: (A) How the Department of Defense can best be assured that it receives the best quality services for the amounts expended and that the contractors supplying such services follow sound personnel management practices and observe established labor-management policies and regulations; (B) Whether contract competitions should be structured in a manner that requires offerors to compete on the basis of factors other than the number of hours per week its professional and technical employees of similar annual salaries work; and (C) Whether the Department of Defense can allow contractors to maintain different accounting systems (for example, 40-hour work week, full time accounting) and still allow the Department to evaluate proposals on the basis of a work rate of 40 hours per week and 2,080 hours per year.

FOR FURTHER INFORMATION CONTACT: Persons desiring additional information or planning to attend the meeting should contact Mr. Ted Godlewski, Action Officer, Office of the Deputy Assistant Secretary of Defense for Procurement, Directorate of Cost, Pricing and Finance, The Pentagon—Room 3C800, Washington, DC 20301-1900, telephone (202) 695-7249, no later than June 14, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 31, 1989.

[FR Doc. 89-13305 Filed 6-5-89; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Environmental Advisory Board; Meeting

Federal Register Citation of Previous Announcement: **Federal Register**/Vol. 54, No. 93/Tuesday, May 16, 1989/ Notices, page 21094, *Meeting:* Environmental Advisory Board, *Agency:* U.S. Army Corps of Engineers, DOD, *Action:* Notice of open meeting.

Previously Announced Time and Date of the Meeting: The meeting will be held from 1:00 p.m. to 5:00 p.m., Thursday, June 22, 1989.

Changes in the Meeting: The meeting will commence at 1:00 p.m. on Thursday, June 22, 1989 and will end at 12:00 p.m. on Friday, June 23, 1989.

Contact Person for More Information: Dr. William L. Klesch, Chief, Office of Environmental Policy, Office of the Chief of Engineers, Washington, DC 20314-1000, (202) 272-0166.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 89-13359 Filed 6-5-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 6, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 30, 1989.

Carlos U. Rice,

Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Extension
Title: Library Services and Construction Act (Pub. L. 98–480)—Financial Performance and Completion Reports for State Administered Programs—Titles, I, II, and III
Frequency: Annually
Affected Public: State or local government
Reporting Burden:
Responses: 54
Burden Hours: 2,160
Recordkeeping Burden:
Recordkeepers: 54
Burden Hours: 541
Abstract: These forms will be used by State Library Administrative Agencies that receive funds under the Library Services and Construction Act, as amended. The Department uses the information collected to assess the accomplishments of project goals and objectives and to aid in effective program management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New
Title: Biennial Report Form for Emergency Immigrant Education Program
Frequency: Biennially
Affected Public: State and local governments
Reporting Burden:
Responses: 32
Burden Hours: 2,206
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form requires SEAs to submit a biennial report to the Secretary on expenditures of Emergency Immigrant Education Program funds. The SEAs are also required to report the national origin of the immigrant children in the program. The Department uses the information collected to assess the accomplishments of projects and to aid in effective program management.

Office of Postsecondary Education

Type of Review: Extension
Title: Application Information Request to Participate in the Paul Douglas Teacher Scholarship Program
Frequency: On Occasion
Affected Public: State or local governments
Reporting Burden:
Responses: 11
Burden Hours: 45
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The Paul Douglas Teacher Scholarship Program uses Federal funds to provide college scholarships to outstanding high school students to enable them to pursue teaching careers at the elementary or secondary school levels. The Department uses this information for program management.

[FR Doc. 89–13357 Filed 6–5–89; 8:45 am]
BILLING CODE 4000–01–M

Office of Elementary and Secondary Education

Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965; Chapter 1 Program in Local Educational Agencies; Meetings

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of regional meetings.

SUMMARY: The Acting Assistant Secretary for Elementary and Secondary Education of the U.S. Department of Education will convene eight regional meetings to discuss the content of the final regulations for grants to local educational agencies under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law 100–297, and to solicit input for the Department on the content of the policy manual required under those Amendments. These meetings are open to the public and will include representatives of Federal, State, and local administrators, parents, teachers, members of local school boards, and private school representatives involved with the implementation of local education programs under Chapter 1. The Acting Assistant Secretary has notified the Chief State School Officer (CSSO) in each State and the following educational organizations and interest groups:

American Association of School Administrators
American Federation of Teachers
Center for Law and Education, Inc.
Children's Defense Fund
Council for American Private Education
Council of Chief State School Officers
Council of the Great City Schools
International Reading Association
Lawyers' Committee for Civil Rights Under Law
NAACP Legal Defense Fund
National Association of Elementary School Principals
National Association of Federal Education Program Administrators
National Association of Secondary School Principals
National Association of State Boards of Education
National Center for Neighborhood Enterprise
National Coalition of Title I/Chapter 1 Parents
National Council of Teachers of Mathematics
National Governors' Association
National Education Association
National Parent Teachers Association
National School Boards Association
Rural Education Association

The CSSOs and the organizations and interest groups will assist the Department in selecting persons to be invited to attend the meetings, but other interested individuals are welcome to attend as well.

Meeting Information: The regional meetings are scheduled to be held as follows:

June 5–6: Atlanta, GA, at the Radisson Inn and Conference Center; Arlington, VA, at the Rosslyn Westpark Hotel
June 8–9: Albany, NY, at the Sheraton Airport Inn; Denver, CO, at the Radisson Hotel
June 12–13: Austin, TX, at the Marriott at the Capitol; San Franisco, CA, at the Westin Hotel
June 15–16: Kansas City, MO, at the Hyatt Regency Crown Center Hotel;

Tacoma, WA, at the La Quinta Motor Inn

Each meeting will begin at approximately 9:00 a.m. the first day and conclude at noon on the second day.

FOR FURTHER INFORMATION CONTACT: Other persons interested in attending one of the meetings should contact Mary Jean LeTendre, Compensatory Education Programs, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., Washington, DC 20202–6132. Telephone: (202) 732–4682.

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children—Local Educational Agencies)

Dated: May 30, 1989.

Daniel F. Bonner,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 89–13356 Filed 6–5–89; 8:45 am]

BILLING CODE 4000–01–M

Office of Special Education and Rehabilitative Services

[CFDA No. 84.133D]

Invitation of Applications for New Awards for Fiscal Year 1989 by the National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice Inviting Applications for New Awards Under the Knowledge Dissemination and Utilization Program of the National Institute on Disability and Rehabilitation Research for Fiscal Year 1989.

Purpose of Program: The purpose of this program is to ensure that rehabilitation knowledge generated from projects and Centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities.

Deadline for Transmittal of Applications: July 7, 1989.

Applications Available: June 7, 1989.

Available Funds: $400,000.

Estimated Number of Awards: 2.

Estimated Average Award: $200,000.

Project Period: Up to 18 months.

Note: The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute. This notice is for applications for Regional Information Exchanges as described in the notice of final funding priorities published in the Federal Register on April 25, 1989 at 59 FR 17896. Potential applicants should consult the final funding priority for a description of the purpose and scope of the projects. Applicants may use the application forms published in that issue of the Federal Register to submit their applications.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), in 34 CFR Parts 74, 75, 77, 80, 81, and 85, and (b) the regulations governing this program at 34 CFR Parts 350 and 355.

For Applications Contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2601, Attention: Peer Review Unit. Telephone: (202) 732–1141; deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

FOR FURTHER INFORMATION CONTACT: Sean Sweeney, National Institute on Disability and Rehabilitation Research, (202) 732–1202.

Program Authority: 29 U.S.C. 761(a), 762(a), and 762(b)(5).

Dated: June 1, 1989.

Michael Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89–13355 Filed 6–5–89; 8:45 am]

BILLING CODE 4001–01–M

[CFDA No. 84.224A]

Invitation to Applications for New Awards for Fiscal Year 1989 by the National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice Inviting Applications for New Awards Under the State Grants Program for Technology-Related Assistance for Individuals with Disabilities for Fiscal Year 1989.

SUMMARY: On May 25, 1989, a notice was published in the Federal Register at 54 FR 22616. The application notice is corrected as follows: On page 22616, in the second column under Applicable Regulations, Part 79 was omitted.

For Applications Contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2601, Attention: Peer Review Unit. Telephone: (202) 732–1141; deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research, (202) 732–1139.

Program Authority: 29 U.S.C. 2201–2271

Dated: May 30, 1989.

Michael Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89–13358 Filed 6–5–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89–440–000, et al.]

Duke Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 30, 1989.

Take notice that the following filings have been made with the Commission:

1. Duke Power Company

[Docket No. ER89–440–000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing estimated billing information for calendar year 1989 pursuant to which North Carolina Municipal Power Agency Number 1 will be billed by Duke Power under Rate Schedule FERC No. 280. Duke Power states that this information is being submitted pursuant to the Commission's order dated October 6, 1978.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER89–422–000]

Take notice that on May 9, 1989, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Central Vermont Public Service Corporation dated May 1, 1989.

The May 1, 1989 agreement is to provide for the sale by Niagara Mohawk Power Corporation of peaking capacity and related energy to Central Vermont Public Service Corporation. The terms of this agreement and the period during which the purchase of Peaking Capacity can occur shall commence on May 1, 1989 and shall continue until October 31, 1989.

Copies of this filing were served upon Central Vermont Public Service Corporation and the New York State Public Service Commission.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Power Company

[Docket No. ER89-444-000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing the 1987 Catawba Interconnect Annual Actual Statements which were used to true-up the 1987 billing estimates for Rate Schedule FERC No. 280 between Duke Power and North Carolina Muncipal Power Agency Number 1.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Power Company

[Docket No. ER89-445-000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing the 1987 Catawba Interconnect Annual Actual Statements which were used to true-up the 1988 billing estimates for Rate Schedule FERC No. 274 between Duke Power and Saluda River Electric Cooperative, Inc.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Company

[Docket No. ER89-448-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on May 17, 1989, tendered for filing a transmission service agreement with Madison Gas and Electric Company (MG&E). The agreement provides for either firm on non-firm transmission service to be rendered by Wisconsin Electric to MG&E, in accordance with Wisconsin Electric's FERC Electric Tariff, Original Volume No. 1, Rate Schedule T-1.

Wisconsin Electric respectfully requests waiver of the Commission's sixty-day notice requirements in order to allow an effective date of May 10, 1989. Wisconsin Electric is authorized to state that MG&E joints in the requested effective date.

Copies of the filing have been served on MG&E and the Public Service Commission of Wisconsin.

Comment date: June 12, 1989, in accordance with Standard Paragraph end of this notice.

6. Nevada Power Company

[Docket No. ER89-450-000]

Take notice that on May 19, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Interconnection Agreement Between Nevada Power Company and Overton Power District No. 5 (Overton) hereinafter "the Agreement." The primary purpose of the Agreement is to establish the terms and conditions for the interchange of economy, emergency, and banked energy and for other power transactions that may be possible through the Parties' interconnected systems or through the systems of third Parties.

Nevada states that copies of the filing were served upon Overton.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Nevada Power Company

[Docket No. ER89-451-000]

Take notice that on May 19, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Interconnection Agreement Between Nevada Power Company and Deseret (Deseret) Generation & Transmission Co-Operative hereinafter the Agreement. The primary purpose of the Agreement is to establish the terms and conditions for the interchange of economy, emergency, and banked energy and for other power transactions that may be possible through the Parties' interconnected systems or through the systems of third Parties.

Nevada states that copies of the filing were served upon Deseret.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Power & Light Company

[Docket No. ER89-452-000]

Take notice that Pennsylvania Power & Light Company (PP&L) tendered for filing on May 19, 1989, as a Supplement to its Rate Schedule FERC No. 84, an executed Agreement dated as of May 3, 1989, between PP&L and Jersey Central Power & Light Company (Jersey Central). The agreement clarifies the methodologies for determining the depreciation expense and decommissioning expense components in the formula rate, and makes several conforming amendments to the rate schedule. A Certificate of Concurrence executed by Jersey Central accompanied PP&L's filing.

Copies of PP&L's filing have been served upon Jersey Central, the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power & Light Company

[Docket No. ER89-349-001]

Take notice that on May 15, 1989, Wisconsin Power & Light Company (WPL) tendered for filing a Wholesale Power Contract dated June 26, 1986 and Amendment No. 1 dated March 22, 1989, both between the City of Elkhorn and WPL. Elkhorn is currently taking service from Wisconsin Electric Power Company (WEP).

The purpose of the Contract and Amendment is to define the terms and conditions of service. Service under this Contract will be in accordance with WPL's standard W-3 rate schedule. WPL requests an effective date of June 16, 1989, concurrent with the termination date of Elkhorn's wholesale power agreement with WEP. WPL states that copies of the agreement and filing have been provided to Elkhorn, WEP and the Wisconsin Public Service Commission.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER89-400-000]

Take notice that Florida Power & Light Company (FPL), on May 2, 1989, tendered eight (8) revised Exhibits A which provide for the contract demands for Florida Keys Electric Cooperative Association, Inc; Fort Pierce Utilities Authority; City of Homestead; Utilities Commission, City of New Smyrna Beach; City of Starke; City of Vero Beach; City of Jacksonville Beach; and City of Green Cove Springs under Rate Schedule PR-3 of FPL's FERC Electric Tariff Second revised Volume No. 1. The proposed effective date for the contract demands for Florida Keys Electric Cooperative Association, Inc; Fort Pierce Utilities Authority; City of Homestead; Utilities Commission, City of New Smyrna Beach; City of Starke; and City of Vero Beach is May 29, 1989. The proposed effective date for the contract demands for the City of Jacksonville Beach, and the City of Green Cove Springs is June 1, 1989.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Minnesota Power & Light Company

[Docket No. ER89-434-000]

Take notice that Minnesota Power & Light Company (MP&L) on May 15, 1989, tendered for filing proposed changes in its rate schedule for third-party purchase and resale transactions pursuant to Commission Order No. 84, designated as:

Minnesota Power & Light Company
FERC Order No. 84 Rate Schedule
Original Sheet No. 1

The third rate schedule is applicable to third-party purchase and resale of electric power. The rate schedule provides that for such voluntary third-

party transactions, Minnesota Power will charge the receiving party:

(a) The amount Minnesota Power pays the supplying third party for such power and/or energy; plus

(b) Up to $5.42 per MWh (in no event shall the one day total of such hourly charges for any single transactions exceed $86.77 times the highest average number of megawatts resold in any hour during the day) for transmission investment; plus

(c) Up to $1.00 per MWh for difficult-to-quantify costs; plus

(d) An adjustment for transmission losses.

Minnesota Power states that its reason for proposing the rate schedule is to include the quantifiable costs in its third-party transactions and to increase Minnesota Power's flexibility to effectively market power and energy by permitting it to charge less than the full rate.

Copies of the filing have been mailed to each of the parties identified in the Service List.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Company

[Docket No. ER89-435-000]

Take notice that on May 15, 1989, Duke Power Company, (Duke Power) tendered for filing the 1988 Catawba Interconnect Annual Actual Statements which were used to true-up the 1988 billing estimates for Rate Schedule FERC No. 273 between Duke Power and North Carolina Electric Membership Corporation.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Power Company

[Docket No. ER89-439-000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing the Catawba Interconnect Annual Actual Statements which were used to true-up the 1987 billing estimates for Rate Schedule FERC No. 273 between Duke Power and North Carolina Electric Membership Corporation.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Power Company

[Docket No. ER89-441-000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing the 1988 Catawba Interconnect Annual Actual Statements which were used to true-up the 1988 billing estimates for Rate Schedule FERC No. 276 between Duke Power and Piedmont Municipal Power Agency.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Power Company

[Docket No. ER89-442-000]

Take notice that on May 15, 1989, Duke Power Company tendered for filing the 1988 Catawba Interconnect Annual Actual Statements which were used to true-up the 1988 billing estimates for Rate Schedule FERC No. 280 between Duke Power and North Carolina Municipal Power Agency Number 1.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Power Company

[Docket No. ER89-443-000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing the 1987 Catawba Interconnect Annual Actual Statements which were used to true-up the 1987 billing estimates for Rate Schedule FERC No. 274 between Duke Power and Saluda River Electric Cooperative, Inc.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

17. Duke Power Company

[Docket No. ER89-446-000]

Take notice that on May 15, 1989, tendered for filing estimated billing information for calendar year 1989 pursuant to which Saluda River Electric Cooperative, Inc. will be billed by Duke Power under Rate Schedule FERC No. 274. Duke Power states that this data is being submitted pursuant to the Commission's Letter Order dated October 6, 1978.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

18. Arizona Public Service Company

[Docket No. ER89-449-000]

Take notice that on May 18, 1989, Arizona Public Service Company (APS or Company) tendered for filing Supplemental Capacity Sale Agreements (Agreements) between the Company and the Arizona Power Authority (APA), Electrical District No. 8 (Ed-8), Citizens Utilities Company (Citizens) and the Town of Wickenburg (Wickenburg) (collectively referred to as the Customers or Parties).

The Agreements provide for the sale of short-term firm supplemental capacity and associated energy by APS to the Parties. The term of these Agreements covers the general period May 1, 1989 through September 30, 1989.

The rates or costs to the Company's other customers will be unaffected by these transactions. No new facilities or modifications to existing facilities are required. The Parties recognize their obligation to provide for the supplemental load thereafter.

For the purposes of administrative efficiency, APS has also filed Notice of Cancellation, with the concurrence of the Parties.

APS and the parties request that the normal notice requirements be waived so that these Agreements may become effective May 1, 1989, for ED-8 and Citizens; and June 1, 1989 for APA and Wickenburg.

A copy of this filing has been served upon the Parties, and the Arizona Corporation Commission.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Pool

[Docket No. ER89-453-000]

Take notice that on May 22, 1989, the New England Power Pool tendered for filing signature pages to the NEPOOL Agreement dated September 1, 1971, as amended, signed by the New Hampshire Electric Cooperative, Inc. The New Hampshire Electric Cooperative, Inc. has its principal office in Plymouth, New Hampshire. NEPOOL indicates that the New England Power Pool Agreement has previously been filed with the Commission as a rate schedule (designated NEPOOL FPC No. 1).

NEPOOL states that New Hampshire Electic Cooperative, Inc. has joined over 90 other electric utilities as participants in the pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make the New Hampshire Electric Cooperative, Inc. a participant in the pool.

NEPOOL requests an effective date of October 1, 1988, for commencement of participation in the power pool by the New Hampshire Electric Cooperative, Inc. and requests waiver of the Commission's customary notice requirements to permit the membership of the New Hampshire Electric Cooperative, Inc. to become effective on that date.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

20. O'Brien (Hartford) Cogeneration Limited Partnership

[Docket No. QF86-9-002

On May 12, 1989, O'Brien (Hartford) Cogeneration Limited Partnership (Applicant), of St. James Street at Eighth Street, Philadelphia, Pennsylvania 19106, 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 cogeneration facility will be located at the Hartford Steam Company, 60 Columbus Boulevard, Hartford, Connecticut 01644. The facility will consist of two combustion turbine generating units, two heat recovery steam generators and an extraction/condensing steam turbine generating unit. The thermal output will consist of steam sold to the Hartford Steam Company for resale to customers in its steam loop. The primary energy source of the facility will be natural gas. No. 2 fuel oil will be used in emergency situations. The net electric power production capacity of the facility will be 53,914 kilowatts. Installation of the facility will begin the second quarter of 1989.

The original application was filed by O'Brien Energy System, Inc., on October 7, 1985 and was granted on December 27, 1985 (33 FERC ¶ 62,449). On December 6, 1988, Applicant filed a notification of qualifying status with the Commission describing a change in ownership and installation of the facility. The instant recertification is requested due to further change in ownership of the facility.

Comment date: Thirty days from publication in the **Federal Register**, 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,

Secretary.

[FR Doc. 89-13335 Filed 6-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-656-001]

Algonquin Gas Transmission Co.; Amendment

May 31, 1989.

Take notice that on May 26, 1989, Algonquin Gas Transmission Company (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP89-656-001 an amendment to its pending application filed on January 17, 1989, pursuant to Section 7(c) of the Natural Gas Act to construct and operate natural gas facilities and to provide a firm transportation service on behalf of Providence Gas Company (Providence), all as more fully set forth in the amendment on file with the Commission and open to public inspection.

In Docket No. CP89-656-000, Applicant requested authorization to initiate a firm transportation service for Providence of 21,063 MMBtu per day under Applicant's proposed Rate Schedule AFT-3. In order to implement the proposed service, Applicant proposed to construct (1) 2.0 miles of 36-inch pipeline loop in Mansfield and Chaplin, Connecticut, (2) 1.6 miles of 24-inch pipeline loop on its existing G-12 System in East Providence, Rhode Island, (3) 2.1 miles of 16-inch pipeline loop on its existing G-3 System which would start from Faunce Corner Road in Dartmouth, Massachusetts and terminate near New Bedford, Massachusetts, (4) 3.8 miles of new 12-inch pipeline lateral from its G-1 System to the new North Portsmouth, Rhode Island meter station on Aquidneck Island and (5) a new meter station on Aquidneck Island which would be designated as the North Portsmouth Meter Station. Applicant estimated that the cost to construct the proposed facilities would have been $17,677,000. It was further proposed that the transportation service would be implemented in two phases. The first phase of 10,000 MMBtu would have commenced on November 1, 1989, with deliveries at the existing Dey Street Meter Station and the second phase of 11,063 MMBtu would have commenced one year later after the proposed North Portsmouth Meter Station and the 3.8-mile lateral had been constructed.

In the amending application, Applicant now proposes to transport only 11,063 MMBtu per day on a firm basis on behalf of Providence and to construct (1) 2.0 miles of 36-inch pipeline loop in Mansfield and Chaplin, Connecticut, (2) 1.6 miles of 24-inch pipeline loop on its existing G-12 System in East Providence, Rhode Island, and (3) 2.1 miles of 16-inch pipeline loop in its existing G-3 System which would start from Faunce Corner Road in Dartmouth, Massachusetts and terminate near New Bedford, Massachusetts. Applicant estimates that the cost to construct these facilities would be approximately $11,230,000. Applicant explains that Providence no longer desires Applicant to construct the 3.8 miles of new 12-inch pipeline lateral or the North Portsmouth Meter Station on Aquidneck Island.

Applicant states that the proposed service would be rendered pursuant to the proposed Rate Schedule AFT-3, a copy of which was filed in the original application. Applicant proposes to recover the cost of the proposed facilities through a monthly demand charge of approximately $16.845 per MMBtu.

Applicant states that it would still receive the quantities of natural gas on behalf of Providence at a proposed point of interconnection with Columbia Gas Transmission Company (Columbia) in Morris County, New Jersey. Applicant explained that Columbia has requested to construct the proposed interconnection in the pending Docket No. CP88-163-000, *et al.*, currently on file with the Commission. From this point of receipt, Applicant would transport and deliver the quantities of natural gas to Providence at the existing Dey Street, East Providence Meter Station; it is stated.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 7, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons

who have heretofore filed need not file again.

Lois Cashell,

Secretary.

[FR Doc. 89-13300 Filed 6-5-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3593-7]

Alabama and Florida; Fiscal Year 89 Grant Performance Reports

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA recently performed midyear evaluations of two state air pollution control programs (Alabama Department of Environmental Management and Florida Department of Environmental Regulation). These midyear audits were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act. The audits were also conducted as part of the National Air Audit System (NAAS) established by EPA in an effort to assure nationwide consistency in the evaluation of state and local air pollution programs. EPA Region IV has prepared reports for the two agencies identified above and these NAAS/§ 105 reports are now available for public inspection.

ADDRESS: The reports may be examined at the EPA's Region IV office, 345 Courtland Street NE., Atlanta, GA 30365, in the Air, Pesticides & Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Walter Bishop at 404/347-2864). (FTS: 257-2864.

Dated: May 26, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 89-13354 Filed 6-5-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59271; FRL-3593-8]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of 5 application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATES: Written comments by: T 89-12, 89-13, 89-14, 89-15, 89-16 June 21, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-59271]" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89-12

Close of Review Period. July 5, 1989.
Importer. Confidential.
Chemical. (G) Polyphenylene ether/ polyamine alloy.
Use/Import. (G) Resin for molding. Import range: Confidential.

T 89-13

Close of Review Period. July 5, 1989.
Importer. Confidential.
Chemical. (G) Polyphenylene/ polyamide alloy.
Use/Import. (G) Resin for molding. Import range: Confidential.

T 89-14

Close of Review Period. July 5, 1989.
Importer. Confidential.
Chemical. (G) Polyphenylene/ polyamide alloy.
Use/Import. (G) Resin for molding. Import range: Confidential.

T 89-15

Close of Review. July 5, 1989.
Importer. Confidential.
Chemical. (G) Polyphenylene/ polyamide alloy.
Use/Import. (G) Resin for molding. Import range: Confidential.

T 89-16

Close of Review Period. July 5, 1989.
Importer. Confidential.
Chemical. (G) Polyphenylene/ polyamide alloy.
Use/Import. (G) Resin for molding. Import range: Confidential.

Date: May 26, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-13404 Filed 6-5-89; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee

Summary: The Advisory Committee was established by Pub. L. 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Tuesday, June 20, 1989, from 9:30 a.m. to 12:00 noon. The meeting will be held at Eximbank in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Financial Report, Congressional Matters, Competitiveness Report, Reinvolving Financial Institutions, Tied Aid Credit Report, and other topics.

Public Participation: The meeting will be open to public participation; and the last 15 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to

arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8871, not later than June 19, 1989. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact, prior to June 15, 1989, the Office of the Secretary, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 566–8871 or TDD: (202) 535–3913.

Further Information: For further information contact Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8871.

Joan P. Harris,

Corporate Secretary.

[FR Doc. 89–13537 Filed 6–5–89; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–829–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–829–DR), dated May 20, 1989, and related determinations.

DATED: May 30, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice: The notice of a major disaster for the State of Louisiana, dated May 20, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 20, 1989:

The parishes of Allen, Beauregard, Caddo, Caldwell, Calcasieu, Natchitoches, Red River, Sabine, Union, Vernon for Individual Assistance.

The notice of a major disaster for the State of Louisiana, dated May 20, 1989, is further amended to change the incidence period from May 5, 1989, and continuing, to May 4, 1989, through May 27, 1989.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89–13378 Filed 6–5–89; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–829–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–829–DR), dated May 20, 1989, and related determinations.

DATED: May 26, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice: The notice of a major disaster for the State of Louisiana, dated May 20, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 20, 1989.

The parishes of Lincoln, Morehouse, Richland, and West Carroll for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

George H. Orrell,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89–13379 Filed 6–5–89; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–827–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–827–DR), dated May 17, 1989, and related determinations.

DATED: May 30, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice: The notice of a major disaster for the State of North Carolina, dated May 17, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1989.

The County of Lincoln, For Public Assistance (Lincoln County is already designated for Individual Assistance)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89–13380 Filed 6–5–89; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200251

Title: Port of Seattle Terminal Agreement

Parties: Port of Seattle, Puget Sound Tug & Barge Co.

Filing Party: Keith Christian, Manager, Marine Real Estate, Port of Seattle, P.O. Box 1209, Seattle, WA 98111

Synopsis: The Agreement provides for the lease and operation of a rail barge

terminal at Pier 2. The teminal is to be used for staging and loading full containers on rail cars and chassis onto barges for shipment to Alaska. The Agreement also provides for chassis and container storage and related operations. The Agreement's term is for 10 years.

By order of the Federal Marine Commission.

Joseph C. Polking,

Secretary.

Dated: May 31, 1989.

[FR Doc. 89-13307 Filed 6-5-89; 8:45 am]

BILLING CODE 6730-01-M

Notice of 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.: 224-002401-011.

Title: Long Beach Terminal Agreement.

Parties:

City of Long Beach

Sea-Land Service, Inc.

Synopsis: The Agreement incoporates into the preferentially assigned areas of the basic agreement a 2.5 acre area commonly referred to as "Pelican Pond" and adjusts the rent payable for Parcel 1 for the term June 1, 1989 through March 31, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 31, 1989.

[FR Doc. 89-13308 Filed 6-5-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Howard R. Curd, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

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 June 20, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Howard R. Curd,* Longwood, Florida; to acquire up to 25.0 percent of the voting shares of Community National Bankcorp, Inc., Staten Island, New York, and thereby indirectly acquire Community National Bank & Trust Company of New York, Staten Island, New York.

B. **Federal Reserve Bank of Cleveland** (John J. Wixsted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Ameritrust Corporation Employees' Savings and Investment Plan,* Cleveland, Ohio; to acquire up to an additional 7.49 percent of the voting shares of Ameritrust Corporation, Cleveland, Ohio, for a total of between 14.7 percent and 16.0 percent, and thereby indirectly acquire Ameritrust Company, N.A., Cleveland, Ohio; and Ameritrust Indiana Corporation, and thereby indirectly acquire American National Bank of Noblesville, Noblesville, Indiana; Boone County State Bank, Lebanon, Indiana; First National Bank, Elkhart, Indiana; First National Bank & Trust Company, Sturgis, Minnesota; Indiana Bank & Trust Company, Martinsville, Indiana; State Bank of Lima, Howe, Indiana; State Bank of Syracuse, Syracuse, Indiana; Union Bank & Trust Company, Kokomo, Indiana; and Franklin Bank & Trust Company, Franklin, Indiana.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Gail K. Mathisen.* Chanhassen, Minnesota; to retain ownership of 100 percent of the voting shares of St. James Bankcorp, Inc., Chanhassen, Minnesota, and thereby indirectly acquire Citizens State Bank of St. James, St. James, Minnesota; and Jackson State Bank, Jackson, Minnesota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Dennis Schardt,* Deshler, Nebraska; to acquire 39.47 percent; Ronald Schardt, Deshler, Nebraska, to acquire 0.67 percent; Superior Deshler Company, Deshler, Nebraska, to acquire 4.94 percent; VIE Company, Deshler, Nebraska, to acquire 4.94 percent; S&S Industries, Inc., Deshler, Nebraska, to acquire 0.65 percent of the voting shares of Gibbon Exchange Company, Gibbon, Nebraska, and thereby indirectly acquire Exchange Bank, Gibbon, Nebraska.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Lowell M. Irby,* Artesia, New Mexico, to acquire 6.10 percent; William M. Siegenthaler, Artesia, New Mexico, to acquire 2.68 percent; Loy G. Fletcher, Artesia, New Mexico, to acquire 1.52 percent; John T. Jackson, Jr., Artesia, New Mexico, to acquire 1.52 percent; Greg Anesi, Farmington, New Mexico, to acquire 3.05 percent; James E. Guy, Artesia, New Mexico, to acquire 1.52 percent; and Western Bank, Artesia, New Mexico, to acquire 3.06 percent of Western Bancshares of New Mexico, Inc., Artesia, New Mexico, and thereby indirectly acquire Western Bank, Artesia, New Mexico.

2. *Vernon Carroll Minor,* Marlin, Texas; to acquire 67 percent of the voting shares of Lorena State Bank, Lorena, Texas.

Board of Governors of the Federal Reserve System, May 31, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-13327 Filed 6-5-89; 8:45 am]

BILLING CODE 6210-01-M

Puget Sound Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

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 June 23, 1989.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Puget Sound Bancorp*, Tacoma, Washington; to engage *de novo* in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Tacoma, Washington.

Board of Governors of the Federal Reserve System, May 31, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-13328 Filed 6-5-89; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific 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 USC 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 outweight 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 June 29, 1989.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to acquire through a wholly-owned subsidiary, Security Pacific Housing Services, Inc., certain assets of the Home and Recreation Financial Services department of General Electric Capital Corporation and continue to engage in conditional sales contract financing and servicing pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 31, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-13329 Filed 6-5-89; 8:45 am]

BILLING CODE 6210-01-M

Valley Bancorp, 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 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 23, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Valley Bancorp, Inc.*, White River Junction, Vermont; to become a bank holding company by acquiring 100 percent of the voting shares of Valley Bank, White River Junction, Vermont.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1445 East Sixth Street, Cleveland, Ohio 44101:

1. *First Financial Bancorp*, Monroe, Ohio; to merge with ILB Financial Corp., North Manchester, Indiana, and thereby indirectly acquire Indiana Lawrence Bank, North Manchester, Indiana.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *FBC Holding Company, Inc.*, Crestview, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Crestview, Crestview, Florida.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mercantile Bancshares, Inc.*, Jonesboro, Arkansas; to acquire 100 percent of the voting shares of North

Arkansas Bancshares, Inc., Jonesboro, Arkansas, and thereby indirectly acquire First State Bank of Newport, Newport, Arkansas; The Bank of Rector, Rector, Arkansas; and Searcy County Bank, Marshall, Arkansas; and Mammoth Investment and Credit Corporation, Mammoth Spring, Arkansas, and thereby indirectly acquire Security National Bank, Sidney Arkansas, and Peoples National Bank, Mammoth Spring, Arkansas. First State Bank of Newport, The Bank of Rector, Searcy County Bank, and Security National Bank engage only in the sale, as agent, of credit-related insurance. Peoples National Bank engages in the sale of general insurance through its wholly-owned subsidiary, Spring River Property, Inc., Mammoth Spring, Arkansas, which has a population of less than 5,000.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Hutchinson Financial Corporation*, Wichita, Kansas; to acquire 100 percent of the voting shares of Iuka Bancshares, Inc., Iuka, Kansas, and thereby indirectly acquire The Iuka State Bank, Iuka, Kansas. Comments on this application must be received by June 20, 1989.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California; to acquire 100 percent of the voting shares of Nevada First Development Corporation, Reno, Nevada, and thereby indirectly acquire Nevada First Bank, Reno, Nevada, and Silver State Thrift & Loan Association, Reno, Nevada.

Board of Governors of the Federal Reserve System, May 31, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-13330 Filed 6-5-89; 8:45 am]

BILLING CODE 6210-01-M

The Long-Term Credit Bank of Japan, Limited, Tokyo, Japan; Application To Provide Certain Financial Advisory Services

The Long-Term Credit Bank of Japan, Limited, Tokyo, Japan ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Act (12 U.S.C. 1841, *et seq.*) (the "BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), to acquire, through its wholly owned subsidiary, LTCB Capital Markets, Wilmington, Delaware ("LCM"), 60 percent of the outstanding voting shares of LTCB-MAS Investment Management, Inc., Bala-Cynwyd, Pennsylvania ("LTCB-MAS"), and thereby establish a joint venture with Miller, Anderson & Sherrerd, Bala-Cynwyd, Pennsylvania ("MAS"). MAS is a partnership which provides discretionary money management services to institutional investors in the United States.

Applicant states that the primary function of LTCB-MAS would be to provide discretionary investment management services and investment advice to Japanese institutional investors and their United States subsidiaries with respect to securities principally traded in the United States. LTCB-MAS would engage in investment advisory activities throughout the United States to the extent permissible under 12 CFR 225.25(b)(4): (i) Serving as the advisory company for a mortgage or a real estate investment trust; (ii) serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(20)) to an investment company registered under that act, including sponsoring, organizing, and managing a closed-end investment company; (iii) providing portfolio investment advice to any other person; (iv) furnishing general economic information and advice, general economic statistical forecasting services and industry studies; and (v) providing financial advice to state and local governments, such as with respect to the issuance of their securities.

Interested persons are requested to express their views in writing on 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 interest, or unsound banking practices.

Any views or requests for a 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 June 30, 1989. 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 of why 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.

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, May 31, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-13331 Filed 6-5-89; 8:45 am]

BILLING CODE 6210-01-M

W.T.B. Financial Corporation, Spokane, WA; Expand Geographic Scope of Permissible Nonbanking Activities; Correction

This notice corrects a previous Federal Register notice (FR Doc. 89-11310) published at page 20431 of the issue for Thursday, May 11, 1989.

Under the Federal Reserve Bank of San Francisco, the entry for W.T.B. Financial Corporation is amended to read as follows:

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *W.T.B. Financial Corporation*, Spokane, Washington; to engage *de novo* through its subsidiary, W.T. Investment Advisors, Inc., Spokane, Washington, in acting as an investment advisor to the extent of providing portfolio investment advice to any person, serving as an investment advisor to a registered investment company and providing financial advice to state and local government, such as with respect to the issuance of their securities pursuant to § 225.25(b)(4) of the Board's Regulation Y. These activities will be conducted in the States of Nevada and California.

Comments regarding this application must be received at the Federal Reserve Bank of San Francisco or the offices of the Board of Governors not later than June 20, 1989.

Board of Governors of the Federal Reserve System, May 31, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-13332 Filed 6-5-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires

persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 051589 AND 052689

Name of acquiring perion, name of acquired person, name of acquired entity	PMN No.	Date terminated
The Renco Group Inc., AMAX Inc., AMAX Magnesium Corporation	89-1473	05/15/89
Amoco Corporation Chevron Corporation, Chevron U.S.A. Inc	89-1564	05/15/89
York Holdings Corporation, RECO International, Inc., RECO International, Inc	89-1567	05/15/89
Mr. George S. Mann, Dunkin' Donuts Incorporated, Dunkin' Donuts Incorporated	89-1596	05/15/89
Prudential-Bache Energy Income L.P. VIP-25, Martin D. Gruss, Jogruss Oil Corp., J.G. Carmel, Inc., Lyntin Oil	89-1603	05/15/89
Courtaulds plc, Products Research & Chemical Corporation, Products Research & Chemical Corporation	89-1607	05/15/89
PepsiCo, Inc., Ruby Rice Speck, Rice Bottling Enterprises, Inc	89-1609	05/15/89
Kirk Kerkorian, Christopher C. Skase, Qintex Australia Limited	89-1626	05/15/89
Qintex Entertainment Inc., Kirk Kerkorian, MGM/UA Communications Co	89-1627	05/15/89
William W. Winspear, c/o Associated Materials Inc., Amercord Inc., Amercord Inc	89-1635	05/15/89
First Chicago Corporation, JWC Associates L.P., The Georgia Marble Company	89-1641	05/15/89
Ivaoc, Inc., Amercord Inc. Amercord Inc	89-1650	05/15/89
Sonat Inc., John Franks, John and Alta Franks; Franks Petroleum Inc	89-1651	05/15/89
Johnson Controls, Inc., Pan Am Corporation Pan Am World Services, Inc./Pan Am World Airways, Inc	89-1656	05/15/89
Tenneco Inc., Hugo Schwartz, Interfriction U.S.A. Corporation	89-1658	05/15/89
Daniel J. Sullivan, Trust Under The Will of George T. Carr, Detroit Tool Metal Products Company	89-1661	05/15/89
Mr. Abraham D. Gosman, c/o A.M.A. Equities Corp., American Healthcorp, Inc., American Treatment Centers, Inc	89-1676	05/15/89
Acadia Partners, L.P. Manville Corporation, Manville Sales Corporation	89-1678	05/15/89
Roxboro Investments (1976) Ltd., Imperial Chemical Industries PLC, C-I-L Corporation of America	89-1683	05/15/89
Sam Fox, Manville Corporation, Manville Sales Corporation	89-1704	05/15/89
Stotler Group Inc., The Statesman Group, Inc., Statesman Financial Services, Inc	89-1721	05/15/89
Aetna Life and Casualty Company, HealthWays Systems, Inc., HealthWays Systems, Inc	89-1552	05/16/89
Victor Posner, DWG Corportion, DWG Corporation	89-1681	05/16/89
Gerald C. Phillips, George Shinn, Rutledge Education System	89-1686	05/16/89
Household International, Inc., Atlantic Financial Federal, Atlantic Financial Federal	89-1688	05/16/89
Compagnie Financiere de Suez, Federal-Mogul Corporation, Target Products Division	89-1469	05/17/89
Petroleos de Venezuela, S.A., Unocal Corporation, Union Oil Company of California	89-1556	05/17/89
Robert M. Bass, The Vons Companies, Inc., The Vons Companies, Inc	89-1580	05/17/89
Petroleos de Venezuela, S.A., Unocal Corporatrion, Union Oil Company of California	89-1598	05/17/89
Unocal Corporation, Unocal Corporation, Unocal Corporation	89-1599	05/17/89
ServiceMaster Limited Partnership, American Home Shield Corporation, American Home Shield Corporation	89-1605	05/17/89
Kobe Steel, Ltd., USX Corporation, Lorain Works of USX	89-1620	05/17/89
Health Insurance Plan of Greater New York, Rutgers Community Health Plan, Inc., Rutgers Community Health Plan, Inc	89-1629	05/17/89
HCS Technology, N.V., Colorocs Corporation, Colorocs Corporation	89-1637	05/17/89
E.I. du Pont de Nemours and Company, Transco Energy Company, TXP Operating Company and Transco Exploration Company	89-1674	05/17/89
Peerless Carpet Mills, Inc., Peerless Carpet Mills, Inc	89-1693	05/17/89
Peerless Carpet Corporation, Galaxy Carpet Mills, Inc., Galaxy Carpet Mills, Inc	89-1697	05/17/89
Tyler Capital Fund, L.P., American Healthcare Management, Inc., American Healthcare Management, Inc	89-1706	05/17/89
Tyler Capital Fund, L.P., AHM Acquisition (Joint Venture) AHM Acquisition (Joint Venture)	89-1714	05/17/89
Donald J. Trump, Elsinore Corporation, Elsinore Shore Associates	89-1597	05/18/89
The Brand Companies, Inc., R.L. Anderson, Jr., Scaffold Services, Inc	89-1614	05/18/89
Unilever N.V., Thomas J. Lutsey, Gold Bond Ice Cream, Inc	89-1640	05/18/89
Cambrex Corporation, Whittaker Corporation, Whittaker Corporation	89-1583	05/19/89
Kotobuki Fudosan Ltd., Golder, Thoma & Cressey Fund II, Ltd. Partnership, Willow Springs Premium Water, Inc	89-1610	05/19/89
Acme Steel Company, Sudbury, Inc., Alpha and Beta Tube Divisions, Sudbury Industrial, Inc	89-1685	05/19/89
Crown Pacific, Ltd., Scott Paper Company, Three River Timber Company et el	89-1701	05/19/89
Diesel Kiki Co., Ltd., Gleason Corporation, DK-Gleason, Inc	89-1707	05/19/89
Henry T. Swiger, ESCO Corporation, NEWESCO	89-1712	05/19/89
Carolco Investments B.V., De Laurentiis Entertainment Group Inc., De Laurentiis Entertainment Group Inc	89-1719	05/19/89
Kobe Steel, Ltd., Kobe/Lorain, Inc., Kobe/Lorain, Inc	89-1724	05/19/89
Parker & Parsley Development Partners, L.P., Southmark Corporation, Parker & Parsley Petroleum Company	89-1726	05/19/89
Roger West, Sudbury, Inc., United Industries, Inc	89-1730	05/19/89
Kennametal Inc., Allied-Signal Inc., Garrett Industrial Supply Company	89-1733	05/19/89
Ladbroke Group PLC, The Equitable Life Assurance Society of the U.S., Washington International Associates	89-1735	05/19/89
Ladbroke Group PLC, Ali A. Juffali (89-1736), Ahmed A. Juffali (89-1737), Washington International Associates	89-1736	05/19/89
Ladbroke Group PLC, Ahmed A. Juffali, Washington International Associates	89-1737	05/19/89
Quanex Corporation, Nichols-Homeshield, Inc., Nichols-Homeshield, Inc	89-1739	05/19/89
Gay M. Love, Banta Corporation, Daniels Packaging Company, Inc	89-1743	05/19/89
Gerald C. Phillips, Maxwell Communication Corporation plc, Katherine Gibbs School (Incorporated)	89-1750	05/19/89
American West Airlines, Inc., Texas Air Corporation, Eastern Air Lines, Inc	89-1752	05/19/89
Stanhome Inc., The Hamilton Group Limited, Inc., The Hamilton Group Limited, Inc	89-1587	05/22/89
Sommer Allibert, S.A., NEWCO, NEWCO	89-1646	05/22/89
Rubbermaid Incorporated, NEWCO, NEWCO	89-1647	05/22/89
John A. Catsimatidis, c/o Red Apply Companies, Michael Foster, 162093 Canada Limited	89-1708	05/22/89
Michael Foster, Core-Mark International Inc., Core-Mark International Inc	89-1709	05/22/89
Norton Company, Panhandle Eastern Corporation, Eastman Christensen Company	89-1718	05/22/89
General Atlantic Corporation, Stroller Tod White, Blessing/White Incorporated	89-1727	05/22/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 051589 AND 052689—Continued

Name of acquiring perion, name of acquired person, name of acquired entity	PMN No.	Date terminated
Sid R. Bass, American Medical International, Inc., American Medical International, Inc	89-1578	05/23/89
Rockwell International Corporation, BBA Group plc, Butler Polymet, Inc	89-1604	05/23/89
Daniel J. Sullivan, Detroit Tool & Engineering Company, Detroit Tool & Engineering Company	89-1660	05/23/89
Hampton Tree Farms, Inc., The Times Mirror Company, Times Mirror Land and Timber Company	89-1662	05/23/89
Takata Corporation, Halle & Stieglitz, Inc., Halle & Stieglitz, Inc	89-1666	05/23/89
Baker Hughes Incorporated, Bird Incorporated, Bird Machine Company, Inc	89-1671	05/23/89
Fireman's Fund Corporation, Sabine Royalty Trust, Sabine Royalty Trust	89-1677	05/23/89
Transamerica Corporation, Charles Miller, Criterion Group, Inc	89-1732	05/23/89
Household International, Inc., Advanta Corp., Colonial National Bank USA	89-1741	05/23/89
Franklin Savings Corporation, Broad Inc., SunLife Insurance Company of America	89-1675	05/24/89
Christopher C. Skase, Hemmeter Laguna Niguel Partners, Laguna Niguel Resort Associates	89-1717	05/24/89
Reed International PLC, The News Corporation Limited, Travel Information Group	89-1694	05/25/89
James H. Guerin, Ferranti International Signal PLC, ISC Technologies, Inc	89-1723	05/25/89
Graymont Limited, The Bricom Group Limited, Continental Lime Inc	89-1731	05/25/89
The RTZ Corporation PLC, The British Petroleum Company plc, Amselco Minerals Inc	89-1713	05/26/89
Exxon Corporation, Maxus Energy Corporation, Maxus Exploration Company	89-1748	05/26/89
Fluor Corporation, Osterreichische Industrieholding AG, Virginia Crews Coal Company	89-1762	05/26/89
Teachers Insurance & Annuity Association of America, Aetna Life and Casualty Company, Aetna Life Insurance Company	89-1774	05/26/89
Masco Corporation, Sherle Wagner & Rose Wagner, Sherle Wagner Intl., Inc. and Sherle Wagner Corp	89-1777	05/26/89
Katokichi Co., Ltd., Richard R. Kelley, Outrigger Hotels Hawaii	89-1792	05/26/89
Wendy's International, Inc., Wendco Northwest Limited Partnership, Wendco Northwest Limited Partnership	89-1797	05/26/89
Unity Mutual Life Insurance Company, Progressive Life Insurance Company, Progressive Life Insurance Company	89-1809	05/26/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-13403 Filed 6-5-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement No. 915]

Implementation of a National Laboratory Training Network for State Laboratories

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1989 for cooperative agreements for the implementation of a National Laboratory Training Network for laboratorians.

Authority

This project is authorized by Section 317(k)(3) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are the Public Health Laboratories of States, the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, The Federated States of Micronesia, Guam, the Northern Meriana Islands, the Republic of the Marshall Islands, and the Republic of Palau.

Availability of Funds

Approximately $100,000 will be available to State Public Health Laboratories during FY 1989 to support seven (7) Area Laboratory Training Alliance (ALTA) cooperative agreements for a 12-month budget period within a 5-year project period. It is estimated that $50,000 will be available for each State Public Health Laboratory in each subsequent year. Continuation awards within the 5-year project period will be made on the basis of satisfactory progress in meeting project objectives and is subject to availability of funds. The funding estimate outlined above may vary and is subject to change.

Under section 317 of the Public Health Service Act as amended, direct assistance may be requested in lieu of cash.

Purpose

This purpose of the cooperative agreement is twofold: (1) To assist State Public Health Laboratories in providing effective coordination of training for the States within their ALTA and, (2) to assist the participation of State Public Health Laboratories in the implementation of a National Laboratory Training Network to increase training opportunities, including HIV/retrovirus testing procedures, for laboratorians.

Program Requirements

A. Recipient Activities

1. Conduct training needs assessments, analyze data, and make recommendations for training to meet needs;

2. Develop and maintain a resource roster of content specialists and training materials;

3. Promote area development of training materials and maintenance of a resource library;

4. Coordinate the area alliance training calendar;

5. Establish a communications network among the States in the area and with the National Laboratory Training Network;

6. Participate in the delivery of laboratory training workshops and seminars;

7. Participate in analyzing the overall effectiveness of the Area Laboratory Training Alliances in meeting the training needs of the Nation's laboratorians.

B. CDC Activities

1. Collaborate with the Area Laboratory Training Alliances in assessing and analyzing laboratory training needs in the States;

2. Provide input for the roster of educational and technical experts who develop and deliver laboratory training;

3. Serve as a collaborator in the design, development, promotion and evaluation of laboratory training meterials;

4. Collaborate in development of the Area Laboratory Training Alliance calendars;

5. Participate in the communications network established for the Area Laboratory Training Alliances;

6. Collaborate in the development and delivery of laboratory training workshops and seminars;

7. Collaborate in analyzing the overall effectiveness of the Area Laboratory Training Alliances.

Evaluation Criteria

The application will be reviewed and evaluated on the following:

a. That the estimated cost to the Government of the project is reasonable considering the anticipated results;

b. That project personnel are well qualified by training and/or experience for the support sought, and that the applicant has adequate facilities and manpower;

c. That insofar as practical, the proposed activities, if well executed, are capable of attaining project objectives; and

d. That the project objectives are identical with, or are capable of achieving, the specific program objectives defined in the program announcement.

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.283—Centers for Disease Control—Investigations and Technical Assistance.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Rev. 3/89) must be submitted to Henry Cassell, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, Georgia 30305 on or before July 3, 1989.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on/or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commerical carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or b. above are considered late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures and an application package may be obtained from Harvey Rowe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, Georgia 30305, (404) 842–6797 or FTS 236–6797.

Please refer to Announcment Number 915 "Implementation of a National Laboratory Training Network for State Laboratories" in all requests for information pertaining to this project.

Technical assistance may be obtained from Carl H. Blank, Training Laboratory Program Office, Centers for Disease Control, Atlanta, Georgia 30333 (404) 639–3874 or FTS 236–3874.

Dated: May 31, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89–13312 Filed 6–5–89; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 89F–0171]

E.I. du Pont de Nemours & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that E.I. du Pont de Nemours and Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly(*p*-phenyleneterephthalamide) resins, to which have been added optional adjuvant substances required in their preparation. The resins are intended to produce articles for repeated use in processing and handling food.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4101) has been filed by E.I. du Pont de Nemours and Co., 1007 Market St., Wilmington, DE 19898, proposing that the food additive regulations be amended to provide for the safe use of poly(*p*-phenyleneterephthalamide) resins. The resins are intended to produce articles for repeated use in processing and handling food and in their preparation and finishing may include optional adjuvant substances:

Diundecylphthalate
Mono-and di-potassium salts of lauryl phosphate
o-Phenylphenol
Poly(oxyethylene/oxypropylene)monobutylether
Polyethyleneglycol mono(nonylphenyl)ether
Polyvinylmethylether
Polyoxyethylene sorbitol monolaurate tetraoleate
Polyoxyethylene sorbitol hexaoleate
4.4′-Butylidenebis(6-*tert*-butyl-*m*-cresol)

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 26, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–13341 Filed 6–5–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89N–0190]

Drug Export; Pseudoephedrine Hydrochloride Controlled Release Capsules, 240 mg

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that KV Pharmaceutical Co. has filed an application requesting approval for the export of the human drug Pseudoephedrine Hydrochloride Controlled Release Capsules, 240 mg, to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act

of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Mary F. Cooper, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that KV Pharmaceutical Co., 2503 South Hanley Rd., St. Louis, MO 63144, has filed an application requesting approval for the export of the drug Pseudoephedrine Hydrochloride Controlled Release Capsules, 240 mg, to Canada. This product is used for the temporary relief of nasal congestion due to the common cold, hay fever, or other upper respiratory allergies, and nasal congestion associated with sinusitis. This product also promotes nasal and/or sinus drainage. The application was received and filed in the center for Drug Evaluation and Research on May 19, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 16, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: May 26, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89–13342 Filed 6–5–89; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer meetings:

Boston District Office: Chaired by Edward J. McDonnell, District Director. The topic to be discussed is "Combating Medical Quackery: Health Professionals' Responsibility."

DATE: Monday, June 12, 1989, 8:30 a.m. to 3:30 p.m.

ADDRESS: Ray Conference Center, Butler Hospital, 345 Blackstone Blvd., Providence, RI 02906.

FOR FURTHER INFORMATION CONTACT: Paula B. Fairfield, Consumer Affairs Officer, Food and Drug Administration, One Montvale Ave., Fourth Floor, Stoneham, MA 02180, 617–279–1479.

Boston District Office: Chaired by Edward J. McDonnell, District Director. The topics to be discussed are current food labeling issues and the Boston District Health Fraud Survey.

DATE: Friday June 23, 1989, 10 a.m. to 12 m.

ADDRESS: Lecture Rm. B, Science Bldg., Cape Cod Community College, West Barnstable, MA 02668.

FOR FURTHER INFORMATION CONTACT: Paula B. Fairfield Consumer Affairs Officer, Food and Drug Administration, One Montvale Ave., Fourth Floor, Stoneham, MA 02180.

SUPPLEMENTARY INFORMATION: .

The purpose of these meetings is to educate and inform the public on matters pertaining to consumer fraud and quackery, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's consumer education programs.

Dated: May 31, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–13350 Filed 6–5–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HFCA), (**Federal Register**, Vol. 53, No. 146, pg. 28702, dated Friday, July 29, 1988, **Federal Register**, Vol. 52, No. 155, pg. 29889 and 29890, dated Wednesday, August 12, 1987), is amended to indicate organizational changes within the Office of the Actuary, Office of the Associate Administrator for Management. Changes are made to the Office of Medicare Cost Estimates' functional statement to include the responsibility for preparing cost estimates for the Catastrophic Drug Insurance program. A new division, the Division of Catastrophic Drug Insurance, is added to concentrate on the catastrophic program. The Office of Medicaid Cost Estimates and the Division of Medicaid Cost Estimates are replaced by a single Office of Medicaid Cost Estimates. Functional statements for the two divisions in the Office of national Cost Estimates are revised to remove references regarding health insurance survey activities. A new division with responsibility for conducting industry and population surveys to measure health insurance coverage and use of health care services is established. The title of the new division is the Division of Survey Studies.

The specific amendments to Part F. are described below:

- Section FH.20.B.1., Office of Medicare Cost Estimate (FHG1), is deleted and replaced by a revised functional statement, and a new section FH.20.B.1.c., Division of Catastrophic Drug Insurance (FHG13), is added.

1. Office of Medicare Cost Estimates (FHG1)

Evaluates the operations of the Medicare trust funds particularly relating to outlays and program solvency. Prepares cost estimates for the Hospital Insurance program, the Supplementary Medical Insurance program, and the Catastrophic Drug Insurance program for use in the

President's budget. Develops such variables as the Part B and prescription drug premium rates, the inpatient and outpatient prescription drug deductibles, the Part A premium rate for voluntary enrollees, and the physicians' economic index applicable to prevailing fees. Develops the payment rates for the annual update of the adjusted average per capita cost ratebook, which is used to pay health maintenance organizations that enter into a risk contract with HCFA to provide benefits to Medicare enrollees. Provides estimates and computations of the impact program benefits and financing modifications have on contractor workload. Serves as technical consultants throughout the Government on Medicare cost estimate issues.

c. Division of Catastrophic Drug Insurance (FHG13)

Evaluates the operations of the Medicare Catastrophic Drug Insurance trust fund concerning outlays and program solvency. Prepares cost estimates for the Catastrophic Drug Insurance (CDI) program for use in the President's budget. Develops such variables as the prescription drug monthly premium and the outpatient prescription drug deductible. Provides estimates and computations of the impact program benefits and financing modifications have on contractor workload. Serves as technical consultants throughout the Government on Medicare CDI cost estimate issues.

• Section FH.20.B.2., Office of Medicaid Cost Estimates (FHG2), and section FH.20.B.2.a., the Division of Medicaid Cost Estimates (FHG21), are deleted in their entireties and replaced by a new section FH.20.B.2., Office of Medicaid Cost Estimates (FHG2) which reads:

2. Office of Medicaid Cost Estimates (FHG2)

Provides cost estimates for the Medicaid program, including the development of cost estimates for proposed changes in Medicaid or in programs affecting Medicaid, and overall Medicaid program costs for years after the current budget year. Develops forecasts of Medicaid expenditures for incorporation into the HCFA budget development process. Studies approaches and research techniques to assist in the development of program forecasts. Provides actuarial consultation to other components of HCFA concerning various proposals and programs affecting the future of the Medicaid program. Provides Government-wide actuarial consultation on issues such as Acquired Immunodeficiency Syndrome (AIDS). Serves as technical consultants throughout the Government on Medicaid cost estimates issues.

• Section FH.20.B.3.a., Division of Economic and Actuarial Analysis (FHG34), is revised to read:

a. Division of Economic and Actuarial Analysis (FHG34)

Conducts economic and actuarial analysis, constructs economic and actuarial models, and reports and interprets national trends in health expenditures. Analyzes and estimates national and regional health care use and expenditures, preparation of health indicators, and development of benchmark issues. Provides analysis of historical experience, creates forecasts of future trends, and explains the underlying causes and forces shaping the size and distribution of United States health expenditures. Explains how past policies have shaped the size and distribution of health spending and how various policy instruments and health sector changes can be expected to influence the size and shape of future health expenditures. Creates a variety of econometric and actuarial models to measure differences in expenditure trends for types of services, e.g., hospitals, physicians, etc., and sources of payment, e.g., public programs, private health insurance, and out-of-pocket.

• Section FH.20.B.3.b., Division of Statistical Analysis (FHG35), is revised to read:

b. Division of Statistical Analysis (FHG35)

Develops and applies statistical methods, models, and techniques used in the analysis of health expenditures, health projections, hospital prospective payments, and other Office initiatives, such as projections of health care expenditures, estimates of health spending differences by age, analysis in support of the Prospective Payment System, and other regulatory processes, and estimation and forecasting of provider market basket input price indices. Designs statistical data bases and statistical software systems to access, retrieve, and process needed data to support cross-sectional analyses, time series analyses, forecasting, and projections. Creates and applies statistical models and methods needed for economic and actuarial studies of hospital case-mix, hospital reimbursement distributional impacts, health expenditure projections, national health accounts, hospital market baskets, private health insurance, and other Office initiatives, as needed.

• Section FH.20.B.3., Office of National Cost Estimates (FHG3), is amended by adding a new section FH.20.B.3.c., Division of Survey Studies (FHG36), which reads:

c. Division of Survey Studies (FHG36)

Conducts industry and population surveys to measure health insurance coverage and use of health care services. Conducts demographic surveys of populations, both insured and uninsured, for health-related issues, acquisition and analysis of other health surveys, comparison of relevant survey data to National Health Expenditure (NHE) levels, evaluation of NHE benchmark issues, and development of alternative estimates of NHE. Analyzes, interprets, and reports results to policymakers and the public that explain the effects of current policies on health consumer and private insurer behavior and the expected outcomes from changes in current policies. Acquires and analyzes external surveys of health services use and insurance coverage as bases for comparison, and to feed into ongoing Office analyses of health expenditures, e.g., by age, by State, etc. Develops instruments to measure the current enrollment, coverage, and financial experience of the private health insurance industry and links current experience with historical survey results, creating a time series showing the evolution of private insurance coverage and its influence on national health expenditure trends. Conducts surveys and acquires external survey results as needed to support Office initiatives.

Louis B. Hays,

Acting Administrator.

Date: May 19, 1989.

[FR Doc. 89-13302 Filed 6-5-89; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Application Announcement for Nursing Post-baccalaureate Faculty Fellowship Grants (Second Cycle)

The Health Resources and Services Administration announces the acceptance of applications for a second Fiscal Year 1989 grant cycle and invites comments on the expansion of study areas to be included under eligibility criteria for Post-baccalaureate Faculty Fellowship Grants, authorized by section 830(b) of the Public Health Service Act, as amended.

Approximately $1,076,000 is available for the Fiscal Year 1989 grant cycle.

Applications submitted for the first grant cycle will be considered before those submitted for the second grant cycle. Thirty-three (33) applications were submitted for the first grant cycle requesting approximately $400,000. It is expected that a total of 134 awards averaging $8,000 each will be made for Fiscal Year 1989.

Purpose

Section 830(b) of the Public Health Service Act, as amended, authorizes grants to public or private nonprofit schools of nursing to cover the costs of post-baccalaureate faculty fellowships to enable faculty to carry out studies in areas specified by the legislation or by the Secretary, Department of Health and Human Services.

Applicants

Public or private nonprofit schools of nursing are eligible to apply for grants to cover the cost of tuition and fees for faculty members who would qualify for a post-baccalaureate faculty fellowship. Stipends also may be requested for periods of full-time study. A school may request fellowship support for more than one faculty member.

Faculty Eligibility

To qualify for a fellowship, a faculty member must:

(1) Hold a baccalaureate degree.

(2) Be employed by the applicant institution as a faculty member during the period of the awarded fellowship.

(3) Be enrolled in a master's program in nursing or in a doctoral program which requires a substantial study, master's thesis or doctoral dissertation, and anticipate meeting master's or doctoral degree requirements by August 31, 1990 or sooner.

(4) Undertake a reported study, thesis or dissertation focusing on:

a. An investigation of cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, physically and mentally disabled individuals, and ethnic and minority groups; or

b. The examination of nursing interventions that result in positive outcomes in health status, with attention to interventions which addresses family violence, drug and alcohol abuse, the health of women, adolescent care, and disease prevention; or

c. Factors within the practice setting associated with retention of nursing personnel; or

d. Acute and long-term nursing care of patients with infectious diseases, particularly illness caused by the human immunodeficiency virus (HIV); or

e. Issues in nursing education including recruitment, retention and graduation of students; quality of clinical education; and innovative teaching/learning strategies with special attention to the needs of disadvantaged students; or

f. Issues in nursing administration which focus on quality assurance and cost effective nursing services.

(5) Be licensed to practice as a registered nurse in a State.

The foci of studies have been expanded by the Secretary to include items 4(e) and (f) dealing with nursing education and nursing administration because these two areas are basic to nursing practice and improved health care delivery. Interested parties are invited to comment on items 4(e) and (f). Normally the comment period would be 60 days but due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before July 6, 1989, will be considered before faculty eligibility will be expanded to include the two new study areas. No funds will be allocated or final selections made until a final notice is published stating whether the expanded study areas will apply.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying in the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Review

In determining the funding of approved applications, the Secretary will consider:

(a) The degree to which the faculty member's study, thesis, or dissertation addresses the criteria set forth in paragraph (4) under "faculty eligibility", and

(b) The below-described funding preference.

Funding Preference

A funding preference was published for public comment and implemented in Fiscal Years 1987 and 1988. This preference states that schools which have been successful in recruiting or retaining minority faculty will be given a funding preference. The Department is extending this preference for Fiscal Year 1989. All eligible applications, however, will be reviewed and given consideration for funding. The Department believes that continued efforts must be made to increase the number of minority faculty and students in schools of nursing.

Application Deadline

To receive consideration applications must meet the deadline of June 30, 1989. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline, or

(2) Postmarked on or before the deadline date, and received in time for submission for review. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

The standard application form and general instructions, Form PHS 6025–1 HRSA Competing Training Grant Application and supplement for this program have been approved by the Office of Management and Budget.

The OMB Clearance number is 0915–0060.

Requests for application materials should be directed to: Grants Management Officer (A–23), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6915.

Completed applications should be mailed to the Grants Management Officer at the above address.

For technical assistance and other information regarding this program, contact: The Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5763.

This program is listed at 13.147 in the "Catalog of Federal Domestic Assistance" and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: April 19, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–13299 Filed 6–5–89; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Health Resources and Services Administration; Nurse Training Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of March 24, 1989, from the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration, the Administrator has redelegated all of the authorities vested in the Administrator under Title VIII of the Public Health Service Act (42 U.S.C. 296 *et seq.*), as amended, pertaining to nurse training, to the Bureau Directors of the Health Resources and Services Administration, as follows:

1. To the Director, Bureau of Health Professions, subject to section 856, all of the authorities delegated under Title VIII of the Public Health Service Act, as amended, excluding the authorities delegated to the Director, Bureau of Maternal and Child Health and Resources Development, and the Director, Bureau of Health Care Delivery and Assistance.

2. To the Director, Bureau of Maternal and Child Health and Resources Development, all of the authorities delegated under section 858 of Title VIII of the Public Health Service Act, as amended, pertaining to recovery for construction.

3. To the Director, Bureau of Health Care Delivery and Assistance, all of the authorities under section 836(h) of the Public Health Service Act, as amended, pertaining to the nursing loan repayment program.

The delegation excluded the authority under section 851 to establish and to select members to the National Advisory Council on Nurse Training, promulgate regulations, establish advisory committees and councils, and select members to advisory councils.

Exercise of these authorities is subject to Health and Human Services policy and requirements for administering section 855 of the Public Health Service Act relating to the prohibition against discrimination by schools on the basis of sex.

Redelegation

These authorities may be redelegated.

Prior Delegations

Provision was made for all previous delegations and redelegations to continue in effect, provided they were consistent with this delegation.

Effective Date

This delegation was effective on May 24, 1989.

John H. Kelso,

Acting Adminstrator.

Date: May 24, 1989.

[FR Doc. 89-13338 Filed 6-5-89; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration; Delegation of Authority to the Director, Bureau of Health Professions

Notice is hereby given that in furtherance of the delegation of authority of April 28, 1989, from the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration, the Administrator has redelegated to the Director, Bureau of Health Professions, the authorities delegated to him under section 254 of Pub. L. 100-607, as amended hereafter, pertaining to continuing education for providers of health care to Acquired Immune Deficiency Syndrome (AIDS) patients. The delegation excluded the authorities to issue regulations, submit reports to Congress or a congressional committee, or appoint members to an advisory committee.

Redelegation

This authority may be redelegated.

Effective Date

This delegation became effective on May 24, 1989.

John H. Kelso,

Acting Administrator.

Date: May 24, 1989.

[FR Doc. 89-13339 Filed 6-5-89; 8:45 am]

BILLING CODE 4160-15-M

Social Security Administration

Disability Advisory Committee; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), this notice announces the schedule and proposed agenda of a forthcoming meeting of the Disability Advisory Committee (the Committee).

DATES: June 21, 1989, 8:30 a.m. to 6:00 p.m.; June 22, 1989, 8:00 a.m. to 6:00 p.m.

ADDRESS: Hubert H. Humphrey Building, Humphrey Auditorium, 200 Independence Avenue SW., Washington, DC 20201.

Agenda: Review materials and formulate recommendations.

The Committee may hold additional sessions during the evenings of June 21 and/or June 22, 1989. If the Committee decides to hold these evening sessions, the Committee will make an announcement during the regularly scheduled sessions.

FOR FURTHER INFORMATION CONTACT: Jean H. Hinckley, Executive Director, Disability Advisory Committee, P.O. Box 17064, Baltimore, Maryland 21235, (301) 965-4646.

SUPPLEMENTARY INFORMATION: The Committee is established under and governed by the provisions of section 1114 of the Social Security Act, as amended, and the provisions of the Federal Advisory Committee Act, as amended, (Pub. L. 92-463). The Committee is chaired by Dr. John E. Affeldt.

The purposes of the Committee are to study the Social Security administrative review process (known as the "appeals process") to ensure that the process protects the rights of the claimants, produces accurate and swift decisions, and is viewed as fair and equitable; receive and consider public views on reform of the process; and make a report and recommendations to the Commissioner of Social Security (the Commissioner).

The Committee is scheduling this meeting to further review and discuss the oral and written comments received pursuant to two public meetings held in March 1989 (announced February 21, 1989 at 54 FR 7477). During the review and discussion, the Committee will identify the issues and proposals and formulate recommendations for inclusion in its report to the Commissioner.

This meeting is open to the public to the extent space is available.

A transcript of the Committee meeting is available to the public on an at-cost-of duplication basis. The transcript will become part of the record of these proceedings.

Dated: May 30, 1989.

Jean H. Hinckley,

Executive Director, Disability Advisory Committee.

[FR Doc. 89-13349 Filed 6-5-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-89-1998]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jon Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: May 24, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Survey of Mortgage Lending Activity

Office: Administration

Description of the Need for the Information and Its Proposed Use: This form is used to obtain information on developments in the mortgage market. It is used to monitor such developments and provide statistical data to Federal, State, and non-governmental entities.

Form Number: HUD-136

Respondents: State or Local Governments, Businesses or Other For-Profit, and Federal Agencies or Employees

Frequency of Submission: Monthly

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	3,771		12		.67		30,319

Total Estimated Burden Hours: 30,319

Status: Extension

Contact: John N. Dickie, (202) 755-7270, John Allison, OMB, (202) 395-6880.

Date: May 24, 1989.

[FR Doc. 89-13314 Filed 6-5-89; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: June 6, 1989.

ADDRESS: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 21, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, D.C.D.C. No. 88-2503-OG, HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Date: May 31, 1989.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-13313 Filed 6-5-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is revising two notices describing systems of records maintained by the Office of Surface Mining Reclamation and Enforcement (OSMRE). Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register**. The two revised notices, which are published in their entirety below, are:

1. Personnel Security Files—Interior, OSMRE-7 (formerly OSM-7), which was previously published in the **Federal Register** on March 31, 1978 (43 FR 13644).

2. Employment and Financial Interests Statements-States and other Federal agencies—Interior, OSMRE–8 (formerly OSM–8), which was previously published in the **Federal Register** on March 14, 1978 (43 FR 10640).

In both notices, the existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act. Also, in both notices the retention and disposal statements are amended to conform to guidelines issued by the Assistant Archivist for Records Administration, National Archives and Records Administration, in his memorandum to Agency Records Officers dated June 11, 1985.

Since these changes do not involve any new or intended use of the information in the systems of records, the notices shall be effective on June 6, 1989. Additional information regarding these revisions may be obtained from the Privacy Act Officer, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240, Telephone: 202–343–4293.

David R. DeAngelis,

Acting Director, Office of Management Improvement.

Date: May 30, 1989.

INTERIOR/OSMRE–7

SYSTEM NAME:

Personnel Security Files—Interior, OSMRE–7.

SYSTEM LOCATION:

U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSMRE), 1100 L Street, NW., Room 5415L, Washington, DC 20005. Mailing address: 1951 Constitution Ave., NW., Room 5415L, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OSMRE personnel who have been investigated under E.O. 10450 for suitability and/or security considerations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains records concerning employees, including personal data submitted by the individual, information developed by investigatory authorities, and records of the requirement, basis, degree and data of clearances. Contains a security briefing statement signed by the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to identify OSM personnel who have security clearances and their degree of clearance. Disclosures outside the Department of the Interior may be made (1) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (2) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or issuance of a security clearance, contract, license, grant or other benefit; (3) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (4) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies, responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in a safe having a three-position dial-type, manipulation proof, combination lock, in the same manner as defense classified material.

RETENTION AND DISPOSAL:

Maintained in accordance with General Records Schedule 18, Item 23. Destroyed by fire, shredder, disintegrator or pulverizer.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Personnel, Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5415L, Washington, DC 20005. Mailing address: 1951 Constitution Ave., Room 5415L, Washington, DC 20240.

NOTIFICATION PROCEDURE:

A written and signed request to the System Manager stating that the requester seeks information concerning record pertaining to him. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access shall be addressed to the System Manager. The request must be in writing and signed by the requester. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and investigations conducted by Federal, State or local agencies or other pertinent authorities.

INTERIOR/OSMRE–8

SYSTEM NAME:

Employment and Financial Interests Statements-States and other Federal agencies—Interior, OSMRE–8

SYSTEM LOCATION:

U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSMRE), 1100 L Street, NW., Room 5415L, Washington, DC 20005. Mailing address: 1951 Constitution Ave., NW., Room 5415L, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. The head of each State regulatory authority who is required to file a financial statement with the Director of the Office of Surface Mining Reclamation and Enforcement by 30 CFR 705.15; 2. Federal employees, other than Interior Department employees, who are required to file a financial interest statement by 30 CFR 706.11(b) and who file with the Director of the Office of Surface Mining Reclamation and Enforcement in accordance with 30 CFR 706.15(c); and 3. State employees, and Federal employees other than Interior Department employees, whose financial interest statements are referred to the Department of the

Interior in accordance with 30 CFR 705.19(a)(3) or 30 CFR 706.19(c).

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains Statements of Employment and Financial Interests forms for State employees (form OSMRE–23), and for Federal employees (form (DI–212A) and similar forms used by Federal agencies other than the Department of the Interior. Also contains records of decisions, analysis of financial holdings, employee statements, pertinent comments from supervisors, heads of bureaus or offices, and the Solicitor's Office, and related records needed for processing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 201(c) and (f) and 517(g) of Pub. L. 95–87.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) to review employee financial interests and determine employee compliance or non-compliance with the applicable statute and regulations: (b) to record the fact that the employee has been made aware of specifically directed legislation or regulations covering his organization and duties and that he or she is in compliance with such specific legislation or regulations; and (c) to provide an adequate system of records for auditors performing compliance audits. Disclosures outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, or local agencies responsible for investigating or prosecuting the violation or, (3) to a Congressional office from the record of an individual in response to an inquiry made at the request of that individual, (4) to Federal, State or local agencies where necessary to obtain information relevant to resolving prohibited financial interest situations or to litigation which may affect the hiring or retention of an employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders;

RETRIEVABILITY:

Filed alphabetically by employee name;

SAFEGUARDS:

Maintained in locked file cabinet in a locked office;

RETENTION AND DISPOSAL:

Records filed with the Department by regulation will be destroyed six years after receipt unless needed in an ongoing investigation (General Records Schedule 1, Item 25). Records referred to the Department will be returned to the referring agency for disposal in accordance with that agency's disposal policy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Personnel, Office of Surface Mining Reclamation and Enforcement, 1100 L Street, NW., Room 5415L, Washington, DC 20005. Mailing address: 1951 Constitution Ave., NW., Room 5415L, Washington, DC 20240.

NOTIFICATION PROCEDURE:

Inquiries may be addressed to the System Manager as indicated above. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager for information regarding the entire system or for specific information about a State or Federal office system. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Present or past Federal or State employees required to file Employment and Financial Interests Statements.

[FR Doc. 89–13311 Filed 6–5–89; 8:45 am]

BILLING CODE 4310–05

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44. U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer, Minerals Management Service, Mail Stop 632, 381 Elden Street, Herndon, Virginia 22070–4817 and to the Office of Management and Budget Interior Department Desk Officer, Paperwork Reduction Project (1010–XXXX), Washington, DC 20503, telephone (202) 395–7340, with copies to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.Q02

Title: MONTCAR Coast Data Acquisition

OMB Approval Number: 1010–XXXX

Abstract: This information will be used to assess the validity and consistency of cost data currently used as well as to develop new data to be used to determine fair market value in the Outer Continental Shelf (OCS).

Bureau Form Number: Forms MMS–370, 371, 372, 373, 374, 375, 376, 377, and 378.

Frequency: On occasion

Description of Respondents: Federal OCS oil and gas lessees

Estimated Completion Time: 8.5 hours

Annual Responses: 176

Annual Burden Hours: 1,500

Bureau Clearance Officer: Dorothy Christopher, (703) 787–1239.

Date: April 5, 1989.

Wm. D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 89–13364 Filed 6–5–89; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Cape Krusenstern National Monument Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission Meeting..

SUMMARY: The Superintendent of the Northwest Alaska Areas and the Chairman of Cape Krusenstern National Monument Subsistence Resource Commission announce a forthcoming meeting of the Cape Krusenstern National Monument Subsistence Resource Commission.

The following agenda topics will be discussed:

(1) Introduction of new members and election of chairman

(2) Introduction of guests

(3) Report on statewide chairman's meeting in Fairbanks (November 1988)

(4) Review of minutes from last meeting

(5) Update of research and activities in Cape Krusenstern National Monument

(6) Recent court rulings on Subsistence Activities and possible effects on NW. Alaska

(7) Subsistence Hunting Plan

(a) Review of Past recommendations

(b) Work on Hunting Plan and new recommendations

(c) Commission recommendations for future research and information needs

(8) Old and New Business

DATES: The meeting will begin at 9:00 a.m., June 22, 1989, and will conclude the afternoon of June 23, 1989.

ADDRESS: The meeting will be held at: Northwest Arctic Borough Conference Room, Kotzebue, Alaska 99752.

FOR FURTHER INFORMATION CONTACT: Dave Mills, Management Assistant, National Park Service, P.O. Box 1029, Kotzebue, AK 99752, (907) 442–3890.

SUPPLEMENTARY INFORMATION: The Cape Krusenstern National Monument Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

Richard J. Stenmark,

Acting Regional Director.

[FR Doc. 89–13394 Filed 6–5–89; 8:45 am]

BILLING CODE 4310–70–M

Kobuk Valley National Park Subsistence Resource Commission; Meeting

AGENCY: National Park Service.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Superintendent of the Northwest Alaska Areas and the Chairman of Kobuk Valley National Park Subsistence Resource Commission announce a forthcoming meeting of the Kobuk Valley National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Election of chairman and introduction of new members.

(2) Introduction of guests.

(3) Review of minutes from last meeting.

(4) Report on chairman's meeting in Fairbanks (November 1988).

(5) Update on research and activities in Kobuk Valley National Park.

(6) Recent court rulings on subsistence and possible effects on NW Alaska.

(7) Subsistence Hunting Plan.

(a) Review of past recommendations.

(b) Work on Hunting Plan and new recommendations.

(c) Commission recommendations for future research and information needs.

(8) Old and New Business.

DATE: The meeting will begin at 9:00 a.m., June 20, 1989 and will conclude the afternoon of June 21, 1989.

ADDRESS: The meeting will be held at: NW Arctic Borough Conference Room, Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Dave Mills, Management Assistant, National Park Service, P.O. Box 1029, Kotzebue, AK 99752, (907) 442–3890.

SUPPLEMENTARY INFORMATION: The Kobuk Valley National Park Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provision of the Federal Advisory Committee Act.

Richard J. Stenmark,

Acting Regional Director.

[FR Doc. 89–13395 Filed 6–5–89; 8:45 am]

BILLING CODE 4310–70–M

National Capital Memorial Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, June 20, at 1:30 p.m., in the Executive Conference Room at the National Capital Planning Commission, 1325 G Street, NW., Washington, DC.

The Commission was established by Pub. L. 99–652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

James Ridenour, Chairman, Director, National Park Service, Washington, DC.

George M. White, Architect of the Capitol, Washington, DC.

Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC.

J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC.

Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC.

Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC.

John Alderson, Administrator, General Services Administration, Washington, DC.

Honorable Frank Carlucci, Secretary of Defense, Washington, DC.

The purpose of the meeting will be to review and take action on the following:

I. Review Korean War Memorial design competition selection.

II. Review Law Enforcement Heroes design.

III. Review Design Competition Criteria for the Peace Garden.

IV. Old Business.

V. New Business.

Dated: May 25, 1989.

Ronald N. Wrye,

Acting Regional Director, National Capital Region.

[FR Doc. 89–13393 Filed 6–5–89; 8:45 am]

BILLING CODE 4310–70–M

Santa Fe National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Pub. L. 92–463, that a meeting of the Santa Fe National Historic Trail Advisory Council will be held at 8:30 a.m., m.d.s.t. on June 21 and 22, 1989, in the Sandia Room at the Howard Johnson Plaza Hotel, 4048 Cerrillos Road, Santa Fe, New Mexico.

The Santa Fe, National Historic Trail Advisory Council was established pursuant to Pub. L. 90–543 establishing the Santa Fe National Historic Trail to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, as well as administrative matters.

The members of the Santa Fe National Historic Trail Advisory Council are:

Dr. David A. Sandoval, Pueblo, Colorado
William deBuys, Santa Fe, New Mexico
Pauline Fowler, Independence, Missouri
Dr. Virginia L.S. Fisher, Arrow Rock, Missouri
Joseph W. Snell, Topeka, Kansas
Dr. Constance Ramirez, Arlington, Virginia
Karen McClure, Springer, New Mexico
David Jolly, Albuquerque, New Mexico
Mrs. Greer Garson Fogelson, Dallas, Texas
Mark L. Gardner, Trinidad, Colorado
Don Berg, Trinidad, Colorado
Ellis Freeny, Oklahoma City, Oklahoma
Daniel T. Kipp, Colorado Springs, Colorado
Dr. Timothy Zwink, Alva, Oklahoma
Mrs. Jane Mallinson, Independence, Missouri
Edward B. Boyd, Larned, Kansas
Ramon Powers, Topeka, Kansas
Dr. Michael A. Olsen, Las Vegas, New Mexico
J. Richard Salazar, Fairview, New Mexico
William Aull, Lexington, Missouri
Marvin B. Spears, Raton, New Mexico
Helen Judd, Council Grove, Kansas
Stanley Hordes, Santa Fe, New Mexico
Dr. George C. Stone, Lyons, Kansas
Dr. Stanley B. Kimball, Florissant, Missouri
Jack Earl Sewell, Clayton, New Mexico
Dan Sharp, Boise City, Oklahoma
Malcolm Disimone, Dallas, Texas
Edmundo R. Delgado, Santa Fe, New Mexico
Joy L. Poole, Farmington, New Mexico
Robert Carr Vincent, Boise City Oklahoma
John E. Cook, Santa Fe, New Mexico

The matters to be discussed include:

—Draft Comprehensive Management and Use Plan and Environmental Assessement.

—Results of the public and agency comments on the Plan.

—Implementation of the Plan.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Project Coordinator.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Project Coordinator, Santa Fe, National Historic Trail, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone 505/988–6779. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the Project Coordinator, located in Room 346, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: May 25, 1989.

Richard Marks,

Acting Regional Director, Southwest Region.

[FR Doc. 89–13392 Filed 6–5–89; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 27, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 21, 1989.

Carol D. Shull,

Chief of Registration, National Register.

MARYLAND

Charles County

Widow's Pleasure, Piney Church Rd., Waldorf vicinity, 89000664

MASSACHUSETTS

Middlesex County

Ayer, Albert, House (Winchester MRA), 8 Brooks St., Winchester, 89000635
Ayer, Thomas, House (Winchester MRA), 8 Grove St., Winchester, 89000630
Bacon, Robert, House (Winchester MRA), 6 Mystic Valley Pkwy., Winchester, 89000611
Baker, Kenelum, House (Winchester MRA), 4 Norwood St., Winchester, 89000632
Beacon Street Tomb (Wakefield MRA), Beacon St., Wakefield, 89000714
Beebe Homestead (Wakefield MRA), 142 Main St., Wakefield, 89000667
Boardman, E., House (Wakefield MRA), 34 Salem St., Wakefield, 89000686
Boit, Elizabeth, House (Wakefield MRA), 127 Chestnut St., Wakefield, 89000720
Brackett, Edward A., House (Winchester MRA), 290 Highland Ave., Winchester, 89000626
Braddock, Edward, House (Winchester MRA), 112 Highland Ave., Winchester, 89000651
Brine, George, House (Winchester MRA), 219 Washington St., Winchester, 89000638
Building at 35–37 Richardson Avenue (Wakefield MRA), 35–37 Richardson Ave., Wakefield, 89000710
Building at 38–48 Richardson Avenue (Wakefield MRA), 34–48 Richardson Ave., Wakefield, 89000709
Carr—Jeeves House (Winchester MRA), 57 Lake St., Winchester, 89000639
Center Depot (Wakefield MRA), 57 Water St., Wakefield, 89000693
Central Street Historic District (Winchester MRA), Roughly Central St. from Norwood St. to Church St., Winchester, 89000660
Childs, Webster, House (Winchester MRA), 16A Ginn St., Winchester, 89000644
Church—Lafayette Street Historic District (Wakefield MRA), Roughly Church St. from Lafayette St. to North Ave., Wakefield, 89000757
Cole House (Winchester MRA), 12 Mason St., Winchester, 89000646
Common District (Wakefield MRA), Roughly bounded by Lake Quannapowitt, Main St., Common St., Church St., and Lake Ave., Wakefield, 89000754
Cowdry, Jonas, House (Wakefield MRA), 61 Prospect St., Wakefield, 89000739
Cowdry, Nathaniel, House (Wakefield MRA), 71 Prospect St., Wakefield, 89000738
DeRochmont House (Winchester MRA), 2–4 Rangeley Rd., Winchester, 89000642
Dike—Orne House (Winchester MRA), 257 Forest St., Winchester, 89000621
Dwight, Edmund, House (Winchester MRA), 5 Cambridge St., Winchester, 89000633
Elder, Samuel, House (Winchester MRA), 38 Rangeley Rd., Winchester, 89000643
Emerson—Franklin Poole House (Wakefield MRA), 23 Salem St., Wakefield, 89000685
Everett Avenue—Sheffield Road Historic District (Winchester MRA), Roughly bounded by Bacon St., Mystic Valley Pkwy., Mystic Lake, Niles Ln., Everett Ave., Sheffield Rd., and Church St., Winchester 89000661
Firth—Glengarry Historic District (Winchester MRA), Roughly bounded by Pine St., Grassmere Ave., Dix St., and Wildwood St., Winchester, 89000662
Flanley's Block (Wakefield MRA), 349–353 Main St., Wakefield, 89000729
Gardner, Edward, House (Winchester MRA), 89 Cambridge, St., Winchester, 89000605
Gardner, Patience and Sarah, House (Winchester MRA), 103–105 Cambridge St., Winchester, 89000608

Ginn Carriage House (Winchester MRA), 24 Ginn Rd., Winchester, 89000655
Ginn Gardener's House (Winchester MRA), 22 Ginn Rd., Winchester, 89000654
Goodwin, Captain—James Custis House (Wakefield MRA), 1 Elm St., Wakefield, 89000744
Gould, Samuel, House (Wakefield MRA), 48 Meriam St., Wakefield, 89000704
Greenwood Union Church (Wakefield MRA), Main and Oak, Wakefield, 89000697
Green, Capt. William, House (Wakefield MRA), 391 Vernon St., Wakefield, 89000672
Green, Deacon Daniel, House (Wakefield MRA), 747 Main St., Wakefield, 89000706
Grover, Henry, House (Winchester MRA), 223–225 Cambridge St., Winchester, 89000641
Hatch, Horace, House (Winchester MRA), 26 Grove St., Winchester, 89000612
House at 1 Morrison Avenue (Wakefield MRA), 1 Morrison Ave., Wakefield, 89000722
House at 1 Woodcrest Drive (Wakefield MRA), 1 Woodcrest Dr., Wakefield, 89000673
House at 11 Wave Avenue (Wakefield MRA), 11 Wave Ave., Wakefield, 89000678
House at 113 Salem Street (Wakefield MRA), 113 Salem St., Wakefield, 89000688
House at 118 Greenwood Street (Wakefield MRA), 118 Greenwood St., Wakefield, 89000702
House at 12 West Water Street (Wakefield MRA), 12 W. Water St., Wakefield, 89000708
House at 13 Sheffield Road (Wakefield MRA), 13 Sheffield Rd., Wakefield, 89000734
House at 15 Chestnut Street (Wakefield MRA), 15 Chestnut St., Wakefield, 89000726
House at 15 Lawrence Avenue (Wakefield MRA), 15 Lawrence Ave., Wakefield, 89000682
House at 15 Wave Avenue (Wakefield MRA), 15 Wave Ave., Wakefield, 89000679
House at 18 Park Street (Wakefield MRA), 18 Park St., Wakefield, 89000690
House at 18A and 20 Aborn Street (Wakefield MRA), 18A and 20 Aborn St., Wakefield, 89000676
House at 19—21 Salem Street (Wakefield MRA), 19—21 Salem St., Wakefield, 89000684
House at 190 Main Street (Wakefield MRA), 190 Main St., Wakefield, 89000666
House at 193 Vernon Street (Wakefield MRA), 193 Vernon St., Wakefield, 89000674
House at 196 Main Street (Wakefield MRA), 196 Main St., Wakefield, 89000668
House at 2 Nichols Street (Wakefield MRA), 2 Nichols St., Wakefield, 89000740
House at 20 Hancock Road (Wakefield MRA), 20 Hancock Rd., Wakefield, 89000671
House at 20 Lawrence Street (Wakefield MRA), 20 Lawrence St., Wakefield, 89000680
House at 20 Morrison Road (Wakefield MRA), 20 Morrison Rd., Wakefield, 89000724
House at 21 Chestnut Street (Wakefield MRA), 21 Chestnut St., Wakefield, 89000727
House at 22 Parker Road (Wakefield MRA), 22 Parker Rd., Wakefield, 89000735
House at 23 Avon Street (Wakefield MRA), 23 Avon St., Wakefield, 89000730
House at 23 Lawrence Street (Wakefield MRA), 23 Lawrence St., Wakefield, 89000681
House at 25 Avon Street (Wakefield MRA), 25 Avon St., Wakefield, 89000731
House at 26 Francis Avenue (Wakefield MRA), 26 Francis Ave., Wakefield, 89000701
House at 28 Cordis Street (Wakefield MRA), 28 Cordis St., Wakefield, 89000675
House at 28 Wiley Street (Wakefield MRA), 28 Wiley St., Wakefield, 89000695
House at 30 Sheffield Road (Wakefield MRA), 30 Sheffield Rd., Wakefield, 89000733
House at 32 Morrison Road (Wakefield MRA), 32 Morrison Rd., Wakefield, 89000723
House at 38 Salem Street (Wakefield MRA), 38 Salem St., Wakefield, 89000687
House at 380 Albion Street (Wakefield MRA), 380 Albion St., Wakefield, 89000711
House at 39 Converse Street (Wakefield MRA), 39 Converse St., Wakefield, 89000718
House at 40 Crescent Street (Wakefield MRA), 40 Crescent St., Wakefield, 89000691
House at 42 Hopkins Street (Wakefield MRA), 42 Hopkins St., Wakefield, 89000732
House at 5 Bennett Street (Wakefield MRA), 5 Bennett St., Wakefield, 89000698
House at 509 North Avenue (Wakefield MRA), 509 North Ave., Wakefield, 89000746
House at 52 Oak Street (Wakefield MRA), 52 Oak St., Wakefield, 89000700
House at 54 Spring Street (Wakefield MRA), 54 Spring St., Wakefield, 89000703
House at 556 Lowell Street (Wakefield MRA), 556 Lowell St., Wakefield, 89000670
House at 6 Adams Street (Wakefield MRA), 6 Adams St., Wakefield, 89000721
House at 7 Salem Street (Wakefield MRA), 7 Salem St., Wakefield, 89000683
House at 8 Park Street (Wakefield MRA), 8 Park St., Wakefield, 89000689
House at 88 Prospect Street (Wakefield MRA), 88 Prospect St., Wakefield, 89000737
House at 9 White Avenue (Wakefield MRA), 9 White Ave., Wakefield, 89000677
House at 90 Prospect Street (Wakefield MRA), 90 Prospect St., Wakefield, 89000736
House at 95 Chestnut Street (Wakefield MRA), 95 Chestnut St., Wakefield, 89000725
Hovey—Winn House (Winchester MRA), 384 Main St., Winchester, 89000616
Hutchinson—Blood House (Winchester MRA), 394—396 Main St., Winchester, 89000615
Item Building (Wakefield MRA), 26 Albion St., Wakefield, 89000712
Johnson—Thompson House (Wakefield MRA), 201 Ridge St., Winchester, 89000604
Jones, Marshall W., House (Winchester MRA), 326 Highland Ave., Winchester, 89000649
Jordan, Dr. Charles, House (Wakefield MRA), 9 Jordan Ave., Wakefield, 89000716
Kendall, Deacon Thomas, House (Wakefield MRA), One Prospect St., Wakefield, 89000742
Lakeside Cemetery Chapel (Wakefield MRA), North Ave., Wakefield, 89000745
Locke, Asa, House (Winchester MRA), 68 High St., Winchester, 89000631
Lynnwood (Wakefield MRA), 5 Linden Ave., Wakefield, 89000705
Mann, James H., House (Winchester MRA), 23 Hancock St., Winchester, 89000624
Mason, John, House (Winchester MRA), 8—10 Hillside Ave., Winchester, 89000634
Massachusetts State Armory (Wakefield MRA), Main St., Wakefield, 89000707
Maxwell, Louis N., House (Winchester MRA), 18 Herrick St., Winchester, 89000650
McCall, Samuel W., House (Winchester MRA), 4 McCall Rd., Winchester, 89000657
Mitchell, Amy B., House (Winchester MRA), 237 Highland Ave., Winchester, 89000653
Moore House (Winchester MRA), 85 Walnut St., Winchester, 89000620
Oak Knoll (Winchester MRA), 39 Oak Knoll, Winchester, 89000648
Parker House (Winchester MRA), 180 Mystic Valley Pkwy., Winchester, 89000628
Parker, Edmund, Jr., House (Winchester MRA), 287 Cambridge St., Winchester, 89000610
Parker, Harrison, Sr., House (Winchester MRA), 60 Lloyd St., Winchester, 89000627
Pressey—Eustis House (Winchester MRA), 14 Stevens St., Winchester, 89000623
Remick, Joseph, House (Winchester MRA), 84 Cambridge St./4 Swan Rd., Winchester, 89000656
Richardson, Dr. S. O., House (Wakefield MRA), 694 Main St., Wakefield, 89000696
Richardson, Zachariah, House (Winchester MRA), 597 Washington St., Winchester, 89000618
Russell, Arthur H., House (Winchester MRA), 10 Mt. Pleasant St., Winchester, 89000652
Russell, Charles, House (Winchester MRA), 993 Main St., Winchester, 89000617
Sharon House (Winchester MRA), 403 Main St., Winchester, 89000640
Simonds, William, House (Winchester MRA), 420 Main St., Winchester, 89000640
Simpson, Dr., Thomas, House (Wakefield MRA), 114 Main St., Wakefield, 89000665
Skillings Estate House (Winchester MRA), 37 Rangeley Rd., Winchester, 89000645
South Reading Academy (Wakefield MRA), 7 Foster St., Wakefield, 89000713
St. Joseph's School (Wakefield MRA), Gould St., Wakefield, 89000749
St. Mary's Catholic Church (Winchester MRA), 159 Washington St., Winchester, 89000625
Stanton, Jacob, House (Winchester MRA), 21 Washington St., Winchester, 89000614
Stimpson, William, House (Wakefield MRA), 22 Prospect St., Wakefield, 89000741
Sullivan, Edward, House (Winchester MRA), 9 Kendall St., Winchester, 89000636
Sweetser, Daniel, House (Wakefield MRA), 458 Lowell St., Wakefield, 89000669
Sweetser, Michael, House (Wakefield MRA), 15 Nahant St., Wakefield, 89000699
Symmes, Deacon John, House (Winchester MRA), 212—214 Main St., Winchester, 89000606
Symmes, Marshall, House (Winchester MRA), 230 Main St., Winchester, 89000607
Symmes, Marshall, Tenant House (Winchester MRA), 233 Main St., Winchester, 89000637
Temple Israel Cemetery (Wakefield MRA), North Ave., Wakefield, 89000753
Thompson, Abijah, House (Winchester MRA), 81 Walnut St., Winchester, 89000619

Tilton, D. Horace, House (Wakefield MRA), 379 Albion St., Wakefield, 89000715
Trowbridge—Badger House (Winchester MRA), 12 Prospect St., Winchester, 89000647
Winton, Alfred, house (Winchester MRA), 417 Main St., Winchester, 89000629
Wakefield Park (Wakefield MRA), Roughly Park Ave. between Summit Ave. and Chestnut St.,Wakefield, 89000755
Wakefield Rattan Co. (Wakefield MRA), 134 Water St., Wakefield, 89000692
Wakefield Trust Company (Wakefield MRA), 371 Main St., Wakefield, 89000728
Wakefield Upper Depot (Wakefield MRA), 27—29 Tuttle St., Wakefield, 89000719
Warren, H. M., School (Wakefield MRA), 30 Converse St., Wakefield, 89000750
Wedgemere (Winchester MRA), Roughly bounded by Foxcroft, Fletcher, Church, and Cambridge, Winchester, 89000659
West Ward School (Wakefield MRA), 39 Prospect St., Wakefield, 89000748
White, S. B., House (Winchester MRA), 8 Stevens St., Winchester, 89000622
Wildwood Cemetery (Winchester MRA), Palmer and Wildwood Sts., Winchester, 89000658
Winn Street Railroad Bridge (Wakefield MRA), Winn St. over Boston & Maine Railroad tracks, Wakefield, 89000752
Winn, Suell, House (Wakefield MRA), 72—74 Elm St., Wakefield, 89000743
Winship, Charles, House (Wakefield MRA), 13 Mansion Rd., Wakefield, 89000717
Woodville School (Wakefield MRA), Farm Rd., Wakefield, 89000694
Woodward Homestead (Wakefield MRA), 17 Main St., Wakefield, 89000747
Wyman, George, House (Winchester MRA), 195 Cambridge St., Winchester, 89000609
Yale Avenue Historic District (Wakefield MRA), 16—25 Yale Ave., Wakefield, 89000756

MISSISSIPPI

Hinds County

Wolfe House, 401 Claiborne, Terry, 89000762

MISSOURI

Washington County

Susan Cave (23WA190), Address Restricted, Shirley vicinity, 89000758

NEW JERSEY

Mercer County

Princeton Battlefield Historic District (Boundary Increase), Roughly Quaker Rd. from Stockton Rd. to Stony Brook, Princeton, 89000761

NORTH CAROLINA

Moore County

Aberdeen Historic District, Roughly bounded by Maple Ave., Bethesda Ave., Campbell St., Main St., Pine St., South St., and Poplar St., Aberdeen, 89000663

Rowan County

Salisbury Historic District (Boundary Increrase II), Roughly bounded by Ellis St., Monroe St., Church St., Bank St., S. Main St., and McCubbins St., Salisbury, 89000760

SOUTH CAROLINA

Charleston County

Charleston Old and Historic District (Boundary Increase), Roughly bounded by US 17, E. Bay, Charlotte, Cooper River, Laurens, Alexander, Calhoun, Coming, Morris, Bee, & Courtnay, Charleston, 89000603

VERMONT

Windsor County

Daman, Rev. George, House, Wyman Ln., Woodstock, 89000759

[FR Doc. 89-13391 Filed 6-5-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 307)]

The Burlington Northern Railroad Co. Abandonment in Washington and Chisago Counties, Minnesota; Findings

The Commission has found that the public convenience and necessity permit the Burlington Northern Railroad Company to abandon its 17.22-mile line of railroad between North Branch (milepost 40.72) and Forest Lake (milepost 23.50), located in Washington and Chisago Counties, MN, subject to the imposition of public-use conditions to allow Washington and Chisago Counties and the City of Wyoming 180 days to negotiate for acquisition for alternative public use.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant not later than 10 days from publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: May 25, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Andre commented with a separate expression. Vice Chairman Simmons and Commissioner Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13399 Filed 6-5-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-7 (Sub-No. 114X); Docket No. AB-57 (Sub-No. 29X)]

CMC Real Estate Corp.; Abandonment Exemption; Chicago, IL; Soo Line Railroad Co.; Discontinuance of Operations Exemption; Chicago, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission is reopening and modifying an exemption served and published in the **Federal Register** on February 8, 1989 (54 FR 6183) that permitted Soo Line Railroad Company to discontinue service on the Deering Line in Chicago, IL. The modification reduces the scope of the exemption to discontinuance of service between engineering station 23+11 and engineering station 36+50. the exemption will continue to be subject to appropriate labor protection, as previously imposed.

DATES: The modified exemption will become effective on June 21, 1989. Petitions to stay the exemption must be filed by June 13, 1989. Petitions for reconsideration must be filed by June 16, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-57 (Sub-No. 29X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Railroads' representatives:
Glenn Olander-Quamme, Suite 1000, Soo Line Building, 105 South Fifth Street, Minneapolis, MN 55402.
John Broadley, Jenner & Block, 21 DuPont Circle NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Building, Washington, DC 20433. Telephone (202) 289-4357/4359. (Assistance for hearing impaired is available through TDD services (202) 275-1721.)

Decided: May 25, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13400 Filed 6-5-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act Advisory Committee; Change in Meeting Location

Notice is hereby given of a change of location of the Job Training Partnership Advisory Committee's June 27, 1989 meeting, announced on April 25, 1989, 54 FR 17844.

The meeting will be held at the Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036. The meeting will begin at 9:30 a.m. and adjourn at 4:00 p.m. The meeting is open to the public.

For further information, contact Hugh Davies, Office of Job Training Programs, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N-4709, Washington, DC 20210. Telephone: 202-535-0580.

Signed at Washington, DC, this 30th day of May 1989.

Roberts T. Jones.

Assistant Secretary of Labor.

[FR Doc. 89-13401 Filed 6-5-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-78-C]

McElroy Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its McElroy Mine (I.D. No. 46-01437) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 6, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 26, 1989.

[FR Doc. 89-13371 Filed 6-5-89; 8:45 am]

BILLING CODE 4510-43-M

THE MARTIN LUTHER KING, JR. FEDERAL HOLIDAY COMMISSION

Meeting

AGENCY: The Martin Luther King, Jr. Federal Holiday Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463 as amended, the Martin Luther King, Jr. Federal Holiday Commission announces a forthcoming meeting of the Commission.

DATE: June 19, 1989, 12 Noon to 3:00 p.m.

ADDRESS: Rayburn House Office Building, Room B-308, Independence Ave., SW., Washington, DC 20515.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Davis, The Martin Luther King, Jr. Federal Holiday Commission, Washington, DC 20410 (202/755-1005).

Type of Meeting: Open

Agenda:

Monday, June 19

12:15 p.m.—Adoption of Minutes of Previous Meeting.

12:30 p.m.—Discussion of Critical Issues to be addressed by the Commission including: (1) responsibilities of Commission under Federal Advisory Committee Act and H.R. 1385 as amended, (2) Financial Report/Audit; and (3) Adoption of 1989 Budget, Reorganization of D.C. and Atlanta Offices, 1989 Work Program, and Resolutions for Consultant Services.

3:00 p.m.—Adjourn.

Charles R. Sadler,

Acting Director.

[FR Doc. 89-13561 Filed 6-5-89; 8:45 am]

BILLING CODE 4210-01-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Public Hearing

ACTION: Notice of hearing.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is hereby given of a public hearing at 26 Federal Plaza, Main Conference Room 305-C, New York City, New York, 10278.

DATE: Wednesday, June 21, 1989, 9:00 a.m.-4:30 p.m.

Status: The hearing is to be open to the public.

Matters to be discussed: The purpose of this public hearing is to enable the Commission members to learn from various segments of the Job Training Partnership Act (JTPA) system their reactions to a draft Commisson paper which examines possible explanations for the under-representation of Hispanics in JTPA. Persons invited to testify represent State and local government agencies that administer JTPA programs and organizations that provide training under JTPA.

Interested parties may submit written testimony either prior to or after the official hearing date, but no later than August 15, 1989 to the Commission headquarters. Additional hearings will be conducted across the U.S. over the next few months. It is anticipated that the results of the hearings will be used to develop formal Commission recommendations.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment

Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV–F of the Job Training Partnership Act (P.L. 79–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the hearing and written testimony submitted by witnesses will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC. 20005.

Signed at Washington, DC, this 31st day of May, 1989.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89–13367 Filed 6–5–89; 8:45 am]

BILLING CODE 4510–30–M

Public Hearing

ACTION: Notice of hearing.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) notice is hereby given of a public hearing at Metro Dade Center, Terrace Level A, 111 NW. 1st Street, Miami, Florida, 33128–1965.

DATE: Friday June 23, 1989 9:00 a.m.–4:30 p.m.

STATUS: The hearing is to be open to the public.

Matters to be discussed: The purpose of this public hearing is to enable the Commission members to learn from various segments of the Job Training Partnership Act (JTPA) system their reactions to a draft Commission paper which examines possible explanations for the under-representation of Hispanics in JTPA. Persons invited to testify represent State and local government agencies that administer JTPA programs and organizations that provide training under JTPA.

Interested parties may submit written comments either prior to or after the official hearing date, but no later than August 15, 1989 to the Commission headquarters. Additional hearings will be conducted across the U.S. over the next few months. It is anticipated that the results of the hearings will be used to develop formal Commission recommendations.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV–F of the Job Training Partnership Act (Pub. L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Transcripts of the hearing and written testimony submitted by witnesses will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 31st day of May, 1989.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89–13368 Filed 6–5–89; 8:45 am]

BILLING CODE 4510–30–M

Meeting

AGENCY: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) notice is hereby given of a public meeting of the National Commission for Employment Policy at the Doubletree Hotel, Coconut Grove, Florida, 33133.

DATE: Thursday, June 22, 1989, 1:30 p.m. till 4:30 p.m.

Status: This meeting is to be open to the public.

Matters to be discussed: The purpose of this public meeting is to enable the Commission members to discuss progress on the proposed research agenda, and to discuss findings received from the prior hearings.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washignton, DC 20005.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV–F of the Job Training Partnership Act (Pub. L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the meeting and working papers will be available for public inspection at the Commission's headquarters, 1522 K Street NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 31st day of May, 1989.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89–13370 Filed 6–5–89; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Overview and Special Projects Section) to the National Council on the Arts will be held on June 27–29, 1989, from 9:00 a.m.–5:00 p.m. in Room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 27, 1989, from 9:00 a.m.—5:00 p.m.; June 28, 1989, from 9:00 a.m.—noon; and June 29, 1989, from 3:00 p.m.—5:00 p.m. The topics for discussion will be special projects guidelines and policy issues.

The remaining portion of this meeting on June 28, 1989, from 1:00 p.m.—5:00 p.m. and on June 29, 1989, from 9:00 a.m—3:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on application for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), and (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms.

Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–13324 Filed 6–5–89; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Overview and Distinguished Artists Fellowships in Theater Section) to the National Council on the Arts will be held on June 22–23, 1989, from 9:30 a.m.–5:30 p.m. in Room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 22, 1989 from 9:30 a.m.–10:00 a.m. and from 1:30 p.m.–5:30 p.m. and on June 23, 1989, from 9:30 a.m.–5:30 p.m. The topics for discussion will be guidelines and policy issues.

The remaining portion of this meeting on June 22, 1989, from 10:00 a.m.–1:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–13325 Filed 6–5–89; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Special Projects and Challenge III Sections) to the National Council on the Arts will be held on June 29, 1989, from 11:00 a.m.–5:30 p.m. and June 30, 1989, from 9:30 a.m.–3:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–13326 Filed 6–5–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information, collection: Occupational External Radiation Exposure History.

3. The form number if applicable: NRC Form 4.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: NRC licensees.

6. An estimate of the number of responses: 40,000 per year.

7. An estimate of the total number of hours needed to complete the requirement or request: 10,000 hours annually (40,000 forms × 0.25 hr/form) or about 1.3 hours per licensee.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: NRC Form 4 is used to record the occupational exposures of individuals to ensure that the accumulated exposure does not exceed regulatory limits.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150–0005), Office of Management and Budget, Washington, DC 20503. Comments can also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 26th day of May 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–13382 Filed 6–5–89; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the

following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information, collection: Current Occupational External Radiation Exposure.

3. The form number if applicable: NRC Form 5.

4. How often the collection is required: Monthly.

5. Who will be required or asked to report: NRC licensees.

6. An estimate of the number of responses: 4,800,000.

7. An estimate of the total number of hours needed to complete the requirement or request: 166,320 hours annually (4,800,000 x 0.033 hrs) or about 22 hours per licensee.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. *Abstract:* NRC Form 5 is used to record the current occupational exposures of individuals to ensure that the regulatory limits are not exceeded.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150-0006), Office of Management and Budget, Washington, DC 20503. Comments can also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 26th day of May 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89-13383 Filed 6-5-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-321 and 50-366]

Georgia Power Co., Oglethorpe Power Corp., Municipal Electric Authority of Georgia, City of Dalton, GA; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the Technical Specifications (TS) to modify the reactor protection system (RPS) surveillance requirements to the Georgia Power Company, et al., (the licensee) for the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located on the licensee's site in Appling County, Georgia.

Environmental Assessment

Identification of Proposed Action

By letter dated March 27, 1986 as supplemented April 22 and December 27, 1988, the licensee, submitted a request for changes to the TS RPS surveillance requirements. The changes requested involve modifying the Hatch Unit 1 TS RPS surveillance requirements to be consistent with the Hatch Unit 2 requirements and modifying the TS RPS surveillance requirements for both units and the allowed equipment outage times for Hatch Unit 2 in accordance with the results of General Electric Company Topical Report NEDC-30851P, "Technical Specification Improvement Analyses for BWR Reactor Protection System," dated May 1985, General Electric Company Report MDE-75-0485, "Technical Specification Improvement Analysis for the Reactor Protection System for Edwin I. Hatch Nuclear Plant, Unit 1," and General Electric Company Report MDE-76-0485, "Technical Specification Improvement Analysis for the Reactor Protection System for Edwin I. Hatch Nuclear Plant, Unit 2."

The proposed amendments are required to make Hatch Unit 1 TS consistent with Hatch Unit 2 TS, increase the RPS surveillance intervals for both units, and increase the allowed equipment outage times for Hatch Unit 2.

Environmental Impacts of the Proposed Action

With respect to the amendments, the licensee states that, overall, RPS surveillance requirements for Hatch Unit 1 will be made more stringent when revised to be consistent with Hatch Unit 2. With regard to increasing RPS surveillance and equipment outage times, the licensee states that the General Electric Reports provide a probabilistic basis for extending RPS surveillance and Hatch Unit 2 allowed equipment outage times. The licensee also states that the reports' " . . . methodology shows that the requested interval extensions can be enacted without negatively affecting the functional capability or reliability of the RPS."

Accordingly, the amendments will not increase or probability or consequences of any reactor accident sequence and will not otherwise affect any other radiological impact associated with the facility. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed amendments.

With regard to potential nonradiological impacts, the proposed amendments involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Action

Because the staff has concluded that there is no significant environmental impact associated with the proposed amendments, any alternative to the amendments will have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement for the Edwin I. Hatch Nuclear Plant, Unit 1 and Unit 2," dated October 1972, and the "Final Environmental Statement related to the operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2," dated March 1978.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendments. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for the amendments dated March 27, 1986 as supplemented April 22 and December 27, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland, this 31st day of May 1989.

For the Nuclear Regulatory Commission.

Lawrence P. Crocker,

Acting Director, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13385 Filed 6-5-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Sacramento Municipal Utility District (licensee) for an amendment to Facility Operating License No. DPR-54, issued to the licensee for operation of the Rancho Seco Nuclear Generating Station, Unit No. 1, located in Sacramento County, California. Notice of Consideration of Issuance of this amendment was published in the Federal Register on December 18, 1986 (51 FR 45407).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) relating to main steam safety valves.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated

By July 6, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. David S. Kaplan, Secretary and General Counsel, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 14, 1985, and (2) the Commission's letter to the licensee dated

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docket Control Desk.

Dated at Rockville, Maryland, this 31st day of May 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13386 Filed 6-5-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Withdrawal of Application for Amendment to Provisional Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Consumers Power Company (the licensee) to withdraw its November 5, 1982, application for proposed amendment to Provisional Operating License No. DPR-20 for the Palisades Plant, located in Van Buren County, Michigan.

The proposed amendment would have modified the Appendix A Technical Specifications (TSs) by adding instrumentation operability and surveillance requirements for certain NUREG-0737, specifically Items II.F.1.1 (Noble Gas Effluent Monitor), II.F.1.2 (Sampling and Analysis of Plant Effluents), II.F.1.3 (Containment Radiation Hi-Range Monitor), and II.F.1.6 (Containment Hydrogen Monitor).

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on November 22, 1983 (48 FR 52811). However, by letter dated January 24, 1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 5, 1982, and the licensee's letter dated January 24, 1989, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the Van Zoeren Library, Hope College, Holland, Michigan 49201.

Dated at Rockville, Maryland, this 31st day of May 1989.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Project Manager, Project Directorate III-1, Division of Reactor Projects-III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13384 Filed 6-5-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16976; 811-4496, 811-3241, 811-4340, 811-4339, 811-5186, 811-4122, 811-5599 and 811-4396]

Altius Beta Fund, Inc., et al; Deregistration

May 26, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of proposed deregistration under the Investment Company Act of 1940 ("1940 Act").

Relevant 1940 Act Section: Section 8(f).

SUMMARY: The SEC proposes to declare on its own motion that Registrants have ceased to be investment companies.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the deregistration of any of the Registrants, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on June 19, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicable Registrant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. The most recent address for each of the Registrants contained in the files of the SEC is as follows: Altius Beta Fund, Inc., ("Altius"), 745 Fifth Avenue, 19th Floor, New York, NY 10151; Cashman Farrell Fund, Inc. ("Cashman"), 207 Valley Circle, West Chester, PA 19830; Citius Alpha Fund, Inc., ("Citius A"), 745 Fifth Avenue, 19th Floor, New York, NY 10151; Citius Beta Fund, Inc., ("Citius B"), 745 Fifth Avenue, 19th Floor, New York, NY 10151; Henderson International Equity Fund, Inc., ("Henderson"), 630 Fifth Avenue, New

York, NY 10111; Sisco fund, Inc., ("Sisco"), 142–30 38th Avenue, Flushing, NY 11354; TrustFunds Cash Reserve Trust, ("TrustFunds"), 28 State Street, Boston, MA 02109; and Zeta Mutual Trust, ("Zeta"), 20380 Town Center Lane, Suite 160, Cupertino, CA 95051.

FOR FURTHER INFORMATION CONTACT: Patricia L. Copeland, Legal Technician, at (202) 272–3009, or Jeremy N. Rubenstein, Staff Attorney, at (202) 272–2847 (Office of Investment Company Regulation, Division of Investment Management).

1. Altius filed a Form N–8A (811–4496) to register under the 1940 Act on November 21, 1985, and on February 20, 1986, Altius filed a registration statement under the Securities Act of 1933 ("1933 Act") on Form N–1A (33–3495). The Altius registration statement was never declared effective and was ordered withdrawn on June 14, 1988.

2. Cashman filed a Form N–8A (811–3241) to register under the 1940 Act on August 12, 1981, and on that same date filed a registration statement under the 1933 Act on Form N–1 (2–73647). The Cashman registration statement was never declared effective and was ordered abandoned on June 29, 1982.

3. Citius A filed a Form N–8A (811–4340) to register under the 1940 Act on June 28, 1985, and on September 30, 1985, Citius A filed a registration statement under the 1933 Act on Form N–1A (33–525). The Citius A registration statement was never declared effective and was ordered withdrawn on June 14, 1988.

4. Citius B filed a Form N–8A (811–4339) to register under the 1940 Act on June 28, 1985, and on September 30, 1985 Citius B filed a registration statement under the 1933 Act on Form N–1A (33–528). The Citius B registration statement was never declared effective and was ordered withdrawn on June 14, 1988.

5. Henderson filed a Form N–8A (811–5186) to register under the 1940 Act on May 22, 1987, and on May 29, 1987 Henderson filed a registration statement under the 1933 Act on Form N–1A (33–14570). The Henderson registration statement was never declared effective and was ordered withdrawn on April 21, 1988.

6. Sisco filed a Form N–8A (811–4122) to register under the 1940 Act on October 9, 1984. Sisco never filed any registration statement under the 1933 Act and has made no further filings with the SEC since filing its N–8A.

7. TrustFunds filed a Form N–8A (811–5599) to register under the 1940 Act on June 22, 1988, and on that same date filed a registration statement under the 1933 Act on Form N–1A (33–22689). The TrustFunds registration statement was never declared effective and was ordered withdrawn on April 20, 1989.

8. Zeta filed a Form N–8A (811–4396) to register under the 1940 Act on August 26, 1985, and on that same date filed a registration statement under the 1933 Act on Form N–1A (2–99866). The Zeta registration statement was never declared effective and was ordered withdrawn on September 23, 1986.

9. Section 8(f) provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company under the 1940 Act shall cease to be in effect.

10. Because each of the companies listed in this notice either abandoned or withdrew its registration statement under the 1933 Act subsequent to its registration under the 1940 Act, it appears that such companies have ceased to be investment companies. Accordingly, the Commission proposes to declare, on its own motion, that each of the listed companies has ceased to be an investment company and thereby terminate its registration under the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–13306 Filed 6–5–89; 8:45 am]

BILLING CODE 8010–01–M

[File No. 500–1]

European American Corp.; Order of Suspension of Trading

June 1, 1989.

It appears to the Securities and Exchange Commission that questions have been raised about European American Corporation ("Euramco") concerning, among other things, the adequacy and accuracy of publicly disseminated information concerning Euramco's business activities, operations and acquisition and valuation of assets, and whether Euramco has reporting obligations under section 12 of the Securities Exchange Act of 1934. The Commission is of the opinion that the public interest and protection of investors require a suspension of trading in the securities of Euramco.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Euramco in the over-the-counter or otherwise, is suspended for the period from 9:00 a.m. (e.d.t), June 1, 1989, through 11:59 p.m. (e.d.t.) on June 9, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–13366 Filed 6–5–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 31, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0065

Form Number: PD 1946–1

Type of Review: Reinstatement.

Title: Application for Disposition—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whole Estate is Being Settled Without Administration.

Description: This form is used by the heirs to apply for disposition of United States Savings Bonds/Notes and/or related checks owned by decedent whose estate is being settled without administration.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,500

Estimated Burden Hours Per Response: 35 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 875 hours

Clearance Officer: Rita DeNagy, (202) 447–1640, Bureau of the Public Debt, Room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239–0001.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management

and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-13345 Filed 6-5-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 31, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0135

Form Number: 1138

Type of Review: Extension

Title: Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback.

Description: Form 1138 is used by corporations to request an extension of time to pay their income taxes, including estimated taxes. Corporations may only file for an extension when they expect a net operating loss in the current tax year and want to delay the payment of tax for a prior year.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 2,033

Estimated Burden Hours Per Response:

Recordkeeping, 3 hours 21 minutes

Learning about the law of the form, 35 minutes

Preparing and sending the form to IRS, 41 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 9,392 hours

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-13346 Filed 6-5-89; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Dept. Circ.—Public Debt Series—No. 15-89]

Treasury Notes, Series Z-1991

Washington, May 25, 1989.

The Secretary announced on May 24, 1989, that the interest rate on the notes designated Series Z-1991, described in Department Circular—Public Debt Series—No. 15-89 dated May 18, 1989, will be 8-¾ percent. Interest on the notes will be payable at the rate of 8-¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-13343 Filed 6-5-89; 8:45 am]

BILLIND CODE 4810-40-M

[Supplement to Depart. Circ.—Public Debt Series—No. 16-89]

Treasury Notes, Series K-1994

Washington, May 26, 1989.

The Secretary announced on May 25, 1989, that the interest rate on the notes designated K-1994, described in Department Circular—Public Debt Series—No. 16-89 dated May 18, 1989, will be 8⅝ percent. Interest on the notes will be payable at the rate of 8⅝ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-13344 Filed 6-5-89; 8:45 am]

BILLIND CODE 4810-40-M

Office of Foreign Assets Control

Service Transactions Related to Cuban Travel or Family Remittances Forwarded to Cuban Nationals

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: Consistent with the licensing requirements governing persons engaged in travel service to, from, and within Cuba and persons forwarding family remittances to Cuba, the Office of Foreign Assets Control invites public comment concerning the fitness and qualification of license applicants. In addition, this notice updates and corrects information concerning certain license applicants listed in an earlier notice. It also informs the public of the identity of additional travel service providers and family remittance forwarders authorized to engage in these services.

DATE: Comments must be submitted on or before August 7, 1989.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief of Enforcement, Tel.: (202) 376-0400, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 376-0236, Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Sections 515.560 and 515.563 of the Cuban Assets Control Regulations, 31 CFR Part 515 (the "Regulations"), were amended, effective December 23, 1988, to require that persons engaged in service transactions related to travel to Cuba or the forwarding of remittances to close relatives in Cuba obtain a specific license from the Office of Foreign Assets Control. The Regulations provide that licenses will be issued only upon the applicant's affirmation and demonstration "that it does not participate in discriminatory practices of the Cuban government against certain residents and citizens of the United States." 31 CFR 515.560(i)(1)(ii).

On April 21, 1989, the Office of Foreign Assets Control published a list of license applicants, who had been granted provisional authority to provide services pending review of their completed license application (54 FR 16188). Provisional authority based on submission of a completed license application is necessary to lawfully provide travel services or family remittance forwarding services. Subsequent to the publication of the April 21, 1989 notice, 8 additional license applicants, listed below, have submitted completed applications and have been granted provisional authority to engage in these services.

In order to evaluate the assertions made by license applicants that they do not engage in discriminatory practices, and to determine the fitness and qualification of the license applicants listed below, anyone having personal knowledge regarding the applicants (including employees, officers, and directors) is invited to comment concerning the following:

1. Any evidence of discrimination based on race, color, religion, sex, citizenship, place of birth, national origin, or ability to pay (charging different amounts based on the financial means of the travelers) with regard to the provision of or payment required for accommodations and meals, or other

services provided in connection with travel to, from, or within Cuba;

2. Any evidence of demanding, soliciting, receiving, or forwarding to Cuba payments or remittances in excess of the amounts permitted by § 515.563 of the Cuban Assets Control Regulations, namely family remittances to close relatives in amounts not to exceed $500 in any consecutive 3-month period to any one payee or household, and remittances for the purpose of enabling emigration from Cuba on a one-time basis in an amount not to exceed $500 to any one payee; and

3. Any evidence of charging any fees prohibited by U.S. law or any arbitrary and exorbitant fees which exceed the total of official Cuban government consular fees and reasonable service charges.

Comments should be submitted in writing to the Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Room 400, Washington, DC 20220. To the extent permitted by law, the identity of anyone submitting information, as well as any identifying information provided, will be held in confidence and will not be released without the express permission of the person submitting the information. Any information provided will be evaluated by the Director of the Office of Foreign Assets Control to determine its reliability and relevance to the investigation of applicants.

List of Applicants for Licenses to Perform Travel, Carrier, and Family Remittance Forwarding Services:

Name of Applicant (Company Name or Individual) Principal Officer (If Applicant is Incorporated: Address (As Supplied by Applicant)	Branch Offices(s) Travel service provider ("TSP"); Carrier service provider ("CSP"); Family remittance forwarder ("FRF")
Adventure Travel Maria De Jesus Menendez 2619 Davie Blvd. Fort Lauderdale, FL 33312	TSP, FRF
Air Center of Miami, Inc. Richard L. Rawlins 13101 SW 80th Ave. Miami, Florida 33156	TSP, CSP 14523 SW 129 Street Miami, FL 33186
Airlift International, Inc. A. M. Oliver 3400 NW. 62nd Ave. (Bldg. 1006) Miami, FL 33152	CSP
Airways International, Inc. Iraz N. Djahanshahi 5700 NW. 36th St. Miami, FL 33166	CSP
Customer Service Company Omar Calleja 3314 Northside Dr., #17A Key West, FL 33040	TSP
Hop-A-Jet, Inc. Harvey N. Hop 5500 NW. 21st Terrace Fort Lauderdale, FL 33309	CSP
Isla Cuba Lucia Anreus 6006 Bellaire Blvd., #206 Houston, TX 77081	TSP, RFR
Twin Town Leasing, Inc. Clay Gamber 270 SW. 34th St. Fort Lauderdale, FL 33315	CSP

Corrections to Notice of April 21, 1989

The following company names and addresses which were listed in the April 21, 1989 notice are repeated below in order to update and/or correct information published at that time:

Airline Brokers Company Vivian Mannerud 3971 SW. 8th Street, #307 Coral Gables, FL 33134	TSP, FRF
Cuba Paquettes, Inc Milton Serret 1087–A West 29th St. Hialeah FL 33012	TSP, FRF 7135 W. Flagler St. Miami, FL 33144
El Español Corporation Augusto C. Rodriguez 8938 SW. 40th St. Miami, FL 33165	FRF 4319 Bergenlin Ave. 2nd Floor Union City, NJ 07087
Le Club Travel, Inc Hector Martinez Puldon 1708 W. 68th St. Hialeah, FL 33014	TSP, FRF 8428 Coral Way Miami, FL 33155
Miami-Cuba Envios, Inc Mario Saldivar 2853 NW. 7th St. Miami, FL 33125	TSP, FRF 13851 SW 16th St. Miami, FL 33184 1544 W. 49th St. Hialeah, FL 33012
New Miami International Import-Export, Corp. Alberto Rodriguez 4800 NW. 7th St. Miami, FL 33126	TSP, FRF 1407 W. Flagler St. Miami, FL 33126 692 W. 29th St., #7 Hialeah, FL 33010 9656 Coral Way Miami, FL 33165 605 Belvedere Rd., #12 West Palm Beach, FL 33405 339A 47th St. Union City, NJ 07087
Paradise International, Inc Jesus G. Rodriguez 1111 SW. 8th St., #208 Miami, FL 33130	TSP, FRF
Sam Immigration Agency & Tours Hilda Martinez 6818 Pacific Blvd., Suite E Huntington Park, CA 90255	TSP, FRF
Solymar Tours Corp Marisol Gutierrez 530 57th St. West New York, NJ 7903	TSP, FRF

Dated: May 22, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: May 31, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-13444 Filed 6-2-89; 10:33 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under Office of Management and Budget Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable, (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 25, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration
2. Application for Total Disability Income Provision
3. VA Form 29-1606
4. This application is used to establish eligibility for the provision. The completed application is required by the Department of Veterans Affairs to determine the insured's eligibility.
5. On occasion
6. Individual or households
7. 15 responses
8. 1½ hours
9. Not applicable.

1. Veterans Benefits Administration
2. Statement of Holder or Servicer of Veteran's Loan
3. VA Form Letter 26-559
4. This form letter is completed by holders or servicers of guaranteed or insured home loans from which obligors may be released from liability pursuant to 38 U.S.C. 1813(a) and/or approval or substitution of entitlement in accordance with 38 U.S.C. 1802(b)(2). Information collected is used to determine that the loan is current.
5. On occasion
6. Business or other for-profit
7. 18,000 responses
8. 1/6 hour
9. Not applicable.

[FR Doc. 89-13298 Filed 6-5-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 107
Tuesday, June 6, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: May 30, 1989, 54 FR 23015.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: May 31, 1989, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Companies have been added to Items CAG–1, CAG–11 and CAG–48 for the agenda of May 31, 1989:

Item No., Docket No., and Company

CAG–1—RP88–68–000 and RP87–7–012, Transcontinental Gas Pipe Line Corporation
CAG–11—RP89–132–000, El Paso Natural Gas Company
CAG–48—ST88–2905–000, ST88–3337–000, ST88–4985–000 and ST89–229–000, Louisiana Intrastate Gas Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 89–13468 Filed 6–2–89; 11:34 am]

BILLING CODE 6717-02-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 1, 1989.

TIME AND DATE: 10:00 a.m., Thursday, June 8, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Local Union 1261, District 22, United Mine Workers of America* v. *Consolidation Coal Co.*, Docket No. WEST 86–199–C. Issues include: (1) Whether miners who have been withdrawn by the operator and therefore are not working at the time on order of withdrawal is issued are entitled to compensation under the first two sentences of section 111 of the Mine Act, and (2) whether the miners are also entitled to pre-judgement interest.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/ (202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89–13548 Filed 6–2–89; 3:58 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on May 26, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, June 5, 1989.

CHANGES IN THE MEETING: Addition of the Following close item(s) to the meeting:

Proposed statement to be presented to the Consumer and Regulatory Affairs Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs concerning Community Reinvestment Act disclosures, Government check cashing, and "lifeline" checking accounts.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date June 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–13546 Filed 6–2–89; 3:53 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 12, 1989.

PLACE: Marriner S. Eccles Federal Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed Federal Reserve Bank salary structure adjustments.
2. Proposed acquisition of computer equipment within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–13547 Filed 6–2–89; 8:45 am]

BILLING CODE 6210-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 1–89]

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time

Tues., June 27, 1989 at 10:00 a.m.

Subject Matter

Routine Business

Consideration of claims under section 6 of the War Claims act of 1948.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111—20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street, NW., Room 400, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, D.C. on June 2, 1989.

Judith H. Lock,

Administrative Officer.

[FR Doc. 89–13541 Filed 6–2–89; 3:04 pm]

BILLING CODE 4410-01-M

PAROLE COMMISSION

Record of Vote of Meeting Closure

I, Benjamin F. Baer, Chairman of the

United States Parole Commission, presided at a meeting of said Commission which started at 9 o'clock a.m. on Wednesday, May 31, 1989 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about 2:30 p.m. The purpose of the meeting was to decide approximately 20 appeals from National Commissioners' decisions pursuant to 28 CFR 2.27. Eight Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Benjamin F. Baer, Cameron M. Batjer, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, Victor M.F. Reyes, Daniel R. Lopez, and G. MacKenzie Rast.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

(Pub. L. 94–409; 5 U.S.C. 552b)

Date: May 31, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89–13513 Filed 6–2–89; 1:22 pm]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 5, 12, 19, and 26, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 5

Thursday, June 8

11:30 a.m.

Affirmation/Discussion and Vote (Public meeting)

a. NEPA Review Procedures for Geological Repositories for High-Level Waste

Week of June 12—Tentative

Tuesday, June 13

2:00 p.m.

Briefing on Proposed Rule on Basic Quality Assurance in Radiation Therapy (Public meeting)

Thursday, June 15

3:30 p.m.

Affirmation/Discussion and Vote (Public meeting) (if neded)

Week of June 19—Tentative

Tuesday, June 20

10:00 a.m.

Briefing on the Application of the Severe Accident Policy to the Lead Application for Advanced Light Water Reactors (Public meeting)

Thursday, June 22

10:00 a.m.

Briefing on Status of Proposed Rule for License Renewal (Public meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of June 26—Tentative

Wednesday, June 28

11:30 a.m.

Affirmation/Discussion and Vote (Public meeting) (if needed)

Note.—Affirmation sessions are initially schedule and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

June 1, 1989

[FR Doc. 89–13534 Filed 6–2–89; 2:33 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities the Exchange Commission will hold the following meetings during the week of June 5, 1989.

Closed meetings will be held on Wednesday, June 7, 1989, at 2:30 p.m. and on Thursday, June 8, 1989, following the 2:30 p.m. open meeting. Open meetings will be held on Thursday, June 8, 1989, at 9:30 a.m. and 2:30 p.m. and on Friday, June 9, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9))A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meetings scheduled for Wednesday, June 7, 1989, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceeding of an enforcement nature.

Institution of injunctive action.

Regulatory matters regarding financial institutions.

The subject matter of the open meeting scheduled for Thursday, June 8, 1989, at 9:30 a.m., will be:

Consideration of whether: (1) To authorize a 2-year pilot program, as part of the General Counsel's study of the Commission's statutory role in Chapter 11 bankruptcy reorganization proceedings, consisting of active participation in a limited number of large Chapter 11 cases; and (2) to broaden the delegation of authority to the General Counsel to take positions on issues in the pilot cases. Participation in these pilot cases would enable the staff to generate evidence concerning the extent of benefits to public investors of active Commission participation in reorganization cases. The study would analyze the effect of Commission participation and the adequacy of public investor protections in reorganization cases. The study's results would form the basis for recommendations as to the future direction and scope of the Commission's bankruptcy program. For further information, please contact Michael A. Berman at (202) 272–2493.

The subject matter of the open meeting scheduled for Thursday, June 8, 1989, at 2:30 p.m., will be:

Oral argument on the Commission's review of an administrative law judge's initial decision with respect to George C. Kern, Jr., a partner in the law firm of Sullivan & Cromwell. For further information, please contact Daniel J. Savitsky at (202) 272–7400.

The subject matter of the closed meeting scheduled for Thursday, June 8, 1989, following the 2:30 p.m., open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Friday, June 9, 1989, at 10:00 a.m., will be:

1. Consideration of whether to recommend legislation to Congress to amend the Investment Advisers Act of 1940. The legislative proposal would authorize the Commission to register one or more national investment adviser associations to provide a

self-regulatory mechanism for investment advisers, subject to Commission oversight. Membership in an association would be mandatory for all registered investment advisers. For further information, please contact John McGuire at (202) 272–2072.

2. Consideration of whether to approve a National Association of Securities Dealers, Inc. ("NASD") proposed rule change (SR–NASD–88–28) that would establish a new category of registration, Assistant Representative—Order Proessing, for associated persons at NASD member firms. The new category would permit associated persons who take and pass the new exam, which is less comprehensive than the general securities representative (Series 7) exam, to take unsolicited orders from existing customers of member firms. For further information, please contact Eugene A. Lopez at (202) 272–2828.

3. Consideration of whether to authorize publication of a release proposing rule and form changes to the registration and reporting requirements relating to employee benefit plans, including (1) amendment of Form S–8 to streamline registration procedures under the Securities Act of 1933; (2) amendment of Form 11–K under the Securities Exchange Act of 1934 to eliminate the requirement for the annual description of the plan's operations; and (3) related new rules and rule amendments. For further information, please contact Larisa Dobriansky at (202) 272–2589.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Karen Burgess at (202) 272–2200.

Jonathan G. Katz,

Secretary.

June 1, 1989.

[FR Doc. 89–13515 Filed 6–2–89; 8:45 am]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 54, No. 107
Tuesday, June 6, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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.

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; University of Wisconsin-Madison et al.

Correction

In notice document 89-12114 beginning on page 22000 in the issue of Monday, May 22, 1989, make the following correction:

In the third column, in the first line, "the " should read "to".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

Correction

In rule document 89-10793 beginning on page 19798 in the issue of Monday, May 8, 1989, make the following corrections:

1. On page 19805, under "**C. SPECIAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS**", in C-4, in the second line, "124°23′ 18″" should read "124°23′00″".

2. On the same page, in C-6, in the second line "4" should read "24".

3. On page 19808, in the second column, under *Geographical Landmarks*, in the second paragraph, the ninth line should read "Leadbetter Point—46°38′10″".

Note: For a Department of Commerce correction to the document referenced in this correction, see the Rules section of this issue.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP89-14-006]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

Correction

In notice document 89-12884 appearing on page 23256 in the issue of Wednesday, May 31, 1989, in the heading, the docket number should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP89-174-000]

Southern Natural Gas Co; Proposed Change in FERC Gas Tariff

Correction

In notice document 89-12882 appearing on page 23257 in the issue of Wednesday, May 31, 1989, in the heading, the docket number should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 89-11839 beginning on page 21289 in the issue of Wednesday, May 17, 1989, make the following correction:

On page 21289, in the third column, under the **Oncologic Drugs Advisory Committee**, in the second paragraph, in the fourth line, "4:16p.m." should read "4:15p.m.".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0137]

Telectronics, Inc.; Premarket Approval of Meta MV™ Model 1202 Pulse Generator, etc.

Correction

In notice document 89-11781 beginning on page 21288 in the issue of Wednesday, May 17, 1989, make the following corrections:

In the third column under **SUPPLEMENTARY INFORMATION**, in the fifth line, the closing quotation marks should be replaced by a trademark symbol.

1. In the third column, under **SUPPLEMENTARY INFORMATION**, in the sixth line, "5803" should read "5603".

2. On page 21289, in the first column, under **OPPORTUNITY FOR ADMINISTRATIVE REVIEW**, in the first line, "Section 515(d)" should read "Section 515(d)(3)".

BILLING CODE 1505-01-D

federal register

Tuesday
June 6, 1989

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Game Bird Hunting; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Game Bird Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds. This supplementary document describes proposed changes and provides additional information that will facilitate establishment of the 1989–90 hunting regulations for certain migratory game birds. Comments received on the preliminary proposals do not appear in this supplemental but will be addressed in the final rule.

DATES: The comment period for proposed migratory bird hunting season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early-seasons will end on July 21, 1989; and that for late-season proposals will end on August 28, 1989. Public hearings on proposed early- and late-seasons frameworks will be held on June 22 and August 3, 1989, respectively (54 FR 12534).

ADDRESSES: Send comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634–Arlington Square, Washington, DC 20240. The June 22 public hearing for early-season proposals will be held in the Auditorium of the Department of the Interior Building on C Street, between 18th and 19th Streets, NW., Washington, DC, and the August 3 public hearing for late-season proposals will be held in the Auditorium of the General Service Administration Building on F Street, between 18th and 19th Streets, NW, Washington, DC. Notice of intention to participate in either hearing should be sent in writing to the Director at the address above.

Comments received on this supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634–Arlington Square, Washington, DC 20240 (703–358–1714).

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons. Early seasons include those which may open before October 1, while late seasons may open about October 1 or later. Regulations are developed independently for early and late seasons. The early-seasons regulations cover mourning, white-winged and white-tipped doves, band-tailed pigeons, rails, moorhens, and gallinules, woodcock, and common snipe; sea ducks in the Atlantic Flyway; September teal; experimental September duck seasons in identified States; experimental September Canada goose seasons in portions of identified States; sandhill cranes in the Central and Pacific Flyways; doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Late seasons include the general waterfowl seasons; coots, moorhens and gallinules, and common snipe in the Pacific Flyway; and extended falconry seasons.

Certain general procedures are followed in developing regulations for the early and late seasons. The data used in regulatory decisions were outlined in the March 27, 1989, **Federal Register** (54 FR 12534). At this time the Service does not have complete data from the spring breeding ground surveys but a preliminary assessment of duck breeding habitat was developed in mid-May. The habitat conditions in the prairie-parklands continue to be dry and duck production prospects are poor. Restrictive duck regulations were enacted in 1988 in response to poor habitat conditions, reduced duck breeding populations, and expected poor fall flights. The Service notes that if populations need additional protection, further framework restrictions, to include, but not limited to, outside dates, season lengths and bag limits, will be considered in the development of regulations for the 1989–90 hunting season. In addition, all aspects of past regulations which may have a bearing on possible harvest, are being reviewed. Some actions on early-season regulations will have to be based on information from the May surveys.

Initial regulatory proposals are announced in the **Federal Register** document published in March and opened to public comment. These proposals are supplemented, as necessary, with additional **Federal Register** documents. Comments in response to the March document that support or oppose proposed preliminary regulations are not listed in this supplemental document. They will be considered in the regulations development process. This document does contain recommendations that require either new proposals or substantial modifications of existing proposals in order to facilitate effective public participation. Following review of comments received and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the **Federal Register.** The Service responses to comments and proposals do not appear in this supplemental or subsequent proposed rules but will appear in the two final frameworks documents. Using these frameworks, State conservation agencies than select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the **Federal Register,** amending Subpart K of 50 CFR Part 20, to establish specific seasons, bag limits, and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows: On March 27, 1989, the Service published in the **Federal Register** (54 FR 12534) a proposal to amend 50 CFR Part 20, with public comment periods ending as noted above. The proposal dealt with establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of Subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. Comment periods on this second document are specified above under **DATES.** Final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, the Virgin Islands, and early seasons in other areas of the United States are targeted for **Federal Register** publication on or about August 9, 1989; and those for late seasons on or about September 18, 1989.

On June 22, 1989, a public hearing will be held in Washington, DC, as announced in the **Federal Register** of March 27, 1989, to review the status of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; and sandhill cranes. Recommended hunting regulations will be discussed for these species and for

migratory game birds in Alaska, Puerto Rico and the Virgin Islands; September teal seasons; experimental September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons.

On August 3, 1989, a public hearing will be held in Washington, DC, as announced in the Federal Register of March 27, 1989, to review the status and recommended hunting regulations for waterfowl not previously discussed at the June 22 public hearing.

This supplemental rulemaking describes a number of changes which have been recommended based on the preliminary proposals published on March 27, 1989, in the Federal Register. Statements and comments are invited.

Review of Public Comments

Written Comments Received

As of May 8, 1989, the Service had received comments on proposals published in the March 27, 1989, Federal Register (54 FR 12534) from 16 correspondents, including 4 States, 2 organizations, all four waterfowl flyway councils, and 6 individuals. In some instances, the communications did not specifically mention the open comment period or the regulatory proposals; however, because they were received during the comment period and generally relate to migratory game bird hunting regulations, they are treated as comments. The Service seeks additional information and comments on the recommendations contained in this supplemental proposed rule. These recommendations and all associated comments will be considered during development of the final frameworks. Early-season frameworks will be proposed in late June and late-season frameworks in early August. Responses to written comments and those received at the public hearings will be included in the appropriate final frameworks Federal Register documents, at which time, additional data about the status of affected species will be available.

General Comments

The Service is currently reviewing many special harvest strategies and tools for migratory game bird management. The Service requested information from the Flyway Councils and States on these harvest stratgegies which include zones, splits, management units, special seasons, bonus birds, and the point system. The Service reiterates that any action on these items is likely to be deferred until the review is complete, which likely will not occur prior to the 1989–90 hunting season. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 27, 1989, Federal Register (at 54 FR 12536).

1. *Shooting hours.* The Service believes clarification is needed in regard to shooting hours and falconry. The first consideration is that hunting hours for falconry will be the same as those for other means of taking migratory birds. The second is that States need not consider falconry seasons in determining the "earliest duck season opening date * * * latest duck season closing date" (at 54 FR 12539, item 1b) in their State.

2. *Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits.* Framework dates. At its March meeting, the Central Flyway Council recommended that framework dates be standardized to open on the Saturday nearest October 1 and closing on the Sunday nearest January 20, as was in effect in 1984–85.

4. *Wood ducks.* The recommendation for September Duck Season bag limits will impact wood ducks (see Item 8).

8. *September Duck Seasons.* At its March meeting, the Atlantic Flyway Council endorsed a recommendation that the bag limit be 4 wood ducks only during the Experimental September Duck Season in Florida. The Council notes that low harvest levels, low band recovery rates, and a low portion of northern wood ducks in the harvest are compatible with providing increased opportunity for harvesting southern wood ducks without jeopardizing the sustained welfare of wood duck populations.

14. *Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits.*

a. The Atlantic Flyway Council endorsed the following recommendations at its March meeting:

i. That a 3-year experimental season be established for resident Canada geese in North Carolina west of Interstate 95 from September 1 through September 10. The daily bag limit would be 2 geese. The Council notes that North Carolina's voluntary closure of the Canada goose season in that portion of the State west of Interstate 95 eliminated a means to harvest resident geese within the regular season framework. Recreational opportunity to harvest resident geese has been lost and hunter support for efforts to protect geese affiliated with the Southern James Bay population may decline as a result. The arrival of migrant geese in North Carolina appears to occur after the proposed season dates of September 1–10.

ii. That a 3-year experimental season be established for resident Canada geese in Georgia and last for 8 days between November 15 and February 5. The bag limit would be 1 goose per season. The Council notes that resident Canada geese in Georgia have increased to nuisance proportions and the population is large enough to support a limited sport harvest. High levels of recreational use, other than hunting, within the proposed hunt areas, prevent implementation of an early September resident goose season.

iii. That the bag limit of Atlantic brant be increased from 2 to 4 birds per day. The season length would remain at 50 days. The Council notes that the population increased and a large proportion of young birds warrant further liberalization of the existing regulation. The 1987–88 season frameworks allowed a 30-day season and 2 brant daily and was extended to 50 days in 1988–89.

iv. That the bag limit for greater snow geese be increased from 4 to 5 birds per day. The season length would remain at 90 days. The Council notes that populations are at high levels and crop depredation and habit degradation are resulting. Snow geese are adapting to hunting pressure, resulting in lower harvest levels Increasing the daily bag limit may stimulate interest, increase hunter participation, and increase harvest levels.

v. That the experimental (special) snow goose season at Bombay Hook NWR in Delaware be expanded to include State areas adjacent to the existing area. The Council notes that the 13-day seasons have been successful in moving geese and minimizing late October damage to Spartina marshes at Bombay Hook. The experimental hunts also provide additional hunting opportunity.

b. The Upper Region Regulations Committee of the Mississippi Flyway Council endorsed the following recommendations at its March meeting:

i. That a 3-year experimental season be established to evaluate the effectiveness of a September 1 to September 10 season for reducing the growth of the local Canada goose population in the Southwest Border zone of Minnesota. The Council notes that giant Canada goose populations in this zone have exceeded population objectives. Restrictive Canada goose seasons have made it difficult to harvest adequate numbers of local Canada

geese in this area in order to minimize nuisance and damage problems.

ii. That a 3-year experimental season be established to evaluate the effectiveness of a September 1 to September 10 season for reducing growth of the Canada goose population in the Fergus-Alex zone of Minnesota. The Council notes that giant Canada goose populations in this zone have exceeded population objectives. Restrictive Canada goose seasons have made it difficult to harvest adequate number of local Canada geese in this area in order to minimize nuisance and damage problems.

iii. That Iowa be permitted to change the boundary of its Southwest Goose zone to include DeSoto National Wildlife Refuge and associated feeding areas. Goose seasons in this zone have generally been held 2 weeks later than those in the rest of the State. The Council notes that snow geese in western Iowa have migrated later in recent years. The requested change will allow the snow goose season in the vicinity of DeSoto National Wildlife Refuge to better coincide with the period when snow geese are present. A slight harvest increase may occur in some years, but snow goose populations are increasing.

iv. That Indiana be permited to split its goose season in existing zones into 3 segments. The Service notes that 3 segments in zoned areas previously have not been permitted.

c. At its March meeting, the Pacific Flyway Council recommended lifting restrictions on hunting western Canada geese in 2 California areas (Sacramento Valley and San Joaquin Valley). There is currently no open season for Canada geese in the Sacramento Valley area, while the hunting season for Canada geese in the San Joaquin Valley area currently closes no later than November 23. The Council notes that western Canada goose hunting is consistent with harvest management objectives for Pacific population Canada geese, but acknowledges potential concerns for Aleutian and cackling Canada geese wintering in these areas.

15. *Tundra swans.* There were two errors regarding the tundra swan seasons in the preliminary proposal. The following statements correct these errors and clarify the swan framework in the Pacific Flyway.

a. It is again proposed that permits in the Pacific Flyway portion of Montana would be valid in Teton, Cascade, Toole, Liberty, Hill, and Pondera Counties.

b. It is again proposed that tundra swan hunts in the Central Flyway portion of Montana run concurrent with the season dates for taking geese.

c. In the Pacific Flyway eligible States may select a 93-day season between September 30 and January 21.

24. *White-winged and White-tipped Doves.*

a. In the March 27, 1989, **Federal Register** (at 54 FR 12542), the Service reviewed a request from Texas for an experimental dove bag limit. At its March meeting, the Central Flyway Council recommended establishment of a 3-year experimental dove bag limit study during the 4-day special season for white-winged doves in Texas. The aggregate daily bag limit of 12 white-winged, mourning, and white-tipped doves would permit no more than 2 white-tipped doves but would allow up to 12 mourning doves. The Council notes that these 4 days (during the first 2 weekends in September) are part of, and not in addition to, the 70-day mourning dove season in Texas. The daily aggregate bag is currently 10 white-winged, mourning, and white-tipped doves to include no more than 2 mourning doves and 2 white-tipped doves. The Council further notes that the restricted bag limits have limited recreational opportunity and contributed to economic problems.

b. In a letter dated May 2, 1989, Texas recommended their initial proposal be modified to limit the aggregate bag limit to 10 doves per day, not more than 5 of which can be mourning doves or 2 of which can be white-tipped doves, except that in the special white-winged dove area upriver from Del Rio, the aggregate daily bag be allowed to contain up to 10 mourning doves. The State reports there is very little late-nesting of mourning doves in the upriver area.

If the experiment is approved, the Texas Parks and Wildlife Department proposes to monitor the effects of the experimental bag limit with (1) additional mourning dove call-count surveys, (2) a nesting chronology study, (3) an egg and nestling survival study, and (4) harvest surveys. Results of these surveys will be used in formulating bag limit recommendations at the end of the 3-year experimental period.

25. *Migratory bird hunting seasons in Alaska.* At its March meeting, the Pacific Flyway Council endorsed Alaska's existing frameworks with no change for the 1989 migratory bird hunting frameworks. In 1988, shooting hours for migratory game birds in Alaska began one-half hour before sunrise. In the March 27, 1989, **Federal Register** (at 54 FR 12542) the Service proposed that shooting hours for Alaska begin at sunrise and end at sunset. The Council notes that, during the hunting season, Alaska receives greater illumination at one-half hour before sunrise than the contiguous United States.

27. *Migratory game bird season for falconers.* See item 1 (Shooting hours). Because of the framework extension granted for falconry in 1988 the Service believes that the number of season segments allowed needs to be established. The Service recommends not more than 3 segments be allowed for falconry seasons.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and with due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States, including Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additonal information received, may lead to final regulations that differ from these proposals. The addresses where comments should be sent and where received comments are available for public inspection were given earlier in this document under the caption **ADDRESSES.**

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Flyway Council Meetings

Department of the Interior representatives will be present at the following meetings of Flyway Councils:

Atlantic Flyway—Quebec City, Quebec, Canada (Desgovzerneurs) July 28–29

Mississippi Flyway—Saginaw, Michigan (Saginaw Sheraton) July 29–30

Central Flyway—North Platte, Nebraska (Holiday Inn) July 27–28

Pacific Flyway—Reno, Nevada (Peppermill Hotel) July 28

Although agendas are not yet available, these meetings usually commence at 8:30 to 9 a.m. on the days indicated.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). The "Final Supplemental Environmental Impact Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds" was completed and filed with the Environmental Protection Agency on June 9, 1988, and a Notice of Availability was published in the June 16, 1988, **Federal Register** (53 FR 22582). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESS.**

Endangered Species Act Consideration

Consultations are presently underway to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. It is possible that the findings from the consultations, which will be included in a biological opinion, may cause modification of some of the regulatory measures proposed in this document. Any modifications will be reflected in the final frameworks.

Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats.

The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for public inspection in the Division of Endangered Species and Habitat Conservation, and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the **Federal Register** dated March 27, 1989 (54 FR 12534), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. This information is included in the present document by reference. As noted in the above **Federal Register** publication, the Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the same time the first of the annual hunting rules is finalized. This rule does not contain any information collection requiring approval by OMB under 44 U.S.C. 3504.

Authorship

The primary author of this supplemental proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Byron K. Williams, Acting Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

Dated: May 31, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–13351 Filed 6–5–89; 8:45 am]

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Tuesday
June 6, 1989

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 606 and 610

Current Good Manufacturing Practice for Blood and Blood Components; Proficiency Testing Requirements; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606 and 610

[Docket No. 88N-0413]

RIN 0905-AC92

Current Good Manufacturing Practice for Blood and Blood Components; Proficiency Testing Requirements

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulations concerning blood products to require that each establishment or laboratory, responsible for performing FDA-required tests for hepatitis B surface antigen (HBsAg) and evidence of Human Immunodeficiency Virus (HIV), participate in an approved program to demonstrate proficiency in performing these tests. This proposed rule is part of an FDA program to provide increased assurance of the quality of laboratory performance.

DATES: Comments by July 6, 1989. FDA proposes that the effective date of any final rule be 60 days after the date of its publication in the **Federal Register**.

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

FOR FURTHER INFORMATION CONTACT: JoAnn Minor, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: FDA is proposing to amend the regulations concerning blood and blood components intended for transfusion or for further manufacture (hereafter referred to as blood and blood components) to require that laboratories performing required tests for evidence of HIV or hepatitis B surface antigen participate in approved proficiency testing programs. The proposed regulations would require these laboratories to perform successfully in such programs to be considered qualified to conduct required HIV or HBsAg testing.

I. Background

Because blood, blood components, and blood products have the potential to transmit HIV (the causative agent of acquired immunodeficiency syndrome (AIDS)) and the virus that causes hepatitis B, FDA has required each donation of blood or blood components to be tested appropriately to detect evidence of HIV or HBsAg (21 CFR 610.40 and 610.45). Units testing reactive or repeatably reactive to these tests are not to be shipped or used in manufacturing biological products except under specified narrowly limited circumstances (21 CFR 610.40 (b) and (d) and 610.45(c)).

As part of this procedure designed to help protect the public against these serious and life-threatening diseases, it is important that the testing for evidence of HIV and for HBsAg be adequately and accurately performed. FDA regulations currently require such testing to be performed by the collection facility, by personnel of an establishment licensed to manufacture blood or blood derivatives under section 351 of the Public Health Service Act (42 U.S.C. 262), or by a clinical laboratory that meets the standards of the Clinical Laboratory Improvement Act of 1967 (CLIA) (42 U.S.C. 263a), provided that the establishment or laboratory is qualified to perform the test (21 CFR 610.40(b) and 610.45(b)). FDA requires that tests approved for this purpose be used, and the specific method for carrying out each licensed test is described in the labeling accompanying the test's reagents.

Recently, questions have been raised concerning the controls over performance of these required tests by testing facilities. The Presidential Commission on the HIV Epidemic (the Commission) has recommended the use of proficiency testing programs to help ensure high quality performance by testing laboratories. (Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic (June 1988), pp. 80-81). On August 5, 1988, in response to the Commission's recommendations, the President directed the Department of Health and Human Services (DHHS) to take steps to improve the quality of HIV antibody laboratory testing. (Memorandum for the Secretary of Health and Human Services from President Ronald Reagan dated 8/5/88, p. 1.)

FDA is issuing this proposed rule as an additional step in a continuing program to improve laboratory quality. FDA has accelerated its inspection program so that every blood establishment in the United States was inspected in 1988. A number of problems were found related to the interpretation of test results and the disposition of products that had not met all testing requirements. FDA assured that appropriate corrective actions were taken, including recalls of a number of blood products and changes in laboratory procedures. The problems encountered demonstrate that a complete program of quality assurance should be in place to prevent deficiencies in laboratory testing.

Proficiency testing is commonly used for many testing procedures to assure that test accuracy is being maintained. Many State and private organizations offer proficiency testing programs. In general, the organization conducting the proficiency testing program periodically pretests samples and distributes them to participating laboratories. The laboratories' supervisory staff knows that the test samples come from the proficiency testing program, but the laboratory is expected to test the proficiency samples as it would any patient or donor sample. The results are reported back to the organization conducting the program, which scores the results and reports them to each laboratory. Repeated unsuccessful participation in the proficiency testing program would indicate that the laboratory should reevaluate its operations and take corrective action, as necessary, to improve the quality of the laboratory's testing program. Thus, proficiency testing serves as a quality assurance tool for use by the laboratories.

As part of a DHHS-wide program to accomplish the goal of improving the quality of laboratory testing, FDA is proposing to amend the regulations concerning blood and blood components to require proficiency testing. Another part of this departmental initiative is the regulation proposed by the Health Care Financing Administration (HCFA) on August 5, 1988 (53 FR 29590). Under this proposed regulation, HCFA would require laboratories seeking approval for Medicare or Medicaid reimbursement or licensing under the Clinical Laboratories Improvement Act of 1967 (CLIA) to enroll in an approved proficiency testing program. (See proposed 42 CFR 493.21 (53 FR 29590 at 29611)).

Although many laboratories testing blood and blood components would be subject to HCFA's proposed regulations, some laboratories performing HIV antibody or HBsAg testing would not be. These include establishments that do not receive Medicare or Medicaid reimbursement, as well as those that do not engage in testing in interstate commerce. (See proposed 42 CFR 493.1 (53 FR 29590 at 29610)). FDA's proposed regulation would assure that laboratories not covered by HCFA's proposed regulations will participate in proficiency testing programs. (Recent amendments to the Clinical Laboratory

Improvement Act will expand HCFA's authority, beginning January 1, 1990, to include the regulation of laboratories that engage solely in testing in intrastate commerce.)

FDA's proposed regulations are intended to supplement, not supersede, the regulations proposed by HCFA, so that all blood and blood product testing laboratories in the United States would be subject to proficiency testing. In the future, however, FDA may consider issuing its own regulations to establish specific requirements for these proficiency testing programs. Such FDA regulations would be considered if development of the HCFA final rule is substantially delayed or if the HCFA final rule does not provide specific assurance that a laboratory testing blood or blood products is qualified to conduct the required HIV or HBsAg testing.

II. Highlights of the Proposed Rule

FDA is proposing to require that any laboratory or other facility that performs either the FDA-required test for HBsAg or for evidence of HIV (currently, the test for antibody to HIV) participate successfully in an approved program to demonstrate proficiency in performing the tests. The proposed rule would apply to any laboratory performing such testing on behalf of, or as part of, any registered blood establishment, whether licensed or unlicensed, and including any plasmapheresis center. (Registered, unlicensed blood establishments may collect and process blood and blood components solely for intrastate distribution.)

Laboratories would be required to participate in a proficiency testing program approved by FDA; however, programs already approved by HCFA would be viewed as meeting FDA requirements. A laboratory that fails to perform successfully, as defined by the organization directing the program at the time of enrollment, would be required to notify FDA immediately by phone or other means, with a followup notification in writing required within 30 days after the laboratory is so notified. The written notification to FDA would include a description of the problem believed to have resulted in the failure and a description of any plans of corrective action. After notification, FDA would initiate appropriate action to assure the adequate performance of the laboratory and the continued protection of the public health.

III. Provisions of the Proposed Rule

A. Requirement To Participate in a Proficiency Testing Program

FDA's proposed amendments to the blood and blood product regulations are intended to help assure that every establishment or laboratory performing FDA-required tests for evidence of HIV or HBsAg is qualified to perform such tests, as evidenced in part by successful participation in an approved proficiency testing program. Proposed 21 CFR 606.145(a) would require laboratories performing either of the tests required under 21 CFR 610.40 (HBsAg) or 21 CFR 610.45 (HIV) to participate in a proficiency testing program.

Throughout this proposed rule, FDA is using the term "test for evidence of HIV" rather than "test for antibody to HIV," so that, if a test other than the test for antibody for HIV is approved by FDA as appropriate for testing in accordance with 21 CFR 610.45, participation in proficiency testing for the new test would be required without necessitating additional rulemaking.

FDA is not proposing to require that laboratories performing the Western Blot test for detecting HIV participate in a proficiency testing program. The Western Blot test is not used for assuring product safety under FDA's requirements but is routinely used by blood establishments to gather additional evidence of infection with HIV before the donor is notified of positive test results. The Western Blot test is also used as part of a testing algorithm to determine whether a donor who has previously tested reactive to the required test for HIV tested "false positive" and therefore may reenter as a donor of blood and blood components. The Western blot test is used in clinical settings as part of determining whether a patient is infected with HIV. FDA is not aware of any proficiency testing programs that currently have the ability to conduct proficiency testing for the Western Blot test.

FDA invites comment on whether proficiency testing for the Western Blot test should be required and, if so, the scope of such a requirement. Proficiency testing for the Western Blot test could be required only for blood establishments regulated by FDA or the scope could be expanded to include all laboratories regulated by HCFA who conduct Western Blot testing in a clinical setting. The comments received will be considered by both FDA and HCFA in preparing their respective final rules.

The term "laboratories" as used in proposed 21 CFR 606.145 is intended to include any entity which performs either the HBsAg test or the test for evidence of HIV pursuant to FDA's regulations.

B. Standards for Acceptable Proficiency Testing Program

Proposed 21 CFR 606.145(b) and (c) address the criteria for acceptable proficiency testing programs. The general standards, as set forth in proposed 21 CFR 606.145(b), would provide that the program must be adequate to demonstrate and evaluate the laboratory's performance of the HBsAg and evidence of HIV tests. A proficiency testing program is most useful when it measures the laboratory's performance under the laboratory's usual practice. Therefore, the proposal would require that proficiency samples be tested (1) Under routine conditions, (2) as part of the laboratory's regular workloads, (3) by the personnel who routinely perform the tests, and (4) using the laboratory's usual methods.

Proposed 21 CFR 606.145(c) would require that a laboratory enroll in a proficiency testing program that has been approved by the Director, Center for Biologics Evaluation and Research (CBER) in FDA. FDA recognizes that many laboratories are regulated both by FDA and HCFA and would want to enroll in one proficiency testing program to meet the requirements of both agencies. FDA is cooperating closely with HCFA to assure that proficiency testing programs conforming with HCFA's final rule will be appropriate for complying with FDA's requirements. Proposed 21 CFR 606.145(c) would provide that proficiency testing programs approved by HCFA will be approved by FDA upon the submission of the written approval by HCFA of the proficiency testing program for the test category that includes the tests for HBsAg and evidence of HIV. FDA is proposing to require its approval of programs already approved by HCFA so that FDA can identify the criteria for unsuccessful performance consistent with each program and instruct the program organization concerning the obligations for laboratories to notify FDA of unsuccessful performance in the proficiency testing program. The proficiency testing program would be expected to notify each laboratory upon enrollment of its obligation to notify FDA in the event that the laboratory fails to participate successfully. By not identifying the exact circumstances for FDA notification in the regulations, FDA will have the flexibility to select appropriate notification procedures for each type of proficiency testing program. (See proposed 21 CFR 606.145(d) and the discussion below.)

A proficiency testing program seeking FDA approval under proposed 21 CFR 606.145(c) that has not already been approved by HCFA would be required to submit a complete description of the program to FDA for review and approval. Proficiency testing programs seeking FDA approval, but not participating under HCFA's regulations, would not necessarily be required to meet HCFA's regulations. For example, criteria applicable to specialties and subspecialties may not be necessary to meet FDA's requirements. However, FDA intends to assure that any proficiency testing programs under its regulations are at least equivalent to those programs meeting HCFA's standards in demonstrating the proficiency of laboratories in performing the required tests. Before publication of any final rule resulting from this proposal, FDA intends to provide additional guidance concerning the information that should be submitted when requesting approval of a proficiency testing program not already approved by HCFA.

FDA is proposing that each proficiency testing program request FDA approval, rather than proposing that each laboratory request approval of the program in which it elects to participate, as the least burdensome means for all concerned of assuring that each laboratory will participate in a program acceptable to FDA and that each laboratory is aware of its specific notification obligations under proposed 21 CFR 606.145(d).

FDA is not proposing at this time to include specific standards, other than those in 21 CFR 606.145 (b) and (c), concerning the criteria for approval and structure of proficiency testing programs and the criteria for successful performance for laboratories participating in proficiency testing. Those proficiency testing programs and laboratories regulated both by HCFA and by FDA would be required to meet the criteria set forth in HCFA's regulations, when they become final. HCFA's standards apply to groups of related tests, rather than individual tests as do FDA's regulations. Because the applicable HCFA regulations also reference many other tests unrelated to this proposed rule, FDA is not repeating the applicable HCFA regulations in proposed 21 CFR 606.145. If standards specific for the tests for HBsAg and anti-HIV are included in HCFA's final regulations, FDA would consider cross-referencing them in 21 CFR 606.145 for the convenience of those laboratories that must meet both FDA's and HCFA's regulations.

Under the proposed HCFA proficiency testing program (42 CFR 493.111), at least two samples per test procedure must be tested each quarter. To participate successfully, a laboratory may not (1) For each test event (e.g., each quarter) have a test for which all results have been unacceptable; and (2) for two consecutive test events have an unsatisfactory result on one of the two challenges. In addition, for all tests in the "General Immunology" subspecialty, which includes the tests for anti-HIV and HBsAg, a score of 80 percent of acceptable results must be obtained for each testing event. (See HCFA's proposed 42 CFR 493.47.)

Laboratories failing to meet these criteria must enroll in an "enhanced proficiency testing program" (42 CFR 493.22(b)). In an enhanced proficiency testing program, a laboratory must participate successfully in three consecutive testing events, occurring quarterly or more frequently. Six samples are tested on each event. A laboratory must obtain an overall score for each event of at least 80 percent and must achieve correct results on 5 of 6 samples for the first testing event; 10 of 12 samples for the first and second testing events; and 15 of 18 samples for all three testing events (21 CFR 493.25(a)). (For example, if a laboratory achieves correct results on all six samples in the first testing event, the laboratory must then achieve correct results on at least four of the six samples in the second testing event.) These proposed HCFA requirements are subject to change as a result of public comment on the proposed rule and because of recent legislation affecting that agency's proficiency testing rules. FDA is cooperating closely with HCFA to assure that proficiency testing programs conforming to HCFA's final rule will be appropriate for complying with FDA's requirements. However, FDA is not proposing to require that laboratories otherwise not regulated by HCFA must follow HCFA's proficiency testing requirements. FDA is proposing that laboratories participating successfully in a proficiency testing program in accordance with HCFA's requirements would also meet FDA's proposed requirements.

FDA considered whether to propose more stringent standards than those proposed by HCFA for demonstrating proficiency in tests that are performed for assuring the safety of the blood supply, particularly for the test for anti-HIV. HCFA's proposed requirement that clinical laboratories obtain a score of 80 percent acceptable results for all tests in the "General Immunology" subspecialty is intended to identify possible problems in performing a related group of tests that often use similar equipment and methodology. The other criteria for successful performance are intended to identify possible problems in any specific test procedure listed under the subspecialty. FDA considered whether to set a more stringent standard than 80 percent acceptable results, such as 90 percent acceptable results, for the FDA required tests for HBsAg and anti-HIV, thereby providing a criterion more directly applicable to these specific tests. In the proficiency testing programs currently in existence, from two to five samples per test procedure are tested each quarter. Many small laboratories affiliated with blood establishments perform only the tests for HBsAg and anti-HIV and would test only 4 to 10 proficiency testing samples per quarter. The setting of a more stringent and more specific criterion would mean that a single incorrect test result could result in unsuccessful performance. FDA believes that a laboratory should be concerned about any incorrect test result and should determine the cause of the error and, if appropriate, take corrective action. However, FDA wishes to inquire whether isolated errors should result in regulatory action, such as required enrollment in an enhanced proficiency testing program or required notification of FDA. The proposed proficiency testing program would be only part of the system for assuring the continued quality of the testing of blood and blood components. In accordance with the instructions provided with each test kit, positive and negative control samples are included with each test run. In accordance with 21 CFR 606.140(b), each laboratory must have control procedures for routinely monitoring the reliability, accuracy, precision and performance of laboratory test procedures and instruments. FDA believes that these quality assurance measures, considered together, are adequate to assure the continued quality of the testing of blood and blood components. Therefore, at this time, FDA does not believe that standards more stringent than those proposed by HCFA for demonstrating proficiency are needed.

In some cases, a proficiency testing program currently ships samples to each laboratory for testing; in other cases, the samples are hand delivered by a representative of the program, usually as part of an overall inspection of the laboratory under HCFA's standards. (The samples are customarily not "blinded"; that is, proficiency testing samples are usually identified as such to the laboratories that are being tested.)

FDA considered whether to initiate its own mandatory proficiency testing program as part of its proficiency testing initiative. As part of its routine inspection of blood establishments, FDA could provide quality control test samples and monitor the testing of the samples during the inspection. In this manner, FDA could more closely monitor the testing of proficiency testing samples as performed. However, FDA does not currently have the resources for the routine collection, testing, handling, and distribution of appropriate samples and the routine processing of test results. Such a program would require specialized training for FDA investigators who would administer the program and additional facilities, expertise, and equipment would be necessary for preparing and handling test samples. For most laboratories, an FDA administered on-site proficiency testing program would be duplicative of current on-site programs conducted under HCFA's requirements. Thus, FDA believes at this time that the proposed proficiency testing requirements, along with other quality control measures described elsewhere in this document, will adequately assure continued accurate testing by laboratories. Accordingly, FDA does not believe at this time that the limited benefits that would be derived from conducting its own proficiency testing program justify the increased resource demands that would be placed on the agency to initiate and administer such a program.

FDA particularly invites comments on the following issues: (1) Whether HCFA's regulations should be cross-referenced in FDA's regulations concerning proficiency testing; (2) whether FDA should provide in FDA's regulations specific stringent standards for performing successfully in proficiency testing, particularly for the test for anti-HIV, and what those standards should be; (3) whether specific standards should be included in FDA's regulations for the structure of proficiency testing programs intended to meet FDA's requirements; (4) whether isolated errors should result in regulatory actions, such as required enrollment in an enhanced proficiency testing program or required notification of FDA; (5) whether FDA should consider blind testing and how such testing could be made operational; and (6) whether FDA should provide quality control samples for testing during inspection as part of its mandatory proficiency testing programs.

C. Notification to FDA of Unsuccessful Participation in Proficiency Testing Program

Because FDA will not itself be conducting the proficiency testing programs, it is important that laboratories be required to notify FDA when they have failed to meet the performance standards of the program in which they are enrolled. Only if FDA is informed of such failures can the agency assess the significance of the unsatisfactory performance and assure that appropriate steps are taken to improve the performance of the laboratory or otherwise protect the public health.

Therefore, proposed 21 CFR 606.145 would require a laboratory that fails to meet the standards of the applicable proficiency testing program to notify FDA immediately by phone or other rapid means of communication, such as by facsimile electronic transmission (FAX). A followup written report would be required within 30 days after the laboratory received notice of such failure. A laboratory would be required to include in the written notification the laboratory's evaluation of the problem that resulted in unsuccessful performance and a description of its plan, including any action already taken, for correcting the problem. To ensure that no problems of unsuccessful performance are missed, the agency also proposes that an approved proficiency testing program notify FDA within 30 days of a failure by any of its participants.

FDA is requiring the laboratory to report a proficiency testing failure to FDA, because only the laboratory can quickly provide the information needed to assess the nature of the testing failure and to determine what appropriate followup action should be taken. FDA is requiring the proficiency testing program to report the failure as an added insurance that FDA is made aware of all testing failures.

The criteria for unsuccessful performance that would trigger the FDA notification requirement would be established at the time of approval of the program. Each laboratory would be instructed by the entity conducting the proficiency testing program of the criteria for "unsuccessful performance" and for notifying FDA at the time of enrollment in the program.

FDA also proposes in 21 CFR 606.145(d) to provide specifically that laboratories make the results of their proficiency tests available to FDA upon request, including, for example, during FDA inspection of the laboratory.

FDA is not proposing that laboratories or proficiency testing programs routinely submit proficiency testing results to FDA. HCFA proposed to require that each proficiency testing program issue reports on each laboratory's performance to the State survey agency responsible for inspecting the laboratory and issue cumulative reports on Medicare-approved and CLIA-licensed laboratories to DHHS. See HCFA's proposed 42 CFR 493.93. FDA does intend to monitor proficiency testing, including by examining test results, as part of its routine inspection of blood establishments. Other than in conjunction with an FDA inspection, a laboratory would be required to report test results only when the laboratory fails to perform successfully in its proficiency testing program. FDA invites comment on whether the proposed system of reporting results only upon unsuccessful performance will be adequate to assure the continued quality of laboratory testing.

D. Potential Ramifications of Unsuccessful Participation in Proficiency Testing Program

The purpose of the notification requirement, as discussed above, is to allow FDA to evaluate the situation and, if necessary, take appropriate action. Any laboratory that fails its proficiency testing program will be closely monitored by FDA regarding the safety of the laboratory's blood products. In order for such a laboratory to continue to perform FDA-required tests on blood and blood components, it must demonstrate to FDA's satisfaction that its staff and procedures are adequate to assure the safety of its products.

Proposed 21 CFR 606.145(e) is intended to make clear some likely consequences of failure to perform successfully in proficiency testing programs. Paragraph (e) of 21 CFR 606.145 would authorize FDA to take any appropriate action, including (1) requiring changes in laboratory procedures or staffing, (2) requiring the laboratory to enroll its staff in suitable training programs, and (3) FDA inspection of the laboratory. The appropriate actions taken by the laboratory and FDA will depend on the nature of the proficiency testing failure, i.e. equipment failure, clerical failure, deficiencies in technical expertise of laboratory personnel, and problems related to the sample (and not to the laboratory's testing system).

If, based on the available information, FDA determines that the laboratory's testing program is not adequate to assure the continued safety of the blood

or blood components being tested, the agency may decide that the laboratory is not qualified to perform FDA-required tests on blood and blood components. Then, until adequate performance has been demonstrated to FDA's satisfaction, the laboratory would be deemed unqualified to perform FDA-required tests.

Similar procedures have been relied on in the past when FDA inspections have revealed serious shortcomings in laboratory practices. These procedures have proved successful in assuring the continued availability of safe and effective blood and blood products.

In order to emphasize that the proposed proficiency testing requirements are directly related to the requirements that the HIV antibody and HBsAg tests be performed by qualified laboratories, the agency is also proposing to revise 21 CFR 610.40 and 610.45. These proposed revisions state that a laboratory performing an FDA required test for HBsAg or evidence of HIV, respectively, must participate successfully in a proficiency testing program consistent with proposed 21 CFR 606.145.

IV. Environmental and Economic Impacts

The agency has determined under 21 CFR 25.24(c)(10) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this final rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as specified in the Regulatory Flexibility Act (Pub. L. 96–354).

Most laboratories would already be required to perform proficiency testing in accordance with any final rule resulting from the HCFA proposed rule of August 5, 1988. Thus, this FDA proposal affects only the estimated 80 to 100 laboratories that are not covered by the HCFA proposal but are regulated by FDA. Although some of these laboratories may incur costs to achieve the required compliance with proficiency testing standards, these costs are expected to be relatively small.

According to the economic analysis that was published in the HCFA proposal, HCFA's proposed rule would not have a significant economic impact. HCFA's proposal, if finalized, would affect approximately 12,000 Federally-regulated laboratories located in hospitals and independent settings. Since FDA's proposal would affect a much smaller number of laboratories (80 to 100), FDA has determined that the final rule will not be a major rule as defined by Executive Order 12291. Further, if promulgated, FDA certifies that the proposed rule will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

V. Paperwork Reduction Act

Section 606.145 of this proposed rule contains information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504, *et seq.*). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VI. Comments

Because of the importance to the public health of having this new requirement in place expeditiously, the Commissioner of Food and Drugs finds, in accordance with 21 CFR 10.40(b)(2), that good cause exists for shortening the comment period on this proposed rule to 30 days. Therefore, interested persons may, on or before July 6, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Administrative Procedure Act, it is proposed that Parts 606 and 610 be amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR Part 606 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended by 76 Stat. 780, 1052–1053 as amended, 1055–1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87–781 (21 U.S.C. 321, 351, 352, 355, 360 and note, 371), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 as amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243, as amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

2. Section 606.145 is added to Subpart H to read as follows:

§ 606.145 Proficiency testing.

(a) Laboratories performing a test for hepatitis B surface antigen (HBsAg) required by § 610.40 of this chapter or a test for evidence of Human Immunodeficiency Virus (HIV) required by § 610.45 of this chapter shall participate in a proficiency testing program as described in this section.

(b) The proficiency testing program for the Food and Drug Administration (FDA) required tests for HBsAg and evidence of HIV shall be adequate to demonstrate and evaluate the performance of the laboratory in required testing for HBsAg or evidence of HIV under routine conditions of testing, with the proficiency samples tested as part of the laboratory's regular workload by personnel who routinely perform testing, using the laboratory's usual methods.

(c) For the tests described in paragraph (a) of this section, a laboratory shall enroll in a proficiency testing program that is approved in writing by the Director, Center for Biologics Evaluation and Research, as appropriate for fulfilling the requirements of this section. Proficiency testing programs approved by the Health Care Financing Administration (HCFA) will be approved by FDA upon submission to the Director, Center for Biologics Evaluation and Research, of the written approval by HCFA of the proficiency testing program for the applicable tests.

(d) A laboratory failing to meet the standards for adequate performance for the tests described in paragraph (a) of this section shall notify the Director, Center for Biologics Evaluation and Research, as soon as possible by phone (301–295–8191) or other means of rapid communication such as by facsimile transmission (FAX) (FAX 301–295–8197). Written notification shall be submitted

by the laboratory to the Director, Center for Biologics Evaluation and Research, 8800 Rockville Pike, Bethesda, Maryland 20892 within 30 days after the laboratory is notified of such a failure. The written notification shall include an evaluation of the problem and a description of the laboratory's plan for corrective action. The laboratory shall make the results of its proficiency tests available to FDA upon request, including during FDA inspection of the laboratory. The criteria for unsuccessful performance and for reporting to FDA under this paragraph will be established at the time of enrollment in the proficiency testing program. In addition to notification by the laboratory, an approved proficiency testing program shall notify FDA within 30 days of a failure by any of its participants.

(e) When notified of a failure under paragraph (d) of this section, FDA may take such action as it deems appropriate. For example, the agency may inspect the laboratory, require the laboratory to enroll its staff in suitable training programs, or require changes in laboratory procedures or staffing. If, based on the available information, FDA determines that the laboratory has not demonstrated that its testing program is adequate to assure the continued safety of the blood and blood components being tested, FDA may determine that the laboratory is no longer qualified to perform FDA-required tests on blood and blood components until adequate performance is demonstrated to FDA.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

3. The authority citation for 21 CFR Part 610 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended by 76 Stat. 780, 1052–1053 as amended, 1055–1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87–781 (21 U.S.C. 321, 351, 352, 355, 360 and note, 371), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 as amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243, as amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

4. Section 610.40 is amended by redesignating paragraph (f) as (g) and adding a new paragraph (f) to read as follows:

§ 610.40 Test for hepatitis B surface antigen.

* * * * *

(f) *Proficiency testing.* Laboratories performing tests for hepatitis B surface antigen required by this section shall participate successfully in a proficiency testing program consistent with § 606.145 of this chapter.

* * * * *

5. Section 610.45 is amended by adding a new paragraph (d) to read as follows:

§ 610.45 Human Immunodeficiency Virus (HIV) requirements.

* * * * *

(d) *Proficiency testing.* Laboratories performing tests for evidence of HIV, including tests for antibody to HIV, as required by this section shall participate successfully in a proficiency testing program consistent with § 606.145 of this chapter.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

Dated: January 19, 1989.

[FR Doc. 89–13340 Filed 6–5–89; 8:45 am]

BILLING CODE 4160-01-M

federal register

Tuesday
June 6, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 43

U.S./Canada Bilateral Airworthiness Agreement; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 43

[Docket No. 25920; Notice No. 89-16]

RIN 2120-AB89

U.S./Canada Bilateral Airworthiness Agreement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the regulations to provide for the acceptance of maintenance, preventive maintenance, and alterations accomplished on U.S civil aeronautical products and components in Canada. This proposal is prompted by the airworthiness maintenance provisions contained in the U.S./Canadian Bilateral Airworthiness Agreement and the Schedule of Implementation Procedures between the United States and Canada. The proposed amendment would provide for acceptance by the FAA of maintenance, preventive maintenance, and alterations performed on aircraft engines, propellers, appliances, materials, parts, and other components which are transported from the United States to Canada and which are for installation on U.S-registered aircraft.

DATE: Comments on the proposal must be received on or before August 7, 1989.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25920, 800 Independence Avenue, SW., Washington, DC 20591; or delivered in duplicate to the Federal Aviation Administration, Rules Docket, Room 915-G, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in Room 915-G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Leo Weston, Aircraft Maintenance Division, Office of Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8203.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address listed above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. All comments submitted will be available both before and after the closing date for comments for examination by interested persons in the Rules Docket. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No.25920." The postcard will be date/time stamped and mailed to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Section 43.17 of the Federal Aviation Regulations (FAR) (14 CFR 43.17) currently defines the scope of mechanical work authorized to be performed by Canadian persons on U.S.-registered aircraft. Generally, an appropriately rated Canadian Aircraft Maintenance Engineer or an authorized employee (Approved Inspector) of an approved Canadian maintenance company may, with respect to a U.S.-registered aircraft located in Canada: (1) Perform maintenance, preventive maintenance, and alterations, if the work is performed and recorded in accordance with the requirements of Part 43 of the FAR; (2) perform inspections (other than annual inspections), if the inspection is performed and recorded in accordance with the requirements of Part 43 of the FAR; and (3) approve the work accomplished in order to return the aircraft to service (except that only a Canadian Airworthiness Inspector or an Approved Inspector may approve a major repair or major alteration). As presently delineated in § 43.17(a), Canadian persons are allowed to perform mechanical work with respect to a U.S.-registered aircraft only when the aircraft is located in Canada.

The need to maintain products used in U.S. and Canadian aircraft operations created a necessity for the United States and Canada to restructure their bilateral airworthiness agreement. In addition to including the present provisions of § 43.17 to maintain and alter U.S.-registered aircraft in Canada, this agreement provides for the maintenance, preventive maintenance, and alterations of aeronautical products shipped between the United States and Canada.

On September 7, 1984, the United States and Canada signed the Agreement Concerning the Airworthiness and Environmental Certification, Approval, or Acceptance of Imported Civil Aeronautical Products (the U.S./Canadian Bilateral Airworthiness Agreement or U.S./CBAA). This agreement terminated and replaced the Arrangement of July 28, 1938 (as amended by the Exchange of Notes at Ottawa, August 12, 1970, and February 18, 1971), which provided for the reciprocal acceptance of certificates of airworthiness for export of aeronautical products between the United States and Canada. The purpose of the maintenance provisions of the U.S./CBAA is to provide for the reciprocal acceptance of the performance in one contracting State of maintenance on, and alterations of, civil aeronautical products certified, approved, or accepted in the other contracting State. (The U.S./CBAA defines "maintenance" as including the types of functions performed as "preventive maintenance," and defines "modification" as synonymous with "alteration.").

Canada has entered into similar airworthiness agreements with several European countries that include provisions to maintain Canadian-registered aircraft in those European countries. The provisions of the agreements between Canada and those European countries are not included as part of the U.S./CBAA. Products for use on U.S.-registered aircraft cannot be maintained or altered under any bilateral agreement made between

Canada and any other country except the United States.

On January 31, 1985, the United States and Canada signed the Schedule of Implementation Procedures (Schedule) for the U.S./Canadian Bilateral Airworthiness Agreement. The purpose of the Schedule is to carry out the objectives of the U.S./CBAA. The Schedule includes the objective of ensuring that "the procedures for the performance of maintenance and alteration or modification by authorized persons in one State on aircraft which are under airworthiness regulation by the civil airworthiness authority * * * of the other State, including aeronautical products to be installed on such aircraft, establish that the work is performed and the aircraft is returned to service in accordance with the laws, regulations, standards, and requirements of the State regulating the airworthiness of the affected aircraft." Concurrent with this objective is the necessity to provide for the development of reciprocity procedures and cooperation toward sustaining the environmental and equivalent safety objectives of the U.S./CBAA.

Discussion of Proposal

Section 43.17

This proposal would provide the regulatory framework for the acceptance of maintenance, preventive maintenance, and alterations accomplished under the U.S./CBAA. The proposal would not change the existing provisions that allow maintenance of U.S.-registered aircraft located in Canada. The amendment, as proposed, would allow a Canadian repair company or air carrier to perform maintenance (excluding annual inspections) and preventive maintenance on, and alterations of, U.S. aeronautical products shipped to Canada, and approve those products for return to service, provided such work is of the type and complexity for which the company or air carrier is approved to perform by the Canadian Department of Transport with respect to Canadian aeronautical products. If the work performed is a major repair or major alteration, the product would be approved for return to service only if the work was accomplished in accordance with technical data approved by the FAA. A Canadian Aircraft Maintenance Engineer, with appropriate ratings issued by the Canadian Department of Transport, would be allowed to perform maintenance (excluding annual inspections) and preventive maintenance on, and alterations of, U.S.-registered aircraft located in Canada and approve those aircraft for return to service. However, an Aircraft Maintenance Engineer would not be allowed to approve a major repair or major alteration.

It should be noted that, for purposes of this proposed amendment, "aeronautical product" means any civil aircraft or airframe, aircraft engine, propeller, appliance, component, or part to be installed thereon. "Modification" is defined as synonymous with "alteration." It also should be noted that the proposal would require that all persons performing work under this section must comply with the applicable performance requirements of §§ 43.13, 43.15, and 43.16; recording requirements of §§ 43.2(a), 43.9, and 43.11; approval requirements of § 43.5; and environmental requirements of Part 36 of the FAR.

Under the reciprocal regulations promulgated by the Canadian Department of Transport pursuant to the U.S./CBAA, the Canadian Department of Transport would accept maintenance, preventive maintenance, and alterations performed with respect to Canadian-registered aircraft located in and shipped to the United States if the work is accomplished and approved by U.S. entities appropriately certificated by the FAA.

This proposed rulemaking action would not adversely affect safety. Persons performing work under this proposal would be required to comply with the performance and approval requirements of the FAR. Canada has maintenance organizations that are approved and surveilled by Canadian procedures similar to those outlined in the FAR.

In addition, this proposal would not result in any cost to the FAA under the U.S/CBAA, since duplicitous approval and surveillance time of Canadian-approved maintenance organizations would not be necessary.

Paperwork Reduction Act

Information collection requirements in Part 43 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0020.

Regulatory Evaluation

The rapid growth following deregulation of the airline industry has resulted in an increased demand for qualified maintenance services and facilities. Since the proposed amendment would permit operators of U.S.-registered aircraft to use aeronautical products that have been shipped to Canada for maintenance, preventive maintenance, and alterations, this would provide additional maintenance services and facilities to U.S. air carriers and other operators of U.S.-registered aircraft.

The proposed amendment reflects changes made to the U.S./CBAA, which is intended to increase trade and competition in the marketplace and yield benefits by giving U.S. certificate holders the option of choosing alternative sources of maintenance that are not permissible under the existing rules. This increase in the availability of maintenance sources would be accomplished without diminishing aviation safety. The FAA anticipates that consumers could also benefit, because the availability of alternative sources of maintenance may result in lower air carrier operating costs that could be passed on to consumers in the form of lower air transportation fares.

Although expanding the access to Canadian markets for aircraft maintenance may ultimately result in additional work being done at Canadian locations, the FAA does not foresee an extensive shift of jobs from the United States to Canada. In fact, since the U.S./CBAA has been in effect, the FAA has already granted several exemptions to permit maintenance and services that would be allowed under the proposed rule. The FAA believes that the expected overall growth in the aviation industry would offset losses, if any, to either the United States or Canada in maintenance and services.

Sending aeronautical products for repair to Canada would not be mandatory under the proposed amendment. The FAA has no available data upon which to predict the extent to which air carriers might take advantage of this proposal. The decision to utilize a Canadian repair facility would depend on the type and make of aeronautical product involved, whether the facility under consideration is appropriately rated, the availability of other appropriately rated repair facilities, time constraints, and many other factors. Thus, the FAA is unable to measure the extent of the benefits that might accrue to these carriers.

Since the proposed amendment would permit, but not require, the use of Canadian repair facilities, no significant costs would be imposed on the public. The availability of additional sources of repair facilities would tend to reduce costs and increase operating efficiency, thus indirectly improving service to the traveling public.

International Trade Impact Analysis

The proposal and the reciprocal regulations to be promulgated by Canada would improve international trade for both U.S. firms doing business in Canada and Canadian firms doing business in the United States by accepting the airworthiness certification process for each country's products. The airworthiness standards that both U.S. and Canadian-manufactured aeronautical products currently have to meet would not change. In addition, both U.S. operators and Canadian operators would have additional facilities for the maintenance of aeronautical products in each other's country. Thus, the proposal would have a beneficial impact on international trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure, among other things, that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." Under FAA Order 2100.14A, adopted September 16, 1986, operators of aircraft for hire who are considered to be small entities are defined as follows: They are those that own, but not necessarily operate, less than nine aircraft. A substantial number of small entities means a number which is not less than 11 and which is more than one-third of the small entities subject to a proposed rule.

The proposal to amend § 43.17 would continue to permit the Canadian Department of Transport approved persons that meet minimum FAA standards to perform maintenance, preventive maintenance, and alterations with respect to U.S. aeronautical products and to inspect and approve those products for return to service. The U.S./CBAA sets forth in detail the standards and methods that will be applied in the approval of the products and repairs.

The proposed regulation would not be mandatory; small entities would be allowed to choose whether or not to utilize Canadian repair facilities. In any case, the FAA does not expect more than one-third of the small entities affected by this proposal to utilize these facilities. As a result, a substantial number of small entities is not expected to be impacted by the proposal. The FAA, therefore, finds that an initial regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

Since the proposals contained in this document would not require the FAA's certification and surveillance of Canadian-approved maintenance organizations and would lessen costs and improve service to the operators of U.S.-registered aircraft, the estimated benefits exceed the estimated costs of implementing this proposal. For the reasons discussed above, the FAA certifies that, under the criteria of the Regulatory Flexibility Act, this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities, and a regulatory flexibility analysis is not required. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, for the same reasons, the proposal does not involve a major rule under Executive Order 12291. A copy of the draft regulatory evaluation for this regulatory action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 43

Maintenance, Preventive maintenance, Rebuilding, Alterations.

The Proposed Amendment

In consideration of the foregoing, the FAA proposes to revise § 43.17 of the FAR (14 CFR 43.17) as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for Part 43 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106 (g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 43.17 is revised to read as follows:

§ 43.17 Maintenance, preventive maintenance, and alterations performed on U.S. aeronautical products by certain Canadian persons.

(a) *Authorized persons.* (1) A person holding a valid Canadian Department of Transport certificate (Aircraft Maintenance Engineer license) and appropriate ratings may, with respect to a U.S.-registered aircraft located in Canada, perform maintenance, preventive maintenance, and alterations in accordance with the requirements of paragraph (c) of this section and approve the affected aircraft for return to service in accordance with the requirements of paragraph (d) of this section.

(2) A company (Approved Maintenance Organization) (AMO) or air carrier whose system of quality control for the maintenance, alteration, and inspection of aeronautical products has been approved by the Canadian Department of Transport, or a person who is an authorized employee (Approved Inspector) performing work for such a company or air carrier, may, with respect to a U.S.-registered aircraft located in Canada or other U.S. aeronautical products transported to Canada from the United States, perform maintenance, preventive maintenance, and alterations in accordance with the requirements of paragraph (c) of this section and approve the affected products for return to service in accordance with the requirements of paragraph (d) of this section.

(b) *Definitions.* For purposes of this section, "aeronautical product" means any civil aircraft or airframe, aircraft engine, propeller, appliance, component, or part to be installed thereon; "U.S. aeronautical product" means any civil aircraft or airframe, aircraft engine, propeller, or appliance under airworthiness regulation by the FAA, or component or part to be installed thereon; "Canadian aeronautical product" means any civil aircraft or airframe, aircraft engine, propeller, or appliance under airworthiness regulation by the Canadian Department of Transport, or component or part to be installed thereon.

(c) *Performance requirements.* A person authorized in paragraph (a) of this section may perform maintenance (including any inspection required by § 91.169 of this chapter, except an annual inspection), preventive maintenance, and alterations, provided:

(1) The person performing the work is authorized by the Canadian Department of Transport to perform the same type of work with respect to Canadian aeronautical products;

(2) The work is performed in accordance with §§ 43.13, 43.15, and 43.16 of this chapter, as applicable;

(3) The work is performed such that the affected product complies with the applicable requirements of Part 36 of this chapter; and

(4) The work is recorded in accordance with §§ 43.2(a), 43.9, and 43.11 of this chapter, as applicable.

(d) *Approval requirements.* (1) To return an affected product to service, a person authorized in paragraph (a) of this section must approve (certify) maintenance, preventive maintenance, and alterations performed under this section, except that an Aircraft Maintenance Engineer may not approve a major repair or major alteration, unless the work is accomplished in accordance with technical data approved by the Administrator.

(2) An AMO or an air carrier whose system of quality control for the maintenance, alteration, and inspection of aeronautical products has been approved by the Canadian Department of Transport, or an authorized employee (Approved Inspector) performing work for such an AMO or air carrier, may approve (certify) a major repair or major alteration performed under this section if the work was performed in accordance with technical data approved by the Administrator.

(e) No person may operate in air commerce an aircraft, airframe, aircraft engine, propeller, or appliance on which maintenance, preventive maintenance, or alteration has been performed under this section unless it has been approved for return to service by a person authorized in this section.

Issued in Washington, DC, on May 30, 1989.

Daniel C. Beaudette,

Acting Director, Flight Standards Service.

[FR Doc. 89-13315 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-13-M

federal register

Tuesday
June 6, 1989

Part V

Environmental Protection Agency

40 CFR Part 259

Standards for the Tracking and Management of Medical Waste; Notice Identifying Participating States, Delaying Effective Date for Certain States, and Extending Comment Period

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 259

[SW-FRL-3598-5]

Standards for the Tracking and Management of Medical Waste

AGENCY: Environmental Protection Agency.

ACTION: Notice identifying participating states; delaying effective date for certain states; and extending the comment period.

SUMMARY: The purpose of this Notice is to specify the States in which the medical waste tracking demonstration program, published in the **Federal Register** on March 24, 1989 (54 FR 12326), will be effective. The Medical Waste Tracking Act of 1988 set up a demonstration program to track medical waste and allowed States 30 days in which to decide whether to participate in the program. Medical wastes generated in such "Covered States" are subject to the tracking requirements promulgated in the March 24 interim final rule. EPA has now determined that seven States will participate in the demonstration program and is revising the regulations to identify as Covered States: Connecticut, Louisiana, New Jersey, New York, Puerto Rico, Rhode Island, and the District of Columbia.

DATES: *Effective Date:* These amendments are effective June 6, 1989. The tracking regulations under Part 259 will be effective June 22, 1989, in New York, New Jersey, and Connecticut, and on July 24, 1989, in Louisiana, Rhode Island, Puerto Rico, and the District of Columbia.

Comments: Comments will be accepted on the March 24, 1989 notice through June 22, 1989.

ADDRESSES: The public docket for this rulemaking (Docket No. F-89-MTPF-FFFFF) is located at Room LG-100, RCRA Docket (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. EPA's RCRA docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. A maximum of 100 pages may be copied from any regulatory docket at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline toll free at (800) 424-9346 (in Washington, DC, call (202) 382-3000). For information on specific aspects of today's notice, contact Mike Petruska, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Authority

This Notice is issued under the authority of sections 2002, 11001, 11002, 11003, 11004, 11010, 11011 of the Solid Waste Disposal Act of 1970 as amended by the Medical Waste Tracking Act of 1988, 42 U.S.C 6992 *et seq.*

II. Background

Recent incidents of medical waste mismanagement resulted in enactment of a two-year demonstration program for tracking medical waste from the point of its generation to its point of disposal. The Medical Waste Tracking Act of 1988, 42 U.S.C. 6992 et seq., requires this demonstration program to be established in a limited number of States. Congress chose this option in order to regulate medical waste on a small scale.

In establishing the demonstration program, Congress intended for Connecticut, New York, and New Jersey to participate or to have a State program that is at least as stringent as the Federal program. Congress also intended for the Great Lakes States (Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin) to participate unless the Governors of those states decided not to participate. Finally, any other States could participate if their Governors wished. Congress provided the States with a 30-day period to decide whether or not to participate (i.e. the opt out/petition in period).

The opt out/petition in period began with the date of the promulgation of the interim final tracking regulations 54 FR at 12326-12395 (March 24, 1989), and ended April 24, 1989. The regulation identified the 7 Great Lake States, New York, New Jersey, and Connecticut as "Covered States." 54 FR 12373.

EPA received several opt out and petition in notifications. As provided in Section 259.23, in this Notice EPA is removing as "Covered States" the Great Lakes States that chose not to participate in the program and is adding as "Covered States" those States which have elected to join this program. 54 FR 12373 (March 24, 1989). As explained in the March 24 preamble (54 FR 12336), now that the 30-day period has passed, EPA will not consider any further additions or deletions to the list of States (id).

III. Participating States

The following States, identified as Covered States in the Act, have elected to remain in the program. They include the States of Connecticut, New York, and New Jersey. The Governors of New York and New Jersey sent letters, available in the public docket, affirming their States' participation in the program; Connecticut did not send a letter.

The Governors of the following States identified as Covered States in the statute and regulations have elected to opt out of the demonstration tracking program for medical waste. They include: Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin. The letters from the Governors of each of these States, indicating their decisions to opt out of the demonstration tracking program, are available in the public docket for this Notice.

The Governors of the States of Louisiana and Rhode Island and the Mayor of the District of Columbia, and Governor of the Commonwealth of Puerto Rico, have petitioned the Administrator to be included in the program. The letters from the Governors of each of the several States petitioning for inclusion into the demonstration tracking program are available in the public docket for this rulemaking. The Administrator has reviewed the petitions for inclusion and has determined that inclusion of these States would provide a broader range of experience and information and therefore, a more meaningful demonstration program than if only New York, New Jersey, and Connecticut were included. Thus, this Notice amends the list of Covered States in §§ 259.10 and 259.20 to identify the following States as Covered States: Connecticut, Louisiana, New Jersey, New York, Puerto Rico, Rhode Island, and the District of Columbia. The regulated medical waste generated in these States will therefore be subject to the regulations at 40 CFR Part 259.

Finally, EPA has modified the effective date of the March 24 regulation so that the regulated communities in the four States that petitioned-in have until July 24 to come into compliance. EPA determined the extra time would be necessary because the regulated parties in those States are only now being officially notified that their States are definitely in the new program, while parties in New York, New Jersey, and Connecticut have known for some time they would be regulated under the new EPA rules or equivalent State rules.

Also, EPA has extended the comment period until June 22 to give all parties, including those in the new States further opportunity for comment.

EPA notes that certain sections of the regulations (e.g., § 259.61, § 259.78, and the incinerator and transporter report forms in Appendices II and III of Part 259) refer to the June 22 date. Regulated parties in Louisiana, Rhode Island, Puerto Rico, and the District of Columbia, however, are not required to keep the required records and report on the period of June 22 to July 23. Their first incinerator and transporter reports then will cover the period July 24–December 22, 1989. After this first reporting period all parties will be in the same schedule and the demonstration program will end in all States on June 22, 1991.

IV. Regulatory Impact

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Administrator determined in the Interim Final Rule that the Medical Waste Demonstration Tracking Program had a total estimated cost of less than $100 million per year. The estimated cost was based on expected cost for management practices and assumed that the 10 States identified in the Medical Waste Tracking Act would participate in the program. Since the seven States bordering the Great Lakes have opted out of the program and only four States, Louisiana, Rhode Island, Puerto Rico, and the District of Columbia, have petitioned in, the Agency believes that the program costs will continue to be less than $100 million per year. Therefore, no Regulatory Impact Analysis is required.

Dated: May 26, 1989.

Robert L. Duprey,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 259—STANDARDS FOR THE TRACKING AND MANAGEMENT OF MEDICAL WASTE

1. The authority citation for Part 259 continues to read as follows:

Authority: 42 U.S.C. 6912, 6992, et. seq.

2. Section 259.10 is amended by revising the definition for "Covered States" in paragraph (b) to read as follows:

§ 259.10 Definitions.

* * * * *

(b) * * *

"Covered States" means those States that are participating in the Demonstration Medical Waste Tracking Program and includes: Connecticut; Louisiana; New Jersey; New York; Rhode Island; Puerto Rico; and the District of Columbia. Any other State is a Non-Covered State.

Subpart C—Covered States

3. Section 259.20 is revised to read as follows:

§ 259.20 States included in the demonstration program.

(a) The regulations of this part apply to Regulated Medical Waste that is generated in any Covered State.

(b) For purposes of this part, Covered States are the States of Connecticut, Louisiana, New Jersey, New York, Rhode Island, Puerto Rico, and the District of Columbia.

§ 259.21 [Removed]

4. Section 259.21 is removed.

§ 259.22 [Removed]

5. Section 259.22 is removed.

§ 259.23 [Removed]

6. Section 259.23 is removed.

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